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Shattering the Silence Surrounding Forced and Early Marriage in the United States

By Julia Alanen*

I. Introduction

Everywhere, people are rallying around the belief that women's rights are human rights. They are coming to grips with what it means that societies cannot flourish if half their people are left behind.¹

—U.S. Secretary of State Hillary Rodham Clinton

Advocates from coast to coast report incidents involving adolescent girls fleeing home to escape being forced by their parents to marry against their will.² Often, the bride-to-be is a teenage girl,³ and the groom a significantly older man.⁴ Some families resort to violence or even ‘honor’ killing to punish girls who are perceived to have shamed themselves and dishonored their families by resisting or fleeing a forced marriage.⁵ Other harmful consequences associated with forced marriage include increased rates of infant and maternal mortality and sexually-transmitted disease, rape, domestic violence, and suicide.⁶ Although U.S. victims⁷ are currently afforded little recourse, a nascent U.S. movement to eliminate forced marriage is rapidly gathering momentum.⁸

This Article examines the nature, catalysts, and consequences of forced and early marriage customs; evaluates the efficacy of applicable domestic, foreign, and international laws and remedies; gauges the capacity of minors to meaningfully consent to marriage; analyzes competing theories about whether harmful marriage practices are best addressed through civil or criminal laws; and explores the role of community-led development efforts to spur social change. In order to craft effective, culturally competent solutions, it is essential that U.S. responders gain a nuanced understanding of the catalysts and consequences of harmful marriage customs in the countries of origin of our immigrant communities, where forced and early marriage are mainstream practices, and integrate lessons learned by countries with well-developed forced-marriage protection regimes. For these reasons, this Article weaves a global perspective throughout the domestic analysis.

II. Catalysts and Consequences of Forced and Early Marriage

A. Catalysts

In order to understand and eliminate harmful marriage practices in the United States, it is essential to situate marriage customs within any given community's broader cultural context. Parents around the world cite a wide variety of justifications for forcing their children into marriage, including:

- Controlling sexuality (particularly the sexuality of women and girls);
- Controlling unwanted behavior (e.g., alcohol or drug use, wearing make-up or behaving in what is perceived to be a “westernized manner”);
- Preventing “unsuitable” relationships (e.g., outside the ethnic, cultural, religious or caste group);
- Protecting “family honor” (or “izzat”);
- Responding to peer group or family pressure;
- Attempting to strengthen family links;
- Achieving financial gain;
- Ensuring land, property and wealth remain within the family;
- Protecting perceived cultural ideals;
- Protecting perceived religious ideals which are misguided;
- Ensuring care for a child or adult with special needs when parents or existing caregivers are unable to fulfill that role;
- Assisting claims for lawful residence and citizenship; and,
- Long-standing family commitments.⁹

Extreme poverty and humanitarian crises are additional catalysts of forced and early marriage practices, particularly in immigrant families that bear a heavy burden of responsibility for the welfare of extended family members in developing or conflict-ridden countries.

1. Preventing “Unsuitable” Relationships and Strengthening Family Links

Women's advocate Debjani Roy explains that, in certain cultural traditions where “marriage is seen as a union of not only individuals, but of families,” parents remain integrally involved in selecting spouses for their children:

[I]t has been the parents' primary duty, role and responsibility to arrange the marriage of their son and/or daughter. Historically ... in many parts of the world, individuals were married at a younger age. Due to their lack of experience, they were not entrusted with the decision as to who they would marry ... [M]arriage was and often still is seen as a union of not only individuals, but of families. One reason for this is because the joint family, where generations of family members live in the same household, used to be the standard living arrangement ... [U]pon marrying ... the bride would move to her husband's home, as custom dictated ... it [was] only logical for parents to assume the responsibility of selecting spouses for their sons because the bride was part of the whole family environment.¹⁰

While the worldwide average age at time of marriage is gradually increasing, even parents of *adult* sons and daughters are sometimes unwilling to entrust their children with the choice of whether, when, and whom to marry.¹¹

2. Controlling Sexuality and Protecting "Family Honor"

Deeply rooted traditional social mores – such as fears surrounding promiscuity, homosexuality, and extramarital pregnancy – precipitate many forced marriages. Forced marriage survivor and advocate Jasvinder Sanghera describes *honor* as "a learnt complex set of rules that an individual has to follow in order to protect the family name and maintain family position."¹² An individual who is perceived to have violated this code of conduct may be severely punished in the name of protecting or defending the family's 'honor.' Nonconforming behaviors as simple as wearing makeup or western clothing, talking to a non-family member of the opposite sex, or resisting an arranged marriage can trigger extreme – even fatal – reprisal.¹³

In countless cultural traditions, a family's perceived honor is inextricably linked to the daughters' virginity prior to marriage.¹⁴ Vidya Sri, an American forced-marriage survivor and advocate, told Inter Press Service, "My parents were very strict about family honour. It was [important] to my father that I remain untouched, unspoiled, pure and pristine because I would be of marriageable age very soon."¹⁵ Outraged upon discovering that their daughter was dating a boy from her school, Sri's parents sent her to India, telling her she could not return without a husband.¹⁶ Under acute emotional coercion by her family, Sri married the man of her parents' choosing.¹⁷

In some cultures, girls who have been raped – often perceived as shamed and shameful to their families – are given in marriage to their rapists.¹⁸ Patriarchy and superstition can also perpetuate the promotion of child marriage. For example, in Nepal many "believe that a parent's soul will rest in peace in heaven if they marry off their daughters before her first menstrual cycle."¹⁹ Many parents force their daughters into nonconsensual marriages in a desperate bid to preserve the family 'honor' and the girl's marriageability within their ethnic community.²⁰

In Malaysia, a marriage law and corresponding public campaign aggressively encourage adolescents to marry, offering monetary stipends, homeownership incentives, and monthly allowances to teens who agree to "tie the knot." Malaysian leaders justified the law by alleging that it will limit the social ills that result from extramarital sex and pregnancies, and reduce the number of abortions and children born out of wedlock.²¹

Parents who disapprove of their child's nontraditional sexual orientation²² sometimes view forced heterosexual marriage as a "solution" or "cure." The United Kingdom's Forced Marriage Unit²³ reports fielding requests for assistance from numerous young gay persons confronted with forced marriage.²⁴ When Reviva's²⁵ parents discovered that their teenage daughter was gay, they began to arrange weekly meetings with prospective grooms.²⁶ Reviva says her parents resorted to exorcism and violence when she resisted being forced into a heterosexual marriage²⁷:

The worst thing they tried was burning my hand on the stove. Anything they could grab, they'd hit you until you'd sort of pass out. They always tried to hit me where it couldn't be seen, to hide the scars. Because don't forget I was meant to get married, so I was meant to have skin that isn't damaged.²⁸

At one point, Reviva's father orchestrated an Islamic marriage, in absentia, to a man in another country who Reviva had never even met.²⁹ Reviva repeatedly attempted suicide, a course of action that she says her parents ultimately encouraged:

I was damaging the family honour. I was making the family [look] like a modernised, westernised, filthy family. So what they wanted to do is get rid of what is damaging the honour. They put you in a room on your own, I don't get any food, or any water, and I have to just sit there and wait to die or kill myself.³⁰

To facilitate suicide, her family left a gun, a knife, pills, a can of petrol, and a box of matches in the room.³¹ Reviva ultimately escaped with the help of the LGBT Forced Marriage project.³²

3. Ensuring Care for Children with Special Needs

Parents who lack the resources to care for a child with special needs, or who fear that nobody will be left to care for the child when the parents grow old or pass away, sometimes view marriage as an opportunity to ensure the child's long-term care and support, normalize her life, and reduce social stigma associated with the disability.³³ According to Mandy Sanghera, a trustee of VOICE UK, a charity that supports people with learning disabilities who have experienced crime or abuse:

Some families see marriage as a way of providing a carer for their child, so feel they have their child's best interests at heart ... We mustn't forget ... that marriage is a right for people with learning disabilities who have capacity. We have to make sure that people are supported to enjoy that right and not forced into marriage.³⁴

4. Alleviating Poverty and Facilitating Migration

Poverty motivates some families to marry off children that they can no longer afford to support.³⁵ Unbeknownst to eight-year-old Mannal,³⁶ when her father ran into financial troubles, he sold her into marriage with a fifty-nine-year-old man in return for 30,000 riyals, the equivalent of 8,000 U.S. dollars.³⁷ "I was negotiated over like a goat" said Hadizatou, another victim, who was sold for the equivalent of 500 U.S. dollars into marriage with a man in his sixties when she was only twelve years old.³⁸ Her husband raped and beat her, and forced her to perform hard labor.³⁹ Hadizatou was sentenced to six months in prison for bigamy after she eventually escaped her abuser and married a man of her own choosing.⁴⁰

A devastating natural disaster or humanitarian crisis can also leave families impoverished and vulnerable, forcing some to sell their children into labor or early marriage in order to ensure their children's survival.⁴¹ Bibi was fifteen years old when she died in childbirth after her family sold her into a marriage with a thirty-four-year-old man, and hers is hardly an isolated case.⁴² Rates of early marriage and pregnancy surged dramatically in flood-devastated areas of Pakistan, where families who lost everything sold their young daughters into marriages in an effort to feed and shelter both the child brides and the rest of the family.⁴³ According to Plan UK, disasters and emergencies have precipitated many forced and early marriages:

Food insecurity in Kenya has led to the phenomena of 'famine brides', drought and conflict in Afghanistan have forced farmers to arrange and receive money for the early marriage of their daughters, and girls in Indonesia, India

and Sri Lanka have been pressed into marriages with 'tsunami widowers', in many instances doing so to receive state subsidies for marrying and starting a family. Early marriage increased in Indonesia after the 2004 tsunami as families in refugee camps saw it as the only protection for their daughters from rape and in Sri Lanka, where rates of early marriage are normally relatively low, girls have been married to protect them from recruitment into militia.⁴⁴

While such extreme circumstances may strike most Americans as remote, many immigrant families – some of whom came to the United States to escape just such crises – bear staggering burdens of responsibility for extended family members living in developing and conflict-ridden countries. Marrying off a daughter for the bride price, or to enable a loved one to lawfully immigrate to the United States, is not such a remote possibility.⁴⁵ Bride price and dowry traditions can further perpetuate harmful marriage practices by creating an additional financial incentive.⁴⁶ The bride is treated as chattel without any right to self-determination.

5. Protecting Perceived Religious Ideals

Many parents cite religious doctrine as a basis for harmful marriage practices.⁴⁷ The United Kingdom's Multi-agency Practice Guidelines characterize such interpretations of religious doctrine as "misguided."⁴⁸ Forced marriage survivor and advocate Jasvinder Sanghera says that her mother quoted religious passages to her in order to convince her to accede to an unwanted marriage.⁴⁹ "No religion supports honor crimes or forced marriage," says Sanghera, and "using religion as a defense for such actions is false."⁵⁰

While the catalysts of harmful marriage customs around the world may not resonate with mainstream America, Tahirih's Director of Public Policy, Jeanne Smoot, explains their relevance to U.S. advocacy efforts:

In forced marriage cases arising in immigrant communities, it is striking just how much of the old world is carried to the new. While some of these dynamics and drivers may change when a family immigrates to a new host country, they may simply manifest themselves in different ways ... [T]hey still inform the family's understanding and framework for what's acceptable and even what's "moral", right, and in a child's best interests.⁵¹

The uncertainty and unease that characterize the U.S. immigrant experience compel many first-generation immigrants to adhere to familiar beliefs and customs in order to assert control over an unfamiliar environment.⁵² Only by taking a global view of forced and early marriage

customs can we begin to address these practices in our own immigrant communities.

B. Consequences

*No woman can call herself free who does not own and control her own body.*⁵³

—Margaret Sanger

The physical and psychological consequences of forced and early marriage can be devastating and enduring.⁵⁴ According to the United Nations' Department of Economic and Social Affairs ("DESA"):

Marriage patterns have implications for the status of women, their health and fertility ... [E]ntry into marriage usually marks the beginning of exposure to childbearing. Early entry into marriage exposes women to the risks of early childbearing and may also impede improvements in their educational, economic, and social status. Where young females marry older males, large age gaps between spouses could contribute to marginalization of females and low status of women.⁵⁵

Once a girl is married, she will be expected to consummate the union. According to the Forum on Marriage and the Rights of Women and Girls, "The young bride's status in the family is frequently dependent on her demonstrating her fertility – often within the first year of her marriage."⁵⁶ Girls who refuse or resist are sometimes threatened, beaten, or raped.⁵⁷ After the marriage is consummated, the wife may be perceived as permanently 'ruined' for any other man. Even if she succeeds in annulling the marriage, she will likely be ostracized by her family and regarded as unmarriageable within her ethnic community.⁵⁸

In communities where early marriage of girls is commonplace, early sexual activity, pregnancy, and childbirth are also common, resulting in higher rates of HIV/AIDS and other sexually transmitted infections, increased infant and maternal mortality and morbidity, and other reproductive health issues such as obstetric fistulae.⁵⁹ According to the Global Health Council on Adolescent Youth:

The immature reproductive and immune systems of adolescent girls increase their risk for sexually transmitted infections and complications during pregnancy and childbirth. Girls aged 15 years and younger are five-times more likely to die during childbirth than women between the ages of 20 and 24 years old.⁶⁰

The power dynamics characteristic of early marriages, particularly where the husband is significantly older, leave many child brides without the sway to negotiate

for safe sex or control over their reproductive activities. The disturbing duality of the husband-as-father power and control dynamic is well illustrated by a recently reported case involving a thirteen-year-old forced-marriage victim in Washington, D.C.⁶¹ The girl's new husband enrolled her in public school by saying he was her father, and then raped her every night when she came home.⁶²

Domestic violence, rape, and sexual assault are pervasive in forced and early marriages, and child brides frequently find themselves in servile conditions.⁶³ The father of eight-year-old Nujood sold her into marriage to a thirty-year-old man who terrorized and sexually abused her:

My father beat me and told me that I must marry this man, and if I did not, I would be raped and no law ... in this country would help me [My husband] used to do bad things to me, and I had no idea as to what a marriage is. I would run from one room to another in order to escape, but in the end he would catch me and beat me and then continued to do what he wanted.⁶⁴

Married girls are typically removed from school at an earlier age, diminishing their capacity for independence and perpetuating a cycle of poverty.⁶⁵

Many of the behavioral indicators of forced marriage resemble indicators of domestic violence: physical and sexual abuse; threatening behavior; isolation and imprisonment; abduction; psychological and social pressure, including emotional blackmail; restrictions on lifestyle such as limitations on movement, association, dress code, education, and career choices; oppressive financial control; and other demeaning, humiliating, and controlling behavior.⁶⁶ When twelve-year-old Reem protested her father's plans to force her into marriage with her thirty-year-old cousin, her father gagged her and tied her up, threatening to kill her for defying him.⁶⁷ Reem tried to commit suicide twice after the wedding.⁶⁸ When she resisted consummating the marriage, her husband raped her, choking and biting her, dragging her by the hair, and overwhelming her by force.⁶⁹ Some families resort to extreme violence, such as beheading⁷⁰ and other methods of 'honor' killing⁷¹ to punish women and girls who are perceived to have shamed themselves and dishonored their families by resisting or fleeing forced marriages. Aisha fled her forced marriage to escape beatings and abuse, only to be hunted down and severely mutilated as punishment for running away.⁷² Her brother-in-law held her down while her husband used a knife to slice off her ears and nose.⁷³ When she lost consciousness from the pain, they left her to die. Aisha awoke choking on her own blood.⁷⁴

According to the Ann Craft Trust, an organization that works to ensure that service providers supporting people with disabilities are aware of abuse and protection issues, forced marriage can have grave consequences for persons with disabilities:

The expectation that marriage will be consummated and lead to children means that people with learning disabilities who are forced into marriage may be subjected to sexual assault and rape. As many people with learning disabilities do not receive sex education, they may be ill-equipped to handle unwanted sexual advances, not understand sex, be unaware of contraception and not understand that children can be a consequence of sex.⁷⁵

Real or perceived social stigma, or desperation to ensure that a marriage proceeds, drive some parents to hide their child's disability from the child's prospective spouse and in-laws. Lack of awareness of the disability can undermine marital consent in some countries. Take, for example, the case of "IC":

IC, a young man with autism and severe learning disabilities, was married over the phone to a woman living in Bangladesh who did not have learning disabilities. The Court of Appeal ruled that the marriage was not entitled to recognition in UK law, and Lord Justice Thorpe said consummating the marriage would be tantamount to rape or indecent assault.⁷⁶

Deliberate deception about disabilities can fuel deep resentment, sometimes leading to abusive behavior or abandonment on the part of deceived spouses and in-laws who did not anticipate taking on intensive caregiving responsibilities as the result of the marriage.⁷⁷

Some victims, feeling utterly isolated and hopeless, resort to suicide to escape forced marriages. Jasvinder Sanghera, founder of Karma Nirvana, a Charity that supports victims and survivors of forced marriage and 'honor'-based abuse, describes her sister Robina's tragic escape:

[Robina] stayed in a violent and unhappy marriage out of duty and fear. Her self-defeating commitment to her family's 'honour' or 'izzat' came before everything else - even her happiness and her right to live. Robina ... could not go on being abused. She set fire to herself, died and became another statistic: a member of that unseen, unheard and voiceless group of women who lose their lives every year to the scandal of honour-based abuse.⁷⁸

Perhaps the least acknowledged of all the harms flowing from forced marriage is the human rights

violation that occurs whenever an individual is deprived of his or her inalienable right to choose whether, when, and whom to marry. The inherent deprivation of dignity, equality, and self-determination renders forced marriage an intrinsic human rights violation, regardless of whether the victim suffers physical or psychological harm.⁷⁹ This catalogue of harmful consequences, combined with a growing international consensus about fundamental human rights and freedoms, has fueled fierce advocacy efforts to end harmful marriage practices worldwide.

III. The Question of Consent

The question of *consent* cuts to the core of forced and early marriage analysis. In order for a marriage to be valid, both parties to the union must give full, free, and informed consent. A variety of factors can undermine the validity of marital consent, particularly where at least one of the parties is a minor.

A. Distinguishing Between Forced and Arranged Marriages

*[C]ultural acceptance does not mean this is acceptable. It's not part of my or anyone's culture to be abused.*⁸⁰

—Jasvinder Sanghera, forced marriage survivor

Forced marriage is often conflated with arranged marriage, making it difficult to recognize as a form of gender-based violence.⁸¹ The term "forced marriage" describes circumstances where one or both spouses enter into or remain in a marriage against their will, under physical force or psychological duress, or without free and valid consent.⁸² Parents or other family members, community elders, religious leaders, matchmakers, international marriage brokers, or even human traffickers can broker forced marriages. Forced marriage is distinct from "arranged marriage," wherein both parties freely consent to receive assistance from a third party to identify a prospective spouse, but the ultimate decision of when, whether, and whom to marry rests entirely with the bride and groom.⁸³

The U.S. Department of State has denounced forced marriage as "a violation of basic human rights" and, where a minor is involved, "a form of child abuse,"⁸⁴ but draws a bright line between *forced* and *arranged* marriages: "Arranged marriages have been a long-standing tradition in many cultures and countries. The Department respects this tradition, and makes a very clear distinction between a forced marriage and an arranged marriage."⁸⁵ In reality, the line between *forced* and *arranged* marriage is a blurry one, and the two often appear virtually indistinguishable. A marriage can even begin as *arranged* and end up *forced*.⁸⁶

While bridenappings⁸⁷ do still occur, most forced marriages are the product of far subtler, though no less insidious, coercive measures.⁸⁸ John Fotheringham, consultant at Fyfe Ireland Solicitors, experts in matrimonial law, said: “The literal shotgun marriage – marry this man or we’ll kill you – is extremely rare. What is more likely is marry this man or we’ll withdraw your university funding, or your mother will kill herself, or you’ll bring shame on the family. That is still a forced marriage.”⁸⁹ In an attempt to illustrate the subtleties that can hinder people’s ability to differentiate between the two, the United Kingdom’s Oxfordshire National Health Service (“NHS”) situates *arranged* and *forced* marriages along a consent continuum.⁹⁰ According to NHS:

A marriage becomes forced if there is any duress, whether physical or mental, to marry without free and valid consent. It is the perception of the individual under pressure to marry which matters when defining duress. As one woman said: “A person knows when they are being forced into marriage against their will – that has to be the starting point”.⁹¹

It is the perception of each individual spouse – *not* the perceptions of the parents, advocates or authorities – that determines whether a marriage is forced or consensual.

B. The Impact of Social and Cultural Dynamics on Marital Consent

*Your yes is only as good as your ability to say no.*⁹²

—Marai Larasi

Social and cultural dynamics can profoundly impact individuals’ decision-making and undermine the validity of consent. For example, a woman or girl whose family hails from a country with social norms and laws that severely marginalize females may feel powerless to assert her dissent to an unwanted marriage.⁹³ Exposure to mainstream Western culture and institutions does not necessarily protect or empower women and girls to stand up to parents and elders who hail from a culture bound by different norms. Similar dynamics impact girls raised in profoundly isolated settings, such as those cultivated by Tony Alamo and Warren Jeffs, where community members are confined to a compound and discouraged from having unsupervised contact with the outside world.

The Western cultural tendency to emphasize individualism and individual rights contrasts starkly with many cultures’ conception of the individual strictly in the context of her membership or role in an extended family or community. A South African woman, Nomagugu Ngobese, aptly articulated this tension between rights

and culture: “Human rights are individual rights, which is not the way for us. We live communally.”⁹⁴ Decision-making can be highly structured and designated to elders, religious leaders, or male heads of family.⁹⁵ An individual from a communal culture may not be accustomed to or comfortable asserting personal needs, fears, and desires that conflict with those of other group members, particularly in their presence.⁹⁶ Even in a highly individualistic culture, a child’s inclination to please and defer to her parents can render her consent to marry illusory. Subtle or overt cultural and parent-child dynamics can place an intended spouse of *any* age or gender in a position that forces her or him to choose between coerced consent and a culturally inappropriate, possibly dangerous, confrontation. An underage bride, who lacks the maturity to comprehend the unmitigated nature and consequences of marrying or her right to withhold consent, understands all too well the nature and gravity of the consequences for refusing her parents’ directive to marry.

IV. Forced and Early Marriage in the United States

The first national survey on forced marriage among immigrant communities in the United States, conducted in 2011 by The Tahirih Justice Center, identified as many as 3,000 cases of known or suspected forced marriages encountered by respondents over the preceding two years.⁹⁷ According to Tahirih Executive Director Layli Miller-Muro, “We’ve already learned enough in the survey to tell us we’re just hitting the tip of the iceberg.”⁹⁸ The families of the forced-marriage victims identified in the Tahirih study represent fifty-six different countries of origin and a diverse range of religions.⁹⁹

Recent news reports documenting ‘honor’-based violence in immigrant families in the Americas illustrate that, when families migrate, their customs and belief systems migrate with them.¹⁰⁰ In Phoenix, Arizona, an Iraqi immigrant woman was arrested on allegations that she padlocked her nineteen-year-old daughter to a bed and burned the girl’s face and chest after the girl refused the marriage that her parents had arranged for her to a thirty-eight-year-old man.¹⁰¹ Police said the girl’s younger sister was also arrested for holding her down during the assault.¹⁰² A fourteen-year-old Greenfield, California girl was sold by her Mexican-national father into marriage with an eighteen-year-old man in exchange for one hundred cases of beer and a few cases of meat.¹⁰³ When her new spouse failed to deliver the promised bride price, the girl’s father asked the police to retrieve his daughter and bring her home.¹⁰⁴ By the time the authorities intervened, the girl’s husband had

already earned statutory rape charges by consummating the marriage.¹⁰⁵ And, a Peoria, Arizona father of Iraqi origin was recently convicted in connection with his daughter's death after he ran her over with his car in what was characterized as an 'honor' killing.¹⁰⁶ The man had warned his daughter a few weeks earlier that "something bad would happen" when she fled the marriage arranged by her parents and became involved with a man of her own choosing.¹⁰⁷

Harmful marriage practices in the United States are not limited to foreign nationals or immigrant communities. Warren Jeffs' Fundamentalist Church of Jesus Christ of Latter-Day Saints ("FLDS") and the Tony Alamo Spiritual Ministry are two widely-publicized examples.¹⁰⁸ Elissa was one of numerous young girls forced into marriages in secret ceremonies conducted at a roadside motel in the Nevada desert by Texas polygamist Warren Jeffs, who identifies himself as a FLDS prophet.¹⁰⁹ Elissa testified that Jeffs forced her into a marriage with her adult first cousin when she was just fourteen years old.¹¹⁰ Prosecutors say the forced marriage resulted in Elissa's rape.¹¹¹ "I was trapped," says Elissa, "I felt like I had nowhere to turn. I did not want to go through with this marriage. I felt, honestly, what it was like to die."¹¹² Amy, Desiree, and Jeanne were forced into marriage by polygamous self-proclaimed prophet Tony Alamo and counted among his flock of abused underage wives. The girls were in their early teens when Alamo took them as 'spiritual' wives and required them to have sexual intercourse with him.¹¹³ The youngest of Alamo's wives was just eight years old when her pastor forced her to wed.¹¹⁴

The so-called "shotgun wedding," wherein parents force a pregnant daughter and the presumed father of the fetus to marry, is the most notorious contemporary harmful marriage practice.¹¹⁵ This custom persists in American families of nearly every imaginable race, faith, and heritage.

A. U.S. Laws Governing Consent to Adolescent Sex and Marriage

*Marriage has a long history, and we live in its shadow.*¹¹⁶

—Susan Moller Okin

The United States has a long and robust history of harmful, oppressive marriage laws and practices, including forced and early marriage. These can be traced back to the ancient Roman concept of *patria potestas*, the authority of the *paterfamilias* (family patriarch) to exert absolute control over his family, including the power to dictate life, death, and marriage. According to Nancy Levin and Robert Verchick, early U.S. "marriage laws ... were extremely harsh toward women, treating

them more as legal property than as legal persons."¹¹⁷ In 1808, a Massachusetts court observed that, "the condition of a slave resembled the connection of a wife with her husband, and of infant children with their father."¹¹⁸ Although much has changed in the last 200 years, insidious vestiges of archaic marriage traditions persist in our family laws and culture.

Under the United States' federal system of government, sex and marriage have traditionally been subject exclusively to state regulation without federal intervention.¹¹⁹ Inconsistent state laws governing consent to adolescent sex and marriage can yield absurd and indefensible results, leaving girls vulnerable to exploitation.¹²⁰

The vast majority of U.S. states permit a minor to marry, with parental consent, upon reaching age sixteen, and much younger in certain states, particularly in the event that a girl becomes pregnant.¹²¹ A few states permit minors as young as age twelve or thirteen to marry with the permission of a parent or guardian.¹²² But, few states' marriage laws explicitly set forth that the minor must *also* consent to the union, or require a court's intervention to assess whether the minor's consent was the product of force, fraud, or coercion.¹²³ When a minor seeks to become legally emancipated from her parents, she requires a court's consent, not simply that of her parents. Why should emancipation through underage marriage be treated with any less gravity? State laws governing the minimum lawful age to consent to marriage were designed to prevent minors from marrying against their parents' wishes,¹²⁴ not to prevent parents from coercing their minor children into marriage. An oft-articulated principle in the international human rights context is "in all cases the interests of the child shall be paramount."¹²⁵ The principle that a child's rights may supersede the parents' rights is critical to the movement to eliminate forced marriage of minors.

The minimum legal ages for consent to sex and marriage do not necessarily align within a given state.¹²⁶ For example, while a state's sex-offense law may deem that a fifteen-year-old girl lacks, *per se*, the requisite maturity to lawfully consent to engage in sexual acts with a seventeen-year-old boy without triggering statutory rape charges (regardless of whether her parents consent), that very same state's marriage law may simultaneously deem her sufficiently mature to lawfully consent to marry a fifty-year-old man (with her parents' consent) and then proceed to consummate the marriage.¹²⁷ According to a report published by the Guttmacher Institute, "Statutory rape laws are based on the premise that until a person reaches a certain age, that individual is legally incapable of consenting to sexual intercourse."¹²⁸ Yet, in the process of establishing a minimum legal age for consent to marriage, U.S.

lawmakers indefensibly abandon the compelling policy considerations underlying the establishment of a minimum legal age for consent to sex.

In the New York case of *People v. Dozier*, the court cited the State's interest in preventing forced marriage as one rationale behind statutory rape laws and a minimum age for consent to sex.¹²⁹ The court underscored adolescents' absolute lack of capacity to consent to sex:

Adolescence is a period of physical and emotional turbulence, a time when patterns of behavior are laid down, when environmental stimuli of all sorts must be integrated into a workable sense of self, when sensuality is being defined and fears elaborated, when pleasure confronts security and impulse encounters control ... In short, adolescence is a time of discovery and experience. The vulnerability of so significant a segment of our society during such a sensitive period of its development imposes a responsibility upon the State to assure that what should be a normal and natural experience does not for the unprepared become a *raison de regretter*, physically or emotionally.¹³⁰

The court in *In re Commissioner of Social Services on Behalf of Leslie C.* echoed the *Dozier* court's commitment to preventing forced marriage, emphasizing the detrimental effects of teen pregnancy: "[P]remature parenthood, forced marriage ... and the need for medical or psychological treatment, must invariably be faced when children bear children."¹³¹ While courts have cited preventing forced marriage as a valid basis for criminalizing certain adolescent sexual activity, they have yet to address preventing adolescent sexual activity as a valid basis for proscribing forced marriage. The U.S. Department of State, in its Foreign Affairs Manual ("FAM"), makes the critical connection that some U.S. courts and lawmakers seem to have missed: "The Department considers ... the forced marriage of a minor child to be a form of child abuse, since the child will presumably be subjected to non-consensual sex."¹³²

The Convention on the Rights of the Child ("CRC") recognizes that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection..."¹³³ The determination of the age at which a minor may lawfully consent to engage in a particular activity (be it alcohol consumption, smoking, operating a motor vehicle, military service, sexual activity, or marriage) typically turns upon an assessment of the minimum level of physical and mental maturity required to ensure that the minor's participation is appropriate, voluntary,

and informed.¹³⁴ According to Stop Violence Against Women, a project of The Advocates for Human Rights, "[P]hysical development does not connote maturity, particularly when social and mental development is still in progress."¹³⁵ The United Nations Children's Fund ("UNICEF") describes the teenage years as a critical developmental stage; adolescents are still "[learning] to marshal their thoughts, measure their impulses and think abstractly."¹³⁶ The CRC sets forth that, "Children should be protected from all forms of sexual exploitation including unlawful sexual activity."¹³⁷

A minor's willingness to marry or her parents' willingness to consent thereto are not, *per se*, evidence that the minor has achieved sufficient physical and mental maturity or life experience to fully appreciate the legal ramifications and practical consequences of marriage. The presumption that parental consent somehow validates or obviates the minor's consent to marry is a fallacy. If a minor is of an age where she is deemed to lack the maturity to *independently* consent to marry, then she lacks the maturity to marry at all, and her parents' consent is inconsequential. Adolescent sex that is defined for compelling public policy reasons as nonconsensual *per se*, based on minors' intrinsic lack of capacity to give free and informed consent, cannot reasonably be rendered consensual solely by virtue of a marriage ceremony.

B. Proscribing Underage Marriage as Intrinsically Nonconsensual

*When Nujood Ali petitioned to dissolve her forced marriage, the Judge told her "We don't divorce little girls." To which Nujood replied, "But how come you allow little girls to get married?"*¹³⁸

If minors are incapable of achieving the requisite degree of physical or psychological maturity to give free and informed consent to marriage, then one potential solution is for states to proscribe underage marriage across the board on the basis that it is intrinsically nonconsensual. Establishing a minimum legal age for marriage is a pivotal principle of the international human rights regime.¹³⁹ However, each contracting country is permitted to determine precisely what the minimum legal age for marriage should be within its respective borders.¹⁴⁰

The CRC, ratified by every sovereign state in the world *except* the United States and Somalia, defines a "child" as anyone less than eighteen years of age.¹⁴¹ Some international human rights advocates are calling for a strict prohibition of all marriages involving a party under the age of eighteen:

Drafters should establish 18 years as the minimum age for marriage without exception. Some states allow an underage minor to marry with their parent or guardian's permission or upon court authorization ... Laws should ensure that the minimum age corresponds with an objective standard of maturity, i.e. the age of 18, rather than subjective perceptions of the party's maturity. Misperceptions that equate sexual maturity with readiness for marriage do not take into account ongoing development.¹⁴²

According to the United Nations Division for the Advancement of Women, "As a child under the age of 18 is not capable of giving their valid consent to enter into marriage, child marriages are considered to be forced marriages."¹⁴³ The United Nations Children's Fund (UNICEF) urges that: "Governments need to establish 18 as the legal age of marriage for girls, as well as boys, and ensure its implementation."¹⁴⁴

The results of a study of 8,314 married women in India, published by the Guttmacher Institute, reinforce the reproductive health benefits that result from delaying marriage: "Young women who had married at age 18 or older were more likely than those who had married earlier to have been involved in planning their marriage, to reject wife beating, to have used contraceptives to delay their first pregnancy and to have had their first birth in a health facility."¹⁴⁵

Defenders of underage marriage have argued that proscribing the practice will have a prejudicial impact on certain cultural and religious groups and penalize underage fiancées who genuinely desire to marry (the Romeo and Juliet scenario).¹⁴⁶ Stricter U.S. marriage laws could prompt some parents to conduct an underage daughter's nonconsensual nuptials abroad, in absentia, or by proxy, and then strand the bride in a country with few or no protections from human rights violations until she turns eighteen. While some of these concerns are certainly valid, U.S. states cannot reasonably neglect to reform domestic marriage laws on the basis that harmful marriage laws and practices persist in other countries.

Defining eighteen as the minimum legal age for marital consent would eliminate the uncertainty of assessing whether a minor's consent is truly free and informed. It would unburden unwilling child brides of the onerous decision of whether to marry against their will or suffer the potentially grave consequences of defying their parents. It would reduce the physical, sexual, and psychological harm suffered by underage brides and their offspring. And, it would empower and oblige authorities to treat forced-marriage allegations seriously and protect victims.¹⁴⁷ The responsibilities and potential consequences of early marriage are simply too

grave and enduring to be entered into by any means other than the full, free, and informed consent of an adult.

V. Custom or Crime?

U.S. case law emphatically recognizes a fundamental right to marry¹⁴⁸ and a right to dissolve a marriage.¹⁴⁹ But, the right *not* to marry has garnered little attention to date. Only nine jurisdictions have enacted forced-marriage laws.¹⁵⁰ In California, Maryland, Minnesota, Mississippi, Nevada, Oklahoma, the Virgin Islands, Virginia, and the District of Columbia, the act of forcing or coercing another person to marry could constitute a criminal offense.

A. Forced-Marriage Laws of the U.S. States and Territories

California's forced marriage law states: "Every person who takes any woman unlawfully, against her will, and by force, menace or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment."¹⁵¹ The most glaring deficiency of California's forced marriage law is that it only protects female victims.¹⁵² Another shortcoming of California's statute is that it contains no preventive terms – it does not criminalize attempting, aiding, abetting, or conspiring to force a person to marry.

Maryland's forced marriage law is somewhat broader than California's, in that it creates criminal consequences for aiders, abettors, and conspirators, which could potentially apply to the groom, his parents, the wedding officiant, or any other third party who knows that the bride does not consent, but nonetheless aids, abets, or conspires to force her to marry. The provision addressing persons who knowingly benefit financially could apply to parents or others who receive a dowry or bride price in circumstances involving an unwilling bride. Maryland classifies forcing another to marry as a felony human trafficking offense.¹⁵³ The "intent" language in the Maryland statute appears to empower authorities to intervene *before* a victim is forced into marriage, but a defendant's intent can be difficult to prove.

Minnesota's law is particularly troubling because it fails to address cases involving adult victims or circumstances where the minor victim's parent or legal custodian is the perpetrator.¹⁵⁴ And, the Minnesota statute contains no language criminalizing attempt, or addressing aiders, abettors, or conspirators.

Mississippi's forced marriage law states:

Every person who shall take any person over the age of fourteen (14) years unlawfully, against his or her will, and by force, menace, fraud, deceit, stratagem or duress, compel or induce

him or her to marry such person or to marry any other person, or to be defiled, and shall be thereof duly convicted, shall be punished by imprisonment in the penitentiary...¹⁵⁵

Unwilling spouses ages fourteen and under will not find recourse under this Mississippi statute. And, the absence of “attempt” or “intent” language prevents Mississippi authorities from intervening until *after* the marriage ceremony takes place.

Nevada’s forced marriage law provides: “1. A person who: ... (e) Takes or detains a person with the intent to compel the person by force, threats, menace or duress to marry him or her or any other person ... is guilty of pandering.”¹⁵⁶ Men, women, and children are covered under Nevada’s forced marriage law, and the penalties are more severe where the victim is a minor.¹⁵⁷ But, aiders, abettors, and conspirators are “off the hook” in Nevada, as are financial beneficiaries of a dowry or bride price.

Oklahoma’s forced marriage law states: “Any person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not less than ten (10) years.”¹⁵⁸ Male forced marriage victims are not protected in Oklahoma, and Oklahoma’s statutory language suggests that the victim would have to be married before authorities could intervene, due to the absence of “attempt” or “intent” language.

The Virgin Islands’ forced marriage law provides: “Whoever takes any woman unlawfully, against her will, and by force, menace or duress, compels her (1) to marry him; (2) to marry any other person; or (3) to be defiled, shall be imprisoned not more than 10 years.”¹⁵⁹ Only female victims are protected under the Virgin Islands’ forced marriage statute, and only *after* the fact.

Virginia’s forced marriage law, titled *Taking, detaining, etc., person for prostitution, etc., or consenting thereto*, provides:

Any person who: ... (2) Takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled ... is guilty of pandering, and shall be guilty of a Class 4 felony.¹⁶⁰

The Virginia forced marriage law does not address aiders, abettors, or conspirators. Recipients of dowry or bride price are not punishable under this statute.

The District of Columbia’s forced marriage law, titled *Pandering; inducing or compelling an individual to engage in prostitution*, states: “(a) It is unlawful for any person, within the District of Columbia to: ... (3)

Take or detain an individual against the individual’s will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person.”¹⁶¹ Where the victim is a minor, the punishment increases fourfold. The inclusion of forced marriage provisions within criminal statutes designed to address prostitution sends a troubling mixed message.

These forced marriage provisions – half of which were enacted a century ago¹⁶² – are largely antiquated, inadequate, and underutilized. In the absence of effective, directed forced-marriage laws, state police and prosecutors are forced to rely on criminal statutes prohibiting ancillary offenses committed in the course of forced marriage.¹⁶³

B. Laws Addressing Ancillary Criminal Acts

A host of ancillary crimes – such as rape, sexual assault, domestic violence, false imprisonment, kidnapping, and abduction – are commonly committed as a means of forcing a person to enter into or remain in a nonconsensual marriage.

In some cases involving immigrant families, the bride’s parents take their unwilling daughter abroad and conduct her wedding ceremony in their country of origin.¹⁶⁴ The Mann Act, which prohibits the transport of females across state lines for the purpose of prostitution or illegal sexual acts, could potentially be invoked in a small number of forced marriage cases.¹⁶⁵ In order for the Act to apply, the case would have to involve a female victim and a crossed border. Despite the implied duty to consummate a forced marriage, prosecutors may well prove reluctant to tackle the task of proving that “illegal sex acts” were the “purpose” of the bride’s transport.

International parental kidnapping and custodial interference laws rarely apply in forced-marriage cases because they are designed to prevent one parent from unilaterally taking the child in violation of the custodial rights of the child’s other parent.¹⁶⁶ In the forced-marriage context, both parents typically support the union.¹⁶⁷ Even a mother sympathetic to her child’s resistance to a forced marriage may be unprepared to pursue criminal measures against her husband to prevent their daughter from being sent abroad to the altar.¹⁶⁸

The United States’ Immigration and Naturalization Act (“INA”) renders any alien (non-U.S. citizen) who detains or retains or withholds custody of a U.S. citizen child outside the United States in violation of a U.S. child custody order inadmissible to the United States until the child is surrendered to the lawful custodian.¹⁶⁹ Aliens who intentionally assist alien abductors by providing them with material support or safe haven are likewise inadmissible.¹⁷⁰ But, the statute does not cover

forced-marriage situations in which no child-custody order has issued and there has been no violation of lawful custodial rights. Adult victims, non-U.S. citizen victims, and victims forced to wed within U.S. borders do not fall under this section of the Act.

Prosecuting perpetrators of forced marriage for ancillary offenses is problematic for a number of reasons. When the crime charged is not designed to fit the offense, certain elements of the crime may be difficult or impossible to prove,¹⁷¹ and the punishment is unlikely to suit the crime. Criminal statutes proscribing ancillary acts may lack preventive and aiding/abetting language, thus precluding authorities from charging all complicit parties or from responding until after the victim is outside the United States' jurisdiction or has been irreparably harmed. An effective forced-marriage legal regime requires directed laws tailored to account for the unique cultural dynamics and practical circumstances surrounding harmful marriage practices.

C. Choosing Between Civil and Criminal Remedies

In other countries that have enacted contemporary forced-marriage laws, the civil-versus-criminal question has sparked fierce debate.¹⁷² Proponents of criminalization argue that criminalizing the practice would simultaneously deter would-be perpetrators and empower victims to report by sending a clear message that forcing or coercing another person to marry is *wrong*.¹⁷³ Forced-marriage survivor Jasvinder Sanghera, who supports criminalization, asserts that victims will only report violations if they are made to understand that they bear no blame.¹⁷⁴

Victims are saying we need the full protection of the law ... We're trying to create a cultural responsibility here. It's our duty to bring this above ground. If we look at countries where this is criminalised, such as Denmark and Germany, there has not been a decrease in reporting. Unless people can show me there will be a drop, I want to see it criminalised. This is an offence that is not to be tolerated, an offence that can – and does – end in violence, rape and murder.¹⁷⁵

Proponents assert that criminalizing forced marriage would obligate and empower law enforcement officials, child welfare agencies, and other relevant authorities to investigate forced marriage allegations, arrest and prosecute perpetrators, and protect and empower victims.¹⁷⁶

Opponents assert that criminalizing forced marriage will only deter reporting and drive the harmful practice

underground.¹⁷⁷ Victims will be dissuaded from seeking help or bringing allegations for fear of criminalizing or alienating their own parents and families:

For many victims it is crucial that seeking help does not prevent future reconciliation with their families, especially their parents. In this regard, criminalisation may actively discourage many victims and potential victims from speaking out about the abuse/coercion they are facing.¹⁷⁸

"No young person wants to turn their parents in and get them into trouble" says forced-marriage survivor Sameem Ali, who opposes criminalization.¹⁷⁹ Ali's brother was sentenced to four years' imprisonment for conspiracy to kidnap her when she fled her marriage.¹⁸⁰ Ali and other opponents of criminalization urge that authorities instead prosecute only ancillary crimes and rely on civil legal mechanisms to protect victims.¹⁸¹ Villainizing entire minority ethnic groups by criminalizing forced marriage is likely to inspire contempt and distrust among the victims, families, and communities whose cooperation is most critical.

The UK's Forced Marriage Act is civil by design. In December 2011, the UK's Home Office initiated an in-depth consultation into whether the act of forcing someone to marry, or the act of breaching a Forced Marriage Protection Order ("FMPO") issued under the Act, should constitute criminal offenses.¹⁸² Lord Lester, who introduced the UK's Forced Marriage bill into Parliament, has consistently advocated for a strictly civil approach. The criminal process, he says, "has not proved to be an effective way of tackling a major social problem."¹⁸³ He argues that adequate criminal laws already exist to redress ancillary crimes, such as murder, kidnapping, abduction, rape, and other violations commonly committed in the course of a forced marriage. However, Prime Minister David Cameron and some Members of Parliament continued to push for criminalization in England, Northern Ireland, and Wales, arguing that criminalization would take the burden off of the victim and place it on the state.¹⁸⁴

The Scottish Government has also wrestled with the question of whether to enact civil or criminal forced-marriage legislation.¹⁸⁵ A spokesperson for Hemat Gryffe Women's Aid, a Glasgow safe house for forced marriage victims, opposes criminalization:

We supported 14 women last year, most of whom are quite young, aged 16 to 21. They suddenly find papers saying they're going to another country, or the wedding starts getting discussed among the family. However, you cannot criminalise the family because then the women will not come forward. They won't want their parents or aunts or uncles put in jail.

The purpose of the bill must be to impose civil order, to prevent the marriage going ahead.¹⁸⁶

In November 2011, Scotland became the first country in the UK to make breaching an FMPO a criminal offence.¹⁸⁷

Although the civil-versus-criminal debate is just beginning to percolate in the United States with respect to forced marriage, U.S. system actors have long wrestled with similar issues in other contexts. For instance, fierce disagreement has characterized debates about whether laws addressing parental kidnapping or female genital cutting should be civil or criminal, and whether arrest and prosecution should be mandatory in the domestic-violence context. The results of at least one study suggest that, when states enact mandatory arrest policies in domestic-violence cases, the intimate partner homicide rate dramatically increases.¹⁸⁸

VI. Using Civil Legal Remedies to Prevent and Redress Forced Marriage

In the absence of effective, directed forced-marriage laws, U.S. advocates are turning to states' family and dependency courts to protect and empower victims.¹⁸⁹ But, much like their criminal counterparts, the states' current civil laws and institutions were not designed to protect forced-marriage victims or to address their unique needs. Most early responders – e.g., educators, child protective services providers, shelter staff, group and foster homes, legal services providers, law enforcement authorities, family and dependency court personnel, court-appointed minor's counsel, and guardians ad litem – are not trained or equipped to protect victims of forced marriage.¹⁹⁰ Concerns over legal liability for interference with parental rights further impede protective intervention and advocacy. U.S. system actors are only just beginning the national dialogue about what a U.S. forced-marriage regime might look like. Meanwhile, advocates are struggling to identify interim best practices for handling imminent and extant forced-marriage cases.

A. Protective Orders

An unwilling child bride could pursue a civil restraining order prohibiting her parents from taking steps to force her to marry.¹⁹¹ However, many girls are averse to the idea of suing their own parents due to deference, for fear of retribution, or out of concern that the parents will be subject to criminal and immigration consequences.¹⁹²

U.S. state restraining order statutes often require that the party seeking protection produce evidence of a history of violence or threats of violence.¹⁹³ In many forced marriage cases there is no past history or overt

threat of physical abuse – only the *implied* future threat of rape, violence, or other harm inflicted either in the inducement of the marriage or in the marriage. Coupled with judges' lack of familiarity with the dynamics and consequences of forced marriage, this means a victim may have difficulty convincing the court that she is in imminent danger.¹⁹⁴ Most U.S. states' restraining order laws do not address the fairly common scenario where a third party (usually someone dear to the bride) is threatened in order to coerce the bride to marry.¹⁹⁵ And, domestic-violence restraining orders are generally not directly enforceable against unnamed third parties conscripted by the bride's parents into helping force their daughter into marriage.¹⁹⁶

In the United States, protective order violations can result in incarceration and, in the case of non-citizen violators, in inadmissibility or removal (deportation).¹⁹⁷ An adolescent victim may not be prepared to cause her parents to go to jail or to be permanently banished from the country.¹⁹⁸ This is particularly true if the bride's siblings or other family members, in the United States or abroad, rely on her parents for financial support. In the event that the victim has young siblings, particularly sisters, she may fear that her parents' deportation could result in her siblings' relocation to a country without any protections from forced marriage or other human rights violations. The potentially dire criminal and immigration consequences of violating a restraining order could have a profound chilling effect on some U.S. victims, discouraging them from reporting to authorities or pursuing protective orders against close family members.¹⁹⁹

The United Kingdom's Forced Marriage Protection Order ("FMPO") remedy is deliberately tailored to account for a number of the realities that render U.S. restraining order statutes ineffectual in the forced-marriage context. The Forced Marriage (Civil Protection) Act of 2007 ("Forced Marriage Act")²⁰⁰ defines force very broadly, to include "threats or other psychological means" of coercing a person to marry.²⁰¹ Because the Act contains "attempt," and "aiding" and "abetting," language, authorities are empowered to intervene before the victim is harmed.²⁰² The Act explicitly permits any person, with leave of court, to petition on behalf of a victim for an FMPO, and, under certain circumstances, even allows the court to issue an FMPO *sua sponte*.²⁰³ The court may dispense with notice to the respondent and issue a temporary FMPO on an *ex parte* basis (before the defendant is afforded notice and an opportunity to be heard) where it deems such action to be "just and convenient."²⁰⁴ The Act extends to actions taken by a defendant against a third party in order to coerce the victim to marry.²⁰⁵ An FMPO can be limited or indefinite in duration,²⁰⁶ and may contain

whatever prohibitions, restrictions, requirements, or other terms that the court deems appropriate.²⁰⁷ Despite the comprehensive protections afforded by FMPOs issued under the UK's Forced Marriage Act, only five FMPO breaches have been recorded to date.²⁰⁸

In order to be effective, forced marriage remedies must account for the rich cultural context, complex parent-child dynamics, and other unique circumstances characteristic of forced-marriage cases. As advocates, lawmakers, and other stakeholders begin to craft a U.S. forced-marriage regime, a carefully constructed civil forced-marriage protective order – possibly modeled after the UK's FMPO – is likely to be among the arsenal of tools developed.

B. Domestic Violence and Youth Shelters

Even a highly effective protective order mechanism is likely to prove futile if the protected party has no safe place to live. A victim evading or fleeing a forced marriage may have no choice but to go into hiding to evade repercussions from her intended spouse's family or her own.²⁰⁹ Extended family members and close friends of the family may eventually succumb to pressure or threats from those in favor of the forced marriage, and their place of residence is often known to the victim's family. Other trusted adults (such as classmates' parents, neighbors, teachers, or coaches) who might be willing to take her in risk facing legal charges for interference with parental rights. Victims who have no trusted adult to rely upon for room and board sometimes turn to domestic violence or youth shelters to meet their housing needs.

Unfortunately, most domestic violence shelters are currently unequipped to serve unaccompanied minors. Shelters' internal rules could prove onerous for adolescents in crisis. For example, shelter residents may be required to cut off all contact with previous acquaintances and stay away from familiar destinations, such as friends' and relatives' homes, school, after-school activities, and houses of worship. Some shelters require that residents obtain protective orders prior to being admitted or require that residents show proof of application for permanent housing. An unemancipated minor is unlikely to be eligible for public housing or to lease an apartment.²¹⁰ Many shelters strictly limit how long a victim may remain in residence, so residents will need to identify alternate long-term housing. Some states' laws explicitly prohibit domestic violence shelters from housing unaccompanied minors.²¹¹

Youth shelters present a possible housing alternative. However, there may be compelling practical reasons for not co-housing an exceptionally sheltered adolescent victim with the troubled and at-risk youth that typically occupy youth shelters.

Social workers and counselors staffing domestic violence and youth shelters may be mandated reporters, and thus required to promptly notify child protective services ("CPS") of the minor's presence and circumstances.²¹² If they have reason to believe that a minor is in imminent danger of physical or psychological harm, CPS is obligated to investigate and determine whether to formally remove her from the care and custody of her parents or other lawful custodians.²¹³ In the event that CPS elects to remove the minor from her home, the dependency court will likely be petitioned to remove her from the shelter and place her in a group or foster home.

C. Child Protection and Foster Care

There can be no keener revelation of a society's soul than the way in which it treats its children.

— Nelson Mandela

Forced marriage of minors is a child protection issue.²¹⁴ Yet, advocates in numerous U.S. states report that child protective services providers have declined to protect minors from forced marriages.²¹⁵ Investigating forced-marriage allegations can be a daunting task for CPS caseworkers.²¹⁶ Frightened adolescents frequently recant testimony for fear of retribution or for fear that their parents will face criminal consequences. Parents deny allegations or deceitfully promise to call off the wedding.²¹⁷ Caseworkers, conflating forced and arranged marriage, frequently fail to recognize forced marriage as an intrinsic human rights violation.²¹⁸ Lack of familiarity with forced marriage makes it difficult for CPS personnel to anticipate potential harmful future consequences, causing them to conclude that there is no evidence of imminent risk posed to the child, and therefore no basis for intervention or removal from the home.²¹⁹ So, they interview the minor and the minor's parents only to close the investigation as unsubstantiated.²²⁰ They compel shelter workers to send the girl home, where her parents promptly pull her out of school, sever all contact with her advocates, and send her straight to the altar.²²¹

In one such case, a fourteen-year-old girl from the Bronx fled to the Sauti Yetu Center for African Women after learning that her parents planned to force her to marry.²²² The Center reported the case, appealing to CPS to remove the girl from her parents' care and custody.²²³ CPS instead sent the girl home, saying that there were no clear signs that she was in any imminent danger. The Center never heard from her again.²²⁴

Another case illustrates that CPS intervention without protective action can actually aggravate the risk to the minor. After Sameem learned of her mother's plans to

force her to marry a man twice her age, she sought help at school:

Matters only got worse after a concerned teacher caused child protective services to intervene. 'After that I got the beating of my life...I was beaten black and blue. My head bled, I was nearly unconscious actually and I wasn't given any dinner that night, I was just sent to bed.'²²⁵

Sameem later attempted suicide.²²⁶

Reluctance to trample on a family's cultural traditions cannot justify inaction. The CRC sets forth, "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."²²⁷ As in any other child abuse scenario, CPS must take seriously a minor's reasonable expression of imminent fear of being forced to marry and intervene *before* she is irreparably harmed. Former UK Home Office Minister Mike O'Brien aptly observed, "multi-cultural sensitivity is no excuse for official silence or moral blindness."²²⁸

D. Guardianship

One alternative to foster care is to place the adolescent victim with a temporary legal guardian or, in extreme cases, appoint a permanent legal guardian and terminate parental rights. In temporary guardianship cases, the minor's parents may be entitled to regular access to the minor, or at least to know where she and her guardian(s) reside. In forced-marriage cases, it may prove challenging to identify a potential guardian within the child's sphere of trustworthy adult acquaintances who is able to resist powerful social pressure – or even threats or violence – from the minor's parents, extended family, and ethnic community.²²⁹ A foster parenting setting outside the adolescent's ethnic community may be safest in cases where the minor is at grave risk of physical harm.²³⁰ In extreme cases, CPS could take custody of the minor and then transfer her to the care of another CPS agency in a remote state.²³¹

E. Emancipation

In the event that the minor and her advocates assess that she is sufficiently mature to live independently, emancipation may be a possible alternative to foster care.²³² The laws governing emancipation of minors in the U.S. vary by state.²³³ The determination of whether an adolescent possesses the requisite maturity to live as an independent, self-sustaining adult is typically assessed on a case-by-case basis.²³⁴ Often, underage brides are exceptionally sheltered individuals and have not yet developed the necessary life skills to support themselves and live independently.²³⁵ Many

have no prior work experience, no driver's license, no credit history, and have not yet earned a high school diploma, so the prospect of renting quarters or securing employment can be daunting at best.²³⁶ Many hail from communal cultures where the very concept of isolating oneself from one's entire extended family and ethnic community is simply unthinkable.²³⁷ The adolescent, her legal advocate, and the judge must be convinced that she is an appropriate candidate and meets all of the elements set forth in the applicable emancipation statute.

A lawful marriage ordinarily obviates parent-child relations, thereby effecting an implied emancipation.²³⁸ However, in the forced-marriage context, advocates often encounter several obstacles.²³⁹ While marriages legally performed and valid abroad are generally also legally valid in the United States,²⁴⁰ the United States may decline to recognize a marriage that violates U.S. public policy.²⁴¹ Even where a marriage certificate appears valid on its face, a forced marriage is arguably, by definition, not a valid marriage due to a lack of free and informed consent. Advocates may find themselves in the ethically dubious position of simultaneously asserting that a marriage is *valid* for purposes of securing emancipation, while simultaneously claiming that it is *invalid* for purposes of obtaining an annulment.²⁴² Victims forced into marriage outside the United States are often unable to access or produce legal proof of marriage.²⁴³ In many countries, marriages are not officially recorded at all.²⁴⁴ In order to produce proof of emancipation by marriage, the minor may be forced to initiate a legal proceeding in the appropriate state court, and produce witness testimony and translated foreign laws to establish that the union was valid under the laws of the country where the nuptials took place.²⁴⁵ In a *very* finite number of cases, emancipation may prove a viable and appropriate option for adolescents approaching the age of majority.

F. International Abduction Prevention

Where there is reason to believe that a minor's parents will take her abroad to marry, the minor's counsel or legal guardian can ask the court to incorporate preventive terms into a restraining order, guardianship letter, or custody decree. For example, a *ne exeat*²⁴⁶ provision prohibits the parent(s) from removing the minor child from a specified jurisdiction (e.g., the city, state, or country where the minor resides) without obtaining prior written consent from the court or a designated legal guardian.²⁴⁷ Violating a *ne exeat* order can trigger a criminal enforcement remedy.²⁴⁸ Courts can also order the parents to post a bond to be used by the child's counsel or legal guardian to recover the child in the event that the parents violate the court's *ne exeat* order.²⁴⁹

The court can also order the parents to yield the child's passport(s) to a legal guardian or the court trustee. And, the U.S. Department of State offers a Child Passport Issuance Alert Program²⁵⁰ ("CPIAP") whereby a minor child's legal custodian can request to be notified in the event that the child's noncustodial parent attempts to secure a new or replacement U.S. passport for the minor.²⁵¹ However, in the case of non-U.S.-citizen or bi-national children, a U.S. court order cannot prevent a foreign embassy or consulate from issuing her parents a new child passport.²⁵² A resourceful parent who is determined to remove a minor from the United States without presenting a child passport will find a way to traverse its vast and relatively porous borders.²⁵³ When a U.S. citizen finds herself trapped abroad, there may be a diplomatic remedy available to secure her repatriation.

G. Diplomatic Negotiations and Repatriation

The U.S. State Department has protocols in place that explicitly address victims of forced marriage.²⁵⁴ The U.S. Foreign Affairs Manual ("FAM") states that when a minor child notifies the Department of State that "he or she is about to travel abroad, and has reason to fear that the trip is a ruse to enter him or her into a forced marriage," Department personnel are instructed to advise the minor as follows:

- (a) He or she has a basic right not to be forced into marriage. (b) Carefully explain the options available: (1) Travel as planned, and either hope he or she is mistaken, or that he or she can convince the parents or even the prospective bride/groom that the marriage should not take place. These are both potentially very high-risk suppositions. (2) Accede to his or her parents' demands, and consent to the marriage. (3) Do not make the trip, even if this means leaving the family for a safe haven in the United States.²⁵⁵

The last of the three options set forth above is perhaps the least absurd of the three, but it utterly fails to address the host of practical factors that currently prevent many minors under these circumstances from actually obtaining safe haven. The FAM goes on to state that State Department officials from the Office of Overseas Citizen Services "will help [the minor] with referrals to local social service agencies that can assist."²⁵⁶ In light of the absence of effective, directed U.S. remedies or resources to protect minors from forced marriage, and the history of non-intervention by states' child protection services, it is dubious whether the Department is presently capable of delivering on this representation.²⁵⁷ Because the FAM is only applicable to U.S. citizens abroad, victims who are legal permanent

residents, nonimmigrant visa holders, or undocumented immigrants are not subject to its protections. As advocates and public servants rally around the issue of forced marriage in the United States, revisions to the FAM's forced marriage provisions are likely to ensue.

When legal and diplomatic remedies fail to prevent parents from sending a daughter abroad to marry, desperate friends, family, advocates, or others responding to a victim's pleas for assistance are sometimes tempted to orchestrate a snatch-back or extraction.²⁵⁸ Self-help remedies, however well-intentioned, have the potential to endanger all involved, especially the victim. In some countries, women and children require the express permission of a spouse, parent, or other male relative in order to travel or relocate.²⁵⁹ Moving a forced-marriage victim across international boundaries could constitute a criminal offense in the foreign jurisdiction and penalties may be severe.²⁶⁰ Other legal and cultural impediments can pose a significant risk to victims and their allies.²⁶¹ The U.S. Department of State's Bureau of Consular Affairs publishes country-specific information sheets that set forth the applicable marriage laws, supply cultural context, and identify local resources available to prevent or redress forced marriage.²⁶²

H. Dissolution of Marriage

In the event that a child bride is not rescued or repatriated before she is forced to wed, she may elect to dissolve the marriage on the basis that the union was nonconsensual. Under U.S. state laws, the absence of free and valid consent – due to force, fraud, coercion, or incapacity of one or both parties – is typically sufficient legal basis to annul or dissolve a marriage.

Many forced-marriage victims are justifiably fearful that serving process of a dissolution proceeding on their spouse will result in an act of retribution by the husband, his family, or even the victim's own family.²⁶³ Some forced-marriage victims are unable to pursue a divorce or annulment because they lack access to critical information, such as the spouse's full legal name or address abroad.²⁶⁴ Forced-marriage victims often have no access to a formal marriage license, if one exists, particularly in cases where the ceremony takes place abroad.²⁶⁵ The bride's spouse or parents frequently control her vital documents.²⁶⁶ Some jurisdictions permit a marriage to take place *in absentia* or *by proxy*, without the bride's presence or participation.²⁶⁷

From a practical perspective, a divorce or annulment²⁶⁸ may serve to aggravate some forced-marriage victims' circumstances and suffering. The foreign country, her ethnic community, and the spouse's family may not recognize a U.S. judgment of marriage dissolution as binding, and the litigation process could motivate reprisals against her by family members, ranging in

severity from ostracization to ‘honor’ killing.²⁶⁹ She may be perceived to have shamed herself and dishonored her family by dissolving or annulling the marriage, and be subsequently deemed “unmarriageable” within her ethnic community, particularly if the union was consummated.²⁷⁰ The fact that a nonconsensual marriage is legally void or voidable (nonbinding) is cold comfort for a traumatized ‘wife’ who has been beaten, confined, raped, impregnated, or otherwise terrorized, tortured, or abused by her alleged spouse.²⁷¹

I. Limiting Full Faith and Credit to Foreign Marriages

In forced marriages involving at least one foreign national, it is not uncommon for the marriage ceremony to be conducted abroad in the parents’ country of origin.²⁷² The age of majority for marriage and the parental consent requirements for underage marriages vary considerably from one country to another.²⁷³ According to the U.S. State Department, “In general, marriages which are legally performed and valid abroad are also legally valid in the United States.”²⁷⁴ When processing immigrant visas for foreign spouses and fiancés, the U.S. State Department has the authority to deny a visa if the qualifying marriage or engagement is not bona fide or violates U.S. public policy.²⁷⁵ However, in practice, forced marriages can be difficult to identify and many spouses of forced-marriage victims are admitted to the United States.

Limiting recognition of foreign marriages could potentially discourage parents from forcing their minor children into marriage abroad, but this approach presents numerous problems. It imposes higher standards on foreign marriages than the states currently impose on domestic marriages. It infringes upon the sovereignty of foreign states to make their own laws with respect to marriage and family. It undermines principles of comity and reciprocity whereby the United States encourages other countries to honor lawful marriages performed in the United States and its territories. And, in order to avoid committing bigamy, the non-consenting party to a foreign marriage not legally recognized in the United States may be forced to take affirmative steps to lawfully void or dissolve the unrecognized marriage abroad prior to remarrying (because other sovereign states *would* still recognize the validity of the union). It could also place underage forced-marriage victims who return to the United States in a vulnerable position – while their spouses and families recognize their union as valid and enforceable, the minor spouse could be denied the privileges and protections (e.g., marital property rights, spousal support, tax benefits, and immigration

benefits) that flow from a legally-recognized marriage in the United States.²⁷⁶ And, parents could simply evade such a law by leaving their daughter abroad with her new husband until she reaches the age of majority – the forced marriage victim could be exiled for years to a country where she has no protections at all.²⁷⁷

UK lawmakers attempted to curb forced marriage by preventing foreign nationals from outside the European Union (“EU”) who were under twenty-one years old from following to join their British spouses in the UK.²⁷⁸ Critics of the law objected to the rule’s disparate impact on British citizens who marry EU versus non-EU foreign-national spouses.²⁷⁹ In response to a human rights challenge brought by the Joint Council for the Welfare of Immigrants (“JCWI”), a UK court recently struck down the law.²⁸⁰ The JCWI successfully argued that the law violated certain persons’ fundamental right to marriage.²⁸¹

J. Immigration Remedies for Non-U.S.-Citizen Victims

The United States has extended sanctuary to immigrant victims fleeing to avoid or escape forced marriage in their countries of origin. While numerous legal remedies exist to protect and empower immigrant victims of domestic violence, sexual assault, human trafficking, and other violent crimes, none explicitly addresses forced marriage.²⁸² Nonetheless, to the extent that a forced marriage involves other qualifying crimes or the victim satisfies certain legal elements, immigrant victims fleeing forced marriages have succeeded in obtaining immigration relief – specifically, U visas,²⁸³ T visas,²⁸⁴ VAWA self-petitions,²⁸⁵ and gender-based asylum²⁸⁶ – in a modest but growing number of cases.²⁸⁷

VII. Addressing Forced Marriage through an International Human Rights Framework

The international community recognizes a bundle of social and cultural rights that inure to the benefit of a *group* of individuals, such as a family unit.²⁸⁸ These groups are entitled to maintain their distinct cultural and religious identities free from state intervention.²⁸⁹ However, harmful customs and practices such as forced and early marriage bring groups’ rights into stark conflict with individuals’ rights, forcing the state to intervene into traditionally private-sphere activities. State actors are confronted with the onerous challenge of striking a balance between respecting groups’ rights and protecting individual group members from human rights violations perpetrated in the name of faith or tradition.

A. Marriage Rights

*[W]hat freedom does any of us have to reimagine the terms of human association?*²⁹⁰

—Clare Dalton

It is a well-established principle that every individual has a fundamental right to choose whether, when, and whom to marry.²⁹¹ The international human rights regime has emphatically denounced nonconsensual marriage.²⁹² Numerous international instruments address the practice, either directly or indirectly.²⁹³ Article 16 of the Universal Declaration of Human Rights (“UDHR”) provides that “Marriage shall be entered into only with the free and full consent of the intending spouses.”²⁹⁴ The U.N. General Assembly declared by resolution in 1954 that:

[In] certain areas of the world, women are subject to customs, ancient laws and practices relating to marriage and the family which are inconsistent with [the principles set forth in the United Nations Charter and in the Universal Declaration of Human Rights, and] ... Believing that the elimination of such customs, ancient laws and practices would tend to the recognition of the human dignity of women and contribute to the benefit of the family as an institution ... [The General Assembly] urges all states ... to take all appropriate measures in the countries and Territories under their jurisdiction with a view to abolishing such customs, ancient laws and practices by ensuring complete freedom in the choice of a spouse; abolishing the practice of the bride-price; guaranteeing the right of widows to the custody of their children and their freedom as to remarriage; eliminating completely child marriages and the betrothal of young girls before the age of puberty and establishing appropriate penalties where necessary; establishing a civil or other register in which all marriages and divorces will be recorded; ensuring that all cases involving personal rights be tried before a competent judicial body; ensuring also that family allowances, where these are provided, be administered in such a way as to benefit directly the mother and child.²⁹⁵

Article 28 of the International Covenant on Civil and Political Rights (“ICCPR”) reiterates that “No marriage shall be entered into without the free and full consent of the intending spouses.”²⁹⁶ The U.N. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages²⁹⁷ (“Convention on Consent to Marriage”) provides that “[n]o marriage shall be legally

entered into without the full and free consent of both parties.”²⁹⁸ General Recommendation No. 21, Comment Article 16(1)(b), UN Convention on the Elimination of All Forms of Discrimination Against Women provides that: “A woman’s right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being.”²⁹⁹ And, the United Nations Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages defines individuals’ marital rights as family rights:

Recognizing that the family group should be strengthened because it is the basic unit of every society, and that men and women of full age have the right to marry and to found a family, that they are entitled to equal rights as to marriage and that marriage shall be entered into only with the free and full consent of the intending spouses, in accordance with the provisions of article 16 of the Universal Declaration of Human Rights....³⁰⁰

Denying any individual the *choice* of whether or not to marry, who to marry, and when to marry violates a host of international human rights laws, norms, and principles guaranteeing all persons dignity,³⁰¹ non-discrimination,³⁰² gender equity,³⁰³ equality in the family,³⁰⁴ equal access to justice,³⁰⁵ equality before the law,³⁰⁶ and self-determination.³⁰⁷

B. The Applicability of International Law in U.S. Forced-Marriage Advocacy

The Supremacy Clause of the U.S. Constitution renders duly ratified international treaties the “supreme law of the land,” binding on U.S. courts and policymakers.³⁰⁸ Notwithstanding the U.S. federal system of government, treaty law trumps inconsistent state law.³⁰⁹ However, international treaties are generally non-self-executing in the U.S. – they take effect only after Congress implements them by passing domestic legislation.³¹⁰ And, a later-in-time federal statute “supersedes earlier inconsistent international law.”³¹¹ So, in effect:

Congress is free to override ... international law ... [Courts] and other decision-makers within the United States would follow the Congressional directive, but the United States would be in violation of its international obligation to its other treaty partner(s) unless there is some valid reason under international treaty law to excuse U.S. performance.³¹²

Nonetheless, the *Charming Betsy*³¹³ canon requires U.S. courts “to construe federal statutes, where reasonably possible, so that they do not violate international law.”³¹⁴ International law may be established by instrument or

by custom.³¹⁵ The U.S. “courts uniformly have held that when there is a conflict between a federal statute and *customary international law* [(“CIL”)],³¹⁶ the statute prevails ... without regard to timing.”³¹⁷ In practice, the binding authority of international law in the United States remains uncertain, but its persuasive value is increasingly, if somewhat inconsistently, evidenced in the dicta of U.S. state and federal case law.³¹⁸ International human rights laws and principles can effectively bolster advocacy efforts to compel the United States and other sovereign states to enact domestic laws to combat forced and early marriage.

C. Positive Liberties and the Affirmative Duties of the State³¹⁹

The United States has historically viewed rights as protection from excessive government infringement on individuals’ right to self-determination.³²⁰ But, contemporary international human rights law cases underscore individuals’ positive liberties and sovereign states’ affirmative duties to *respect, protect, and fulfill* individual’s rights. The Inter-American Court of Human Rights (“IACHR”) has helped to clarify the scope of positive liberties and corresponding affirmative duties of states. In *Velasquez-Rodriguez*, the IACHR held that the state is obligated to “conduct itself so as to effectively ensure the free and full exercise of human rights.”³²¹ The state may not acquiesce and “has a legal duty to take reasonable steps to prevent human rights violations” by means “legal, political, administrative and cultural” and to investigate thoroughly and ensure that violations are punished and victims compensated.³²² The IACHR found human rights to be inherent attributes of human dignity superior to state sovereignty.³²³ In *Maria da Penha Fernandes v. Brazil*, the Inter-American Commission on Human Rights concluded that states have an affirmative due diligence obligation to conduct a “serious, impartial and exhaustive investigation,” identify events and state action that prevented rapid and effective prosecution, adopt corrective measures, and afford the domestic violence victim a fair trial, judicial protection, and just compensation.³²⁴ A state’s failure to comply with the due diligence standard would constitute a pattern of discrimination condoning domestic violence against women.³²⁵

In *Jessica Gonzales v. U.S.A.*, the first case brought by a domestic violence survivor against the United States before an international human rights tribunal, the Inter-American Commission on Human Rights found that the United States violated the human rights of Jessica Lenahan (formerly Gonzales) and her children by failing in its legal obligation to protect them from domestic violence.³²⁶ In June 1999, Jessica Gonzales’ estranged husband abducted and killed her three young

daughters after Colorado police refused to enforce a restraining order against him.³²⁷ Although Gonzales repeatedly called the police and reported her fears for her daughters’ safety, the police failed to respond.³²⁸ Just hours later, Gonzales’ husband drove his pick-up truck to the police department and opened fire.³²⁹ Police shot him dead.³³⁰ The slain bodies of Gonzales’ three daughters were subsequently discovered in the back of their father’s pickup truck.³³¹ Gonzales sued the police but the U.S. Supreme Court ruled in June 2005 that she had no Constitutional right to police enforcement of her restraining order.³³² Gonzalez then filed a petition with the Inter-American Commission on Human Rights, successfully arguing that the police’s inaction and the U.S. Supreme Court’s decision violated her human rights.³³³ By failing to enact laws or intervene to protect victims of forced and early marriage, the United States arguably fails to meet the due diligence standard and, in effect, thereby condones or perpetuates the victimization.

VIII. Motivating Communities to Abandon Harmful Marriage Practices

Go to the people. Live with them. Learn from them. Love them. Start with what they know. Build with what they have. But with the best leaders, when the work is done, the task accomplished, the people will say ‘We have done this ourselves’.

—Lao Tzu

The emerging consensus among advocates is that laws, alone, will not eliminate harmful marriage practices. “Change has to come from within these households and communities,” says forced-marriage survivor and advocate Sameem Ali. “Empowerment has to come from within, too.”³³⁴ According to the directors of a UNICEF learning program on social change, “exclusively informational or exclusively legal strategies may not work for relational problems ... [I]nformational and legal strategies [must be integrated] with organized group change of social practices.”³³⁵

Attempts at rewarding or punishing behaviors ... through subsidy or fine and imprisonment ... may falter when the problem of interest is primarily relational, such as early marriage ... Social norms coexist with legal rules, and may be consistent or inconsistent with the latter. Often legislation has a signaling effect, by pointing to the importance of practices and norms that are already present. Legal reform (as opposed to preexisting legislation), however, is frequently aimed at curbing practices that

have a long history and are quite widespread ... Developing an understanding of the complex relationship between norms and legal rules is crucial for those who aim to implement social change.³³⁶

International development organizations report remarkable success at working with community leaders and families to shift cultural norms and motivate voluntary abandonment of harmful marriage customs, one village at a time.³³⁷ In order to affect enduring social change, forced-marriage laws must be crafted and implemented in tandem with culturally-competent community-led development strategies.³³⁸

When the United States passed a law proscribing medically unnecessary female genital cutting (“FGC”),³³⁹ advocates were quick to point out the critical role of community outreach and education. According to Bien-Aime of Equality Now:

The law isn’t enough. It is important as a deterrent, but people need education. We need people on the ground who have access to girls and young women at risk, to help them understand that not only is the procedure against the law, but also that there are harmful effects.³⁴⁰

Lisanne Divine, Director for Community Integration at the Mohawk Valley Resource Center for Refugees, believes that community outreach and education will be equally critical in the forced-marriage context. “Ethnic communities need to be engaged in ways that resonate [in order] for the community to give up practices that are illegal or cause harm,” says Divine.³⁴¹ “Respect for human rights and democracy through community led empowerment is the future for thriving communities and family peace.”³⁴²

The women who participate in Divine’s forced-marriage community forums underscore the importance of including men in the conversation.³⁴³ Notwithstanding women’s vital role in society and vast untapped potential, effective community-led advocacy in intensely patriarchal societies requires “buy-in” from male community leaders and male family members. The Programme of Action of the United Nations International Conference on Population and Development understood well that:

Men play a key role in bringing about gender equality since, in most societies, men exercise the preponderant power in nearly every sphere of life, ranging from personal decisions regarding the size of families to the policy and programme decisions taken at all levels of Government. It is essential to improve communication between men and women on

issues of sexuality and reproductive health, and the understanding of their joint responsibilities, so that men and women are equal partners in public and private life.³⁴⁴

U.S. Secretary of State Hillary Rodham Clinton touts an inclusive community-led advocacy approach to ending harmful marriage practices, “We are reaching out to women and girls, fathers and brothers, religious leaders and all who can help us to convince societies that this particular tradition is better left behind.”³⁴⁵

IX. U.S. Efforts to Eliminate Forced Marriage

A number of promising undertakings evidence a nascent U.S. movement to eliminate harmful marriage practices. The Virginia-based Tahirih Justice Center has established a National Network to Prevent Forced Marriage and a corresponding work group.³⁴⁶ Domestic legislative advocacy efforts are certain to ensue. A national forced-marriage and ‘honor’-based-violence hotline, a collaborative pilot project of the AHA Foundation and Polaris Project, is scheduled to launch in September 2012.³⁴⁷ Legal services providers are beginning to incorporate a forced-marriage module into domestic-violence training curricula, and a New York-based community organization has organized community forums to promote frank dialogue and spur social change in immigrant communities from countries of origin where forced and early marriage are widely practiced.³⁴⁸ Non-governmental organizations (“NGOs”) are forming a North America chapter of The Elders’ Girls Not Brides campaign,³⁴⁹ a global partnership to end child marriage, and informal regional and national working groups are forming between Girls Not Brides signatories.³⁵⁰ Meanwhile, the U.S. Department of State is working diligently to improve the consular response to forced-marriage cases involving U.S. citizens overseas.

In February 2011, U.S. lawmakers introduced the third iteration of the International Protecting Girls by Preventing Child Marriage Act (S-414), a bipartisan bill aimed to define forced marriage of minors as a human rights violation and develop comprehensive strategies to prevent such marriages in developing countries.³⁵¹ One of the bill’s sponsors, Rep. Betty McCollum (D-Minn.), posited that “Senate Democrats and Republicans ... unanimously [recognize] that the United States can and should become a leader in the fight against child marriage.”³⁵² As the United States asserts itself as a leader in the movement to eliminate harmful marriage customs in developing countries, it must lead by example by acknowledging and addressing the full array of nonconsensual marriages taking place within its own states and territories.

X. Conclusions

Global migration patterns and growing international consensus about fundamental human rights and freedoms are forcing sovereign states to acknowledge and address harmful customs and practices within their borders. State actors are increasingly confronted with the challenge of striking a balance between respecting groups' rights to maintain their cultural and religious identities, and protecting individuals from human rights violations perpetrated in the name of faith or tradition. When a group's cultural traditions do harm to individual group members, states are obligated to intervene into traditionally private-sphere activities in order to respect, protect, and fulfill individuals' human rights.

It is a well-established human rights principle that every individual has a fundamental right to choose whether, when, and whom to marry. Forced marriage is an intrinsic human rights violation, regardless of whether the victim consequently suffers any physical or psychological harm. U.S. federal agencies and nongovernmental organizations are beginning to coalesce around the compelling shared objective of eliminating forced marriage in the homeland. Although gender norms render women and girls particularly vulnerable to harmful marriage practices, it is critical that remedies and resources developed to combat forced and early marriage address *all* victim demographics. An effective U.S. strategy to eradicate harmful marriage practices will include culturally competent, victim-centered legislation; mandatory training and practice guidelines for the full range of responders; holistic legal and social services; and a robust community-led development component. Together, the mounting voices of fierce advocates and courageous survivors are shattering the insidious silence surrounding forced and early marriage in the United States.

Endnotes

* Julia Alanen is a co-founder of the Washington D.C.-based non-profit organization, Global Justice Initiative (GJI) and directs GJI's Forced Marriage Prevention Initiative. She previously served as Director of the International Division, and as Policy Counsel, at The National Center for Missing and Exploited Children. Alanen has coordinated national gender-based violence and human trafficking legal technical assistance projects, and litigated cases involving domestic violence, parental kidnapping, child custody, and human trafficking. She holds a Master's degree from American University's School of International Service, a Juris Doctor degree from the University of San Diego School of Law, and a Legum Magistra (LL.M.) degree with a dual specialization in *International Human Rights and Gender and the Law* from the Washington College of Law.

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¹ *The Fight Against Child Marriage*, U.S. DEP'T OF STATE'S OFFICIAL BLOG (Feb. 7, 2011), http://blogs.state.gov/index.php/site/entry/fight_against_child_marriage_.

² In her capacity as director of a national technical assistance project, the author interacts regularly with legal and social service providers seeking assistance in forced-marriage cases. See also *Forced Marriage in Immigrant Communities in the United States*, TAHIRIH JUSTICE CTR. (Sept. 2011), <http://www.tahirih.org/site/wp-content/uploads/2011/09/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States-September-20113.pdf> [hereinafter *Forced Marriage in Immigrant Communities*]. The scope of this Article is confined to addressing primarily forced marriage of girls under the age of eighteen. In so doing, it is not the author's intent to detract from the forced marriage of boys, or adult men and women, circumstances equally deserving of advocacy. The U.S. State Department's forced marriage guidance estimates that, "as many as fifteen per cent [of forced marriage victims] are male." U.S. DEP'T OF STATE, *Foreign Affairs Manual*, 7 FAM 1741(a) (2005), <http://www.state.gov/documents/organization/86822.pdf>. But, as Imkaan director Marai Larasi aptly observes, forced marriage impacts males differently than females. Male victims retain freedom of movement and association in a way that females typically do not. Marai Larasi, Director, Imkaan, Presentation at Tahirih Justice Center Policy Briefing: What Can the United States Learn from the United Kingdom's Experiences with Forced Marriage? (Mar. 2, 2012). Although gender norms frequently render women and girls particularly vulnerable to harmful marriage practices, it is critical that remedies and resources developed to combat forced and early marriage address *all* victim demographics.

³ *Fresh Case of Attempted Forced Marriage of Minor Girl Surfaces*, SAMAA NEWS (Oct. 22, 2010), http://www.samaa.tv/News26914-Fresh_case_of_attempted_forced_marriage_of_minor_girl_surfaces.aspx (Forced marriages of very young children have been reported in some cultures involving the attempted forced marriage of a 3-year-old girl to a 6-year-old boy.).

⁴ *72 Year Old Man Admits Marriage to 14 Years Old*, DEMOTIX (Aug. 1, 2010), <http://www.demotix.com/news/450782/72-year-old-man-admits-marriage-14-years-old> (Afghan teen girl forced, at age 10, into a polygamous marriage with a man more than six times her age); see also *Nigeria Court Rejects 'Forced Marriage' Case*, BBC NEWS, Oct. 22, 2010, <http://www.bbc.co.uk/news/world-africa-11607532> (Young Nigerian woman forced into marriage with a Senator more than twice her age receives no support from Nigerian high court.).

⁵ *Forced Marriage in Immigrant Communities*, *supra* note 2, at 3 (“Almost half of respondents (46%) who provided information on particular tactics used against victims reported that victims had been subjected to actual physical violence. 13 respondents also reported murder attempts among the forced marriage cases they encountered, and 1 respondent reported an actual murder.”).

⁶ *Id.* (“42 respondents reported that they had encountered forced marriage victims who had contemplated or attempted suicide.”).

⁷ Many contemporary advocates promote use of the term “survivor” in lieu of the term “victim.” Nomenclature carries powerful implications. Word choice can significantly impact the framing of a debate, reveal an author’s bias, and shape how a reader processes information. For example, an advocate might prefer to use the term “victim” when pressuring legislators to pass a bill, but prefer the term “survivor” when addressing a victim directly. In criminal court, the prosecutor might elect to use the term “victim” to inspire empathy or outrage from a judge or jury. To underscore the gravity and harmful nature of forced and early marriage, I intentionally use the term “victim” rather than the term “survivor” in the context of this publication.

⁸ In her capacity as director of a national technical assistance project, the author interacts regularly with legal and social service providers seeking assistance on behalf of victims of forced marriage. Some of the author’s assertions in this Article are derived from her experience working with other advocates on forced marriage cases.

⁹ HM GOVERNMENT, MULTI-AGENCY PRACTICE GUIDELINES: HANDLING CASES OF FORCED MARRIAGE 11 (June 2009), <http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf> [hereinafter HM GOVERNMENT, HANDLING CASES]; *see also* V.V. PRAKASA RAO & V. NANDINI RAO, MARRIAGE, THE FAMILY, AND WOMEN IN INDIA (1982).

¹⁰ Debjani Roy, *An Introduction to Forced Marriage in the South Asian Community in the United States*, 9 MANAVI OCCASIONAL PAPER 12 (2011). Some parents broker nonconsensual marriages to secure or elevate the family’s social status, or out of a sense of duty or social obligation to another family. *Id.* at 14.

¹¹ For information about the contemporary average age at marriage by county, see *World Marriage Patterns*, United Nations, U.N. DEP’T OF ECON. & SOC. AFFAIRS, POPULATION DIV. (2000), <http://www.un.org/esa/population/publications/worldmarriage/worldmarriagepatterns2000.pdf>.

¹² Jasvinder Sanghera, Founder & CEO, Karma Nirvana, Presentation during webinar, *Practical Tips and Strategies for Forced Marriage Cases*, Tahirih Justice Center (Apr. 27, 2012) (“That honor code is extremely well known by the victim. It means something different in every community and family. She knows best what the risks are, what’s safe and unsafe. Honor is fluid, never static. Risk is fluid, too.”).

¹³ *Id.* “What by western standards are very minor actions by adolescent girls can trigger extreme actions by family members.” *Id.*

¹⁴ *See* NICHOLAS D. KRISTOF & SHERYL WUDUNN, *HALF THE SKY* (2009). Kristof and WuDunn refer to this phenomenon as the “cult of virginity.” “[T]he hymen – fragile, rarely seen, and pretty pointless – remains an object of worship among many religions and societies around the world, the simulacrum of honor. No matter how much gold may sell for, a hymen is infinitely more valuable. It is frequently worth more than a human life.” *Id.* at 81.

¹⁵ Charundi Panagoda, *U.S.: Forced Marriages Still an Ugly Secret*, INTER PRESS SERV. (Jan. 26, 2012), <http://ipsnews.net/news.asp?idnews=106563>. Vidya Sri is the founder of Gangashakti, an American survivor-led grassroots movement working to end violence and forced marriage, <http://www.gangashakti.org/>.

¹⁶ *Id.* at 12.

¹⁷ *Id.*

¹⁸ *See, e.g., In Morocco, Suicide, Uproar over Marriage Law Tests Islamist Government*, WASH. POST, Apr. 16, 2012, <http://bangordailynews.com/2012/04/16/politics/in-morocco-suicide-uproar-over-marriage-law-tests-islamist-government/?ref=latest> (Following the suicide of a teenage girl who was forced to marry her rapist, outraged Moroccan citizens demand reform of a law that protects an alleged rapist if he marries his victim.); *see also* *Afghan Woman: I’ll Marry Rapist, ‘Even though I Can’t Look At Him’*, MSNBC (Dec. 7, 2011), http://worldblog.msnbc.msn.com/_news/2011/12/07/9252482-afghan-woman-ill-marry-rapist-even-though-i-cant-look-at-him (19-year-old Afghan woman faces impossible “choice” between spending 12 years in prison or marrying the man who raped her.); *see also* Mohamed Kabba, *In Sierra Leone, Early Marriages on the Increase*, AWARENESS TIMES (Dec. 13, 2010), http://news.sl/drwebsite/publish/article_200516941.shtml (Local Chief cites poverty as the lead reason for forced marriage of minor girls. In some cases, parents who suspect their daughters have been raped give the girls in marriage to the suspected rapist.).

¹⁹ Tara Bhattarai, *Financial Burden and Local Tradition Foster Child Marriage in Nepal*, GLOBAL PRESS INST. (Sept. 2010), <http://www.globalpressinstitute.org/global-news/asia/nepal/financial-burden-and-local-tradition-foster-child-marriage-nepal>.

²⁰ *See supra* note 8.

²¹ *Malaysia Promotes Early Marriage*, ISLAMIC NEWS (Sept. 3, 2010), http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fglobaljusticeinitiative.files.wordpress.com%2F2010%2F09%2Fislamic_news_in_pdf1.pdf&ei=Nm2MT8fID4rO9QSLvonkCQ&usg=AFQjCNGNYJu249hkTriyGrwNKIsg8WFD4g&sig2=kO0nTLzB_5HsUaqEQ57cuw.

²² This could include lesbian, gay, bisexual, transgender, questioning, intersex, and other orientations.

²³ *Forced Marriage Unit*, FOREIGN & COMMONWEALTH OFFICE, <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/> (last visited Mar. 26, 2012) (a joint-initiative of the Foreign Commonwealth Office and the Home Office).

²⁴ Adrian Goldberg, *Tale of Gay Woman Forced to Marry to Protect 'Honour'*, BBC NEWS UK, Oct. 24, 2010 ("The government's Forced Marriage Unit (FMU) has received hundreds of calls from young gay men and women... who fear they are going to be forced into marriage by their family, against their will ... However, it is thought this emerging trend is just the tip of the iceberg, as more gay men and women seek assistance.").

²⁵ *Id.* "Reviva" is not the girl's real name, which has been changed to protect her safety and wellbeing.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *LGBT Forced Marriage*, ALBERT KENNEDY TRUST, <http://lgbtforcedmarriage.org/> (last visited Apr. 24, 2012).

³³ *Forced Marriage of People with Learning Disabilities: A Hidden Problem*, ANN CRAFT TRUST http://www.anncrafttrust.org/Forced_Marriage.php (last visited Feb. 11, 2011) [hereinafter ANN CRAFT TRUST]; see also HM GOVERNMENT, FORCED MARRIAGE AND LEARNING DISABILITIES: MULTI-AGENCY PRACTICE GUIDELINES (Dec. 2010), <http://www.fco.gov.uk/resources/en/pdf/travel-living-abroad/when-things-go-wrong/fm-disability-guidelines> [hereinafter HM GOVERNMENT, LEARNING DISABILITIES].

³⁴ Natalie Valios, *Forced Marriage of People with Learning Disabilities*, COMMUNITY CARE (Aug. 22, 2008), <http://www.communitycare.co.uk/Articles/22/08/2008/109193/Forced-marriage-of-people-with-learning-disabilities.htm>.

³⁵ Zahida Ishrat Khan, *Nuptial Nightmare: Child Marriage in Bangladesh*, DISPATCHES INT'L (Oct. 22, 2010), http://www.dispatchesinternational.org/index.php?option=com_content&view=article&id=104:nuptial-nightmare-child-marriage-in-bangladesh&catid=44:bangladesh&Itemid=58 (A teen girl's mother says she married her daughter off early to reduce her family's living expenses.); see also Bhattarai, *supra* note 19.

³⁶ Not her real name.

³⁷ Anne Szustek, *Married Saudi Girls Can't Divorce Until Puberty*, GROUND REP. (Dec. 23, 2008), http://www.groundreport.com/article.php?articleID=2877625&action=print_article (Mannal's mother's plea for divorce on her daughter's behalf was dismissed by the local court.).

³⁸ Hadizatou Mani: "No Woman Should Suffer the Way I Did," U.S. DEP'T OF STATE'S OFFICIAL BLOG (Mar. 9, 2009), http://blogs.state.gov/index.php/entries/hadizatou_mani/.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Jamil Bhatti, *Under-Age Marriage Agonizes Girls in Post-Flood Pakistan*, XINHUA (July 31, 2011), http://news.xinhuanet.com/english2010/indepth/2011-07/31/c_131020928.htm.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See, Juliette Myers & Rowan Harvey, *Breaking Vows: Early and Forced Marriage and Girls' Education*, PLAN UK 1, 9 (June 2011), <http://www.plan-uk.org/resources/documents/Breaking-Vows-Early-and-Forced-Marriage-and-Girls-Education/>.

⁴⁵ For example, the marriage of a U.S. citizen daughter to her foreign national uncle or cousin abroad may be orchestrated by her parents to facilitate a loved one's escape from poverty, strife, or persecution by facilitating his lawful immigration to the United States.

⁴⁶ In some traditions, the groom's family pays the bride's parents a bride price in exchange for the girl's hand in marriage. In other traditions, the bride's family gives the groom's parents a dowry (e.g., livestock, jewelry or land), in exchange for which the groom's family assumes responsibility for and possession of the bride.

⁴⁷ HM GOVERNMENT, HANDLING CASES, *supra* note 9.

⁴⁸ *Id.*

⁴⁹ Sanghera, *supra* note 12.

⁵⁰ *Id.* Sanghera advises that advocates help victims identify an interpretation of religious doctrine that is inconsistent with forced marriage and "honor-based" violence. Because religious leaders hold a position of considerable influence and authority in their communities, they are uniquely positioned to shape social mores and marriage practices. Religious leaders can assume a leadership role in advancing interpretations of religious doctrine that promote gender equality, condemn gender-based violence, and encourage the abandonment of harmful customs and practices, including forced and early marriage. See Atia Abawi, 'Feminist Imam' Delivers Message in Afghanistan, NBC NEWS (Aug. 30, 2011), http://worldblog.msnbc.msn.com/_news/2011/08/30/7526183-feminist-imam-delivers-message-in-afghanistan. Self-labeled 'feminist Imam' Yahya Hendi states "What makes a leader a leader is his or her ability to be courageous. To stand up or take a stand. We all need to challenge ourselves and go out of the box and understand the other from within, not from without." *Id.* Imam Hendi and a group of other imams, rabbis and priests – members of the group Clergy Beyond Borders – drive a 'Caravan of Reconciliation' around the United States to promote peace and understanding. *Id.*

⁵¹ Written Statement from Jeanne Smoot, Director of Public Policy at Tahirih Justice Center, to Author (Apr. 22, 2012) (on file with author).

⁵² Roy, *supra* note 10, at 14 (“The nature of the immigrant experience in the United States, where one is displaced from one’s native country, customs, culture, religion and community, carries with it a certain level of burden, unease and insecurity ... In the name of self-preservation and for the sake of continuity, immigrant families sometimes may choose to uphold certain beliefs and practices that they grew up around and with which they are familiar. They may even adhere to different versions of those ideas and practices to maintain control in their changing and new environment. This can pose challenges between first generation immigrants and their American born and/or raised children, the former trying to uphold the ways of a world left behind and the latter being asked to balance home life with culturally assimilating at school and as they socialize with people outside of their immediate ethnic or religious community.”).

⁵³ MARGARET SANGER, *WOMAN AND THE NEW RACE* 94 (1920).

⁵⁴ *Fact Sheet No. 23: Harmful Traditional Practices Affecting the Health of Women and Children, Early Marriage and Dowry*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR) 8–11, <http://www.unhcr.org/refworld/pdfid/479477410.pdf>.

⁵⁵ Press Release, United Nations Issues Wall Chart on Marriage Patterns, United Nations Population Div. of the Dep’t of Econ. & Soc. Affairs (DESA), U.N. Press Release DEV/2251, POP/771 (June 15, 2000).

⁵⁶ Naana Otoo-Oyortey & Sonita Pobi, *Early Marriage and Poverty: Exploring Links for Policy and Programme Development*, FORUM ON MARRIAGE & THE RIGHTS OF WOMEN & GIRLS (2003), <http://www.swaasthya.net/pdf/Early%20Marriage%20&%20Poverty%20-%20publication.pdf>.

⁵⁷ Sanghera, *supra* note 12; *see also, e.g., Hadizatou Mani, supra* note 38; *see also 8-year-old Girl Asks for Divorce in Court*, YEMEN TIMES (Apr. 9, 2008), <http://islamoscope.wordpress.com/2008/04/11/8-year-old-girl-asks-for-divorce-in-court-yemen/>.

⁵⁸ *8-year-old Girl Shunned by Family after Rape Sparks Outcry*, USA TODAY, July 24, 2009, http://www.usatoday.com/news/nation/2009-07-24-arizona-children-assault_N.htm?csp=usat.me.

⁵⁹ Otoo-Oyortey & Pobi, *supra* note 56 (“The young bride’s status in the family is frequently dependent on her demonstrating her fertility – often within the first year of her marriage – at a time when she is not yet physiologically and emotionally prepared.”); *see also* Duncan Green, *How Change Happens: Campaigning on Early Marriage in Yemen*, FROM POVERTY TO POWER (Sept. 21, 2010), <http://www.oxfamblogs.org/fp2p/?tag=early-marriage>; *see also Obstetric Fistula in Brief*, THE UNITED NATIONS POPULATION FUND (UNFPA), http://www.endfistula.org/fistula_brief.

htm (last visited Feb. 10, 2011) (“Obstetric fistula is a hole in the birth canal caused by prolonged labour without prompt medical intervention, usually a Caesarean section. The woman is left with chronic incontinence and, in most cases, a stillborn baby. The smell of leaking urine or faeces, or both, is constant and humiliating, often driving loved ones away. Left untreated, fistula can lead to chronic medical problems, including ulcerations, kidney disease, and nerve damage in the legs.”); *see also*, Jeffrey P. Wilkinson et al., *Ethical Issues in Maternal Birth Trauma in the Developing World*, THE DUKE OBSTETRIC FISTULA WORKING GROUP, http://www.interdisciplinary.duke.edu/attachments/wilkinson_fistula.pdf (last visited Feb. 10, 2011).

⁶⁰ *Adolescent Health*, GLOBAL HEALTH COUNCIL, http://www.globalhealth.org/child_health/adolescent/ (last visited Oct. 10, 2011) (citing Bearinger LH, Sieving RE, Ferguson J, Sharma V., *Global Perspectives on the Sexual and Reproductive Health of Adolescents: Patterns, Prevention, and Potential*, LANCET (2007)).

⁶¹ *Forced into Marriage and Raped*, MAIL ONLINE (Oct. 4, 2011), <http://www.dailymail.co.uk/news/article-2045254/Forced-marriage-raped-shocking-survey-reveals-plight-thousands-women-United-States.html#ixzz1bKpGlyGo>.

⁶² *Id.*

⁶³ HM GOVERNMENT, *HANDLING CASES, supra* note 9, at 44.

⁶⁴ *8-year-old Girl Asks for Divorce in Court, supra* note 57; *see* NUJOOD ALI & DELPHINE MINOUI, *I AM NUJOOD: AGE 10 AND DIVORCED* (2010). The U.S. State Department honored Ali as an International Woman of Courage. *The Secretary of State’s 2009 International Women of Courage Awards*, U.S. DEP’T OF STATE (Mar. 5, 2009), <http://www.state.gov/r/pa/prs/ps/2009/03/120070.htm>.

⁶⁵ Otoo-Oyortey & Pobi, *supra* note 56 (“[E]arly marriages violate the rights of children with often more negative consequences for girls. This compromises their overall development, leaving them socially isolated with little education, skills and opportunities for employment and self-realization. These conditions ultimately make married girls vulnerable to poverty.”).

⁶⁶ *See* OXFORDSHIRE NAT’L HEALTH SERV. (NHS), <http://www.forcedmarriage.nhs.uk/definitions.asp> (last visited July 31, 2009). Some additional indicators of forced marriage include: “Appointments are often missed; The person appears frightened, excessively anxious or depressed; The person is always accompanied when attending a consultation; Injuries are inconsistent with the explanation of the cause of accident; The partner appears aggressive and overly dominant/the woman is passive and afraid; Worsening academic performance; Absence or poor attendance at school, college or work; Depression; Self harm; Eating disorders; Regular visits to the GP with no obvious illness or reason; Attempted suicide...[and/or] patients experience physical injury (often disguised as

accidents) or emotional trauma resulting in depression, suicide or self-harm.” *Id.*

⁶⁷ *The Secretary of State’s 2009 International Women of Courage Awards*, *supra* note 64.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Hugh Macleod & Annasofie Flamand, *Fleeing Somali Women Recount Tales of Terror*, BBC NEWS AFRICA (Oct. 7, 2010), <http://www.bbc.co.uk/news/world-africa-11437595> (“If a woman refuses a forced marriage, we have reports of them being beheaded and their head sent to their father.”).

⁷¹ See, e.g., *Men of ‘Honour’: Cousins ‘Killed for Fleeing Forced Marriage,’* INT’L HERALD TRIB. (Dec. 14, 2010), <http://tribune.com.pk/story/89702/men-of-honour-cousins-killed-for-fleeing-forced-marriage/>; Duncan Kennedy, *Murdered by Her Father for Becoming a Western Woman*, BBC NEWS, Feb. 10, 2011, <http://www.bbc.co.uk/news/world-europe-12416394> (reporting on a young Pakistani woman whose father slit her throat 28 times in an ‘honor killing’ for refusing an arranged marriage and adopting a western lifestyle that he felt shamed her family); Kautilya Singh, *Honour Killing: Girl Hacked to Death By Grandfather in Kanpur*, INDIAN EXPRESS (Feb. 16, 2011), <http://www.indianexpress.com/news/honour-killing-girl-hacked-to-death-by-grandfather-in-kanpur/750726/> (“Learning that his granddaughter Malti (19) was planning elope and marry a neighbour belonging to another caste, 65-year-old Babulal Kashyap killed her, the police said”); *Honour Crimes*, BBC ETHICS GUIDE, http://www.bbc.co.uk/ethics/honourcrimes/crimesofhonour_1.shtml (last visited Apr. 4, 2012) (“Honour killing is the murder of a person accused of ‘bringing shame’ upon their family. Victims have been killed for refusing to enter a marriage, committing adultery or being in a relationship that displeased their relatives...In some parts of the world, women who have been raped have also been murdered for the ‘dishonour’ of being a victim and the ‘disgrace’ it brings to their family.”).

⁷² Aryn Baker, *Afghan Women and the Return of the Taliban*, TIME, Aug. 9, 2010, <http://www.time.com/time/world/article/0,8599,2007238,00.html>.

⁷³ *Id.*

⁷⁴ *Id.*; see also *Mutilated Afghan Girl Aisha Gets New Nose*, BBC NEWS SOUTH ASIA (Oct. 13, 2010), <http://www.bbc.co.uk/news/world-south-asia-11530849>; *Brave Bibi Holds Her Head High*, THE SUN (Feb. 16, 2011), <http://www.thesun.co.uk/sol/homepage/features/3414607/Pretty-Afghan-woman-had-her-nose-hacked-off-after-fleeing-arranged-marriage.html>.

⁷⁵ ANN CRAFT TRUST, *supra* note 33.

⁷⁶ *Valios*, *supra* note 34.

⁷⁷ See Backer, *supra* note 72; ANN CRAFT TRUST, *supra* note 33.

⁷⁸ Jasvinder Sanghera, KARMA NIRVANA, <http://www.karmanirvana.org.uk/a-word-from-jasvinder-sanghera.html> (last visited Apr. 4, 2012).

⁷⁹ Neglecting to address this fundamental principle does victims a grave disservice, and sends the profoundly misguided message that forced marriage is acceptable, so long as no ancillary harms flow there from.

⁸⁰ Homa Khaleeli, *Summer is a Dangerous Time For Those at Risk of Forced Marriage*, GUARDIAN (Aug. 4, 2011), <http://www.guardian.co.uk/lifeandstyle/2011/aug/04/summer-dangerous-forced-marriage>.

⁸¹ Roy, *supra* note 10, at 8.

⁸² See *Honour Based Violence and Forced Marriage: Guidance on Identifying and Flagging cases*, THE UNITED KINGDOM’S CROWN PROSECUTION SERV., http://www.cps.gov.uk/legal/h_to_k/forced_marriage_and_honour_based_violence_cases_guidance_on_flagging_and_identifying_cases/ (last visited Apr. 25, 2012) (defining forced marriage as “A marriage without the consent of one or both parties and where duress is a factor.”); see also EUR. PARL. ASS. DEB. 29th Sess. (Oct. 5, 2005), available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1468.htm> (defining forced marriage as “the union of two persons at least one of whom has not given their full and free consent to the marriage.”); see Eur. Consult. Ass., *Forced Marriages and Child Marriages*, 29th Sess., Doc. No. 10590 (June 20, 2005); Eur. Consult. Ass., *Forced Marriages and Child Marriages*, 29th Sess., Doc. No. 10678 (Sept. 21, 2005); see also *Forced Marriage in Immigrant Communities*, *supra* note 2 (“A forced marriage is one that takes place without the full and free consent of one or both parties. It can happen to either gender, at any age. It may be a marriage that is threatened, or one that has already taken place, either in the United States or abroad. An individual’s lack of consent or lack of ability to give informed consent may be caused by a variety of factors, including but not limited to the individual being: [y]ounger than the legal age to marry; [s]ubject to some other incapacity or disability; [or] subject to force, fraud, or coercion. Force, fraud, or coercion can take many forms, including psychological manipulation, emotional blackmail, deception, and physical threats or violence, and—in some cases—even kidnapping or death threats.”).

⁸³ See *Honour Based Violence and Forced Marriage*, *supra* note 82 (“An arranged marriage is very different from a forced marriage. An arranged marriage is entered into freely by both people, although their families take a leading role in the choice of partner.”). Although forced marriages, too, are often *arranged* by a third party or parties, the above-proffered definition of the term “arranged marriage” (i.e., as involving the mutual consent of the spouses) has achieved broad common usage among system actors in the U.S. and abroad. Nonetheless, there are advocates who view forced marriages as a subset of arranged marriages, to the extent that the forced marriage was arranged by somebody claiming to act on behalf of the non-consenting spouse.

⁸⁴ U.S. DEP’T OF STATE, *supra* note 2.

⁸⁵ *Id.*

⁸⁶ Sanghera, *supra* note 12.

⁸⁷ Bridenapping involves the physical abduction of an intended bride for purposes of forcing her into a marriage.

⁸⁸ See, e.g., Lochana Sharma, *Group in Nepal Takes Pride in Kidnapping Brides*, WOMEN'S ENEWS (Jan. 10, 2012), <http://womensenews.org/story/marriagedivorce/120109/group-in-nepal-takes-pride-in-kidnapping-brides> (detailing the cultural tradition of kidnapping women and girls for marriage that persists among indigenous groups in western Nepal); see also Mia Malan, *Abduction a Perversion of the Past*, MAIL & GUARDIAN (Dec. 15, 2011), <http://mg.co.za/article/2011-12-15-abduction-a-perversion-of-the-past/> (detailing *Ukuthwala*, an ancient tradition of physically abducting girls and forcing them to marry that persists in parts of South Africa).

⁸⁹ Gareth Rose, *Call to Prosecute the Husbands Who Knowingly Wed Forced-Marriage Girls*, THE SCOTSMAN (Sept. 17, 2010), <http://news.scotsman.com/uk/Call-to-prosecute-the-husbands.6538333.jp>.

⁹⁰ OXFORDSHIRE NAT'L HEALTH SERV. (NHS), *supra* note 66. For example, most would deem a marriage entered into under the following circumstances to be *arranged*, but not *forced*: "Parent/s start to think about their child getting married; Parent/s begin to talk about their child's marriage, perhaps suggesting or looking for potential partners; an agreement to marry is made; whilst the families of those who are marrying are involved in the process, the final decision lies with those who are to be married; arranged marriage takes place." *Id.* Whereas, for both victims and responders, the line between *arranged* and *forced* marriage may tend to blur where: "marriage is discussed, but with no mutual acceptance or rejection of ideas; there is pressure to marry, which may take the form of emotional blackmail or appeals to conform with traditional family roles and values." *Id.* But, few would contest that a marriage is *forced* where: "demands to accept a marriage proposal are accompanied by physical, mental and/or emotional pressure and violence; the people concerned are maneuvered into going through the marriage ceremony against their will." *Id.*

⁹¹ *Id.*

⁹² Larasi, *supra* note 2.

⁹³ Julia Alanen, *When Human Rights Conflict: Mediating International Parental Kidnapping Disputes Involving the Domestic Violence Defense*, 40 U. MIAMI INTER-AM. L. REV. 49, 65–66 (2008) ("Numerous states' legal systems severely marginalize women and children. Divorce, or female-initiated divorce, is prohibited. Women's and children's travel and movement are restricted or linked to the permission of male guardians. Women and children are treated as chattel of male partners or other male family members. Maternal custody of children of a certain age-range is precluded. Women are denied property rights and prohibited from working, and are therefore unable to independently support themselves and their dependents.") [hereinafter Alanen, *When Human Rights Conflict*].

⁹⁴ Karin Brulliard, *Zulus Eagerly Defy Ban on Virginity Test*, WASH. POST, Sept. 26, 2008, at A1, <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/25/AR2008092504625.html>.

⁹⁵ Alanen, *When Human Rights Conflict*, *supra* note 93, at 98.

⁹⁶ *Id.*

⁹⁷ *Forced Marriage in Immigrant Communities*, *supra* note 2 (More than 500 respondents from 47 U.S. states participated in the survey, which was conducted between May 2011 and August 2011. The survey targeted primarily nongovernmental agencies serving immigrant women. Sixty-seven percent of survey respondents felt that there were additional, unidentified cases among the populations they serve.).

⁹⁸ Michelle Goldberg, *Marry – or Else: Forced Weddings and 'Honor' Killings Aren't Just a Developing-World Issue. New Research Shows How it Happens in England and the United States*, NEWSWEEK, Sept. 18, 2011, <http://www.thedailybeast.com/newsweek/2011/09/18/forced-marriage-and-honor-killings-happen-in-britain-u-s-too.html>.

⁹⁹ Only ten percent of the responders' agencies had adopted a working definition of forced marriage; only twenty-two percent had screening protocols in place that would enable them to identify these cases; and only sixteen percent felt their agencies were equipped to help individuals facing forced marriage. *Forced Marriage in Immigrant Communities*, *supra* note 2, at 7–8.

¹⁰⁰ The most widely publicized case involves four Afghan women in Ontario who were murdered by close family members who alleged that the victims had violated the family honor by adopting western attire and behaviors. See *Canada Honor Killing Trial Verdict: Shafia Family Found Guilty*, HUFF. POST (Jan. 29, 2012), http://www.huffingtonpost.com/2012/01/29/canada-honor-killing-shafia-family-guilty_n_1240268.html.

¹⁰¹ David Schwartz, *Phoenix Police Arrest Iraqi Woman for Burning Daughter*, CHI. TRIB., Feb. 16, 2012, <http://www.reuters.com/article/2012/02/16/us-crime-arizona-iraqi-idUSTRE81F29K20120216>.

¹⁰² *Id.*

¹⁰³ See Ioan Grillo, *Selling Brides: Native Mexican Custom or Crime?*, TIME, Feb. 1, 2009, <http://www.time.com/time/world/article/0,8599,1876102,00.html>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Nadya Labi, *An American Honor Killing: One Victim's Story*, TIME, Feb. 25, 2011, <http://www.time.com/time/nation/article/0,8599,2055445,00.html>.

¹⁰⁷ *Id.*

¹⁰⁸ Regarding Tony Alamo, see, e.g., *Women Who Claim They Were Child Brides in the USA*, OPRAH WINFREY SHOW (Sept. 7, 2010), <http://www.oprah.com/showinfo/Women-Who-Claim-They-Were-Child-Brides-in-the-USA>. And, regarding Warren Jeffs, see Joseph Diaz, *Elissa*

Wall Speaks Out About her 'Stolen Innocence,' ABC NEWS 20/20 (May 16, 2008), <http://abcnews.go.com/2020/story?id=4863899&page=1>; Elissa Wall, *Warren Jeffs' FLDS Church and What I Left Behind*, HUFF. POST (May 17, 2008), http://www.huffingtonpost.com/elissa-wall/warren-jeffs-flds-church_b_102195.html (Warren Jeff's conviction was recently overturned on the basis of faulty jury instructions.); Brent Hunsaker, *Elissa Wall Wants Jeffs Tried Again*, ABC 4 NEWS (Aug. 4, 2010), <http://www.abc4.com/mostpopular/story/EXCLUSIVE-Elissa-Wall-wants-Warren-Jeffs-tried/4oli2q-VtESSzEKzISow5A.csp>; see generally, ANDREA MOORE-EMMETT, *GOD'S BROTHEL: THE EXTORTION OF SEX FOR SALVATION IN CONTEMPORARY MORMON AND CHRISTIAN FUNDAMENTALIST POLYGAMY AND THE STORIES OF 18 WOMEN WHO ESCAPED* (2004) (Many of the women whose stories are featured in Moore-Emmett's book were forced into marriage when they were adolescents).

¹⁰⁹ Diaz, *supra* note 108.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See ELISSA WALL WITH LISA PULTZER, *STOLEN INNOCENCE: MY STORY OF GROWING UP IN A POLYGAMOUS SECT, BECOMING A TEENAGE BRIDE, AND BREAKING FREE OF WARREN JEFFS* (2008); see also Diaz, *supra* note 108; see also Wall, *supra* note 108; see also Hunsaker, *supra* note 108.

¹¹³ See ELISSA WALL WITH LISA PULTZER, *STOLEN INNOCENCE: MY STORY OF GROWING UP IN A POLYGAMOUS SECT, BECOMING A TEENAGE BRIDE, AND BREAKING FREE OF WARREN JEFFS* (2008); see also Diaz, *supra* note 108; see also Wall, *supra* note 108; see also Hunsaker, *supra* note 108.

¹¹⁴ See *Women Who Claim They Were Child Brides in the USA*, *supra* note 108.

¹¹⁵ While, in the modern context, one is unlikely to encounter the outraged father of the bride literally ushering a reluctant groom down the aisle at the butt of a loaded shotgun, more subtle forms of coercion – such as threats of disinheritance, withholding of financial support, or ostracization from the family – can prove equally effective at maneuvering expectant young parents into an unwanted marriage.

¹¹⁶ SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* 140 (1989).

¹¹⁷ NANCY LEVIT & ROBERT R. M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* 163 (2006).

¹¹⁸ *Winchendon v. Hatfield*, 4 Mass. 123, 129 (1808).

¹¹⁹ See *Sosna v. Iowa*, 419 U.S. 393 (1975).

¹²⁰ See Hannah Cartwright, *Legal Age of Consent for Marriage and Sex in the 50 United States*, GLOBAL JUSTICE INITIATIVE (Aug. 21, 2011), <http://globaljusticeinitiative.files.wordpress.com/2011/12/united-states-age-of-consent-table11.pdf>.

¹²¹ *Id.*; see also *Marriage Laws*, LEGAL INFO. INST., http://topics.law.cornell.edu/wex/table_marriage (last visited Apr. 4, 2012).

¹²² See generally, *Marriage Laws*, *supra* note 121.

¹²³ According to the FAM, “All civil law countries require proof of legal capacity to enter into a marriage contract in the form of certification by competent authority that no impediment exists to the marriage,” but “No such document exists in the United States.” U.S. DEP’T OF STATE, *Foreign Affairs Manual: Marriage of U.S. Citizens Abroad*, 7 FAM 1454(g) (2005), <http://www.state.gov/documents/organization/86802.pdf> [hereinafter U.S. DEP’T OF STATE, *Marriage of U.S. Citizens Abroad*].

¹²⁴ See Larasi, *supra* note 2.

¹²⁵ United Nations Convention on the Elimination of All Forms of Discrimination Against Women, art. 16(d), 16(f) (Sept. 3, 1981) [hereinafter CEAFDW]. For historical background and international sources of children’s rights, see Geneva Declaration of the Rights of the Child, O.J. Spec. Ed. (21) 43, League of Nations, Sept. 26, 1924, available at <http://www.un-documents.net/gdrc1924.htm>; United Nations Convention on the Rights of the Child, pmbl., 28 I.L.M. 1448 (Nov. 20, 1989) [hereinafter CRC]; Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., UN Doc. A/810 (Dec. 10 1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., UN Doc. A/6316 (Dec. 16, 1966) [hereinafter ICESCR].

¹²⁶ State criminal laws and reporting requirements on sex acts involving a minor – sometimes classified as statutory rape, rape, sexual conduct or activity with a minor, sexual abuse or assault of a minor, etc. – vary dramatically from state to state. Some state statutes criminalize any sexual activity involving a person under age eighteen; other states’ sex laws turn on gender, limiting criminality to sex acts involving a female minor; while still other states hang criminality on the relative age difference between the participants. See Cartwright, *supra* note 120.

¹²⁷ *Id.*

¹²⁸ Patricia Donovan, *Can Statutory Rape Laws Be Effective in Preventing Adolescent Pregnancy?* 29 FAMILY PLANNING PERSPECTIVES 1 (Jan./Feb. 1996), <http://www.guttmacher.org/pubs/journals/2903097.html>.

¹²⁹ *People v. Dozier*, 72 A.D.2d 478, 483 (N.Y. 1980).

¹³⁰ *Id.* The court cites forced marriage as one possible negative consequence of adolescent intercourse: “Forced marriage...abortion, the need for medical treatment and precipitate withdrawal from school are just some of the considerations which often have to be faced, so it can be discerned that the state’s concern stems from more than a dogmatic insistence on appropriate adolescent behavior.” *Id.* at 483. Unfortunately, the *Dozier* court does not concern itself with teen girls older than age sixteen: “The state has a legitimate concern that females sixteen years and younger do not become pregnant or suffer physical injury, and as a

result, find themselves facing practical problems for which their youth has not prepared them.” *Id.* at 482–83.

¹³¹ *In re Commissioner of Social Services on Behalf of Leslie C.*, 614 N.Y.S.2d 855, 860 (N.Y. Fam. Ct. 1994). However, the court focused upon the consequences of extramarital sex involving girls under age seventeen: “This Court recognizes there are sound social policy reasons underlying the public policy of discouraging sexual intercourse among unwed females under the age of seventeen.” *Id.*

¹³² U.S. DEP’T OF STATE, *supra* note 2. While the State Department acknowledges that non-consensual sex is a probable consequence of forced marriage of a minor, the Department fails to explicitly address whether a minor child has the requisite capacity to give free and informed consent to marriage or sex.

¹³³ CRC, *supra* note 125, at pmb1.

¹³⁴ *Forced Marriage in Immigrant Communities*, *supra* note 2.

¹³⁵ *Establishing a Minimum Age for Consent*, STOP VIOLENCE AGAINST WOMEN: A PROJECT OF THE ADVOCATES FOR HUMAN RIGHTS, http://www.stopvaw.org/establishing_a_minimum_age_for_consent.html (last visited Apr. 4, 2012).

¹³⁶ *Adolescence: A Time That Matters*, THE UNITED NATIONS CHILDREN’S FUND (UNICEF) 7 (2002), [http://www.unicef.org/adolescence/files/pub_adolescence_en\(1\).pdf](http://www.unicef.org/adolescence/files/pub_adolescence_en(1).pdf).

¹³⁷ CRC, *supra* note 125.

¹³⁸ Evelyn Leopold, “We Don’t Divorce Little Girls,” *Said the Judge*. “But How Come You Allow Little Girls to Get Married?” *Said the Little Girl*, HUFF. POST WORLD (Jan. 1, 2012), http://www.huffingtonpost.com/evelyn-leopold/we-dont-divorce-little-gi_b_1176877.html.

¹³⁹ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231 (Dec. 9, 1964) [hereinafter Convention on Consent to Marriage]. The Convention on Consent to Marriage requires that contracting states set a minimum age for marriage: “States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.” *Id.* Article 6 of the CEAFDW provides that: “Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages compulsory.” CEAFDW, *supra* note 125, at art. 6(3).

¹⁴⁰ Some states’ marital consent laws set a higher minimum age for boys than for girls, a practice that constitutes gender discrimination and further exacerbate young girls’ vulnerability. Human rights groups are advocating for gender parity in marriage laws: “Since girls are frequently the underage party in forced marriages, drafters should promote equality in marriage by ensuring

that the minimum age is the same for men and women.” *Establishing a Minimum Age for Consent*, *supra* note 135.

¹⁴¹ CRC, *supra* note 125, at art. 1. Every sovereign state in the world has ratified the CRC, with the exception of the United States and Somalia.

¹⁴² *Establishing a Minimum Age for Consent*, *supra* note 135; see also Myers & Harvey, *supra* note 44 (“Marriage before the age of 18 years old should not be permitted since children do not have the ‘full maturity and capacity to act,’ as recognised by the expert body that monitors the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) in its General Recommendation 21.”); see also *Child Marriage and Forced Marriage*, THE FOUND. FOR WOMEN’S HEALTH (FORWARD), <http://www.forwarduk.org.uk/key-issues/child-marriage> (last visited May 22, 2012) (“Child/early marriage refers to any marriage of a child younger than 18 years old ... FORWARD believes that any child marriage constitutes a forced marriage, in recognition that even if a child appears to give their consent, anyone under the age of 18 is not able to make a fully informed choice whether or not to marry.”).

¹⁴³ Cheryl Thomas, *Forced and Early Marriage: A Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries*, U.N. DIV. FOR THE ADVANCEMENT OF WOMEN 2 (June 19, 2009), available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Cheryl%20Thomas%20revised_.pdf (citing The Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (Nov. 7, 1962), 32 U.N.T.S. 231).

¹⁴⁴ *Child Protection Information Sheet: Child Marriage*, THE UNITED NATIONS CHILDREN’S FUND (UNICEF) (May 2006), http://www.unicef.org/protection/files/Child_Marriage.pdf.

¹⁴⁵ *In This Issue*, 36 INT’L PERSPECTIVES ON SEXUAL & REPROD. HEALTH 3 (Sept. 2010), <http://www.guttmacher.org/pubs/journals/3611910.html>; see K.G. Santhya et al., *Associations Between Early Marriage and Young Women’s Marital and Reproductive Health Outcomes: Evidence from India*, 36 INT’L PERSPECTIVES ON SEXUAL & REPROD. HEALTH 3, 132–35 (2010), <http://www.guttmacher.org/pubs/journals/3613210.html> (“Methods: Data from 8,314 married women aged 20–24 living in five Indian states, obtained from a subnationally representative study of transitions experienced by youth, were used to compare marital, reproductive and other outcomes between young women who had married before age 18 and those who had married later. Logistic regression analyses were conducted to identify associations between timing of marriage and the outcomes of interest... Young women who had married at age 18 or older were more likely than those who had married before age 18 to have been involved in planning their marriage (odds ratio, 1.4), to reject wife beating (1.2), to have used contraceptives to delay their first pregnancy

(1.4) and to have had their first birth in a health facility (1.4). They were less likely than women who had married early to have experienced physical violence (0.6) or sexual violence (0.7) in their marriage or to have had a miscarriage or stillbirth (0.6).”

¹⁴⁶ In the play *Romeo and Juliet* by William Shakespeare (completed in 1596), star-crossed teen lovers take their own lives in a romanticized double suicide because their feuding families would never permit them to marry, and Juliet’s father has promised her hand in marriage to another man who she does not wish to marry. In the contemporary context, defining eighteen as the minimum legal age for marital consent simply means that Romeo and Juliet (and other eager fiancés) would have to wait to “tie the knot” until they both reached the age of majority.

¹⁴⁷ In countries that proscribe marriage of minors, the gap between law and practice remains vast. See, e.g., *Marrying Off Young Girls is a Tradition Here*, ZAMBIAN WATCHDOG (Dec. 21, 2010), <http://www.zambianwatchdog.com/2010/12/21/zambia-marrying-off-young-girls-is-a-tradition-here>.

¹⁴⁸ *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (overturning a state anti-miscegenation law criminalizing interracial marriage, stating that “Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”). See also *Zablocki v. Redhail*, 434 U.S. 374, 383–84 (1978); *In re Carrafa*, 77 Cal. App. 3d 788, 791 (1978); *Griswold v. Connecticut*, 381 U.S. 479, 495 (1965); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639 (1974).

¹⁴⁹ See *Boddie v. Connecticut*, 401 U.S. 371, 380–81 (1971) (citing *Skinner v. Oklahoma*, 316 U.S. 535 (1942)) (recognizing a fundamental right to dissolve a marriage, holding that a denial of access to a court divorce proceeding amounted to a denial of due process under the U.S. Constitution).

¹⁵⁰ Julia Alanen, *Forced Marriage Laws of the U.S. States and Territories*, GLOBAL JUSTICE INITIATIVE (Oct. 20, 2011), <http://globaljusticeinitiative.files.wordpress.com/2011/12/forced-marriage-laws-of-the-us-states-alanen.pdf> [hereinafter Alanen, *Forced Marriage Laws*].

¹⁵¹ CAL. PENAL CODE § 265 (West 2011).

¹⁵² *Id.* Although the statute does not explicitly mention “girls,” there is an easily colorable argument that the term “women” was intended to include girls.

¹⁵³ MD. CODE ANN., CRIM. LAW § 11-303 (West 2012) (“(b)(2) A person may not knowingly take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse... A person who violates subsection (b) of this section is guilty of the felony of human trafficking... A person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in subsection (b) of this section is

subject to the same penalties that would apply if the person had violated that subsection... A person who knowingly aids, abets, or conspires with one or more other persons to violate any subsection of this section is subject to the same penalties that apply for a violation of that subsection.”).

¹⁵⁴ MINN. STAT. ANN. § 609.265 (West 2012) (“Whoever, for the purpose of marriage, takes a person under the age of 18 years, without the consent of the parents, guardian, or other person having legal custody of such person is guilty of abduction and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.”). The *minor’s* consent – a determination of whether or not he or she wishes to marry – appears to be wholly immaterial under Minnesota’s forced marriage law. *Id.*

¹⁵⁵ MISS. CODE ANN. § 97-3-1 (West 2011).

¹⁵⁶ NEV. REV. STAT. ANN. § 201.300 (West 2010).

¹⁵⁷ *Id.* (finding a person guilty of pandering an adult victim guilty of a class C or D felony, depending on whether the perpetrator used physical force or immediate threat of physical force against the victim and if the victim is a child, violation of this statute constitutes a class B felony, punishable by imprisonment for a term of between one and twenty years, and a fine of between \$10,000 and \$20,000, depending on whether physical force or immediate threat of physical force was used against the child).

¹⁵⁸ OKLA. STAT. ANN. tit. Compelling woman to marry, § 1117 (West 2011).

¹⁵⁹ V.I. CODE ANN. tit. Forcible marriage; defilement, § 1301 (West 2011).

¹⁶⁰ VA. CODE ANN. § 18.2-355 (West 2011).

¹⁶¹ D.C. CODE § 22-2705 (2012) (finding a person convicted under this D.C. statute guilty of a felony punishable by imprisonment for not more than five years, or by a fine of not more than \$5,000, or both. In the event that the victim was a minor, the penalty increases to imprisonment of not more than twenty years, or a fine of not more than \$20,000, or both).

¹⁶² *Criminal Laws Addressing Forced Marriage in the United States*, TAHIRIH JUSTICE CENTER (Nov. 2011), <http://www.tahirih.org/site/wp-content/uploads/2011/09/Criminal-Laws-Addressing-Forced-Marriage-in-the-United-States.pdf>.

¹⁶³ For example, polygamous prophet Tony Alamo, who forced numerous underage girls into marriage, was charged with “transporting minors across state lines with the intent to have sex” because prosecutors had no forced-marriage statute at their disposal. See also Schwartz, *supra* note 101 (mother charged with physically assaulting daughter who resisted a forced marriage).

¹⁶⁴ See *supra* note 8.

¹⁶⁵ The Mann Act, 18 U.S.C. §§ 2421–2424 (1998).

¹⁶⁶ See International Parental Kidnapping, 18 U.S.C.A. § 1204 (“Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in

the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both ... It shall be an affirmative defense under this section that ... the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense ... or ... the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child..."). See also *Criminal Custodial Interference – State Statutes*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN (June 2006), http://www.missingkids.com/en_US/documents/CriminalCustodialInterference.pdf. Every U.S. state has criminalized interference with child custody. The author litigated parental kidnapping cases as a legal aid attorney, and later managed the team responsible for international family abduction cases as International Division Director at The National Center for Missing & Exploited Children.

¹⁶⁷ See Myers & Harvey, *supra* note 44.

¹⁶⁸ Furthermore, there is rarely a child custody order in place at the time when a child bride is sent abroad to be married and, under most states' family laws, absent an order to the contrary, both parents have custodial rights. In the event that a bride is physically taken and forced to the altar by a family or community member who is *not* the bride's parent or legal guardian, a variety of other criminal laws could prove applicable.

¹⁶⁹ Immigration and Naturalization Act, 8 U.S.C. § 1182, sec. 212.

¹⁷⁰ *Id.* § 212(a)(10)(C). A number of statutorily enumerated exceptions apply.

¹⁷¹ Prosecutors concerned with maintaining high conviction rates or confronted with reluctant victim-witnesses may be unlikely to pursue ancillary criminal theories in the forced marriage context.

¹⁷² See Edwige Rude-Antoine, *Forced Marriages in Council of Europe Member States: A Comparative Study of Legislation and Political Initiatives*, DIRECTOR GENERAL OF HUMAN RIGHTS 8–9 (2005), [http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG\(2005\)1_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG(2005)1_en.pdf); Khaleeli, *supra* note 80. Countries that have already taken steps or enacted laws to explicitly address forced marriage include Germany, New Zealand, Norway, Pakistan, Scotland, Turkey and the United Kingdom. See *Germany Moves to Outlaw Forced Marriage*, NEWS.COM.AU (Oct. 27, 2010), <http://www.news.com.au/breaking-news/germany-moves-to-outlaw-forced-marriage/story-e6frfku0-1225944419041>;

Michelle Duff, *Plea for Ban on Forced Marriages*, STUFF.CO.NZ (Jan. 28, 2011), <http://www.stuff.co.nz/national/4591041/Plea-for-ban-on-forced-marriages>; *Pakistan Passes Law to Stop 'Anti-Women Practices'*, TRUSTLAW (Nov. 16, 2011), <http://www.trust.org/trustlaw/news/pakistan-passes-law-to-stop-anti-women-practices-paper/>; *MSPs to Vote on Forced Marriage Bid*, ASSOCIATED PRESS, Feb. 2011, <http://www.google.com/hostednews/ukpress/article/ALeqM5hoAzJ2tgeR86LRtK9q002mVj-qDA?docId=N0497461296615584649A>; Ali Aslan Kilic, *Turkey Considers Chemical Castration for Sex Offenders*, TODAY'S ZAMAN (Feb. 11, 2011), <http://www.todayszaman.com/news-235242-turkey-considers-chemical-castration-for-sex-offenders.html>. In Oaxaca, Mexico, where bride-selling remains a common practice among some cultural groups, Human Rights Commissioner, Heriberto García, indicated that he intends to advocate for legislative reform to criminalize the practice. See Grillo, *supra* note 85.

¹⁷³ Khaleeli, *supra* note 80.

¹⁷⁴ *Id.* "The girls will only [report] it if we have a strong campaign, making victims realise they haven't done anything wrong. We have to empower them." *Id.*

¹⁷⁵ Catherine Deveney, *Without Consent: The Truth about Forced Marriage*, THE OBSERVER (Mar. 10, 2012), <http://www.guardian.co.uk/world/2012/mar/11/forced-marriage-pakistan-matrimony-laws>.

¹⁷⁶ *Id.*

¹⁷⁷ Sameem Ali, Tahirah Justice Center Policy Briefing: What Can the United States Learn from the United Kingdom's Experiences with Forced Marriage? (Mar. 2, 2012). Ali published her biography, *Belonging*, in 2009, detailing her personal experience with forced child marriage. She was elected as a Councilmember in Manchester, England, where she raises awareness about forced marriage by speaking at schools, conferences, and in the media.

¹⁷⁸ See FORCED MARRIAGE: INTRODUCING A SOCIAL JUSTICE AND WOMEN'S RIGHTS PERSPECTIVE (Aisha K. Gill & Sundari Anitha eds., 2011) [hereinafter Gill, FORCED MARRIAGE].

¹⁷⁹ *Id.*

¹⁸⁰ Deveney, *supra* note 173.

¹⁸¹ See, e.g., *Should Forced Marriage Be Criminalized?*, GUARDIAN (Oct. 12, 2011), <http://www.guardian.co.uk/uk/crime-and-justice-blog/2011/oct/12/forced-marriage-ukcrime>; *Forced Marriage Consultation*, UNITED KINGDOM HOME OFFICE, Dec. 2011, <http://www.homeoffice.gov.uk/publications/about-us/consultations/forced-marriage/forced-marriage-consultation?view=Binary>.

¹⁸² *Id.* See also *Response to the Forced Marriage Consultation*, DIVERSITY SUB COMMITTEE OF THE FAMILY JUSTICE COUNCIL (Mar. 2012), http://www.coramchambers.co.uk/_data/assets/pdf_file/0008/99575/Final_Draft_11PM_29March2012.ed.pdf (objecting to criminalization in *either* context - forcing another to marry or violating an FMPO).

¹⁸³ See *Honour Crimes*, *supra* note 71.

¹⁸⁴ *David Cameron Urges People to Report Illegal Immigrants*, BBC NEWS UK POLITICS (Oct. 10, 2011), <http://www.bbc.co.uk/news/uk-15235649?print=true>.

¹⁸⁵ *Honour Crimes*, *supra* note 71.

¹⁸⁶ Rose, *supra* note 89.

¹⁸⁷ Deveney, *supra* note 173.

¹⁸⁸ See Radha Iyengar, *Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws*, NAT'L BUREAU OF ECONOMIC RESEARCH, WORKING PAPER 13186 (June 2007), <http://www.nber.org/papers/w13186.pdf> (suggesting when states enact mandatory arrest policies, the intimate partner homicide rate dramatically increases).

¹⁸⁹ See *supra* note 8.

¹⁹⁰ In nearly every forced-marriage prevention case reported the author of this article, child protective service (CPS) providers in each U.S. state implicated declined to remove and protect the child. In some cases, CPS declared that there was no imminent harm to the girl, closed the case as unsubstantiated and sent the girl back to her parents, never to be heard from again by the adults upon whom she relied for protection.

¹⁹¹ See *supra* note 8.

¹⁹² See *supra* note 8. See also Khaleeli, *supra* note 80; Gill, *FORCED MARRIAGE*, *supra* note 178; *Honour Crimes*, *supra* note 71 (quoting UK shadow minister for community cohesion, Baroness Warsi, "The onus to go for a civil protection order is actually on the victim of the forced marriage or somebody close to them. I know from speaking to victims of forced marriages that, when they're in those circumstances, the last thing on their mind or the last thing that they're able to do, is go to court and seek an order.").

¹⁹³ See generally, *Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State*, A.B.A. COMM'N ON DOMESTIC VIOLENCE (June 2009), http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards_of_Proof_by_State.authcheckdam.pdf.

¹⁹⁴ Proving future harm in this context can be a daunting prospect even for skilled legal advocates, particularly when judges are unfamiliar with the issues surrounding forced marriage. One possible solution is to present expert testimony (live or via sworn affidavit) by forced and early marriage experts detailing the nature, frequency, and severity of the harmful consequences, and establishing that being forced into marriage, regardless of what follows, is an intrinsic human rights violation. There is some precedent supporting the premise that any forced marriage scenario carries a reasonable fear of imminent rape or sexual assault for the non-consenting spouse. See *K.H. v. Mitchell*, 27 P.3d 130, 132 (2001) (finding that the defendant's expressive contacts substantiated a threat, causing the plaintiff to fear imminent rape. The defendant called the plaintiff, a high school senior, on the phone and

alluded that he would be right over to have sex with her. The court found that the defendant's language caused the plaintiff to reasonably fear imminent rape). If a marriage must be consummated in order to be valid, then the mere threat of being forced into an unwanted marriage could constitute sufficient reason to reasonably fear imminent rape or sexual assault. Although not every 'spouse' of a forced marriage victim is predisposed to commit rape or sexual assault, the incidence of rape and sexual assault in this context are significant, and the holding in *K.H.* makes clear that it is the reasonableness of the victim's fear that controls.

¹⁹⁵ For example, *marry, or I'll kill your mom; marry, or your mother will kill herself out of shame; or, marry, or I'll force your little sister to marry him, instead.*

¹⁹⁶ For example, years after Sameem Ali and her son finally escaped her forced marriage, police arrested three armed persons en route to her home; they had been hired by her brother to kidnap Sameem and her son by any means necessary. *Forced Marriage: Sameem's Story*, BBC NEWS, Sept. 13, 2010, http://news.bbc.co.uk/local/manchester/hi/people_and_places/religion_and_ethics/newsid_8994000/8994147.stm. The UK's FMPO, by contrast, explicitly extends to third parties – such as extended family members of the bride or groom, or even bounty hunters – regardless of whether they were named in the petition, and the Forced Marriage Act defines 'force' broadly to include force used against third parties. Forced Marriage (Civil Protection) Act, 2007, c. 20 (U.K.), available at http://www.legislation.gov.uk/ukpga/2007/20/pdfs/ukpga_20070020_en.pdf.

¹⁹⁷ A civil restraining order violation constitutes contempt of court, punishable by incarceration. See *Restraining Orders: Overview of Civil Versus Criminal Law*, WOMENSLAW.ORG, http://www.womenslaw.org/laws_state_type.php?id=600&state_code=WA (last visited Apr. 25, 2012). For immigration consequences of restraining order/protection order violations, see INA § 237(a)(2)(E); 8 U.S.C. § 1227(a)(2)(E).

¹⁹⁸ This is particularly true if the bride's siblings or other dependents, in the U.S. or abroad, rely on her parents' financial support.

¹⁹⁹ The Tahirih Justice Center's 2011 national forced marriage survey revealed that, while many forced marriage victims had obtained restraining orders in the process of fleeing their marriages, none had obtained a restraining order preemptively to prevent a forced marriage from taking place. *Forced Marriage in Immigrant Communities*, *supra* note 2.

²⁰⁰ Forced Marriage (Civil Protection) Act, 2007, c. 20 (Eng.). A handful of other countries have passed or introduced similar legislation to prevent forced marriage. The Act aims to deter and remedy forced marriages involving UK citizens: "Anyone - including a victim, friend or local authority - can ask a court to implement

a Forced Marriage Protection Order (FMPO). This can stop a person being married against their will and prevent them from being taken abroad. The FMPOs can also demand that perpetrators stop any intimidation, reveal the victim's location and hand over passports otherwise they could face imprisonment." *Honour crimes, supra* note 71. The UK has designated a specialized Forced Marriage Unit to investigate forced marriage allegations, and the Foreign and Commonwealth Office (FCO) has published comprehensive materials for victims of forced marriage and multi-disciplinary guidelines for a full range of professional responders. See HM GOVERNMENT, HANDING CASES, *supra* note 9, at 74. Laws to prevent forced marriages and provide a way out for those already in an unwanted union were introduced in England, Wales and Northern Ireland in November 2008. Visit the UK's Forced Marriage Unit website, *Forced Marriage Unit, supra* note 23. Oxfordshire National Health Service (NHS) has launched a website on forced marriage in order to heighten public awareness of the practice and increase understanding of what constitutes forced marriage. The campaign provides practical information on how to help a colleague, patient or friend who has expressed fear of being forced into marriage against their will, or who seeks to escape a forced marriage. OXFORDSHIRE NAT'L HEALTH SERV. (NHS), *supra* note 66.

²⁰¹ Forced Marriage (Civil Protection Act), 2007, c. 20, § 63A (Eng.) ("...force" includes coercion by threats or other psychological means (and related expressions are to be read accordingly)...").

²⁰² Forced Marriage (Civil Protection Act), 2007, c. 20, § 63A(1) (Eng.) ("The court may make an order for the purposes of protecting— a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage."); see also Forced Marriage (Civil Protection Act), 2007, c. 20, § 63B(3) (Eng.) ("For the purposes of subsection (2) examples of involvement in other respects are— (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or (b) conspiring to force, or to attempt to force, a person to enter into a marriage.").

²⁰³ Forced Marriage (Civil Protection Act), 2007, c. 20, § 63(C) (Eng.) ("(1) The court may make a forced marriage protection order— (a) on an application being made to it; or (b) without an application being made to it but in the circumstances mentioned in subsection (6). (2) An application may be made by— (a) the person who is to be protected by the order; or (b) a relevant third party. (3) An application may be made by any other person with the leave of the court.").

²⁰⁴ Forced Marriage (Civil Protection Act), 2007, c. 20, § 63D (Eng.) ("Ex parte orders: Part 4A(1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of

the proceedings as would otherwise be required by rules of court.").

²⁰⁵ Forced Marriage (Civil Protection Act), 2007, c. 20, § 63A(5) (Eng.) ("...it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.").

²⁰⁶ Forced Marriage (Civil Protection Act), 2007, c. 20, § 63F (Eng.) ("Duration of orders A forced marriage protection order may be made for a specified period or until varied or discharged.").

²⁰⁷ Forced Marriage (Civil Protection Act), 2007, c. 20, § 63B(1) (Eng.) ("A forced marriage protection order may contain— (a) such prohibitions, restrictions or requirements; and (b) such other terms; as the court considers appropriate for the purposes of the order.").

²⁰⁸ See, *Forced Marriages Blight Lives, But Criminalising Them Would Not Work*, GUARDIAN (Apr. 9, 2012), <http://www.guardian.co.uk/commentisfree/2012/apr/09/forced-marriages-criminalising?INTCMP=ILCNETTXT3487>. One breach involved an FMPO issued to a teenage boy, Edirin, after his mother took extreme measures to coerce him into a non-consensual marriage, going so far as to perform exorcisms on him when he resisted. See *Edirin Onogeta-Idogun Mother Jailed Over 'Missing' Son*, BBC News, Feb. 14, 2011, <http://www.bbc.co.uk/news/uk-england-london-12455820>. The boy's family tricked him into traveling to Nigeria, where he was held against his will. *Id.* Edirin was believed to be in Lagos with his father while Edirin's mother spent eight months in a UK jail for violating the FMPO. *Id.*; see also *Marriage Row Mum Faces Jail Over Missing Son Edirin Onogeta-Idogun*, NEWSCORE (Feb. 4, 2011), <http://www.news.com.au/breaking-news/marriage-row-mum-faces-jail-over-missing-son-edirin-onogeta-idogun/story-e6frku0-1226000458608>. Other UK cases have since triggered enforcement actions.

²⁰⁹ In many cases it is easier to safeguard a forced-marriage victim if she is physically removed from the family or community that is the source of the threat. In the event that a minor will relocate to a new State, her advocates should consider whether the new jurisdiction has favorable laws and abundant resources. It is critical that legal advocates for forced-marriage victims take steps to maintain the girls' whereabouts confidential. In some jurisdictions, the practice of asking the court to simply maintain confidential (seal) her residential address is insufficient because the sealed envelope is stored in the Court's case file which the opposing party (or in some cases anybody with a photo identification card) can check out and tear open. The minor's counsel should request that an *official* confidential address be assigned to the victim, whenever possible. Some states' laws provide that DV victims may petition the secretary of state for a confidential address where opposing party/counsel can serve her — generally a P.O. Box in the state capital — and the Secretary then forwards her mail to her private address immediately.

²¹⁰ She may not be old enough to legally work or drive, and she may have no work or rental history or references.

²¹¹ See *Alone Without a Home: A State by State Review of Laws Affecting Unaccompanied Youth*, NAT'L LAW CTR. ON HOMELESSNESS & POVERTY & THE NAT'L NETWORK FOR YOUTH (2003), <http://www.nlchp.org/content/pubs/Alone%20Without%20A%20Home1.pdf>. Shelter staff also risk being sued by underage victims' parents for interference with parental rights.

²¹² *Id.*

²¹³ For child protection statutes by state, see U.S. Dep't of Health & Human Servs., *State Laws on Child Abuse & Neglect*, CHILD WELFARE INFORMATION GATEWAY, http://www.childwelfare.gov/systemwide/laws_policies/state/can/ (last visited May 22, 2012).

²¹⁴ Larasi, *supra* note 2. "Forced marriage is a child protection issue," says UK forced marriage expert Marai Larasi, "when we're talking about girls under [age] eighteen." *Id.* See also Sanghera, *supra* note 12 ("[Forced marriage] is a child protection issue and a public protection issue.")

²¹⁵ See *supra* note 8.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Forced into Marriage and Raped*, *supra* note 61.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Forced Marriage: Sameem's Story*, *supra* note 196.

²²⁶ *Id.*

²²⁷ CRC, *supra* note 125, at art. 3.

²²⁸ 325 PARL. DEB. H. C. (1999) 275, 276 (U.K.).

²²⁹ See *supra* note 8.

²³⁰ Yasmeen Hamza, LMSW, Arab-American Family Support Center, panel presentation at conference *Forced Marriage in the United States*, Utica, NY (Oct. 13, 2011) (reporting success at securing CPS intervention and appropriate foster placement for an adolescent forced marriage victim in her agency's service area).

²³¹ See Interstate Compact on the Placement of Children, art. III., ASS'N OF ADMIN. OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, available at <http://ssl.csg.org/dockets/27cycle/2007B/27Bbills/1827b02childrencompact.pdf>.

²³² Emancipation involves the conferral of lawful adult status upon a minor.

²³³ See, *Emancipation of Minors – Laws*, LEGAL INFORMATION INST., http://www.law.cornell.edu/wex/table_emancipation (last visited Apr. 4, 2012); see also *Alone Without a Home*, *supra* note 211.

²³⁴ *Id.*

²³⁵ See *supra* note 8.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Emancipation of Minors—Overview*, LEGAL INFORMATION INST., http://www.law.cornell.edu/wex/emancipation_of_minors (last visited Apr. 25, 2012).

²³⁹ *Id.*

²⁴⁰ *Marriage of U.S. Citizens Abroad*, TRAVEL.STATE.GOV., http://travel.state.gov/law/family_issues/marriage/marriage_589.html (last visited Apr. 25, 2012) ("Validity of Marriages Abroad: In general, marriages which are legally performed and valid abroad are also legally valid in the United States. Inquiries regarding the validity of a marriage abroad should be directed to the attorney general of the state in the United States where the parties to the marriage live.").

²⁴¹ See, e.g., *Leszinske v. Poole*, 798 P.2d 1049 (NM Ct. App. 1990); see also *People v. Ezeonu*, 588 NYS 2d 116 (N.Y. Sup. Ct. 1992); see also *Farah v. Farah*, 429 S.E.2d 626 (Va. Ct. App. 1993).

²⁴² See *supra* note 8.

²⁴³ *Id.*

²⁴⁴ *Ending Child Marriage: A Guide for Global Policy Action*, INT'L PLANNED PARENTHOOD FEDERATION & THE FORUM ON MARRIAGE & THE RIGHTS OF WOMEN, Nov. 2007, <http://www.ippf.org/nr/rdonlyres/8415a7e9-0833-4500-ae53-9aa09f1a56d8/0/endchildmarriage.pdf>.

²⁴⁵ See *supra* note 8.

²⁴⁶ The Latin phrase *ne exeat regno* literally translated means "let him not go out of the kingdom."

²⁴⁷ For information on preventing international parental abduction, see generally, Julia Alanen, *Remedies and Resources to Combat International Family Abduction*, 21 AM. J. OF FAMILY LAW 11 (2007), available at <http://globaljusticeinitiative.files.wordpress.com/2010/03/alanen-published-article-on-ipk-remedies-and-resources-ajfl.pdf> [hereinafter Alanen, *Remedies and Resources*]. Expert witness testimony (live or by sworn affidavit) can help convince the court that a particular parent or relative presents a flight risk to the minor, that a particular destination country has no legal mechanisms in place with the U.S. to facilitate a child's return, or that existing legal remedies are inapplicable without a *ne exeat* order. *Ne exeat* provisions should include language prohibiting the parents from using an unnamed third party to remove the minor. The order containing *ne exeat* provisions can be presented to airport authorities to prevent an abduction-in-progress. In the course of helping an intended spouse develop a personal safety plan, advocates often advise her to take control of her critical identity documents if she has access to them. In the case of a minor who either has no access to her documents or is unable to keep them safe, the court can order the parents to surrender the minor's passport(s) and immigration papers (if applicable), along with any other critical documents (birth certificates, school and medical records, etc.) to the court trustee or to a court-appointed legal guardian for safekeeping.

²⁴⁸ Enforcement remedies may depend on the nature of the underlying order that contains the *ne exeat* clause. For example, if the *ne exeat* term is part of a custody or guardianship decree, then enforcement actions could be based on state or federal criminal laws prohibiting custodial interference or parental kidnapping. Whereas, violating any term of a restraining order or criminal protection order, including a *ne exeat* clause, automatically triggers criminal enforcement remedies.

²⁴⁹ Alanen, *Remedies and Resources*, *supra* note 247.

²⁵⁰ See *Children's Passport Issuance Alert Program*, U.S. DEP'T OF STATE, OFFICE OF CONSULAR AFFAIRS, http://travel.state.gov/abduction/prevention/passportissuance/passportissuance_554.html (last visited Apr. 4, 2012).

²⁵¹ Because an unemancipated minor cannot currently flag her own passport, CPIAP is feckless in circumstances where no legal guardian has been appointed and neither parent objects to the issuance of a child passport.

²⁵² See Alanen, *Remedies and Resources*, *supra* note 247. It may, nonetheless, be worthwhile to request such an order, because some foreign embassies and consulates may elect to voluntarily comply for reasons of diplomacy.

²⁵³ For example, while international air travel sans passports is not feasible, vast stretches of the U.S.' national borders are not consistently patrolled, and persons could conceivably cross over on foot, or in a variety of vehicles or vessels.

²⁵⁴ *Forced Marriage Prevention*, TRAVEL.STATE.GOV., http://travel.state.gov/travel/tips/safety/safety_5475.html (last visited Apr. 25, 2012).

²⁵⁵ U.S. DEP'T OF STATE, *supra* note 2.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ A snatch-back scenario involves the extralegal repatriation of the victim, either by a sympathetic friend or family member, or by a third party mercenary hired by a sympathetic friend or family member. Alanen, *Remedies and Resources*, *supra* note 247.

²⁵⁹ Many countries, particularly in the MENA region, have laws requiring women and children to obtain the prior written permission of a male family member (spouse, parent or other relative) in order to travel. The Author saw numerous translated laws to this effect in the course of her work at the National Center for Missing & Exploited Children. This limitation on females' movement is a principle found in almost every human rights instrument because it is such a widespread problem.

²⁶⁰ See, e.g., Alanen, *When Human Rights Conflict*, *supra* note 93 ("In 2006, for example, one desperate U.S. left-behind mother hired some men to snatch back her child from the child's abductor/father in Egypt. In the process of executing the plot, the men poisoned the father and were ultimately apprehended. The mother now has custody of her child, but she is the subject of an extradition request from Egypt to the United States; among the charges is *attempted murder*.").

²⁶¹ *Forced Marriage Flier – Bangladesh*, U.S. DEP'T OF STATE, OFFICE OF CONSULAR AFFAIRS http://travel.state.gov/travel/tips/safety/safety_5488.html (last visited Apr. 25, 2012) ("While Bangladesh has security at border crossings and at other international ports of departure, the borders are relatively porous allowing individuals to move relatively freely, particularly across land borders. However, parents or family members can obtain a court order to place a lookout at international airports and border check points to prevent an individual from leaving the country, though this tends to be a time consuming process. These lookouts can be placed on an individual regardless of age, and are often based on false allegations submitted to the court. Influential families have also been known to use both private and government contacts to limit the ability of an individual to leave Bangladesh.").

²⁶² *Forced Marriage Prevention*, U.S. DEP'T OF STATE, OFFICE OF CONSULAR AFFAIRS, http://travel.state.gov/travel/tips/safety/safety_5475.html (last visited Apr. 25, 2012). To date, the Department has published flyers for only eleven countries, but more are likely forthcoming.

²⁶³ Experience teaches that women and girls who flee forced marriages may suffer grave consequences, including extreme physical violence. See, e.g., Labi, *supra* note 106. An Arizona father murdered his own daughter in an 'honor' killing to punish her for 'shaming' herself and her family by abandoning the marriage arranged by her parents and pursuing a relationship with a man of her own choosing. *Id.*

²⁶⁴ See *supra* note 8.

²⁶⁵ *Id.* Proof of marriage is typically required in divorce court proceedings.

²⁶⁶ *Id.*

²⁶⁷ PROXY MARRIAGE CENTER, <http://proxymarriagecenter.com/> (last visited Apr. 25, 2012) ("A Proxy Marriage (also known as "Marriage by Proxy") is one in which either the bride, or the groom, or both, are unable to be present at the solemnization of the marriage; and, instead, a stand-in, known as a "proxy," takes the place of each absent party. In a "double proxy marriage," the bride and groom are each represented by a proxy." In the U.S., proxy marriages are most commonly performed when one or both intended spouses is active duty military deployed abroad.).

²⁶⁸ Annulment refers to the formal invalidation of a marriage through judicial proceedings on the basis that the marriage is voidable.

²⁶⁹ "Honor killing" refers to a homicide committed by a member of the victim's family or social group due to the perpetrator's belief that the victim has brought shame or dishonor upon her family or community. See *Forced Marriage in Immigrant Communities*, *supra* note 2. The Tahirih survey revealed that such threats were among the arsenal of coercive measures used to force women and girls into marriage in United States. *Id.*

²⁷⁰ See *supra* note 8.

²⁷¹ In the event that the forced marriage victim is reliant on her (imputed) spouse for her U.S. immigration status, her legal advocate should consult with an immigration specialist before filing for divorce or annulment. The timing of the victim's divorce could impact her eligibility for certain immigration remedies, such as a Violence Against Women Act self-petition.

²⁷² See *supra* note 8.

²⁷³ U.S. DEP'T OF STATE, *Marriage of U.S. Citizens Abroad*, *supra* note 123, at 1454(f).

²⁷⁴ *Id.* at 1454(b) ("Inquiries regarding the validity of a marriage abroad should be directed to the attorney general of the state in the United States where the parties to the marriage live.").

²⁷⁵ U.S. DEP'T OF STATE, 9 *FAM 41.81 Notes*, FOREIGN AFFAIRS MANUAL VOL. 9: VISAS, Mar. 9, 2012, available at <http://www.state.gov/documents/organization/87391.pdf>.

²⁷⁶ A similar scheme to address non-consensual marriages involving two adult parties would pose similar problems.

²⁷⁷ HM GOVERNMENT, *HANDLING CASES*, *supra* note 9, at 44.

²⁷⁸ Dipankar De Sarkar, *UK Court Strikes Down Forced-Marriage Law*, HINDUSTAN TIMES (Dec. 22, 2010), <http://www.hindustantimes.com/UK-court-strikes-down-forced-marriage-law/Article1-641372.aspx>; see also *Forced Marriages Targeted*, BBC NEWS, May 14, 2003, http://news.bbc.co.uk/2/hi/uk_news/3027297.stm.

²⁷⁹ *Forced Marriages Targeted*, *supra* note 278.

²⁸⁰ De Sarkar, *supra* note 278.

²⁸¹ *Id.*

²⁸² E.g., International Marriage Broker Regulation Act of 2005 (IMBRA), Pub. L. No. 109-162 (2006); Violence Against Women Act of 1994 (VAWA), Pub. L. No. 103-322, 108 Stat. 1902 (1994); Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA), Pub. L. No. 109-164, tit. I, § 103(c), 119 Stat. 3558 (2006).

²⁸³ The U nonimmigrant visa is a remedy available to certain victims of specifically enumerated violent crimes including, among others, domestic violence, rape, sexual assault, abduction, kidnapping, and false imprisonment. The U visa qualifying crimes include Abduction, Abusive Sexual Content, Blackmail, Domestic Violence, Extortion, False Imprisonment, Female Genital Mutilation, Felonious Assault, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint, and Other Related Crimes. An immigrant victim of any of the enumerated qualifying crimes, many of which are not uncommon in forced marriage cases, might qualify for a U nonimmigrant visa if she also meets certain additional eligibility requirements.

²⁸⁴ The T nonimmigrant visa is a remedy for victims of severe forms of trafficking in persons. Certain elements

of forced marriage – such as inducement by force, fraud or coercion, or the sale or exchange of a bride in return for something of value (e.g., money, drugs, land or other valuable consideration) – are reminiscent of the crime of human trafficking. But, the immigration law definition of human trafficking requires that there be a commercial element present. For example, a wife who is forced by her husband to work long hours in his business without any remuneration might qualify for a T visa if she succeeds in meeting certain additional eligibility requirements.

²⁸⁵ See VAWA, Pub. L. No. 103-322. The VAWA self-petition is another remedy available to certain immigrant spouses of abusive U.S. citizens and legal permanent residents.

²⁸⁶ Gender-based asylum has been granted in a number of forced marriage cases involving foreign nationals seeking refuge in the U.S. after fleeing forced marriages abroad. See *Guide to Establishing the Asylum Eligibility of Victims of Human Trafficking and Forced Marriage*, WORLD ORG. FOR HUMAN RIGHTS USA (2011), http://www.humanrightssusa.org/images/stories/human_rights_usa_guide_to_establishing_asylum_eligibility.pdf.

²⁸⁷ Immigration remedies are only applicable to non-U.S.-citizen victims of forced marriage. Securing lawful immigration status does not guarantee a person's safety or prevent her from being forced into a nonconsensual marriage, but it can give her access to protections not available in her country of origin.

²⁸⁸ For more information, see *Group Rights*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2008) available at <http://plato.stanford.edu/entries/rights-group/>.

²⁸⁹ For example, the international community recognizes a right to respect for privacy in family life. Article 23 of the ICCPR echoes Article 16(3) of the Universal Declaration of Human Rights which provides that, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state." Article 17 of the ICCPR states that, "Nobody shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." See also ICESCR, *supra* note 125, at art. 10(1); CRC, *supra* note 125, at pmb.; UDHR, *supra* note 125, at art. 8; ICCPR, *supra* note 125, at art. 17. The UNHR Committee decides cases under ICCPR, which the U.S. has ratified, but its interpretations (decisions) are not binding on the U.S. because the U.S. has not signed the Optional Protocol. Although the treaty is not binding, it has persuasive authority.

²⁹⁰ Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L.J. 997, 1109 (1985).

²⁹¹ For a summary of international instruments addressing marriage rights, see Julia Alanen, *International Instruments Establishing Marriage Rights*, GLOBAL JUSTICE INITIATIVE (Aug. 6, 2010), <http://globaljusticeinitiative.files.wordpress.com/2010/08/marriage-rights-international-instruments-in-pdf.pdf>.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ UDHR, *supra* note 125, at art. 16(2).

²⁹⁵ U.N. Res. 843 (IX) (Dec. 17, 1954) (On the "Status of women in private law; customs, ancient laws and practices affecting the human dignity of women.").

²⁹⁶ ICCPR, *supra* note 125, at art. 23.

²⁹⁷ Convention on Consent to Marriage, *supra* note 139.

²⁹⁸ *Id.*

²⁹⁹ Comm. on the Elimination of All Forms of Discrimination Against Women, General Recommendation 21 (13th Sess.) Equality in Marriage and Family Relations, U.N. GAOR, 49th Sess., Supp. No. 38, U.N. Doc. A/49/38, at art. 16(1994) [hereinafter GR 21].

³⁰⁰ U.N. Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 2018 (XX), at 36, U.N. GAOR, Supp. No. 14, U.N. Doc. A/60141 (1965).

³⁰¹ CEAFDW, *supra* note 125, at pmbl.; ICCPR, *supra* note 125, at pmbl.; ICESCR, *supra* note 125, at pmbl.; UDHR, *supra* note 125, at pmbl., art. 1.

³⁰² ICCPR, *supra* note 125, at art. 2(1); ICESCR, *supra* note 125, at art. 2; UDHR, *supra* note 125, at pmbl.

³⁰³ CEAFDW, *supra* note 125, at pmbl., arts. 2–4; ICCPR, *supra* note 125, at pmbl., art. 2(1); ICESCR, *supra* note 125, at art. 3; UDHR, *supra* note 125, at pmbl., art. 2.

³⁰⁴ GR 21, *supra* note 299, at art. 16; CEAFDW, *supra* note 125, at pmbl., arts. 16(d), 16(f).

³⁰⁵ ICCPR, *supra* note 125, at art. 14.

³⁰⁶ GR 21, *supra* note 299, at art. 15(1); ICCPR, *supra* note 125, at arts. 14, 26; UDHR, *supra* note 125, at art. 6.

³⁰⁷ ICCPR, *supra* note 125, at art. 1(3); ICESCR, *supra* note 125, at art. 1; U.N. Charter art. 1, para. 2.

³⁰⁸ U.S. CONST. art. VI, cl. 2. The Supremacy Clause applies to international treaties ratified by the U.S. President with the advice and consent of two-thirds of the Senate.

³⁰⁹ See, e.g. Curtis Bradley & Jack Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 Harv. L. Rev. 815 (1997).

³¹⁰ LORI F. DAMROSCH ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS* 692–718 (5th Ed. 2009).

³¹¹ BARRY E. CARTER ET AL., *INTERNATIONAL LAW* 715 (Little, Brown eds., Aspen Publishers, 5th ed. 2007).

³¹² *Id.*

³¹³ *Murray v. Schooner Charming Betsy*, 6 U.S. 64 (1804).

³¹⁴ CARTER, *supra* note 311.

³¹⁵ DAMROSCH, *supra* note 310, at 59–61.

³¹⁶ Some international law principles achieve customary international law (CIL) status by their inclusion in most humanitarian and human rights instruments, by extensive *opinio juris* on point, and by extensive evidence of state practice in conformity with the principles. Customary

international laws are deemed universally applicable to all states regardless of whether they have executed binding instruments on point.

³¹⁷ CARTER, *supra* note 311 (emphasis added).

³¹⁸ See, e.g., *Roper v. Simmons*, 543 U.S. 551 (2005) (referencing international law when considering a constitutional challenge to the juvenile death penalty).

³¹⁹ The term "state" in the international law context refers to a sovereign nation (country). Interchangeable use of the terms "state" and "country" can prove confusing to readers who are nationals of federal systems. However, "state," "state party," "contracting state," and "sovereign state" are the terms typically used in international instruments.

³²⁰ U.N. Econ. & Soc. Council, Sub-Comm'n on Human Rights, Report of the Special Rapporteur on the Right to Education, U.N. Doc. E/CN.4/2002/60/Add.1 (Jan. 17, 2002).

³²¹ *Velasquez Rodriguez Case*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 167 (July 29, 1988), *reprinted in* 28 I.L.M. 291, 91, 152 (1989).

³²² *Id.* ¶ 174, 175.

³²³ See *id.* ¶ 165.

³²⁴ *Da Penha v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 3(2000), available at <http://www1.umn.edu/humanrts/cases/54-01.html>.

³²⁵ See *id.* ¶ 20.

³²⁶ *Jessica Gonzales v. U.S.A.*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 215 (2011).

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ Ali, *supra* note 177.

³³⁵ Cristina Bichieri and Gerry Mackie, UNICEF Learning Program on Social Norms at the University of Pennsylvania (Jul. 5–16, 2010), www.sas.upenn.edu/.../0704SecondPenultimateAgend-1.docx.docx (explaining the dynamics of relational problems as follows: "Social norms are upheld because of a web of mutual expectations: individuals expect others to follow the norm, and in turn everyone believes he or she is expected to comply, and often each fears that negative sanctions, such as ostracism or loss of status, will follow transgression. The understanding and overcoming of relational problems thus requires an explicit analysis of social conventions, social norms, and other types of social practice, and the design of strategies of change at the group level.").

³³⁶ *Id.*

³³⁷ See *Resources on Child/Forced Marriage*, TOSTAN, <http://www.tostan.org/web/page/645/sectionid/548/>

pagelevel/3/interior.asp (last visited Mar. 27, 2012); see also Christine Ennulat, *Education Before Marriage: Booking Girls to Learn*, CHILD FUND INT'L (Nov. 3, 2010), http://www.childfund.org/media/articles/current/2010/Education_Before_Marriage_Booking_Girls_to_Learn.aspx. Additional examples abound of social change emanating from within communities that practice harmful marriage customs. For example, Governor Bakosoro of South Sudan publicly condemned the harmful practices of forced and early marriage, and called for a stop to the marginalization of women and girls. See generally *First Legislative Assembly Commences in South Sudan's W. Equatoria State*, SUDAN TRIBUNE (Aug. 4, 2011), <http://www.sudantribune.com/First-legislative-assembly,39727>. In Ghana, following wide-spread media coverage, a police investigation and other pressure, a father agreed to annul the forced marriage of his daughter, a junior high schoolgirl, and her fifty-three-year-old husband, a trucker. See *Forced Marriage to be Annulled*, THE MAIL (Feb. 9, 2011), http://accra-mail.com/index.php?option=com_content&view=article&id=32258%3Aforced-marriage-to-be-annulled&catid=60%3Amain-news&Itemid=209. In India, quick thinking saved fifteen-year-old schoolgirl, Muniyammal, from being forced into marriage with a thirty-two-year-old man. See K. A. Shaji, *Minor Girl's Fax to Collector Saves Her from Forced Wedding*, TNN / TIMES OF INDIA (Sept. 6, 2010), <http://timesofindia.indiatimes.com/india/Minor-girls-fax-to-collector-saves-her-from-forced-wedding/articleshow/6503201.cms>. Muniyammal faxed a complaint and her wedding invitation to District Collector, Arun Roy, who sent officials to intervene and stop the wedding ceremony. *Id.* The bride's parents and the groom were warned that any further attempt to force the underage girl into wedlock would be met with criminal charges. *Id.* In Kenya, hundreds of Maasai girls escaped early marriage by enrolling in a boarding school founded specially to prevent the harmful practice. See Ennulat, *supra* note 337; *Two Teen Girls Withdrawn from Marriage*, NYASA TIMES (Feb. 8, 2011), <http://www.nyasatimes.com/national/two-teen-girls-withdrawn-from-marriage.html>. In return for the promise that their daughters would receive a free education and meals, which in turn would alleviate poverty, families all across the Great Rift Valley community agreed to postpone the girls' marriages until they completed their studies. *Id.* In Pakistan, police and neighbors intervened to prevent an eight-year-old girl's father from selling her into a marriage to a fifty-two-year-old man. See *Forced Marriage: Eight-year-old's 'Sale' Prevented by Police, Neighbours*, INT'L HERALD TRIB. (Feb. 21, 2011), <http://tribune.com.pk/story/121458/forced-marriage-eight-year-olds-sale-prevented-by-police-neighbours/>. The bride's father, the groom and other guests fled the marriage ceremony when police arrived. *Id.* And, also in Pakistan, a village councilman and prominent community member interrupted an imminent forced

marriage involving a fifteen-year-old bride, explaining to the families and guests of the betrothed the harmful effects of child marriage, and convincing the bride and groom's parents to postpone the wedding until both intended spouses reach the age of majority. See *For Pakistan Teen, A Chance to Finish Childhood*, USAID (Dec. 2010/Jan. 2011), http://www.usaid.gov/press/frontlines/fl_jan11/FL_jan11_PAKchance.html.

³³⁸ Experienced forced marriage advocates caution against contacting members of a victim's family or community in individual cases. Sanghera, *supra* note 12. In order to protect individual victims' safety, discourse about harmful customs should be restricted to a general discussion with the larger community.

³³⁹ Female Genital Mutilation, 8 U.S.C. 7 § 116 (1996), available at <http://mgmbill.org/usfgmlaw.htm>.

³⁴⁰ Megan Costello, *Two in U.S. Accused of Genital Mutilation*, WOMEN'S ENEWS (Feb. 19, 2004), <http://womensenews.org/story/genital-mutilation/040219/two-in-us-accused-genital-mutilation>.

³⁴¹ Written Statement from Lisanne K. Divine, Director for Community Integration, Mohawk Valley Resource Center for Refugees, to Author (May 1, 2012) (on file with author) ("Our curriculum is intended to generate new conversations as a way to prevent forced marriages and support dignity in families and communities. We have [engaged] in discussions with several refugee and immigrant populations. The discussions have been centered around consent to marriage as a human right. The conversations ... support community led development and utilize popular human rights educational methodology, open discussions for human rights, democracy and successful integration into the United States ... Discussions ranged from the health implications of early pregnancy to community and family interpretations of honor violations like dating or pregnancy outside of marriage. These led to discussions on how early and forced marriage perpetuates poverty and stifles fulfillment of potential as a result of lack of opportunities for education. Many of the women in the groups had marriages that had been arranged or forced in their countries of origin and did not have other marriage models to reference. The discussions created a space to explore what is done in the United States while talking about traditions and practices which cause harm, impede successful integration and cause families to break up. Many different views were shared and most of the women wanted more information on laws, prenatal care, family planning, dating, how to change, and how to include men in the discussion. These were initial discussions which we intend on expanding ... Ethnic communities need to be engaged in ways that resonate [in order] for the community to give up practices that are illegal or cause harm. Respect for human rights and democracy through community led empowerment is the future for thriving communities and family peace.").

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ Programme of Action of the United Nations International Conference on Population and Development, Chapter IV: Gender Equality, Equity and Empowerment of Women, ¶4.24 UN DOC A/CONF. 171/13, 18 (Oct. 1994) (“Changes in both men’s and women’s knowledge, attitudes and behaviour are necessary conditions for achieving the harmonious partnership of men and women.”).

³⁴⁵ *The Fight Against Child Marriage*, *supra* note 1.

³⁴⁶ See *National Network to Prevent Forced Marriage: Organization Sign-up Form*, TAHIRIH JUSTICE CTR. (2011), <http://www.tahirih.org/site/wp-content/uploads/2011/09/FORM-Organization-Sign-Up-National-Network-to-Prevent-Forced-Marriage-Dec.-2011.pdf>.

³⁴⁷ Visit the AHA Foundation at <http://theahafoundation.org/>, and Polaris Project at <http://www.polarisproject.org/>.

³⁴⁸ Written Statement from Lisanne K. Divine, *supra* note 341. Divine has led community fora on forced marriage in the United States, engaging women from Myanmar, Colombia, Cuba, the Dominican Republic, El Salvador, Puerto Rico, Iraq, Sudan, and Somalia. Participants included Christians (predominantly Baptists and Catholics), Muslims, and Buddhists.

³⁴⁹ GIRLS NOT BRIDES, <http://girlsnotbrides.org/> (last visited Mar. 27, 2012); THE ELDERS, <http://www.theelders.org/> (last visited Mar. 27, 2012) (“Girls Not Brides is a new global partnership to end the harmful traditional practice of child marriage, so that girls can fulfill their potential. Created by The Elders, Girls Not Brides brings together organisations that work to tackle child marriage at the grassroots, national and global levels around the world.”).

³⁵⁰ Telephone call with Françoise Moudouthe, Policy Officer, The Elders (Oct. 7, 2011).

³⁵¹ International Protecting Girls by Preventing Child Marriage Act of 2011, S.414, 112th Cong. (2011), available at <http://www.opencongress.org/bill/112-s414/text>. Two earlier versions of the bill were defeated. See Amanda Terkel, *House Republicans Block Child Marriage Prevention Act*, HUFF. POST (Dec. 17, 2010), http://www.huffingtonpost.com/2010/12/17/house-republicans-block-child-marriage-prevention-act_n_798382.html.

³⁵² Andy Birkey, *Republicans Kill McCollum’s Anti-Child Marriage Bill*, MINNESOTA INDEPENDENT (Dec. 21, 2010), http://www.mccollum.house.gov/index.php?option=com_content&view=article&id=1217:december-21-2010-republicans-kill-mccollums-anti-child-marriage-bill&catid=63:betty-in-the-news&Itemid=151.