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**United Nations Division for the Advancement of Women
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**Expert Group Meeting on good practices in legislation
to address harmful practices against women**

I. Introduction

Forced and early marriage deprives women and young girls of their basic human rights. Forced marriage describes a marriage that takes place without the free or valid consent of one or both of the partners and involves either physical or emotional duress. Early marriage is related to forced marriage because minors are deemed incapable of giving informed consent.¹ Forced and early marriages are serious human rights violations. The requirement for the free and informed consent of both parties to a marriage is recognized in numerous legal instruments at international, national and local levels. These instruments, along with all major world religions, condemn forced and early marriages.² Despite this opposition, only a few countries have specifically criminalized the practice. And regardless of the existing opposition and laws, the practices of forced and early marriage continue.

This paper provides a brief overview of forced and child marriage from an international perspective and discusses selected international and regional standards on this issue. It includes information about how this problem presents itself in Central and Eastern Europe and the Former Soviet Union (CEE/FSU) and discusses selected laws addressing forced and child marriage from other countries.

A. Prevalence

Forced and early marriage is a persistent problem that occurs mainly among young women and girls, although there are cases of young men and boys being forced to marry.

Reliable statistics on forced marriage are difficult to compile due to the unofficial and, therefore, undocumented nature of most forced marriages. Victims' resistance to speaking out against their typically "closed" families, or communities, poses another

¹ 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. See The Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, November 7, 1962, 32 U.N.T.S. 231, *available at* <http://www.unhchr.ch/html/menu3/b/63.htm>.

² Forced marriages differ from arranged marriages. In forced marriages, one or more parties lose their right to choose their partner. In arranged marriages, the parents and families play a leading role in arranging the marriage, but the ultimate decision on whether to marry lies with the individuals getting married. Many regard arranged marriages as a well established cultural tradition that continues to successfully exist within many communities, and so it is important that a clear distinction be drawn between forced and arranged marriages. In some cases, however, the difference between a forced marriage and an arranged marriage may be semantic. In a January 2007 report, Sigma Huda, the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, states that, "[a] marriage imposed on a woman not by explicit force, but by subjecting her to relentless pressure and/or manipulation, often by telling her that her refusal of a suitor will harm her family's standing in the community, can also be understood as forced." Human Rights Council, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, at 10, U.N. Doc. A/HRC/4/23 (January 24, 2007)(prepared by Sigma Huda).

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obstacle to reliable data.³ The absence of a birth certificate can also mean that the victim has no way of proving that they are a victim of child or early marriage. In 2003, the International Centre for Research on Women estimated that more than 51 million girls under 18 years were married and they expected the figure to rise to over 100 million within the next 10 years.⁴ Similarly, in 2006, experts estimated that 38 percent of young women aged 20-24 in the fifty least-developed countries were married before the age of 18.⁵ While forced and early marriages are becoming increasingly less common among the wealthiest sectors of society in all regions of the world, they are most common still in Africa and South Asia, but also persist in certain areas of CEE/FSU⁶ and other parts of the world.

In South Asia, UNICEF estimates that among women ages 15 to 24, 48 percent were married before the age of 18. In Bangl5 (a t e s t

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were married before the age of 15 and 9.1 percent of women ages 20 to 24 were married before the age of 18.¹² In addition, early marriage is practiced particularly among Roma and in “the former Yugoslav Republic of Macedonia”, where 27 percent of the women who married in 1994 were aged 15 to 19.¹³ In Uzbekistan, more than 45 percent of women, while only 8 percent of men, marry before the age of 20.¹⁴ In 1998, according to government statistics 10,847 Uzbek women below the age of 18 were married compared to 183 men under the age of 18.¹⁵

Within North America, in 2000, approximately 4 percent of women aged 15 to 19 were married.¹⁶ In addition, in Afghanistan, the Afghanistan Independent Human Rights Commission estimates that over 38 percent of women have been victims of forced marriage.¹⁷ UNICEF has stated that 54 percent of Afghan girls are victims of early marriage.¹⁸ The United Kingdom’s Forced Marriage Unit sees over 250 cases a year.¹⁹

B. International and Regional Laws and Policies

Forced and early marriages are recognized as human rights violations. Numerous international and regional legal instruments condemn the practices of forced and early marriage. Many of these documents mandate consent of both parties, recommend a minimum marriage age, and require that the marriage be registered to better review the occurrences of forced and early marriages and to ensure that both partners receive equal rights and protections. Although most countries have signed onto these documents, many countries lack adequate implementation of the treaties. For example, despite the recommendations to set the minimum age to marry to 18, many countries lack domestic laws specifying 18 as the minimum age to marry as a means of preventing early marriages.

¹² Id.

¹³ Rude-Antoine, Edwige, ed., “Forced Marriages in Council of Europe Member States,” Council of Europe, 2005, at 23. [http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG\(2005\)1_E.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG(2005)1_E.pdf)

¹⁴ “Domestic Violence in Uzbekistan,” Minnesota Advocates for Human Rights, December 2000, at 14, citing “Status of Women in Uzbekistan,” United Nations Development Program 1999, at 40, and “Women of Uzbekistan,” Statistical collection of the State Department of Statistics under the Ministry of Macroeconomics and Statistics of the Republic of Uzbekistan, 1990, at 40.

¹⁵ Id.

¹⁶ “Too Young to Wed: The Lives, Rights, and Health of Young Married Girls,” International Center for Research on Women, 2003, citing Population Reference Bureau 2000.

¹⁷ “Evaluation report on General Situation of Women in Afghanistan,” Afghanistan Independent Human Rights Commission, 2005, http://www.aihrc.org.af/rep_eng_wom_situation_8_march.htm#_ftn7.

¹⁸ “Child Marriage Fact Sheet,” press release, United Nations Population Division, 2005, http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm.

¹⁹ “What We Can Do to Help,” Forced Marriage Unit, Foreign & Commonwealth Office, <http://www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1094234857863>; The Forced Marriage Unit (FMU) in the United Kingdom is a joint-initiative with the Foreign & Commonwealth Office. The FMU works both outside of the UK with embassy staff to rescue victims held captive, raped, or forced into having an abortion, as well as in the UK by providing extensive guidelines for social workers, educators, police, and health workers on how to provide services for cases of forced marriage. See FMU website at <http://www.fco.gov.uk/en/fco-in-action/nationals/forced-marriage-unit/>.

Both The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (The Convention on Consent to Marriage),²⁰ as well as The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²¹ contain all three principles articulated above. They require the consent of both parties. In addition, both Conventions mandate that all State Parties take legislative action to set a minimum age to marry, and both Conventions direct that marriages be registered. Neither Convention, however, suggests what that minimum age should be. While the CEDAW warns that the betrothal and marriage of a child will have no legal effect, The Convention on Consent to Marriage allows for exceptions to whatever minimum age is set.

The following CEE/FSU countries have ratified both the Convention on Consent to Marriage as well as the CEDAW: Azerbaijan, Bosnia and Herzegovina, Croatia, Czech Republic, Hungary, Kyrgyzstan, Mongolia, Montenegro, Poland, Romania, Serbia, and Slovakia.²² In addition to those listed, the CEDAW has also been ratified by the following CEE/FSU countries: Albania, Armenia, Belarus, Bulgaria, Estonia, Georgia, Kazakhstan, Latvia, Lithuania, Republic of Moldova, the Russian Federation, Slovenia, Tajikistan, Turkmenistan, the Ukraine, and Uzbekistan.²³

Similarly, the United Nation's Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (The Recommendation) requires consent of both parties as well as registration of the marriages.²⁴ The Recommendation also mandates that Member States specify a minimum age to marry,

children as people under the age of 18.²⁵ The CRC has been ratified by all countries with the exception of the United States and Somalia.

Regional legal instruments such as the Council of Europe Parliamentary Assembly Resolution 1468²⁶ and the African Charter on the Rights and Welfare of the Child²⁷ have taken a strong position on the age of consent to marry, and recommend that 18 be the minimum age of marriage. In 2005, the Council of Europe adopted Resolution 1468 on forced marriages and child marriages. The resolution defines forced marriage as “the union of two persons at least one of whom has not given their full consent to the marriage.”²⁸ It defines child marriage as “the union of two persons at least one of whom is under 18 years of age.”²⁹ Among other things, Resolution 1468 urges the national parliament of the Council of Europe member states to set the minimum age for marriage at 18 for women and men, to make it a requirement that every marriage be declared and officially registered, and to consider criminalizing acts of forced marriage.³⁰

Resolution 1468 applies to many CEE/FSU countries including: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Moldova, Montenegro, Poland, Romania, the Russian Federation, Serbia, Slovak Republic, Slovenia, and the Ukraine.³¹

II. Forced and Early Marriage in Central and Eastern Europe and the Former Soviet Union

A. Characteristics of Forced and Early Marriage: Causes and Consequences

Bride kidnapping, arranged marriages, and unregistered marriages continue to occur within the local populations of CEE/FSU countries. Not every country has laws prohibiting forced and early marriages. In countries that do not have specific laws, criminal offenses that occur as part of the forced marriage can sometimes be used to penalize the perpetrators. Even when countries do have such provisions, however, the practice of forced and early marriage continues.

²⁵ The Convention on the Rights of the Child, G.A. res. 44/24, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, in accordance with article 49, *available at* <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

²⁶ The Council of Europe Parliamentary Assembly Resolution 1468, 5 October 2005, *available at* <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1468.htm>.

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In former Soviet Union countries, for

suddenly no one will propose. Here, the sooner she's out of your hands what comes later no longer worries us."⁵³

B. Legal Reform to Address Forced and Early Marriage

There are laws in CEE/FSU countries criminalizing the practice of bride kidnapping and forced and early marriage in general. Under Article 23 of the Georgian criminal code, bride abduction qualifies as a "crime against human rights and freedoms" and a perpetrator can receive a sentence of four to eight years in prison or up to twelve years if the act is premeditated by a group.⁵⁴ The practice is also a crime in Uzbekistan and Azerbaijan.⁵⁵ Despite the view by some that bride kidnapping is often a harmless and consensual way to avoid wedding expenses or parental disapproval, Azerbaijan's parliament recognized that forced abductions also occur, and voted to equate bride kidnapping with the more serious crime of kidnapping. As a result, the possible sentences for bride kidnapping increased.⁵⁶

The Kyrgyzstan criminal code prohibits forced and early marriages. Article 154 criminalizes marriage with anyone younger than 16, including by way of kidnapping, and provides a penalty of between three and seven years in prison.⁵⁷ Article 155 specifically criminalizes non-consensual marriage by abduction: "Forcing a woman to marry or to continue a marriage, or kidnapping her in order to marry without her consent" can be punished by either a fine or up to five years in prison.⁵⁸ In addition, other laws within the criminal code can be used to hold kidnapers accountable for the violence that often accompanies the abduction.⁵⁹ In March 2009, the Organization for Security and Cooperation in Europe's Center in Bishkek, Kyrgyzstan, held a hearing to discuss the

⁵³ "Domestic Violence in Uzbekistan," Minnesota Advocates for Human Rights, December 2000, at 14, citing "Problems of Women," May 3, 2000, at section 6.2 (unpublished sociological study).

⁵⁴ Kokhodze, Gulo & Tamuna Uchidze, "Bride Theft Rampant in Southern Georgia," Institute for War and Peace Reporting, 15 June 2006, http://www.iwpr.net/?p=crs&s=f&o=321627&apc_state=henicrs2006.

⁵⁵ Aminova, Alena, "Uzbekistan: No Love Lost in Karakalpak Bride Thefts," 18 August 2003, http://faculty.philau.edu/kleinbachr/uzbekistan_kidnapping.htm; Kiryashova, Sabina, "Azeri Bride Kidnappers Risk Heavy Sentences," Institute for War and Peace Reporting, 17 November 2005, http://www.iwpr.net/?p=wpr&s=f&o=258105&apc_state=henpwpr; See also "Criminal Code of the Republic of Uzbekistan," 22 September 1994, Article 136-137, *available at* <http://www.legislationline.org/documents/section/criminal-codes/country/55>.

⁵⁶ Kiryashova, Sabina, "Azeri Bride Kidnappers Risk Heavy Sentences," Institute for War and Peace Reporting, 17 November 2005, http://www.iwpr.net/?p=wpr&s=f&o=258105&apc_state=henpwpr.

⁵⁷ Criminal Code of the Kyrgyz Republic, Article 154; see "Kyrgyzstan: Status of Law and Violence Against Women," <http://faculty.philau.edu/kleinbachr/laws.htm>.

⁵⁸ Criminal Code of the Kyrgyz Republic, Article 155; see "Kyrgyzstan: Status of Law and Violence Against Women," <http://faculty.philau.edu/kleinbachr/laws.htm>; Reconciled to Violence," Human Rights Watch, September 2006, at 120, <http://hrw.org/reports/2006/kyrgyzstan0906/>.

⁵⁹ Reconciled to Violence," Human Rights Watch, September 2006, p. 120, <http://hrw.org/reports/2006/kyrgyzstan0906/>, citing Criminal Code of the Kyrgyz Republic, Article 111 which criminalizes the infliction of physical or psychological suffering on a person through systematic beatings or other violence with a penalty of between three to seven years. See also Article 112 "Purposeful infliction of light damage to health."

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country's draft legislation on forced marriage. The new legislation seeks to reduce forced marriage and bride kidnapping, reduce domestic violence, and promote equality on behalf of women.⁶⁰

While there is no specific mention of bride kidnapping in its legislation, Tajikistan criminalizes early marriages. The minimum legal age for marriage in Tajikistan is 17. Under the Tajikistan criminal code, the giving in marriage of a girl who has not reached marriage age by parents or guardians can be punished with correctional labor for up to two years, restriction of freedom for two years, or confinement for six months.⁶¹ Contracting a marriage with a person who has not reached the marriage age is punishable by a fine, correctional labor for up to two years, or up to six months confinement.⁶²

In most countries where there is no specific criminal offense for forced or early marriage, other crimes related to the act can be used to hold perpetrators accountable. While categorized differently in various countries, typical offenses include, among others, "rape, attempted rape, physical and psychological violence, sexual violence, bodily harm, threatening with a weapon or dangerous object, ill-treatment, trespass to the person, indecent assault, false imprisonment, infringement of freedom and integrity, psychological duress, sexual duress, kidnapping and abduction, offenses against the person, infringement of sexual integrity, and honor crimes."⁶³

A study of laws of Council of Europe Member States found the following with regard to laws relating to forced and early marriage in some CEE/FSU countries. In Bosnia and Herzegovina, Article 222 of the criminal code punishes rape within the marriage and Article 236 penalizes a parent or guardian who abuses a minor or fails to fulfill his or her duty of care toward the minor.⁶⁴ In Croatia, rape is also prohibited within a marriage and forced marriage can be penalized under Chapter 14 of the criminal code, which describes "criminal acts directed against sexual freedom and sexual morality."⁶⁵ While Slovakia has no specific provision against forced marriage, Section

⁶⁰ "OSCE Centre in Bishkek Supports Parliamentary Hearing on Gender and Legislation to Curb Bride Kidnapping," OSCE Press Release, 3 March 2009.

⁶¹ Criminal Code of the Republic of Tajikistan, Chapter 20, Article 168; See OSCE Office for Democratic Institutions and Human Rights ("ODIHR") Legislationline.org, <http://www.legislationline.org/countries/country/49>.

⁶² Criminal Code of the Republic of Tajikistan, Chapter 20, Article 169. Polygamy is also criminalized by Article 170. See OSCE Office for Democratic Institutions and Human Rights ("ODIHR") Legislationline.org, <http://www.legislationline.org/countries/country/49>.

⁶³ Rude-Antoine, Edwige, ed., "Forced Marriages in Council of Europe Member States," Council of Europe, 2005, at 42, [http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG\(2005\)1_E.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG(2005)1_E.pdf).

⁶⁴ Id.

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VI of the Slovakian criminal code contains specific provisions protecting children against various forms of assault and violence.⁶⁶

In Romania, rape between spouses does not constitute a criminal offense. Nonetheless, Romanian law provides for certain remedies on behalf of women who are victims of sexual cruelty within marriage.⁶⁷ In the Czech Republic, however, marital rape is not recognized as a specific offense. In addition, there is a further absence of legal provisions relevant to the practice of forced marriage. The lack of relevant laws means perpetrators are relatively immune from punishment.⁶⁸

C. Problems with Implementation of Laws on Forced and Early Marriage in Central and Eastern Europe and Former Soviet Union

While laws prohibiting forced and early marriages may be helpful, their existence alone does not eliminate the practice. Even in countries where there are laws that address forced marriage and early marriage, the practice continues to increase and abductors are rarely punished. Furthermore, there is frustration that the option of a fine as a punishment, such as in Kyrgyzstan, is a seriously inadequate response to the prevalence and severity of the problem.⁶⁹

Despite provisions prohibiting forced and early marriages in Tajikistan, as discussed above, girls there are often forced into marriage before they reach the minimum age of 17.⁷⁰ In Uzbekistan, people sometimes do not realize that forced marriage is a

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in the ancient times.⁷⁴ Non-consensual bride kidnapping is not permitted by Kyrgyz criminal law or Islamic law.⁷⁵ It is also not legitimized by either Kyrgyz or Turkmen adat (common law) tradition.⁷⁶ Non-consensual bride kidnapping was a practice that has always been a violation of traditionally approved forms of marriage and, in ancient times, often resulted in major conflict.⁷⁷ In its modern form, it has been described as “an illegal and a distorted version of the old custom of pretend abductions because it increasingly involves coercion and rape.”⁷⁸

Unregistered Traditional Marriages

Furthermore, laws on forced and early marriages are often circumvented by participation in traditional religious marriages, sometimes called “nikoh marriages.” These marriages, however, are not recognized by the law, which can affect the rights of women both during and after the marriage.

Many marriages in Uzbekistan are purely religious and not legally registered. This is, in part, because religious ceremonies allow for under-aged women to be married as well for polygamy. However, rights to property and child support are based on the existence of a lawful marriage. Thus, women who marry only in religious ceremony have no legal protection.⁷⁹

Most marriages in Tajikistan are arranged by parents and, although the minimum legal age for entry into marriage is seventeen, many people circumvent the law by entering into traditional Muslim *nikoh*M o s t

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couple's assets are not divided as the state does not recognize the marriage, and the woman often ends up homeless and with little or no money.⁸¹

In addition, the failure to maintain registers of birth, deaths, and marriages makes it more difficult to check the age of people getting married and to track the circumstances and occurrences of early marriages. Most legal instruments that condemn the practice of forced and early marriage also recommend that marriages be officially registered.⁸² This would allow for tracking of marriage practices

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Norway was the first country in the world to introduce legislation to criminalize the practice of forced marriage.⁸⁷ Norway's laws criminalized forced marriages in Norway as well as the act of taking a young person to another country and forcing them to get married there.⁸⁸ Norwegian law states:

“In the case of forced marriage, anyone who through violence, loss of liberty, improper pressure or other unlawful conduct, or by threatening such conduct, forces another to enter into a marriage shall be punished. The punishment for forced marriage is 6 years. Aiding and abetting shall be punished the same manner.”⁸⁹

As of 2008, there had been two Norwegian court cases convicting someone of forced marriage.⁹⁰

Belgium became the second country in the world to enact a criminal law penalizing forced marriages.⁹¹ Previously in Belgium, laws against physical and mental abuse, rape, and threats were used to penalize forced marriages, and only the married partners could apply for an annulment.⁹² As of 2006, forced marriages were specifically punishable with a jail term of one month to two years or maximum fines of EUR 500 to EUR 2,500. An attempted forced marriage is punishable by a jail term of 15 days to a year or a fine of EUR 250 to EUR 1,250. In addition, the law gives public prosecution authorities the ability to annul a force marriage. This helps the partner who was forced into the marriage avoid further persecutions or abuse for attempting to annul the marriage him-or-herself.

Criminalization, however, is not universally accepted as the only, or even best, way to eliminate the practice of forced marriage. Many countries in the European Union tend to associate forced marriage with immigrant families.⁹³ Denmark, for example, addressed the issue of forced marriages by tightening their immigration policy and restricting the right to family unification with a foreign spouse.⁹⁴ In 2002, they amended

⁸⁷ “Western Resistance: Special Report: Muslim Forced Marriages in Europe,” 8 June 2006, <http://www.westernresistance.com/blog/archives/002305.html>.

⁸⁸ “The Marriage Act”, Section 1a; See <http://introengelsk.cappelendamm.no/c35050/artikkel/vis.html?tid=35358>.

⁸⁹ Norwegian Penal Code, Section 222, subsection 2; See <http://introengelsk.cappelendamm.no/c35050/artikkel/vis.html?tid=35358>.

⁹⁰ “Norway: Four Years for Forced Marriage,” Islam in Europe, 1 July 2008, <http://islamineurope.blogspot.com/2008/07/norway-four-years-for-forced-marriage.html>.

⁹¹ “Western Resistance: Special Report: Muslim Forced Marriages in Europe,” 8 June 2006, <http://www.westernresistance.com/blog/archives/002305.html>.

⁹² “Belgium Set to Ban Forced Marriages,” 10 March 2006, http://www.expatica.com/be/news/local_news/belgium-set-to-ban-forced-marriages-28329.html.

⁹³ Rude-Antoine, Edwige, ed., “Forced Marriages in Council of Europe Member States,” Council of Europe, 2005, at 8 and 23, [http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG\(2005\)1_E.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG(2005)1_E.pdf).

⁹⁴ Dostrovsky, Nadine, Cook, Rebecca, J. & Gagon, Michael. “Annotated Bibliography on Comparative and International Law Relating to Forced Marriage,” Canada Department of Justice, August 2007, 5.2.3.

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been registered by the state.¹⁰⁰ The goal of The Customary Marriage and Divorce Act is to protect women from the abuses that occur as a result of marriages not being registered by giving them the same legal recognition as civil, Christian, and Muslim marriages. The Act also makes forced marriage illegal and sets 18 as the legal marriage age.

The country saw its first court conviction on the charges of “forced marriage” in February 2009. After a four-year trial, The Special Court for Sierra Leone convicted three former leaders of the Revolutionary United Front (RUF) of war crimes and crimes against humanity, and forced marriage.¹⁰¹ The court set legal precedent by considering forced marriage as a crime against humanity, separate from other forms of sexual violence and specifically sexual slavery. The fact that many

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force, threats, menace, or duress to marry the abductor or to marry any other person.”¹⁰⁹

Recently, at a federal level, The International Protecting Girls by Preventing Child Marriages Act of 2009 was proposed to the United States Congress.¹¹⁰ The draft bill seeks to protect girls in developing countries through the prevention of child marriage. It will be important to see how this proposed federal legislation progresses, but it appears its focus is on international forced and early marriage, as opposed to forced or early marriage within the United States.

VI. Conclusion

There has been recognition of the practice of forced and early marriage throughout the world. International legal instruments as well as country-specific laws have been created which condemn the practice or even specifically criminalize the practice. The practice, however, continues, and is actually in