



RESEARCH REPORT

**ANNOTATED BIBLIOGRAPHY ON
COMPARATIVE AND
INTERNATIONAL LAW
RELATING TO FORCED
MARRIAGE**

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Annotated Bibliography on Comparative and International Law relating to Forced Marriage

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1.0 EXECUTIVE SUMMARY

1.1 THE PURPOSE OF THE PROJECT

A forced marriage occurs when people are coerced into a marriage against their will and under duress, which can include both physical and emotional pressure. A forced marriage is very different from an arranged marriage in which the free and informed consent of both parties is present. Due to its confusion with the tradition of arranged marriage, forced marriage is often associated in developed states with South Asian immigrants, but it is important to remember that it occurs across many cultures and religions. Every major faith condemns the practice and requires freely given consent for marriage, as does the law in most states.

Forced marriage often affects young people, who may be taken abroad on false pretexts, or pressured to marry in order to sponsor their new spouse for immigration purposes. In many if not all instances, it is the parents who are forcing the young person to marry because they see the forced marriage as protecting their child by controlling unwanted sexual interest or behaviour, preventing “unsuitable” relationships, protecting religious or cultural ideals, strengthening family links, or honouring long-standing family commitments. Yet forced marriage is an international human rights violation. Forced marriage is prohibited under a number of United Nations conventions, and many states have taken both legislative and non-legislative routes to combat the practice.

The purpose of this project was to provide an overview of what nations are doing in this area. Since the topic of forced marriage is one which Canada has not yet formally addressed, this report aims to provide an initial comparative review of literature as a foundation for any future research or policy development.

1.2 METHODOLOGY

The findings in this paper are based on a preliminary literature review and do not purport to be exhaustive. The goal of the project was to produce an annotated bibliography, with some accompanying narrative, which could provide background information on the subject and a basis for any further research. Completed over a four-month period in the summer of 2006, the research included database searches for books, journal articles, and newspaper articles, as well as internet searches and discussions with prominent academics and practitioners. Since this is an issue which is constantly evolving, the searches which gave access to the most up-to-date sources such as websites and newspaper articles proved to be the most useful. The authors believe that this bibliography includes most of the leading English-language works on the subject. However, since the research was primarily limited to the English language (with the exception of the list of French language sources), it would be important to conduct research in other languages, particularly to determine in greater detail the initiatives of nations which are not primarily English-speaking.

1.3 HIGHLIGHTS

- Forced marriage is specifically recognized as an abuse of human rights in many United Nations treaties and other international documents. Child marriage is also recognized as an abuse of human rights in numerous treaties, and overlaps with forced marriage because minors are deemed incapable of giving informed consent. As a party to many of these treaties, Canada has an international obligation to address the issue of forced marriage, and to ensure that a prerequisite for all marriages within its jurisdiction is the free and informed consent of both parties.
- Common law courts have established that duress in forced marriage cases does not have to be confined to physical coercion, and can also include emotional pressure. However, parental pressure will not necessarily amount to duress in all situations because valid consent can be “reluctant” or “resentful”. What matters is whether the will of the individual has been overborne by the pressure. If this is the case, the marriage is not founded on the free and informed consent of both parties.
- The research on the UK initiatives appears the most useful for Canada to determine possible routes which can be taken in the future due to the similarities and close ties between the two countries, as well as the depth to which the UK has gone in investigating the issue. The British government has demonstrated its commitment to combat the issue by creating a joint team between the Foreign Commonwealth and Home Offices to address forced marriage. This team has conducted research and consultations, proposed legislation, compiled statistics, and arranged support and rescue operations for victims.
- Other countries have implemented various measures in an attempt to address the practice of forced marriages. Some of these measures include:
 - introducing legislation to criminalize the practice (Norway, Belgium);
 - revising existing offences to criminalize activities associated with forced marriage (Australia, Denmark, Germany);
 - raising the minimum age of marriage (France, Gabon, Indonesia, UK); and
 - tightening immigration laws (Denmark).

There are also a wide variety of support and awareness programs in place for victims. By studying the public response to these initiatives, as well as their impacts, Canada can make a more informed decision about its own preferred action plan.

- There is very little information about the extent of the problem in Canada. The only evidence of forced marriage at this time is through court cases dealing with nullification of marriage or refugee asylum, although some anecdotal reports exist.

1.4 IMPLICATIONS

Since there is very little information about forced marriage in Canada, it is difficult to determine what steps the government should take to tackle the practice. As an initial step, it is important to compile statistics, testimonies, and other information from non-governmental organizations, women's groups, and victims in order to assess the situation. Using the UK's initiatives as a template, a "working group" or some similar body could be established in order to gauge how the practice is affecting Canadian citizens, and to weigh the various policy options to determine which would be most effective in Canada. Suggesting a particular course of action at this point in time would be premature without this additional information, and could not take into account the particulars of Canada's situation, since they are largely unknown and undocumented. It is only after a more thorough investigation which looks at the frequency, location, and extent of the practice that policy recommendations can be fully measured.

As a preliminary consideration, however, while acknowledging that more information is needed, initiatives which have been introduced in other countries could be examined to promote discussion and determine possible areas for further research. For example, modelling possible initiatives after some of those taken in other countries could include: possibly creating a specific criminal offence of forcing someone to marry; possible guidelines for Foreign Affairs on how to address cases of forced marriage and setting out Canada's position on cases with an overseas element; possibly providing guidance for professionals about forced marriage; even considering providing a framework and funding for support programs and shelters for victims; and perhaps reviewing the manner in which cases of asylum based on gender-based persecution are handled and decided.

In addition to obtaining more detailed information on Canada's situation, further research could be conducted to expand upon specific aspects of what has been covered in this bibliography. Suggested research areas include:

- Child marriage;
- Trafficking in women and children;
- Marriages of convenience and limited purpose marriages;
- An examination of consent in marriage under the laws of the countries where forced marriage is prevalent;
- A study of case law to determine how courts have interpreted obligations under the treaties and covenants which address consent in marriage;
- A thorough study of all case law relating to forced marriage including nullification of marriage;
- Refugee claims resulting from fears about being forced into marriage;

- The degree to which marriages performed abroad are recognized and conflict of laws issues relating to recognition of marriages performed abroad; and
- Further research into the initiatives of nations which are neither English-speaking nor French-speaking, to be performed in one of the official languages of those nations.

1.5 GUIDE

This bibliography begins by giving background information on marriage and the importance and nature of consent in marriage. It then summarizes the relevant treaties and their applicable provisions. Next, it gives an overview of the various measures which have been implemented by different states and provides insight into the problem within those nations. It then outlines some important topics which overlap with forced marriage such as child marriage, trafficking in women and children, and dual nationality. Lastly, it provides a preliminary list of French-language sources before highlighting the important findings and implications in the conclusion.

2.0 GENERAL BACKGROUND INFORMATION

The British Foreign Commonwealth and Home Office defines a forced marriage as a marriage performed under duress without the full and informed consent or free will of both parties. Being under duress includes feeling both physical and emotional pressure.

Forced marriage is condemned as an abuse of human rights in numerous treaties and international documents. However, it is important to distinguish between an arranged marriage and a forced marriage: in an arranged marriage the free and informed consent of both parties is sought and given; in a forced marriage consent is not freely given. All major religions in the world condemn forced marriage. For an overview of the problem of forced marriage, with emphasis on the British perspective, refer to the BBC (British Broadcasting Corporation) and NHS (National Health Services) websites devoted to the topic (BBC, NHS).

Free and informed consent is a requirement for a valid marriage, and a marriage can be annulled and declared void if voluntary consent is not present. Hahlo discusses how lack of consent can nullify a marriage (Hahlo, 1979). The marriage is then treated as if it never occurred, however it is important to note that in Canada, claims for maintenance and support from a former spouse, both with respect to child support and spousal support, can still be brought forth following an annulment. Voluntary consent can be affected by a lack of understanding, mistake, duress, or an improper motive. Turning to the first issue, it is necessary that a party to a marriage have an understanding of the nature of the marriage and its obligations. Although this level of understanding is low and only requires a basic appreciation of the roles of the parties to the union determined at the time of the ceremony, it becomes a primary issue in cases involving an underage spouse (see Section 7.1 on “Child Marriage”). Voluntary consent can also be affected by mistake going to the identity of the other party or the nature of the ceremony. This situation sometimes occurs when marriages take place in a language or jurisdiction which is foreign to one of the parties.

The issue of duress is of particular importance when studying the practice of forced marriage. The case of *Buckland v. Buckland*, [1967] 2 All E.R. 300 held that there are three factors which are required to show duress: (1) the person must be sufficiently afraid to remove the element of voluntary consent to the marriage; (2) the fear must be reasonable in light of the circumstances; and (3) the fear must arise from external circumstances for which the party is not himself or herself responsible. For a further discussion on consent in marriage, including the cases which developed the common law on consent, see Section 3.

Lastly, the validity of a marriage can be questioned where the parties enter into the union for reasons other than living together in a family environment. The most common reason for this type of marriage is an “immigration marriage” or “limited purpose marriage”, which is discussed in the case law in Section 8. For further background information on consent in marriage, family law textbooks and encyclopaedias give an overview of the primary issues involved.

There are further issues which relate to and overlap with the practice of forced marriage. Dual nationality becomes important when determining a country's response to a citizen who has been forced into a marriage, especially when the marriage involves an overseas dimension. There is still ongoing debate about the extent of power that a country can exercise in aiding a citizen who is a dual national and within their other country of nationality. For more discussion on this topic, see Section 7.2. Another related issue is trafficking in women, discussed in Section 7.3. This topic overlaps with forced marriage because women are often trafficked overseas in order to be sold as wives, and may thus be forced to undergo a marriage ceremony. These are only two of the many issues which are associated with the practice of forced marriage. The suggested research areas noted in Section 1.4 provide some other topics which overlap with the issue of forced marriage, but are not discussed within the confines of this paper.

1. BBC, "Religion & Ethics—Forced marriages," online:
<http://www.bbc.co.uk/religion/ethics/forced_marriages/index.shtml>

This website provides background information on forced marriage by BBC news, primarily from a British perspective. It also includes some of the pros and cons raised regarding the implementation of "forced marriage" as a criminal offence.

2. Hahlo, H.R. *Nullity of Marriage in Canada with a Sideways Glance at Concubinage* (Toronto: Butterworths, 1979) at 26-29.

There is a presumption of consent in marriage and so the onus of proving lack of consent rests on the one seeking to have the marriage annulled. Based on this supposition, Hahlo looks at how lack of consent can nullify a marriage. It is also important to note that only the parties to the marriage can seek annulment, and a third party (such as a state) does not have standing to bring such an action on any basis.

3. Lawson, Edward, ed. *Encyclopedia of Human Rights* (New York: Taylor & Francis, 1991) s.v. "Marriage and the Family".

This encyclopedia entry provides overall summary information on the law on marriage and the family.

4. Oxfordshire NHS. "Forced Marriage Awareness," online: NHS
<<http://www.forcedmarriage.nhs.uk/>>.

This website gives an overview of some of the issues involved in forced marriage cases, including advice on steps to follow if a case is encountered and contact information for British sources who can assist.

5. Stark, Barbara. *International Family Law* (Burlington: Ashgate, 2005) at 18-22.

This text provides an overview of the international conventions and laws which relate to marriage.

6. *Report of the Secretary-General: In-depth study on all forms of violence against women*, UN GAOR, 61st Sess., UN Doc. A/61/122/Add.1 (2006).

This study provides information on violence against women worldwide, including information on the extent and types of violence, the causes of the violence, as well as an overview of national and international methods of addressing this issue. Early marriage and forced marriage are considered harmful traditional practices (see paragraphs 121-122) and concern is raised about the under-documentation of forced marriage. Paragraphs 298-299 provide an overview of some of the national guidelines and programmes which have been implemented to deal with the practice.

3.0 NATURE OF CONSENT

Free and informed consent is a prerequisite to a valid marriage. The principal English case on duress in forced marriage cases was *Singh v. Singh* (1971) which limited duress in these cases to “fear caused by threat of immediate danger...to life, limb, or liberty”. Due to this limitation, courts refused to classify pressure of the type in *Singh* as sufficient. This changed with *Hirani v. Hirani* (1983), which annulled the marriage of a 19 year old Hindu: “the crucial question is whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual.” An Australian case, *In the Marriage of S*, held that even more subtle forms of duress than in *Hirani* can vitiate consent, stating that duress creating a nullity should be broad enough to encompass non-violent but controlling parental coercion.

The Scottish cases *Mahmood v. Mahmood* (1993) and *Mahmud v. Mahmud* solidify an objective test of duress. In both cases the court held that what mattered was whether there had been coercion of a person’s will such as to vitiate consent, not what form the coercion took. The court also said parents can advise and apply pressure, and this does not necessarily amount to duress since consent can be “reluctant” or “resentful”. Bradney notes that the law on duress in both England and Scotland is still uncertain because of the difficulty of determining when legitimate pressure turns into duress.

1. Bradley, David. “Duress and Arranged Marriages” (1983), 46 Mod. L. Rev. 499.

The principal English case on duress in forced marriage cases was *Singh v. Singh* (1971) which limited duress to “fear caused by threat of immediate danger...to life, limb, or liberty.” This changed with *Hirani v. Hirani* (1983), in which the marriage of a 19 year old Hindu woman to a man she had never met was annulled. The court held that “the crucial question is whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual.” Bradley argues that duress in domestic relations law should be wider and more flexible.

2. Bradney, A. “Duress, Family Law and the Coherent Legal System” (1994), 57:6 Mod. L. Rev. 963.

Bradney compares the Scottish family law on duress with the English law on duress, making particular note of the cases *Mahmood v. Mahmood* (1993) and *Mahmud v. Mahmud* (1994). There has been a solidification of an objective test of duress, however the law on duress in both countries is still uncertain due to the difficulty of determining when legitimate pressure turns into duress.

3. Phillips, Anne and Moira Dustin. “UK initiatives on forced marriage: regulation, dialogue and exit” *Political Studies* 52:3 (October 2004) 531.

This article outlines the relevant UK cases (*Singh*, *Hirani*, *Mahmood*, *Mahmud*) which developed the law on consent in marriage. Duress involving threats to life, limb or liberty became obsolete, moderated first by considerations of age, sex and financial

vulnerability, and later by a broader appreciation of the moral pressures parents can bring to bear on their children, even when the children are of mature age.

4. Ziff, Bruce. "Recent Developments in Marriage and Divorce" (1986), 18 Ottawa L. Rev. 21.

In his discussion of duress, Ziff notes that at that time there had been no Canadian cases, but in the English case of *Hirani* a marriage was held to have been performed under such duress as to destroy the reality of consent. The Australian case of *In the Marriage of S* held that even more subtle forms of duress can vitiate consent and duress creating a nullity should be broad enough to encompass non-violent but controlling parental coercion.

4.0 INTERNATIONAL DOCUMENTS

The requirement for the free and informed consent of both parties to a marriage is recognized in numerous international instruments and conventions, which then condemn forced marriages and child marriages as a result. However, as both the “Bringing Rights to Bear” article and the International Law Association (ILA) report below show, the comments of treaty bodies are not legally binding on national courts and in many countries, even ratified treaties often take a backseat in the face of conflicting domestic legislation. More research is necessary to determine in greater detail how specific treaty provisions in this area are interpreted and applied in domestic courts.

1. Center for Reproductive Law and Policy and University of Toronto International Programme on Reproductive and Sexual Health Law. *Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights* (2002), online: <http://www.crlp.org/pdf/pub_bo_tmb_full.pdf>.

This report examines six UN treaties and their monitoring bodies, specifically studying how each committee has incorporated reproductive and sexual health into its work. After outlining how the treaty monitoring body system works, the report examines different topics of reproductive and sexual health under each treaty and assesses how effective the treaty has been and whether it has met its obligations. Under the section “Marriage and the Private Life”, the report discusses how each treaty addresses topics such as forced marriage and child marriage.

2. International Law Association. *International Human Rights Law and Practice: Report from the Berlin Conference* (Berlin, 2004), online: <<http://www.ila-hq.org/pdf/Human%20Rights%20Law/Report%202004.pdf>>.

This report examines references to the relevance and utility of treaty body findings in domestic and international courts. It concludes that, in general, courts have stated that although treaty bodies are not courts, their findings are relevant and useful in some contexts, although national courts have generally not been prepared to accept that they are formally bound by committee interpretations of treaty provisions. The report includes numerous examples of case law from courts around the world.

4.1 INTERNATIONAL TREATIES

Numerous treaties recognize the right to free and full consent in a marriage. Thus, if a country has signed and ratified one of the following treaties, it is internationally bound to ensure that only marriages which are founded upon mutual consent are recognized within its jurisdiction. In this regard, the four most significant treaties ratified by Canada which address consent in marriage are the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the *Convention on the Rights of the Child* (CRC), the *International Covenant on Civil and Political Rights* (ICCPR), and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Canada has not signed or ratified the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*.

1. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 7 November 1962, 521 U.N.T.S. 231 (entered into force 9 December 1964, Canada has not signed or ratified). Articles 1-3.

Article 1: 1. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

2. Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

Article 2: 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.

Article 3: All marriages shall be registered in an appropriate official register by the competent authority.

2. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13 (entered into force 3 September 1981, ratification by Canada 9 January 1982). Article 16 and General Recommendation 21 on Equality in Marriage and Family Relations.

Article 16:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

General Recommendation 21, Article 16:

16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.

3. *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3 (entered into force 2 September 1990, accession by Canada 12 January 1992). Articles 11, 12, 19, 35, 36;

Article 11: 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

Article 12: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 19: 1. States Parties shall take all appropriate legislative, administrative, social and

educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 35: States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36: States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

4. Hague Conference on Private International Law, *Hague Convention on Celebration and Recognition of the Validity of Marriages*, 14 March 1978 (entered into force 1 May 1991, Canada has not signed or ratified but is a member state to the conference), online: <http://www.hcch.net/index_en.php?act=conventions.text &cid=88>. Article 11.

Article 11: A Contracting State may refuse to recognize the validity of a marriage only where, at the time of the marriage, under the law of that State—

(3) one of the spouses had not attained the minimum age required for marriage, nor had obtained the necessary dispensation; or

(4) one of the spouses did not have the mental capacity to consent; or

(5) one of the spouses did not freely consent to the marriage.

5. *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976, accession by Canada 19 May 1976). Article 8, 23, General Comment No. 19 on protection of the family, the right to marriage and equality of the spouses, General Comment No. 28 on the equality of rights between men and women.

Article 8:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

Article 23:

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

General Comment No. 19, Article 4:

4. Article 23, paragraph 2, of the Covenant reaffirms the right of men and women of marriageable age to marry and to found a family. Paragraph 3 of the same article provides that no marriage shall be entered into without the free and full consent of the intending spouses. States parties' reports should indicate whether there are restrictions or impediments to the exercise of the right to marry based on special factors such as degree of kinship or mental incapacity. The Covenant does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law[...]

General Comment No. 28, Article 23 & 24:

23. States are required to treat men and women equally in regard to marriage in accordance with article 23, which has been elaborated further by General Comment No. 19 (1990). Men and

women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis. Many factors may prevent women from being able to make the decision to marry freely. One factor relates to the minimum age for marriage. That age should be set by the State on the basis of equal criteria for men and women. These criteria should ensure women's capacity to make an informed and uncoerced decision. A second factor in some States may be that either by statutory or customary law a guardian, who is generally male, consents to the marriage instead of the woman herself, thereby preventing women from exercising a free choice.

24. Another factor that may affect women's right to marry only when they have given free and full consent is the existence of social attitudes which tend to marginalize women victims of rape and put pressure on them to agree to marriage. A woman's free and full consent to marriage may also be undermined by laws which allow the rapist to have his criminal responsibility extinguished or mitigated if he marries the victim. States parties should indicate whether marrying the victim extinguishes or mitigates criminal responsibility and, in the case in which the victim is a minor, whether the rape reduces the marriageable age of the victim, particularly in societies where rape victims have to endure marginalization from society[...]

6. *International Covenant on Economic, Social and Cultural Rights*, 993 U.N.T.S. 3, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (entered into force 3 January 1976, accession by Canada 19 May 1976). Article 10; General Comment 14 on the right to the highest attainable standard of health, Article 22. General Comment 16 on Equality of Rights between Men and Women, Article 27.

Article 10.1:

The States Parties to the present Covenant recognize that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

General Comment 14, Article 22:

22. There is a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children.

General Comment 16, Article 27:

27. Article 10, paragraph 1, of the Covenant requires that States parties recognize that the widest possible protection and assistance should be accorded to the family, and that marriage must be entered into with the free consent of the intending spouses. Implementing article 3, in relation to article 10, requires States parties, inter alia, [...] to ensure that men and women have an equal right to choose if, whom and when to marry—in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion.

7. *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 25 May 2000, GA Res. A/RES/54/263 (entered into force 18 January 2002, ratification by Canada 14 September 2005). Articles 3, 8, 10.

Article 3: 1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child; [...]

c. Engagement of the child in forced labour; [...]

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

Article 8: 1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

Article 10: 1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

8. *Supplementary Convention on the Abolition of Slavery, and the Slave Trade, and Institutions and Practices Similar to Slavery, art 1(c)(i), 7 September 1956, 266 U.N.T.S. 3 (entered into force 30 April 1957, ratification by Canada 10 January 1963). Article 1.*

Article 1:

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery...

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

4.2 INTERNATIONAL CONSENSUS DOCUMENTS

Although not internationally binding, international documents can provide insight into world opinions—including that on forced marriage. The *Universal Declaration of Human Rights* (UDHR) is a declaration adopted by the United Nations General Assembly, and although the declaration does not form part of international law¹, it is a powerful tool in applying diplomatic and moral pressure to governments that violate any of its articles. It is important, therefore, to note that article 16 of the UDHR states that “[m]arriage shall be entered into only with the free and full consent of the intending spouses.” Similarly, the texts of the Council of Europe allow an examination of the commitments of its member countries in areas such as forced marriages and child marriages. The *Universal Islamic Declaration of Human Rights* clarifies that there is no justification in Islam for forced marriage.

1. Council of Europe, P.A., 13th Sitting, *Traffic in women and forced prostitution in Council of Europe member states*, Texts Adopted, Rec. 1325 (1997).

1. The Assembly is alarmed by the dramatic increase in recent years in the traffic in women and forced prostitution in Council of Europe member states[...]The Assembly is also concerned about the deterioration of the treatment of trafficked women, bordering on slavery, which has resulted from this development.
2. The Assembly defines traffic in women and forced prostitution as any legal or illegal transporting of women and/or trade in them, with or without their initial consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage, or other forms of forced sexual exploitation. The use of force may be physical, sexual and/or psychological, and includes intimidation, rape, abuse of authority or a situation of dependence.
3. Considering traffic in women and forced prostitution thus defined to be a form of inhuman and degrading treatment and a flagrant violation of human rights, the Assembly feels the need for urgent and concerted action on the part of the Council of Europe, its individual member states and other international organisations.
4. The Assembly recommends that the Committee of Ministers elaborate a convention on traffic in women and forced prostitution, which would also be open for signature by states not members of the Council of Europe.

2. Council of Europe, P.A., 29th Sitting, *Forced marriages and child marriages*, Texts Adopted, Res. 1468 (2005).

1. The Parliamentary Assembly is deeply concerned about the serious and recurrent violations of human rights and the rights of the child which are constituted by forced marriages and child marriages.
2. The Assembly observes that the problem arises chiefly in migrant communities and primarily affects young women and girls.
3. It is outraged by the fact that, under the cloak of respect for the culture and traditions of migrant communities, there are authorities which tolerate forced marriages and child marriages although they violate the fundamental rights of each and every victim.
4. The Assembly defines forced marriage as the union of two persons at least one of whom has not given their full and free consent to the marriage.

¹ International law has three primary sources: international conventions, international customs, and general principles of law recognized by civilized nations (see *Statute of the International Court of Justice*, Art. 38).

5. Since it infringes the fundamental human rights of the individual, forced marriage can in no way be justified.
7. The Assembly defines child marriage as the union of two persons at least one of whom is under 18 years of age.
8. The Assembly deplors the drastic effects of marriage on married children. Child marriage in itself infringes their rights as children. It is prejudicial to their physical and psychological welfare. Often an obstacle to school attendance, child marriages may be prejudicial to children's access to education and their intellectual and social development, in that they restrict their horizon to the family circle.
9. The Assembly is appalled to find that some national legislation permits the marriage of minors, sometimes in a discriminatory fashion with gender-based differences in minimum ages.
10. Such marriages should, in fact, no longer take place in our societies, which uphold human rights and the rights of the child. In that respect, the Assembly concurs with the considerations set out in the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages[...]
12. It therefore stresses the need to take the requisite legislative measures to prohibit child marriage by making 18 years the minimum marriageable age. Thus, persons not having reached this age would not be able to lawfully contract marriage.

3. Council of Europe, P.A., 29th Sitting, *Forced marriages and child marriages*, Texts Adopted, Rec. 1723 (2005).

1. The Parliamentary Assembly refers to its Resolution 1468 (2005) on forced marriages and child marriages and asks the Committee of Ministers to ensure its application by member states.
2. It recommends that the Committee of Ministers of the Council of Europe instruct the appropriate intergovernmental committee to make a thorough analysis of forced marriages and child marriages and devise a strategy encouraging member states to take the following specific action: [recommendations, including prevention, punishment, and support programs, are omitted]

4. UN Fourth World Conference on Women, *Report of the Fourth World Conference on Women (Beijing)*, UN Doc. A/CONF.177/20 (Beijing: 4-15 September 1995), online: <<http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en>>.

Part B: Education and training of women:

71. Discrimination in girls' access to education persists in many areas, owing to customary attitudes, early marriages and pregnancies, inadequate and gender-biased teaching and educational materials, sexual harassment and lack of adequate and physically and otherwise accessible schooling facilities[...]

Part C: Women and health:

96. The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.

Part D: Violence Against Women:

112. Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms[...]

113. The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

- a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital

114. mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

b. Physical, sexual and psychological violence occurring within the general community, including...trafficking in women and forced prostitution;

115. Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.

117. [...]In many cases, violence against women and girls occurs in the family or within the home, where violence is often tolerated. The neglect, physical and sexual abuse, and rape of girl children and women by family members and other members of the household, as well as incidences of spousal and non-spousal abuse, often go unreported and are thus difficult to detect. Even when such violence is reported, there is often a failure to protect victims or punish perpetrators.

Part L: The girl child:

259. [...]in many countries available indicators show that the girl child is discriminated against from the earliest stages of life, through her childhood and into adulthood[...]The reasons for the discrepancy include, among other things, harmful attitudes and practices, such as female genital mutilation, son preference—which results in female infanticide and prenatal sex selection—early marriage, including child marriage, violence against women, sexual exploitation, sexual abuse, discrimination against girls in food allocation and other practices related to health and well-being. As a result, fewer girls than boys survive into adulthood.

[suggestions for actions to be taken by governments and organizations follow each section]

5. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948). Article 16.

Article 16:

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

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

6. *Universal Islamic Declaration of Human Rights*, 19 September 1981 (adopted by the Islamic Council, proclaimed at UNESCO), online: <<http://www.alhewar.com/ISLAMDECL.html>>. Article 19.

Article 19: Right to Found a Family and Related Matters:

a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

b) Each of the partners in a marriage is entitled to respect and consideration from the other. [...]

d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.

i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

5.0 NATIONAL INITIATIVES (AND RESPONSES TO THE INITIATIVES)

The issue of forced marriages has come to the attention of numerous states in the past few decades and each state has chosen different strategies to address the practice. In some nations, governments have taken the leading role, implementing legislation focussed on curtailing the practice of forced marriage; other countries have relied on non-governmental organizations and women's groups to provide support for victims. An examination of the initiatives by other nations gives an overview of measures which have been implemented worldwide and their effects, as well as the public response to their implementation.

1. Cambrensis, Giraldus. "Special Report: Muslim Forced Marriages In Europe" (8 June 2006), online: Western Resistance <<http://www.westernresistance.com/blog/archives/002305.html>>.

This report outlines the recent initiatives taken by selected European countries (Holland, Belgium, Turkey, Germany, Austria, France, and Britain) to tackle forced marriage.

2. Kamguian, Azam. "Girls' Nightmare in Muslim Families: Forced Marriages in Europe," online: Institute for the Secularisation of Islam <<http://www.secularislam.org/women/nightmare.htm>>.

This article discusses the practice of forced marriage in Europe and advocates for government and societal protection of women who are victims of forced marriages. It emphasizes the underlying reasons for forced marriages and the struggle between children and their parents, who believe they are acting in their child's best interests.

3. Rude-Antione, Edwige. *Forced marriages in Council of Europe member states*, (Strasbourg: Directorate General of Human Rights, 2005).

This report examines legislation and policy initiatives relating to forced marriages in the 28 member states of the Council of Europe. Proposals are put forth to amend the minimum age of marriage to 18 for all states and to introduce an offence of "forced marriage". Increased education on the subject and the expansion of resources available to those involved in forced marriage situations are also encouraged. Since it outlines the initiatives of a number of European countries, it is a good starting point for research on this topic within the European community.

5.1 AFRICA

5.1.1 Gabon

There have been discussions in both chambers of Parliament on a law prohibiting traffic in children and there has been discussion on addressing dowry marriage², which is prohibited by law but continues as a common practice. The government is considering introducing a minimum legal age for the marriage of girls.

1. Gabon. “Responses to the list of issues and questions for consideration of the combined second, third and fourth periodic reports” (Submitted to the *Committee on the Elimination of Discrimination against Women*, 6 October 2004).

This CEDAW country report outlines the measures Gabon has implemented in order to adhere to its obligations under the CEDAW convention. Noteworthy measures include discussions in both chambers of Parliament on a law prohibiting traffic in children and the discussion on addressing dowry marriage, which is prohibited by law but continues as a common practice. There is resistance to the law because the dowry is a symbol which marks a woman’s departure from her birth family and entry into that of her husband, and the law is not enforced since the practice is frequent and widely accepted. The Ministry of National Education established an information, education and communication programme addressing early pregnancies, and awareness-raising campaigns are under way in schools. The government is contemplating bringing national law into line with the Convention by establishing a legal minimum age for the marriage of girls.

5.1.2 Other African Nations

There have been numerous reported instances of forced marriage in Africa due to a history of male supremacy whereby fathers commonly give away their daughters without consultation. Child marriages remain the usual practice rather than the exception in many parts of the continent. Some national policies discourage early marriage, although this is in constant tension with “brideprice” traditions which lead many poverty-stricken families to marry off their daughters at young ages. Legal redress is now becoming available in some countries—children under 18 can sometimes report cases to the police or to local councillors, and some adults have recourse to the Constitutional Courts to seek redress. Moreover, many children’s associations and district education offices are working to discourage the practices of forced and child marriages. Some courts are providing redress by sentencing husbands and fathers for acts relating to forced marriage such as detaining and defiling children.

² Note that although the more usual European form of “dowry marriage” is a marriage in which a bride brings money or property to her new husband and his family as her “dowry”, as practiced in Gabon and many other African and Islamic countries, a “dowry marriage” is a form of marriage whereby the groom’s family pays a “dowry” to the bride’s family as a symbol of her passage from her family of birth to the family of her husband. This form of dowry marriage is also often called a “brideprice” marriage.

1. Bamgbose, Oluyemisi. "Legal and Cultural Approaches to Sexual Matters in Africa: The Cry of the Adolescent Girl" (2001-2002) 10 U. Miami Int'l & Comp. L. Rev. 127.

Noting the general culture of male supremacy in Africa which seeks to dominate females in all aspects of life, the article discusses the cultural practice of early marriage in Africa. The marriage of a girl is considered the responsibility of her father and her father commonly gives her to the man of his choice without consulting her. In Hausa land, child marriages are the rule, not the exception, even though it is a criminal offence in many African countries to have sexual intercourse with a woman under the age of 14 and there is a national policy to discourage early marriage. The remainder of the article focuses on female genital mutilation.

2. Emasu, Alice. "Use the Law to Bar a Forced Marriage" *Africa News Service* (2 August 2005).

The author argues that women who are forced into marriage should seek legal redress by arguing that consent was not obtained. Children under 18 can report cases of child marriage to the police or to local councillors, and adults can go to the Constitutional Court to seek redress for forced marriage. The author also encourages "exploiting" legal aid agencies such as the Federation of Women Lawyers (FIDA) if the process becomes expensive.

3. Lemeketi, Peter. "Girl, 11, Rescued From Forced Marriage" *Africa News Service* (14 October 2004).

The story is told of a girl who was saved at the last minute when a teacher was notified that she was going to be married to a 40 year old man, and the article states that the district education office is trying to combat the practice of early forced marriage.

4. Mukuka, Jonathan. "Nakonde Girl, 14 Forced Into Marriage" *Africa News Service* (11 November 2004).

This article tells the story of a 14 year old girl who ran away from a forced marriage, but was found and immediately returned and married. There are organizations attempting to end the practice such as the National Single Parents Association of Zambia (NSPAZ), whose director has condemned marrying off girls who are supposed to be in school. The NSPAZ said they would ensure that both the father of the girl and her new husband were punished under the law.

5. Women's International Network. "Africa: Forced Marriage of young girls destroys their lives" *WIN News* 25:3 (Summer 1999) 56.

Discussion of how the "brideprice" tradition in Africa leads poor families to marry off their daughters at young ages for money. However, this ensures that girls are not killed at birth as often occurs in India, where the family must pay a dowry in order for a man to marry their daughter.

6. "Court Rescues A 13 Year Old Girl From Forced Marriage" *Africa News Service* (19 May 2000).

A 13 year old girl was illegally married to a 45 year old villager, who was sentenced to five years by the Babati District Court because of evidence that he was defiling a girl while knowing that she was under age. The girl's father was sentenced to three years in prison for marrying off his under-aged daughter for a bride price of 20 head of cattle.

7. "DEO Saves Pupil, 13, From Forced Marriage" *Africa News Service* (31 May 2002).

This short article tells of the rescue of a 13 year old girl from "a traditional circumcision den" where she was being held for a forced marriage and had been confined for six months. The area District Court stated that parents who marry off their under-age children will be arrested.

8. "Two Jailed Over Forced Marriage" *Africa News Service* (15 August 2002).

A father and prospective husband were jailed for detaining a 12 year old girl and were fined for trying to force her into marriage.

5.2 EUROPE

5.2.1 Austria

Austria's government addressed forced marriage in September 2005, when it announced that police and prosecutors would investigate suspected forced marriages even when victims are too afraid to testify. However, much of the campaign to fight forced marriage comes from non-profit organizations and support groups.

1. Greiger, Eric. "Muslim girls in Austria fighting forced marriages" *San Francisco Chronicle* (4 December 2005) A15.

Reports that Muslim girls in Austria and Germany are fighting against forced marriage with the help of support groups. In September 2005, Austria's government announced that police and prosecutors would investigate suspected forced marriages even when victims are too afraid to testify. Orient Express, a Vienna non-profit organization, recently started a media campaign in Vienna schools to make Muslim teens aware of the possibility of forced marriage as one of the risks of travelling to their parents' homeland.

5.2.2 Belgium

Belgium will become the world's second country after Norway to enact a criminal law ban on forced marriage, a crime which will be punishable by a jail sentence or fine. The new law will also allow an attempted forced marriage to be prosecuted.

1. "Belgium set to ban forced marriages" (10 March 2006), online: Expatica.com <http://www.expatica.com/source/site_article.asp?channel_id=1&story_id=28329>.

Belgium's Cabinet approved a proposal from the Justice Minister which will make Belgium the world's second country after Norway to ban forced marriages following research which found that many Turkish and Moroccan women in Belgium were affected by forced marriage. Forcing another into marriage will be 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 prosecutable with a jail term of 15 days to a year or a fine of EUR 250 to EUR 1,250. The legislative proposal outlines the right to enter a marriage willingly and gives public prosecution authorities the power to directly annul a forced marriage.

5.2.3 Denmark

Denmark's response to the issue of forced marriages was to tighten their immigration policy and restrict the right to family unification with a spouse from abroad. They amended the Alien Act in 2002 to include stricter requirements for foreign spouses (the minimum age for family reunification was raised from 18 to 24, spouses cannot be cousins, and there must be a strong affiliation to the country), and released an Action Plan on Forced, Quasi-Forced & Arranged Marriages in 2003. Moreover, the Danish Immigration Service will now presume that a marriage has not been entered into voluntarily if the spouses have a close family relationship and the application for immigration will be rejected. The Danish Criminal Code provisions concerning coercion also apply to marriage. In 2004, the first conviction in a forced marriage case occurred when a father was sentenced to one year in prison for forcing his 15 year old daughter into an arranged marriage.

1. Bredal, Anja. "Tackling forced marriages in the Nordic countries: between women's rights and immigration control" in Lynn Welchman and Sara Hossain, eds. *'Honour': Crimes, Paradigms, and Violence against Women* (London: Zed Books, 2005) 332.

This paper looks at the measures implemented by the governments of Norway and Denmark to combat forced marriage. Denmark's dominant strategy was to tighten their immigration policy and restrict the right to family unification with a spouse from abroad. The Alien Act was amended in 2002 such that foreign spouses must now be 24 years of age, the spouses cannot be cousins, and both spouses must have ties with Denmark which are closer than with any other country. Moreover, the government published an Action Plan on Forced, Quasi-Forced & Arranged Marriages in 2003 to address the issue. The author argues for a sensitive approach which takes into account the individuals involved and their specific family situations, cultures and traditions.

2. Danish Government. *The Government's Action Plan for 2003-2005 on Forced, Quasi-forced and Arranged Marriages* (Denmark: Ministry of Refugee, Immigration and Integration Affairs, 2003).

The Government Action Plan outlines the government's goals with respect to combating forced marriage which include changing attitudes of young people on choice of marriage partner, supporting and helping victims of forced marriage, reinforcing preventative initiatives by the authorities, and strengthening cooperation between private and public

organizations. It discusses the immigration measures already introduced and notes that forced marriages are prohibited by internationally recognized human rights conventions and Danish law. The Danish Criminal Code provisions concerning coercion also apply to marriage.

3. Danish Immigration Service. "Forced Marriages," online: <http://www.udlst.dk/english/Family+Reunification/Spouses/forced_marriages.htm>.

These guidelines outline what the Danish Immigration Service will examine in order to determine whether a marriage has been forced. If the spouses share a close family relationship it will be presupposed that they did not marry on a voluntary basis and in such cases the application will as a rule be rejected. The authorities will also look at age, relationship and contact prior to marriage, financial conditions, and contact with families-in-law to determine if one of the parties was forced into the marriage.

4. "First conviction in forced marriage case in Denmark" *Asia Africa Intelligence Wire* (25 February 2004).

In the country's first case of forced marriage, a father was sentenced to one year in prison for forcing his 15 year old daughter to marry by using forceful means.

5.2.4 France

In March 2006, France raised the minimum age at which a woman can marry from 15 to 18, bringing it in line with the minimum age a man can marry. The higher marriage age was introduced as an effort to discourage forced marriages which occur primarily in some immigrant communities, and was one of the numerous recommendations of the Information Mission to combat the issue of forced marriages in France. Brenner's article notes that as of 2004, France was reluctant to acknowledge that oppressive practices were occurring to many Muslim women in France's large Muslim population.

1. Brenner, Marie. "Daughters of France, Daughters of Allah" *Vanity Fair* (April 2004), online: Marie Brenner.com <<http://www.mariebrenner.com/articles/daughters/df1.html>>.

Brenner discusses the prevalence of forced marriage in France and the reluctance of France to acknowledge that oppressive practices occur against Muslim women. However, the tribulations of the large Muslim population gained media attention with the headscarf debate and when Sohane Benziane was burned to death in October 2002.

2. France, National Assembly. "Parliamentary Report on the Family and the Rights of Children," (26 January 2006) at p. 13-14.

In this report created at the request of the President of the National Assembly by the Information Mission, suggestions for combating forced marriages are proposed including raising the age limit on marriage to 18, introducing educational and supportive measures, and facilitating applications to have marriages annulled for lack of consent. These

suggestions include a proposal to make it possible for the public prosecutor to challenge a marriage entered into without the freely given consent of one or both spouses.

3. Schuck, Nathalie. "French parliament raises female marriage age to 18 in crackdown on forced marriages" *The America's Intelligence Wire* (23 March 2006).

For the first time since the minimum age for marriage was set in 1804, the minimum age at which a woman can marry was raised from 15 to 18. The higher marriage age is an effort to discourage forced marriages which occur in some immigrant communities.

4. "France raises marriage age limit" *BBC News* (23 March 2006), online: BBC News <<http://news.bbc.co.uk/2/hi/europe/4838090.stm>>

The French parliament raised the minimum age at which a women can marry from 15 to 18, which puts it at the same age that men can marry.

5.2.5 Germany

Germany's large Turkish and Kurdish populations have high rates of forced marriage, pressing Germany to address the issue. Forced marriage can now be charged under the criminal offence of severe coercion, and those found to have been involved in forcing another to marry can be jailed. However, if the marriage takes place in a foreign country, which often occurs, as is the case with other countries, women are subject to the foreign laws. An unwanted marriage can be annulled within the first year on application, but most women don't know about this deadline and it expires before they decide to take action.

1. Bryant, Elizabeth. "German Activist Puts a Face on Issues Plaguing Muslim Women" *Religion News Service* (5 June 2006).

This article discusses Seyran Ates, a women's rights lawyer in Berlin. A recent German law now makes forced marriage a criminal offence.

2. Dethloff, Sigrid. "The struggle against forced marriage" (22 April 2004), online: Quantara.de <http://www.qantara.de/webcom/show_article.php/_c-478/_nr-102/i.html>.

This article notes that most victims of forced marriage in Germany are Turkish and Kurdish, the two largest ethnic minority groups. A 1996 poll showed that 28.3% of female Turkish immigrants in Berlin married against their will and many are subjected to sexual coercion. An unwanted marriage can be annulled within the first year, but most women don't know about this deadline or wait too long and the deadline for annulment expires.

3. Schneider, Peter. "The New Berlin Wall" (4 December 2005), online: WUNRN <http://www.wunrn.com/news/12_5_05/stories/germany_turkey.htm>.

Schneider discusses the large immigrant districts in Berlin, noting that they are completely detached from the rest of the city. Traditional immigrant customs often live on within these areas, which in turn means that many in this parallel Muslim community are subject to being forced into arranged marriages.

4. Tzortzis, Andreas. "Europe tackles forced marriage" *The Christian Science Monitor* (21 January 2004).

This article details the accounts of a woman who was finally able to divorce her husband after being forced into marriage by her family and discusses how Germany was considering implementing legal initiatives such as a law which would jail those found to have been involved in forcing another to marry. Judges don't view forced marriage as a human rights violation, but rather think that it is something stemming from religion or tradition that must be addressed from within the community.

5.2.6 Holland

Although the Netherlands have not yet implemented specific measures to combat forced marriage, a recent advisory commission informed the Minister of Immigration that forced marriages occur frequently in the country. The report of the committee advised the government to adopt measures to prevent forced marriages.

1. "Forced marriages 'occur frequently', says report" (9 June 2006), online: Expatica.com
<http://www.expatica.com/source/site_article.asp?channel_id=1&story_id=30650>.

An advisory commission told the Minister of Immigration that forced marriage occurs frequently in the Netherlands. The commission also advised that a case manager should be assigned to each victim to ensure that she receives the appropriate assistance, and that coordination between different help organizations should be improved.

5.2.7 Norway

Forced marriages have been discussed and recognized as an outstanding issue in Norway for many years. The Norwegian government published an Action Plan against forced marriages in December 1998. The Ministry of Children and Family Affairs were primarily responsible for the action plan, which contained 40 initiatives covering a broad spectrum of topics including preparing information leaflets, crisis help, school involvement, international cooperation, and research. The government also asked ethnic minorities and religious leaders to assume some of the responsibility for preventing forced marriages from happening.

In the spring of 2002, the government published a "Renewed Initiative against Forced Marriage", which was a continuation of the Action Plan of 1998 containing 30 new initiatives, and the idea of introducing a minimum age limit and a ban on cousin marriages was suggested. In 2003, forced marriage was made a criminal offence in Norway (there has been one case where a man was found guilty) and can result in a prison sentence of up to three years. The Marriage Act includes annulment for forced

marriage and the Children's Act forbids marriages made by parents on behalf of a child. Also in 2003, the Norwegian parliament adopted a law stipulating that family reunification through marriage will not be permitted unless the wife has the right to divorce, becoming the first country in Europe to introduce such a law. The Ministry of Children and Family Affairs has pledged to set aside money to create support networks and crisis centers for those affected by forced marriage and to fund research on the topic.

Sherene Razack has criticized Norway's laws on forced marriage, arguing that the approach attributes violence against women to Muslim values and stigmatizes the Muslim community by emphasizing the notion that immigrant youth must be protected from their families. There have also been concerns that the mandatory prosecution clause for cases of forced marriage which allows perpetrators to be prosecuted without the victims' consent (ideally relieving the young person of having to initiate legal action against her own family) could in fact be contrary to the victim's wishes, since she may not want to criminalize her family. This may in turn make youth reluctant to report forced marriages. NGOs are also critical of the lack of involvement of social services and other institutions such as schools, and the fact that the problem is not taken seriously and awareness is lacking.

1. Bawer, Bruce. "A problem with Muslim enclaves; A controversial study in Norway says forced marriage among immigrants prevents desired integration" *The Christian Science Monitor* (30 June 2003) 9.

Bawer discusses the release of the book *Human Visas*, which details the integration of non-Western immigrants in Europe. The book examines "fetching marriages", defined as the situation where one spouse is "fetched" from the country of origin; the results of a study showed that 82% of Moroccan immigrants and 76% of Pakistani immigrants had been parties to these marriages and the numbers increased between 1996 and 2001. These trends in Norway are representative of Muslims throughout Western Europe. Norway became the first country in Europe to adopt a law stipulating that no family reunification through marriage will be permitted unless the wife has the right to divorce.

2. Bredal, Anja. "Tackling forced marriages in the Nordic countries: between women's rights and immigration control" in Lynn Welchman and Sara Hossain, eds. *'Honour': Crimes, Paradigms, and Violence against Women* (London: Zed Books, 2005) 332.

This paper looks at the measures implemented by the governments of Norway and Denmark to combat forced marriage. The Norwegian government developed an Action Plan on forced marriages to establish support networks, which was published in December 1998. Raising the minimum age for family reunification on the basis of marriage to 24 was proposed in 1998, and in 2002, an age limit and a ban on cousin marriages were suggested. In 2003, forced marriage was added as a specific criminal offence, making it the first country to take this step, yet there has been only one case where a man was found guilty of the crime. Annulment of a forced marriage is now included in the Marriage Act and the Children's Act forbids marriages made by parents on behalf of a child.

3. Norway, Ministry of Children and Family Affairs. *Action Plan Against Forced Marriages* (1998), online: <<http://odin.dep.no/bld/english/doc/handbooks/004021-120005/dok-bn.html>>.

The action plan against forced marriages aims to prevent young people from being exposed to forced marriage and to provide better help and support to young people who are involved in forced marriages. The action plan includes a commitment to increase awareness and disseminate information regarding forced marriages to both youth and parents. The department pledges to set aside money to create support networks and crisis centers for those affected by forced marriage and to fund research on the topic.

4. Norway, Ministry of Children and Family Affairs. *Renewed Initiative Against Forced Marriage Spring 2002* (2002), online: <http://odin.dep.no/filarkiv/187208/Q-1037_E.pdf>.

This renewed initiative against forced marriage suggests thirty measures to combat forced marriage. The proposals are focussed in the areas of crisis help for young people, regulations, the education sector, in-service training, information and work to improve training, and international cooperation.

5. Razack, Sherene. "Imperilled Muslim Women, Dangerous Muslim Men and Civilized Europeans: Legal and Social Responses to Forced Marriages" (2004) 12 *Feminist Legal Studies* 129.

Razack criticizes Norway's laws on forced marriage, arguing that their response, even though more moderate than other countries, is still racist in that it attributes violence against women to Muslim values and stigmatizes the Muslim community. She discusses two books on forced marriage: *Human Visas* by Hege Storhaug, which assumes that marriages involving someone from an immigrant's homeland are forced and involve rape, and Unni Wikan's publication *Generous Betrayal* which says that women pay the price for the government's generous attitude with respect to the cultural practices of Norway's immigrants. The Action Plan, which identifies culture as the culprit, is structured around the notion that immigrant youth must be protected from their families.

6. "Court cracks down on forced marriage" *Aftenposten* (23 May 2005), online: Aftenposten <<http://www.aftenposten.no/english/local/article1044225.ece>>.

A city court in Drammen sentenced a girl's father and brother to jail for threatening her life and physically abusing her to marry a man from Northern Iraq. Social workers reported the threats to the police, who investigated the case and filed charges.

5.2.8 Scotland

There have been proposals to make "forced marriage" a criminal offence in Scotland, but they have not yet been implemented. Currently, initiatives have included a campaign to encourage women forced into marriage to speak out and a conference to brainstorm ways of reducing the incidence of forced marriages.

Scotland's Pakistani community is actively trying to get the government to address the issue of forced marriages. They believe that it has largely been ignored by the authorities, especially the courts, and the misunderstanding regarding the topic is having a negative impact on race relations. When a local Muslim MP was approached for help in retrieving two Scottish-Asian girls who were abducted to Pakistan by their father to marry and was successful in bringing them home, the Muslim community in Glasgow was split—some felt it was a private family issue and he should not have intervened, but the family themselves said that he saved their family and they were grateful to him (Gillan, 1999).

1. Brown, Craig. "Campaigners reach out to women forced into marriage" *The Scotsman* (20 January 2005), online: Scotsman.com News <<http://news.scotsman.com/topics.cfm?tid=612&id=69852005>>.

A campaign was launched by the police to encourage women who have been forced into marriage to speak out about their situations, since they may not come forward because they feel that their situation will not be dealt with safely and in confidence. Some of the people who work with these women believe that overcoming the taboo surrounding the issue is crucial to combating it.

2. Gillan, Audrey. "The case of the reluctant brides" *The Guardian* (16 January 1999) T010.

This article discusses Mohammad Sarwar, Britain's first Muslim MP, and his rescue operation of two Asian girls from Glasgow who had been abducted by their father to Pakistan to marry. Sarwar was able to bring the girls back to Scotland, but the Muslim community in Glasgow was split on his actions—some felt it was a private family issue and he should not have intervened, but the family themselves are reported as saying that he saved their family.

3. "Forced marriages causing concern" *BBC News* (22 March 2004), online: BBC News <<http://news.bbc.co.uk/1/hi/scotland/3557727.stm>>.

Scotland's Pakistani community conducted research which revealed that forced marriages are twice as common as previously thought, and that almost half of marriages involving Scottish Asians and a partner from abroad involve coercion.

4. "Fresh fears over forced marriages" *BBC News* (28 February 2005), online: BBC News <<http://news.bbc.co.uk/1/hi/scotland/4298479.stm>>.

The Council for British Pakistanis carried out research on forced marriage and concluded that Scotland is lagging behind in efforts to combat the issue. However, the article notes that a conference was held to brainstorm ways of reducing the incidence of forced marriages.

5.2.9 United Kingdom

Numerous initiatives have been undertaken by the United Kingdom in order to tackle the issue of forced marriages. In 1997, the “Primary Purpose Rule,” which required a ruling on whether the primary purpose of the marriage was to gain entry into the UK, was abolished, which in turn led to an increase in reported cases of forced marriage. In 1999, the Home Office established a working group on forced marriage, which published a report of its findings, “A Choice by Right”, in 2000. Since the release of the report, guidelines for social workers, police officers, and education professionals on dealing with and recognizing forced marriage have been published, and publicity of the issue has increased, in an attempt to encourage women to seek help.

The government revised its definition of domestic abuse in October 2004 to include forced marriage and in January 2005 the Community Liaison Unit at the Foreign Office became part of the joint Home Office and Foreign Office Forced Marriage Unit. An extra immigration officer was appointed to the British High Commission in Islamabad to support British nationals who are reluctant to sponsor their spouse’s entry into the UK and a special team was established by the British High Commission in Islamabad to rescue girls forced into marriage and bring them back to the UK. This team will issue an emergency passport and, if necessary, loan money for the plane fare home.

The minimum age for a spouse from outside the European Union to enter the UK has been raised from 16 to 18. Dual nationality is becoming less relevant and the government now treats all persons facing forced marriage alike, making representations on their behalf and taking all appropriate action (Hossain, 2005). In September 2005, a three-month public consultation was launched to determine whether or not to institute a criminal law ban on forced marriages. In June 2006, the results of the consultation were published, with a narrow majority against the ban. On June 7, 2006, the Home Office revealed that they have abandoned the idea of creating a new criminal offence due to lack of support and because they felt that the “disadvantages of creating new legislation would outweigh the advantages”.

There have been numerous criticisms of the government’s initiatives on forced marriage. Some argue that forced marriages are private disputes between families that the public should not become involved with, whereas others feel that the increased publicity of forced marriage is causing criticism of cultural practices and minority populations, largely due to the misunderstanding of the difference between forced and arranged marriages.

The consultation report put out by the government lists many pros and cons raised in the consultation on the proposed ban on forced marriage. The respondents who felt that the disadvantages of creating new legislation would outweigh the advantages feared that victims could become isolated, that reconciliation of families could be prevented and that forced marriage could be driven underground. Some respondents were also concerned that the creation of specific legislation could cause racial segregation and create a ‘minority law’. They didn’t feel that spending resources on creating specific legislation was justified because the money could be more usefully spent on tackling the issue

through non-legislative routes such as increased education and awareness-raising, and better support for victims and survivors. They argue that the existing criminal offences, including those on kidnapping, assault, sexual offences and false imprisonment, are sufficient for prosecution.

Those in support of creating a specific offence argued that primary legislation could change public opinion, perception and practice and could have a strong deterrent effect, showing families and communities that this practice is wrong and illegal. They also felt that it could empower young people with more tools to negotiate with their parents and relatives, and clarify what steps can be taken against perpetrators. A new criminal offence could allow families who forced their children into marriage, community members who conspired in the arrangements, or clerics who carried out the weddings, to be jailed.

Since the announcement in June 2006 that a new specific offence of forced marriage would not be created, many have responded with criticism against the government for failing to follow through in their plans to protect women. The bulk of the criticism accuses the government of worrying too much about political correctness, pacifying the large Muslim population which gives them the votes they need, and grabbing headlines, rather than focussing on the needs of vulnerable young women. Some feel that the failure to implement the ban on forced marriage sends a message to minority communities that forced marriage is acceptable.

The response from UK Muslims to the initiative of raising the minimum age at which a person can apply for a spouse from outside the European Union to be allowed to live in Britain from 16 to 18 has been largely critical. The minimum age at which a person can apply for a spouse from inside the EU to live in Britain remains 16, which has caused the Muslim community to allege that the lack of consistency in the two ages is targeted at the legal tradition of arranged marriages within Muslim communities.

In response to the abolishment of the “Primary Purpose Rule” in February 1997, public opinion is somewhat divided. A Bradford women’s group called Our Voice has argued that the “Primary Purpose Rule” should be reintroduced, claiming that after this rule was abolished there was a rise in the number of forced marriages. However, anti-racism groups have campaigned against the “Primary Purpose Rule” for years, arguing that Asian women were victimized by the rule because entry clearance was refused to their lawful spouses. It is important to note that there does not seem to have ever been a Primary Purpose case involving a Caucasian couple.

1. An-Na’im, Abdullahi. “Forced Marriage” (2000), online: CIMEL/INTERIGHTS Forced Marriage Project <<http://www.soas.ac.uk/honourcrimes/FMpaperAnNa'im.pdf>>.

In this article, An-Na’im specifically examines South Asian Muslims in the UK. He suggests that for cultural transformation to occur, it is essential to work within the communities and engage opinion leaders, women’s groups and other actors, both in the UK and the sending country, in order to contextualize the issue and encourage culturally sensitive responses. These are the people who will have the most access to developing the

ideas of the group. It will not be effective to challenge the concept of honour in these cultures or shame the community.

2. Branigan, Tania. "Caution over ban on forced marriages" *The Guardian* (6 September 2005), online: Guardian Unlimited <<http://www.guardian.co.uk/crime/article/0,,1563482,00.html>>.

This article discusses the proposed law banning forced marriages, and how it could have far-reaching effects on clerics or community members involved in the arrangement of the marriage. It also notes that the minimum age for spouses entering the UK was recently raised from 16 to 18.

3. Cambrensis, Giraldus. "Special Report: Muslim Forced Marriages In Europe" (8 June 2006), online: Western Resistance <<http://www.westernresistance.com/blog/archives/002305.html>>.

The section on Britain in this report argues that Tony Blair's government is not acting on the issue of forced marriage because the Muslim votes are important for the Labour Party. The Muslim Council for Britain was always against the criminal law ban on forced marriage because they thought it could stigmatize the Muslim community, and now Blair's government has disregarded the proposal to ban forced marriages.

4. Gill, Aisha. "Chained together" *Community Care* (27 October 2005) 36.

The possibility of a criminal offence of forced marriage has been both criticized and applauded. Most groups argue for legislation to protect victims, but many women's groups are against new legislation, arguing that existing laws offer sufficient protection, and a new offence may create more racist tendencies and intimidate victims. The government defines forced marriage as "a marriage performed under duress without the full and informed consent or free will of both parties. Being under duress includes feeling both physical and emotional pressure."

5. Hossain, Sara. "Women's Rights to Choice in Marriage: From Recognition to Realisation...and denial?" (Paper delivered at Catalyst 2005: Global Perspectives on Successful Implementation of Human Rights of Women Conference, University of Essex, 6 May 2005) [unpublished].

Hossain tells of many cases of women who were forced to marry, including instances where the women were successfully returned to the UK. She summarizes the measures that the UK has introduced since 2000 including a change with respect to dual nationals: the government stated that dual nationality was irrelevant and all persons in the same situation who are facing forced marriage will be treated alike. Many difficulties still exist because courts in other nations are unwilling to address the issue.

6. Hossain, Sara and Suzanne Turner. "Abduction for Forced Marriage—Rights and Remedies in Bangladesh and Pakistan" (2001), 1-64 I.F.L. 15.

This article focuses on abduction from Britain to Bangladesh and Pakistan of individuals who are dual nationals. Protection is available for dual nationals, but there is no binding obligation to act unless there has been a breach of international human rights norms. The authors argue that the Convention on Nationality should be abandoned and the dominant nationality rule should prevail.

7. Hutchinson, Anne-Marie, Harriet Hayward and Teertha Gupta. "Forced Marriage Nullity Procedure in England and Wales" (March 2006) I.F.L. 20.

This article discusses British policy measures and case law related to forced marriage, and includes a case study of a 21 year-old who was sent to India for a forced marriage, which was eventually nullified. The authors argue that the adoption of swift but fair resolutions of similar nullity petitions in the future, especially where they are unopposed, will greatly enhance the protection of the victims of forced marriage.

8. INTERIGHTS, Ain O Salish Kendra (ASK) & Shirkat Gah. "Home Office Working Group—Information Gathering Exercise on Forced Marriages" (Submission to the Home Office Working Group, March 2000).

This submission was created to assist the working group in identifying strategies for providing redress to women taken from the UK to Bangladesh and Pakistan for forced marriage. It outlines characteristics of forced marriage cases and the international legal obligations on the state with respect to forced marriage. The remedies currently available to women who are forced into marriage and suggestions for improvement are discussed.

9. Menski, Werner. "South Asian women in Britain, family integrity and the primary purpose rule" in Rohit Baror, Harriet Bradley, and Steve Fenton, eds., *Ethnicity, Gender and Social Change* (London: Macmillan Press, Ltd, 1999) 81.

Menski argues that Asian women were victimized by the Primary Purpose Rule because it refused entry clearance to Asian women's lawful spouses and there were limited options available to Asian women whose spouses were prevented from joining them in Britain by this rule. A 'reluctant bride' phenomenon emerged, whereby female applicants were asked pointed questions about whether they wanted to get married and if they were reluctant or hesitant in answering, it was interpreted as a forced marriage.

10. Miller, Hannah and Vinay Talwar. "Marriage Guidance" *Community Care* (31 March 2005), online: [Communitycare.co.uk <http://www.communitycare.co.uk/Articles/2005/03/31/48735/Marriage+guidance.html>](http://www.communitycare.co.uk/Articles/2005/03/31/48735/Marriage+guidance.html).

This article discusses the developments which have taken place since the guidelines for social services staff on forced marriages were issued one year prior: the government revised its definition of domestic abuse in October 2004 to include forced marriage and in January 2005 the Community Liaison Unit at the Foreign Office became part of the joint Home Office and Foreign Office Forced Marriage Unit. The age of entry into the UK for

spouses was increased from 16 to 18 and an extra immigration officer was appointed to the British High Commission in Islamabad to support British nationals who are reluctant to sponsor their spouse's entry into the UK.

11. Norfolk, Andrew. "Despair as forced marriages stay legal" *The Times* (24 July 2006).

There are many people in the UK who are concerned about the government's failure to make forced marriages criminal. A senior police officer said that the lives of young women might be ruined because the decision has been seen by some ethnic minorities as a signal that forced marriage is acceptable. The Crown Prosecution Service director said that a new criminal law would have helped campaigners in minority communities to stamp out forced marriage and others said that the ban would have sent out a message that forced marriage will not be tolerated or accepted.

12. Phillips, Anne and Moira Dustin. "UK initiatives on forced marriage: regulation, dialogue and exit" *Political Studies* 52:3 (October 2004) 531.

This article outlines the relevant UK cases (*Singh, Hirani, Mahmood, Mahmud*) which developed the law on consent in marriage. Duress involving threats to life, limb or liberty became obsolete, moderated first by considerations of age, sex and financial vulnerability, and later by a broader appreciation of the moral pressures parents can bring to bear on their children, even when the children are of mature age.

13. Rao, Kavitha. "Britain Debates Outlawing Forced Marriage" *Women's eNews* (27 October 2005), online: <<http://www.womensenews.org/article.cfm/dyn/aid/2499/context/archive>>.

This article gives background information on forced marriage in the UK, outlines the government's measures to date, and introduces the three-month consultation on whether to criminally ban the practice which began on September 5, 2005. Rao also discusses the Asian community's attitudes about whether forced marriage should be criminalized.

14. Singer, Sir Peter. "When is an Arranged Marriage a Forced Marriage?" (April 2001) I.F.L. 30-34.

Singer was the judge in the case of *Re KR (A Minor)* and in this article he provides some background to the case. He explains that he authorized the reporting of what would otherwise have been a confidential chambers judgment. He discusses the problem of forced marriage as an under-recognised mode of human rights abuse as well as the abuse of parental power which can affect children, primarily girls.

15. Southall Black Sisters. *Forced Marriage: An Abuse of Human Rights One Year after 'A Choice by Right' Interim Report* (Southall: Southall Black Sisters, 2001).

This report criticizes the Home Office Working Group report for not giving detailed guidance to police, social service and education professionals, and for endorsing mediation. The Working Group is also criticized for not consulting women's and minority groups, and for allowing change to come from community leaders, who are

often conservative males lacking respect for women's rights. The government is often reluctant to intervene because multiculturalism demands acceptance of cultural practices, so to interfere would be racist. Stricter immigration laws are not the answer because many marriages take place overseas and are not primarily for entry into the UK.

16. Teare, Para. "Forced Marriages: No Simple Solution," online: Spiked Liberties <<http://www.spiked-online.com/Articles/00000002D359.htm>>.

Teare argues that minority communities are the only effective people to solve the problem of forced marriage and the government should not involve itself because its interference will be seen as prejudicial to the minority group.

17. Tendler, Stewart. "The grooms who marry in fear" *Times Online* (21 March 2005), online: TimesOnline <<http://www.timesonline.co.uk/article/0,,2-1534985,00.html>>.

This article examines British males who are forced to marry, noting that data suggests that males may account for up to 38 percent of all forced marriages, and at a minimum 15 percent.

18. The Law Society of England and Wales. "Law Society guidance on forced marriages" (April 2004), online: <<http://www.lawsociety.org.uk/documents/downloads/dynamic/flpappendix5.pdf>>.

These guidelines published by the law society advise solicitors on their role in cases of forced marriages. They emphasize that mediation between the victim and her family should not be attempted and that disclosure of information to family members should be done very cautiously. They also include numerous non-legal options for solicitors to consider, including a list of local organizations which can help.

19. U.K., Association of Chief Police Officers, Foreign & Commonwealth Office and Home Office. *Dealing with Cases of Forced Marriage: Guidelines for Police* (London: Foreign and Commonwealth Office, 2002), online: <<http://www.fco.gov.uk/Files/kfile/forcedmarriageguidelines.pdf>>.

The police guidelines include background information on forced marriage, specific guidelines for particular situations, and suggestions for dealing with different issues which may arise.

20. U.K., Foreign and Commonwealth Office. "Forced Marriage Unit (FMU) Tackling Human Rights Abuses," online: Foreign and Commonwealth Office <<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1094234857863>>.

This website provides an overview of the Forced Marriage Unit and the services they provide. The Unit sees approximately 250 cases each year, providing guidance, support, and sometimes assistance from overseas police forces to bring victims back to the UK. There is an increased emphasis on prevention, and the website includes contact numbers and links to information for victims and professionals.

21. U.K., Foreign and Commonwealth Office. *Young people & vulnerable adults facing forced marriage: Practice Guidance for Social Workers* (London: Foreign and Commonwealth Office, 2004), online: <<http://www.fco.gov.uk/Files/kfile/Forced%20Marriage%20Guidelines%20for%20social%20workers.pdf>>.

These guidelines provide information for social workers on dealing with cases of forced marriage. The guidelines include background information, common risks, and general guidelines, as well as detailed guidelines for specific situations.

22. U.K., Foreign & Commonwealth Office and the Department for Education and Skills. *Dealing with Cases of Forced Marriage: Guidance for Education Professionals* (London: Foreign and Commonwealth Office, 2005), online: <<http://www.fco.gov.uk/Files/kfile/Dealing%20with%20cases%20of%20Forced%20Marriages.pdf>>.

The guidelines for education professionals provide background information on forced marriage and warning signs which could indicate that a student is being forced to marry. They include contact information as well as approved courses of action to follow.

23. U.K., Foreign and Commonwealth Office. “Forced Marriage: A Wrong not a Right” (September 2005), online: <<http://www.fco.gov.uk/Files/KFile/forcedmarriageconsultation%20doc.pdf>>.

This consultation paper regarding the proposed ban on forced marriages was distributed during the three-month consultation period (September to December 2005) and responses were sent back (see summary of responses below). It includes the arguments raised for and against forced marriage and encourages responses about alternatives, other arguments, and whether the benefits would outweigh the risks of implementing the offence.

24. U.K., Foreign and Commonwealth Office. “Forced Marriage: A Wrong not a Right— Summary of responses to the consultation on the criminalization of forced marriage” (7 June 2006), online: <<http://www.fco.gov.uk/Files/KFile/05062006%20Final%20FM%20Report%20NJA.pdf>>.

This report, which summarizes the responses to the consultation paper, reveals that 37% of respondents (consisting mostly of Crown Prosecutors and police services) were opposed to creating a specific offence of forced marriage and 34% (primarily those working in children’s and young peoples services) were in favour of the creation of the offence. The majority of respondents felt that the disadvantages of creating a new offence would outweigh the advantages and that the money could be better spent on tackling the issue through non-legislative routes.

25. U.K., Home Office. *A Choice by Right: The report of the working group on forced marriage* (London: Home Office, 2000).

This report gives an overview of the extent of the issue of forced marriage in the UK and includes recommendations for prevention and program implementation. It recognizes the

diversity and size of the issue and encourages participation from organizations which focus on different aspects and community-based groups which provide support and services to victims. The working group recommends monitoring the extent of the situation, implementing training for relevant agencies and service providers, and promoting awareness of services and rights. It does not support the creation of a specific offence of forcing a person to marry.

26. Walsh, Declan. "The Rescuers" *The Guardian* (9 December 2005), online: The Guardian <<http://www.guardian.co.uk/pakistan/Story/0,,1663387,00.html>>.

A special team was established by the British High Commission in Islamabad to rescue girls forced into marriage and bring them back to the UK. In 2004, this team intervened in the cases of 105 British girls. The High Commission will issue an emergency passport and, if necessary, loan the price of the plane fare home. The article includes some case studies which depict the struggles these women must go through upon their return to the UK.

27. "Crackdown on forced marriages" *Edinburgh Evening News* (27 October 2004), online: Scotsman.com News <<http://news.scotsman.com/topics.cfm?tid=612&id=1243612004>>.

This article discusses the UK's decision to raise the minimum age to bring a spouse from overseas from 16 to 18 in order to combat forced marriages. A unit within the Foreign Commonwealth Office has handled almost 1000 cases of forced marriage since it was introduced in 2000, and has returned 200 British citizens from overseas.

28. "Huge rise in forced marriages (UK)" *The Independent* (January 2000), online: WLUML <<http://www.wluml.org/english/pubsfulltxt.shtml?cmd%5b87%5d=i-87-2732>>.

The article cites a rise in forced marriages in the UK in 2000 due to looser immigration laws, such as the abandonment of the Primary Purpose Rule, which required a ruling on whether the primary purpose of the marriage was to gain entry into UK.

29. "Law on forced marriages pondered" *BBC News* (27 October 2004), online: BBC News <<http://news.bbc.co.uk/1/hi/uk/3956399.stm>>.

This article discusses the proposed changes in immigration and criminal law in the UK, as well as the establishment of a joint forced marriage unit between the Home and Foreign Offices, all of which are to help combat forced marriage.

30. "Forced Marriages targeted" *BBC News* (14 May 2003), online: BBC News <<http://news.bbc.co.uk/1/hi/uk/3027297.stm>>.

The article reports that the Muslim community response to raising the minimum age a spouse from outside the EU can enter Britain from 16 to 18 was highly critical and angry. This is because the age for a spouse to enter Britain from within the EU remained 16, thus creating two sets of rules depending on where the spouse is coming from. The

Muslim population, who were also angered because of an alleged lack of consultation before the changes, reportedly see it as an attack on the tradition of arranged marriages.

31. “Police urge forced marriage law” *BBC News* (21 March 2005), online: BBC News <<http://news.bbc.co.uk/1/hi/uk/4367087.stm>>.

Police officers showed support for introducing a criminal offence of forcing someone to marry because of the clear message it would send that this behaviour is not appropriate.

32. “Forced Marriage Unit launches national public information campaign” *Europe Intelligence Wire* (16 March 2006).

A national publicity campaign on forced marriage was launched involving radio and press ads, TV fillers, and poster campaigns to increase awareness of the issues surrounding forced marriage. The campaign aims to emphasize the difference between arranged and forced marriages and highlight the support and assistance which is available for victims.

33. “Forced Marriage Ban Lacks Support” *BBC News* (12 March 2006), online: BBC News <http://news.bbc.co.uk/1/hi/uk_politics/4799728.stm>.

This article discusses the results of the three month consultation on whether to implement a ban on forced marriages as new legislation, and reveals that a narrow majority was against the idea of a criminal law ban.

34. “Community split over forced marriage law” *Europe Intelligence Wire* (7 Sept 2005).

The British Asian community reportedly had mixed reactions over the proposed ban on forced marriages, which could result in parents and community elders going to jail for forcing young people to marry. Some felt that the new law could be an important deterrent for parents and relatives, whereas others feel that the traditional views of older Asians will not change, and that this is unnecessary interference in private affairs.

5.3 ISLAMIC NATIONS

5.3.1 Afghanistan

One estimate suggests that 60 to 80 percent of marriages in Afghanistan are forced on women, however this percentage may diminish with the introduction of greater rights for women nationwide.

1. Pennington, Matthew. “Despite re-emerging women’s rights, forced marriage still rife in Afghanistan” *The America’s Intelligence Wire* (15 March 2005).

Human rights officials estimate that between 60 and 80 percent of all marriages in Afghanistan are forced on women, largely because fathers want to marry off their daughters to receive a dowry from the groom’s family. However, women’s rights have

improved in the country: women theoretically have the vote, and many girls returned to school after the US overthrew the Islamic regime.

5.3.2 Indonesia

There has been a steady decline in underage marriage in Indonesia since the passing of the National Marriage Act in 1974, which introduced a minimum age of marriage of 16 for girls and 19 for boys, but as Cammack argues, the decline may be due to other factors.

1. Cammack, Mark, Lawrence A. Young, and Tim Heaton. "Legislating Social Change in an Islamic Society—Indonesia's Marriage Law" (1996), 44 Am. J. Comp. L. 45.

Although the Government passed the National Marriage Act in 1974 to attempt to limit polygamy and reduce child marriage, this paper argues that it has had little if any direct effect on the rate of underage marriage by girls. The act requires the consent of both parties for marriage, and the consent of parents if the parties are under 21. It also introduced a minimum age of marriage of 16 for girls and 19 for boys. Although there has been a steady decline in underage marriage, this paper argues that it is due to the availability of alternative understandings of female roles in deciding when and whom to marry which has encouraged the trend to marry later. The most common explanation for the rise in marriage age is expansion of education.

5.3.3 Pakistan

Despite the fact that the minimum age of marriage for girls is 16, forced marriage and child marriage are still prevalent in Pakistan. Some authors allege that the government has neglected to protect women's rights and still fails to provide adequate protection for women against abuse. The *zina* law, which criminalizes heterosexual relations outside of marriage and is considered a breach of Pakistan's commitments under the CEDAW convention, is widespread and leads to the prosecution and death of many women. There was a judgment of the Lahore High Court in January 2001 which held that a woman cannot be forced to live with her husband or her parent against her will. There have also been a few instances where men have been convicted in cases of honour killings.

1. Amnesty International. *Pakistan: Insufficient protection of women* (London: Amnesty International, International Secretariat, 2002), online: <<http://web.amnesty.org/802568F7005C4453/0/B681F17BF82BE7BE80256B8100631267?Open>>.

This Amnesty International report summarizes the government commitments which have been made since October 1999 to uphold women's rights and describes instances of abuse of women's rights which have occurred despite these assurances. It also discusses the difficulties women face in the criminal justice system when they seek redress and includes recommendations to the government of Pakistan. Although there has been improvement since 1999, Pakistan is still considered to fail to provide adequate protection for women against abuse. Forced marriage and early marriage are still prevalent despite the fact that the minimum age for marriage for girls is 16. There was a judgment of the Lahore High Court in January 2001 that a woman cannot be forced to

live with her husband or her parent against her will and there have also been a few instances where men have been convicted in cases of honour killings.

2. Amnesty International. *Pakistan: Women's Human Rights Remain a Dead Letter: No Progress Towards the Realization of Women's Rights After the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women* (March 1997) AI Index: ASA 33/07/97.

Pakistan ratified the *Convention on the Elimination of All Forms of Discrimination against Women* on 12 March 1996, with the reservation that no provision which conflicts with the Constitution of Pakistan would be adopted, which has resulted in no effective steps being taken by the government to end discrimination against women. The *Zina* Ordinance, which criminalizes *zina* (heterosexual relations between consenting adults outside marriage), is widespread and is considered to be in breach of the requirements of the Convention.

3. Amnesty International. *Pakistan: No Progress on Women's Rights* (September 1998) AI Index: ASA 33/13/98.

This follow-up report notes that the government still hasn't acted on their commitments since the 1997 report and conditions have not improved for women. Abuses to women's rights remain widespread and underreported and there are still numerous cases of women threatened or killed for marrying men of their choice or prosecuted under *zina* law.

4. Canada, Department of Foreign Affairs and International Trade. "Travel Report: Pakistan," online: Consular Affairs <<http://www.voyage.gc.ca/dest/report-en.asp?country=229000#3>>.

In the section entitled "safety and security" in this advisory report for Canadians travelling to Pakistan, there is a warning of forced marriage and an acknowledgement that forced marriages are contrary to Canadian law. Contact numbers are included for those fearing forced marriage or who are subjected to it abroad.

5. "Pak cops break up forced marriage deal" *Asia Africa Intelligence Wire* (27 July 2002).

Pakistani police intervened to cancel the forced marriage of two teenage girls to elderly men in exchange for saving the girls' relatives from execution and the men were forced to divorce their wives.

6. "Pakistan: Court says woman can't be forced to live with husband" *Off Our Backs* (March 2001), online: <http://www.findarticles.com/p/articles/mi_qa3693/is_200103/ai_n8953448>.

In the forced marriage case of Shahnaz Akhter, the Lahore High Court ruled that a woman cannot be forced to live with her husband against her will.

7. "Pakistani girls saved from marriage in exchange for buffalos" *Agence France Presse* (14 June 2006).

A Pakistani court barred the forced marriage of two girls, aged six and eight, into a rival family to compensate for a dispute over payment of three buffalos. This marriage was similar to the tradition of *vani*, which involves giving away girls to be married at puberty in order to settle local feuds, a practice which has been outlawed in Pakistan but continues in remote areas.

5.3.4 Turkey

Women's rights in Turkey are improving in part due to pressure the Turkish government is exerting to meet higher standards in order to join the European Union. Turkey removed the mitigating factor of "honour killings" in the summer of 2004, which means that individuals sentenced for murder will no longer be able to plead "extenuating" circumstances to receive a lighter sentence. However, under Turkish law rapists can still have their sentences suspended or cancelled by marrying their victims. Although consent is necessary for marriage under the Turkish Civil Code, marriages still occur without the free and full consent of both partners.

1. Beattie, Meriel. "Turkish rape victims forced to marry rapists or die" *The Scotsman* (22 November 2005), online: Scotsman.com News <<http://news.scotsman.com/topics.cfm?tid=612&id=2279292005>>.

Women in Turkey are often forced by their family to marry their rapists so as not to bring shame on their family because they are no longer virgins, a UN study looking at the motivations behind "honour killings" revealed. A rapist who marries his victim will have his sentence suspended, and it will be completely cancelled if he stays with her for five years. However, a new penal code makes "honour killings" punishable with life sentences.

2. Cambrensis, Giraldus. "Special Report: Muslim Forced Marriages In Europe" (8 June 2006), online: Western Resistance <<http://www.westernresistance.com/blog/archives/002305.html>>.

In order to accede to the European Union, Turkey was forced to remove the mitigating factor of "honour killings" in the summer of 2004. Now an individual sentenced for this crime will be treated as a murderer rather than the lighter sentence which was previously given if "extenuating" circumstances were pleaded. Although the government has instituted campaigns to prevent domestic violence, the implementation of laws proposed to protect women has been slow.

3. Ilkcaracan, Punar. "Exploring the Context of Women's Sexuality in Eastern Turkey" *Reproductive Health Matters* 6:12 (November 1998) 66.

This article examines consent to marriage, marriage customs, polygyny and potential consequences of extra-marital relationships for women in Eastern Turkey. When couples did not arrange the marriage themselves, 50% were married without their consent even

though consent is necessary under the Turkish Civil Code. However, a greater percentage of those who are still unmarried believe they would have a say in their marriage partner.

5.4 NORTH AMERICA

5.4.1 United States

The United States has now recognized that forced marriage is gender-based persecution which can give rise to a claim for asylum, although claims are often decided based on what some see as stereotypical norms. Volpp's article discusses how forced marriage is seen as a "cultural" practice only when it involves minorities, although it also occurs among the white American population.

1. Cronin, Elizabeth and Elizabeth Badger. "Refuge for a bought bride" *New Jersey L.J.* (24 April 2006).

The U.S. Court of Appeals for the Second Circuit issued a precedent-setting opinion on 3 March 2006 in *Gao v. Gonzales*, 440 F.3d 62, (2d Cir.), recognizing that forced marriage could give rise to a claim for asylum. The social group which the victim had established she feared persecution "on account of" was young women who have been sold into marriage "and who live in a part of China where forced marriages are considered valid and enforceable."

2. Oxford, Connie G. "Protectors and victims in the gender regime of asylum" (2005), 17:3 *NWSA Journal* 18(21).

Immigrant women can seek political asylum and gain entry into the US as a result of gender-based persecution, which includes female circumcision, rape, domestic violence, coercive family planning, honour killings, forced marriage, and repressive social norms. Although this is an advance for women fleeing gendered harm, a study found that most of these asylum claims are based on stereotypes of ethnocentric norms, and not on the actual situation of the refugees, and thus could victimize migrant women.

3. Volpp, Leti. "Blaming Culture for Bad Behaviour" (2000), 12 *Yale J. L. & Human.* 89.

Volpp discusses how actions of Caucasians are not deemed "cultural" practices, whereas the same actions of minorities are, and forced marriage and child marriage are used as examples. Two cases are examined: the "Kingston case", where a 16 year old Caucasian girl in Utah was forced to marry her older uncle, and the "Al-Saidy case", where two sisters aged 13 and 14 were forced by their Iraqi immigrant father to marry 28 and 34 year old men in Nebraska. The Al-Saidy case was argued as a conflict between cultural mores and US law whereas forced adolescent marriages occurring in white American communities are not viewed as cultural phenomena.

5.5 OCEANIA

5.5.1 Australia

Australia's Justice Minister announced that under the new legislation in force as of August 3, 2005, trafficking young girls overseas for forced marriage is a criminal offence. Provisions in the Criminal Code Amendment include new and revised offences that comprehensively criminalise trafficking in persons activity, and trafficking in children under 18 is now punishable by a period of up to 25 years imprisonment. Australian embassies abroad report handling numerous cases of forced marriage, many involving minors. Ambassadors try to assist Australian citizens who approach them alleging a forced marriage by escorting them to court, a police station, and the airport, aiding them with airline reservations, and assisting in annulment procedures for underage marriages.

1. Arab Resource Collective. "Australian Minors Forced into Marriage," online: <<http://www.mawared.org/english/?q=node/235>>.

The article indicates that seven of the twelve young girls who have sought the Australian embassy's help in Beirut, Lebanon between 2003 and 2005 were minors under sixteen. The Australian embassy can help girls facing coercion into forced marriage by escorting them to court, a police station and the airport, aiding them with airline reservations, and aiding them in seeking an annulment of an underage marriage.

2. Harris, Trudy. "Australia: Early and Forced Marriages" *Women Living Under Muslim Laws* (2 August 2005), online: <<http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-308734>>.

Reports that the Australian embassy in Lebanon has handled 12 cases of forced marriage in the past two years. The report suggests that many Muslims in Australia decline to integrate fully into Australian society and remain isolated in their traditional culture, and girls are brought up knowing they will be married off at a young age. Marriage is seen as a way of "controlling" girls who risk becoming too "Australian" or sexually promiscuous.

3. Mercer, Phil. "Australia acts on forced marriage" *BBC News* (3 August 2001), online: BBC News <<http://news.bbc.co.uk/1/hi/world/asia-pacific/4740871.stm>>.

The Justice Minister announced that trafficking young girls overseas for forced marriage is tantamount to sexual trafficking and will be an offence under the new legislation. This offence could see offenders jailed for up to 25 years. The minister also announced that forcing children into marriage in foreign countries will not be tolerated.

4. "New laws to protect Australian children from forced marriages overseas" (2 August 2005), online: Minister for Justice and Customs <<http://www.ag.gov.au/agd/WWW/justiceministerHome.nsf/D2801B61EABE80A2CA256809001328BA/F8358C4DDEEDC1CFCA2570510016C122>>.

This media release from the Minister for Justice and Customs outlines the new laws which came into force August 3, 2005 to combat the practice of sending underage Australian children overseas to enter forced marriages. Provisions in the Criminal Code Amendment included new and revised offences that criminalise trafficking in persons activity, and trafficking in children under 18 is now punishable by up to 25 yrs imprisonment.

6.0 INTERNATIONAL TRIBUNALS

6.1 SPECIAL COURT FOR SIERRA LEONE

The Special Court for Sierra Leone introduced forced marriage as a new crime against humanity. The Special Court for Sierra Leone was set up jointly by the Government of Sierra Leone and the United Nations and is mandated to try those who bear the greatest responsibility for serious violations of law committed in the territory of Sierra Leone since 30 November 1996.³ In order to be prosecuted as a crime against humanity, forced marriage must be part of a widespread and systemic attack on a civilian population.

1. Sankoh, Osman Benk. "RUF, AFRC Charged With Forced Marriage" *Africa News Service* (20 May 2004).

This article discusses the court appearance of the leaders of the Revolutionary United Front (RUF) and the Armed Forced Revolutionary Council (AFRC) on the charge of forced marriage. This is the first time forced marriage will be prosecuted as a crime against humanity.

2. Scharf, Michael and Suzanne Mattler. "Forced Marriage: Exploring the Viability of the Special Court for Sierra Leone's New Crime Against Humanity" Case Legal Studies Research Paper No. 05-35 (October 2005), online: SSRN <<http://ssrn.com/abstract=824291>>.

Scharf and Mattler examine whether or not forced marriage should have been introduced as a crime of humanity and conclude that it is valid and can be tried by the Special Court for Sierra Leone as well as other war crimes tribunals. To be prosecuted as a crime against humanity, forced marriage must be part of a widespread and systemic attack on a civilian population. Since the act of forced marriage cannot be fully grasped as a sum of the other crimes comprising it, a new crime is necessary.

6.2 INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The Security Council of the United Nations created the International Criminal Tribunal for Rwanda (ICTR) in 1994, and it was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994.⁴ There have been suggestions to introduce forced marriage as a crime of sexual violence at the International Criminal Tribunal for Rwanda, because by neglecting forced marriage as a crime, the international community sends a message that acts of sexual violence done within the confines of marriage are acceptable.

³ For more information see "Special Court for Sierra Leone", online: <<http://www.sc-sl.org/>>.

⁴ For more information see "International Criminal Tribunal for Rwanda", online: <<http://69.94.11.53/default.htm>>.

1. Kalra, Monika Satya. "Forced Marriage: Rwanda's Secret Revealed" (2001) 7 U.C. Davis Journal of International Law and Policy 197.

The author of this article argues that the Office of the Prosecutor (OTP) of the International Criminal Tribunal for Rwanda (ICTR) should charge forced marriage as a crime of sexual violence. It outlines the sexual violence which took place during the Rwandan genocide and discusses the importance of charging perpetrators with the crime of forced marriage to ensure full recognition of the gravity of the crimes committed against Tutsi women. By not trying the crime of forced marriage, the international community sends a message that acts of sexual violence are acceptable if they are done within the confines of "marriage". The legal framework for prosecuting forced marriage under the ICTR Statute is discussed.

7.0 RELATED ISSUES

7.1 CHILD MARRIAGE

Child marriage, sometimes referred to as early marriage, is usually considered to be forced marriage since minors are deemed incapable of giving consent due to lack of understanding. Even despite this question, however, many child marriages involve situations where the child's agreement is not sought. Although child marriage has attracted attention due to its associated health risks (such as early pregnancy, a leading cause of death worldwide for girls aged 15 to 19), it is largely overlooked as a human rights issue despite the fact that it is prohibited by many international conventions. Many of the domestic laws and international covenants which deal with child marriage are unsuccessful because of laws protecting traditional customary or religious marriages and lack of marriage registration, as well as exceptions where the victim is married to the sexual abuser. However, simply adopting a uniform minimum age for marriage as required by CEDAW (see General Recommendation 21 above at page 10) may overlook the complexity of both marriage and childhood, so a more contextual approach may be preferable. The key contributing factors to child marriage are poverty and the need to control female sexuality.

1. Black, Maggie. "WANTED: the right to refuse" *New Internationalist* (August 2001) 20.

Black criticizes the fact that forced marriage is not recognized as a major human rights issue yet it is akin to slavery and has the effect of legalizing rape and forced pregnancy. Most arguments put forth against early pregnancy are related to health concerns and population growth, not slavery and forced marriage.

2. Bunting, Annie. "Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue" (2005), 14(1) *Social & Legal Studies* 17.

Bunting argues that the CEDAW strategy of creating a uniform marriageable age and the narrow rights-based analysis miss the complexity of both marriage and age. It is necessary to consider the cultural constructions of childhood when analyzing early marriage and a strategy based on a uniform age of 18 overlooks the diversity of childhoods. The approach must be grounded in the historical, cultural, social and economic conditions that impact the occurrence and consequences of early marriage.

3. Canada, Senate, Standing Committee on Human Rights. "Who's in charge here?: effective implementation of Canada's international obligations with respect to the rights of children : Interim Report of the Standing Senate Committee on Human Rights" (Ottawa: The Committee, 2005), online: <<http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep19nov05-e.htm>>.

This report discusses a study on Canada's international obligations in relation to the rights and freedoms of children and whether Canada's legislation meets the obligations under the *Convention on the Rights of the Child*. The study found that Canada had fallen

behind other countries in meeting its expectations, so a new process is necessary. One concern was that Canada lacks uniform national standards in a number of key areas with direct impact on children's rights and the institutions established to protect children's rights in each province perform significantly different functions.

4. Council of Europe, Committee on Equal Opportunities for Women and Men. *Forced marriages and child marriages*, Documents, Doc. 10590 (2005) at II(B).

This document gives some background information on child marriage, the extent of the problem worldwide, and offers proposals for change. The rapporteur notes that states have a duty to enforce human rights in their countries, so national legislation should reflect this duty and the minimum legal age of marriage for men and women should be brought to 18 years. Forced marriages should not be recognized and preventative measures and protection for victims should be put in place.

5. UNICEF. "Early Marriage: Child spouses" 7 Innocenti Dig. 1 (United Nations Children's Fund, Innocenti Research Centre, Italy, March 2001).

This digest focuses on early marriage—the marriage of children and young people under the age of 18—from a human rights perspective, a view which has not as often been addressed in the past. It examines the extent of early marriage, its context and causes, and its impact on society. The key contributing factors to child marriage are poverty and the need to "protect" girls. The report encourages information and education programs for both adolescents and parents, increased emergency support for victims, governmental action to ensure customary and civil law abides by international human rights standards, and increased rights-based research into the problem.

6. Warner, Elizabeth. "Behind the Wedding Veil: Child Marriage as a form of trafficking in girls" (2004) 12 Am. U. J. Gender Soc. Pol'y & L 233.

Warner discusses the failure of domestic laws and international covenants with respect to child marriage because of exceptions where the victim is married to the abuser and for laws protecting traditional customary or religious practices. Furthermore, the conventions do not have enforcement mechanisms and do not recognize the vulnerabilities of children whose consent may be coerced. Child marriage is usually encouraged either for financial reasons, since younger brides fetch a higher price, or due to a parental desire to control female sexuality. The end of the article sets out recommendations for legal and extra-legal measures to combat child marriage.

7. "Case study: Forced Early Marriage," online: BBC World Service <http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/casestudy_art16.shtml>.

This website outlines the problem of early marriage as a human rights violation, relying heavily on the UNICEF report. It discusses the impact of early marriage and the reasons it occurs, as well as summarizing some preventative measures which have been introduced. UNICEF developed the Sara Adolescent Girl Communication Initiative in ten Eastern and Southern African countries to educate girls and their families. In Ethiopia,

the Family Guidance Association runs 18 clinics and more than 500 community-based centres which promote safer sex practices and offer relationship advice.

7.2 DUAL NATIONALITY

Dual nationality becomes important when determining a country's response to a citizen who has been forced into a marriage, especially when the marriage involves an overseas dimension. There is still ongoing debate about the extent of power that a country can exercise in aiding a citizen who is a dual national and within their other country of nationality. Although the Nationality Convention established that "a state may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possesses," many now argue that the rule of dominant and effective nationality should prevail (Symington, 2001; Hossain and Turner, 2001). The primary reason for intervention by the UK in cases of forced marriage is breach of international human rights norms, which creates an obligation to act. The Home Office Working Group report criticizes that dual nationals are not guaranteed assistance, but as Hossain (2005) notes, dual nationality is now to be considered irrelevant in the UK and the government has decided to treat all persons in the same situation who are facing forced marriage alike, taking all appropriate action and making representations on their behalf.

1. Symington, Alison. "Dual Citizenship and Forced Marriages" (2001), 10 Dalhousie J. Legal Stud. 1.

Symington provides background information on both dual nationality and forced marriage, particularly from a British-Asian perspective. The interaction of domestic laws prevent dual nationals who are abducted and forced into marriage from receiving protection. The author argues that the Convention on Nationality should be abandoned and the rule of dominant and effective nationality should prevail.

2. INTERIGHTS, Ain O Salish Kendra (ASK) & Shirkat Gah. "Home Office Working Group—Information Gathering Exercise on Forced Marriages" (Submission to the Home Office Working Group, March 2000).

This paper includes a section on dual nationals and their position under both international law and UK law, criticizing that assistance cannot be guaranteed.

3. Hossain, Sara. "Women's Rights to Choice in Marriage: From Recognition to Realisation...and denial?" (Paper delivered at Catalyst 2005: Global Perspectives on Successful Implementation of Human Rights of Women Conference, University of Essex, 6 May 2005) [unpublished].

Hossain tells of many cases of women who were forced to marry, including instances where the women were successfully returned to the UK. She summarizes the measures that the UK has introduced since 2000 including a change with respect to dual nationals: the government stated that dual nationality was irrelevant and all persons in the same situation who are facing forced marriage will be treated alike and appropriate action will be taken. Many problems still exist because courts in other nations are unwilling to address the issue.

4. Hossain, Sara and Suzanne Turner, "Abduction for Forced Marriage—Rights and Remedies in Bangladesh and Pakistan" (2001), 1-64 I.F.L. 15.

This article focuses on abduction from Britain to Bangladesh and Pakistan of individuals who are dual nationals. Protection is available for dual nationals, but there is no binding obligation to act unless there has been a breach of international human rights norms. The authors argue that the Convention on Nationality should be abandoned and the dominant nationality rule should prevail.

7.3 TRAFFICKING IN WOMEN

Forced marriage is closely related to trafficking in women, and in some instances there may be an overlap, for example if women are trafficked to be sold as wives. Governments have international legal duties to take steps to prevent trafficking and related abuses, but these duties are often disregarded where a marriage is involved due to the perceived private nature of these cases. Case studies show that in Iraq, rape of unwilling brides is encouraged because a marriage must be consummated to be legal, and trafficking for "mass marriages" occurs frequently in Japan. In China, forced marriages are legal and some 30-90% of marriages may be forced.

1. Human Rights Watch. "Trafficking of women and girls into forced prostitution and coerced marriage" (1995), online: Human Rights Watch <<http://www.hrw.org/about/projects/womrep/General-116.htm>>.

Thousands of women each year are sold or lured into forced marriage or prostitution, a situation which they can rarely escape. Often government officials and police officers profit from the trade, so there are no means of redress. Both forced prostitution and coerced marriage have largely been dismissed as crimes perpetrated by private individuals for which states have no responsibility under international human rights law, but governments do in fact have specific international legal duties to take steps to eliminate trafficking and related abuses.

2. Wijers, Marjan and Lin Lap-Chew. *Trafficking in Women. Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution* (Utrecht: Foundation Against Trafficking in Women (STV), 1997), at 64-65, 194-195.

This book reveals the results of an international investigation on trafficking in women, with the primary focus on prostitution practices. The short section on forced marriage focuses on servile marriage relationships, which stem from a woman's inferior position in society with respect to property and legal rights. It examines cases from Iraq, where rape of unwilling brides is encouraged because a marriage must be consummated to be legal, and Japan, a country which sees many "mass marriages". In China, forced marriages are legal and 30-90% of marriages may be forced depending on local customs.

8.0 SELECTED RELEVANT CASE LAW

This section includes selected cases from Britain, Scotland, Australia, and Canada, and does not purport to be exhaustive. On the contrary, it seeks to present a glimpse at some of the principal forced marriage cases and demonstrate the development of the case law in this area over the past few decades. Numerous other cases exist which are not included, most notably many immigration/ refugee claims where petitioners are seeking asylum due to fear of forced marriage, as well as nullification of marriage cases.

8.1 BRITISH CASES

1. *Singh v. Singh*, [1971] 2 All ER 828.

In this case, a 17 year old Sikh girl went through a civil ceremony of marriage arranged by her family. She had not met the groom before the wedding and when she met him she refused to go through the Sikh religious ceremony. She applied for nullity on the grounds that she had only gone through the ceremony out of a sense of duty to her parents and Sikh customs. The court rejected her argument that her consent was vitiated by duress since there was no evidence that her will had been overborne or that her consent had been obtained through fear.

2. *Singh v. Kaur*, [1981] Court of Appeal (Civil Division).

The appellant was from a Sikh family and had lived in England since he was four years old. He was pressured by his parents to marry a girl from India. He was told that if he refused, his family would be a disgrace to the community and that he would not be allowed to work in the family business. At the age of 21, he agreed to go along with the marriage. Case law stated that duress exists only when the will of one of the parties had been overborne by genuine and reasonably held fear caused by threat of immediate danger to life, limb or liberty. The court held that the evidence in this case fell “far, far short of that.”

3. *Hirani v. Hirani*, [1983] 4 F.L.R. 232.

A 19 year old Hindu woman living in England became friendly with a Muslim whom her parents did not approve of, so they arranged for her to marry a man neither she nor her parents had met. The marriage took place at a registry office and was followed by a religious ceremony, but was not consummated and the woman left after six weeks. She petitioned for a decree of nullity on the ground of duress exercised by her parents, upon whom she was financially dependent, and who had threatened to turn her out of the home if she did not go through with the marriage. The court granted the decree of nullity, holding that it is not necessary to find a threat to life, limb or liberty in order to find duress, the crucial question being whether the threats or pressure were such as to overbear the will of the individual and destroy the reality of their consent. The duress must involve a coercion of the will so as to vitiate consent. The test for duress is simply “whether the mind of the applicant has in fact been overborne, howsoever that was caused.”

4. *Re KR (A Child) (Abduction: Forcible Removal by Parents)*, [1999] 2 F.L.R. 542.

KR, the youngest daughter of a Sikh family of Indian origin, left home at 16 to live with her sister, who had earlier moved in with a man against her parents' wishes. The father reported KR as a missing person, and the police returned her to the care of her father. When she was 17, KR was taken to India by her parents and placed in custody of her aunt. KR's sister instituted wardship proceedings and KR was made a ward of court, which was continued during her minority. KR persuaded her relatives to take her to the British High Commission in Delhi to establish whether her stay in India was voluntary, and when she stated that she was not in India voluntarily she was flown back to the UK. The judge held that child abduction remains abduction, even when both parents are abductors and the child is nearly an adult.

5. *P v. R*, [2003] 1 F.L.R. 661.

The plaintiff, a British citizen of Pakistani origin, began a relationship her parents did not approve of at the age of 17. When she was 20, she travelled with her parents to Pakistan for the funeral of her sister. While there, her parents announced that she was to marry her cousin. The plaintiff did not consent and was allegedly forced by emotional pressure and threats of force to go through with the ceremony. Several months later she was able to return to the UK where she went into hiding and applied for annulment of the marriage. The application was allowed, and a decree was granted, holding that any apparent consent shown by the plaintiff was extinguished by the nature of the circumstances.

6. *Re M Minors (Repatriated Orphans)*, [2003] EWHC 852.

Two girls, aged 13 and 15, were born in Pakistan, but came to live in the UK in 1991. Their mother had died, and after the death of their father in 1999, they lived with a paternal relative R. A court order prohibited R from removing them from the UK, but after it expired they were taken to Pakistan where they lived with relatives. Since the girls had inherited land, their relatives forced them to go through betrothal ceremonies. Wardship proceedings were initiated in the UK, and they were repatriated in February 2003. Justice Singer noted that '[a]s a society, we have become increasingly aware of the need to preserve the individual's ability to make effective choices, and to safeguard the integrity of a child or young adult from the risk of marriages forced or imposed upon them by undue pressure and sometimes by violent threat.' The judgement stresses the responsibilities of local authorities and the need for speedy action.

7. *In Re SK (An Adult) (Forced Marriage: Appropriate Relief)*, [2004] E.W.H.C. 3203 (Fam).

A British citizen living in England visited her family in Bangladesh and was detained in Bangladesh against her will for a forced marriage. An application for relief was made on her behalf. Relief was granted by the court, which used its inherent jurisdiction to provide declaratory relief to an adult deprived of the capacity to make relevant decisions. The court gave directions to ascertain whether or not the victim had been able to exercise her

free will in decisions concerning her civil status and her country of residence by requiring that she be seen by an appropriate official at the British High Commission overseas.

8.2 SCOTTISH CASES

1. *Mahmood v. Mahmood*, [1993] S.L.T. 589.

A 21 year old woman had married a man and lived with him for three months before seeking to have the marriage nullified on the grounds of duress. She claimed that her parents had threatened to disown her, stop supporting her financially, and send her to live in Pakistan if she refused to marry. Since both her elder sister and brother had been disowned when they refused arranged marriages, this seemed a plausible threat. Because of the specific nature of the threats, the Court sent the case for proof before answer, but held in general that duress to a sufficient extent vitiates consent, and each case depends on establishing the degree of duress.

2. *Mahmud v. Mahmud*, [1994] S.L.T. 599.

Mahmud was the 30 year old son of a Scottish Muslim family of Pakistani origin, who was put under pressure by his parents and other family members to enter an arranged marriage and was informed that it was his father's dying wish. He lived with a non-Muslim woman, with whom he had one child and was expecting a second, but agreed to go through a marriage ceremony in Glasgow in January 1992 with his cousin from Pakistan. After the marriage, he informed the immigration authorities and his cousin was deported. Pursuing a claim of nullity on the grounds of duress, he argued that he had been made to feel responsible for his father's death, and that he would be exposing his family to shame and degradation if he refused. The Court held that consent 'had been vitiated by pressure amounting to force with the result that his own will was truly overborn' and a decree of nullity was granted. The judgment notes that one cannot assume that a male will be stronger than a female or an older person less swayed by conscience than a younger person.

3. *Sohrab v. Khan*, [2002] S.C.L.R. 663.

The plaintiff was 16 and still attending school at the time of her marriage in a Muslim wedding ceremony in Glasgow in December 1998 and the defendant was 19 and on a six-month visitor's visa from Pakistan. In 1999 the plaintiff brought an action for declaration of nullity. She alleged both irregularities in the registration of the marriage and lack of consent, arguing that her mother had threatened suicide and to send the plaintiff to live in Pakistan if she refused the marriage. The video of the marriage ceremony, in which the plaintiff's unhappiness is clear, was used as evidence. The Court held that the marriage was invalid, both on the technical grounds that the pretended marriage was solemnised without a marriage schedule and was not properly registered, and on the absence of free consent.

8.3 AUSTRALIAN CASES

1. *In the Marriage of S*, [1980] F.L.C. 90-820.

A 16 year old Egyptian woman participated in an arranged marriage solely out of respect for her parents and to avoid any prejudice to future marital opportunities of her younger sisters. Watson SJ held that duress creating a nullity should be broad enough to encompass non-violent but controlling parental coercion, since in this case she was not threatened, nor was she in any danger. He emphasised the need to regard the coercive action from the subjective vantage point of the unwilling bride.

2. *R v. GJ*, [2005] NT Supreme Court [unreported].

A 55 year old Aboriginal man pled guilty to unlawfully assaulting and having sexual intercourse with a 14 year old child. The accused believed that his traditional law permitted him to strike her and to have intercourse with her because she had been promised as his bride when she was four years old, but the law of the Northern Territory forbids this. The accused was sentenced for unlawful intercourse, not rape, because his traditional beliefs may have prevented him from realizing she was not consenting. The judge's comments condemn the traditional belief that it is permissible to assault and have intercourse with a child, stating that change is necessary to reconcile the traditional beliefs with the law of the Northern Territory.

8.4 CANADIAN CASES

1. *Thompson v. Thompson* (1971), 4 R.F.L. 376 (Sask. Q.B.).

In this case the plaintiff had agreed to marry the defendant as a result of his persistent urging, at a time when her resistance was reduced by her state of depression arising from her rejection by another man. Once the wedding plans were underway, the plaintiff felt that she was unable to cancel them because of the social consequences within her family. The plaintiff sought annulment of her marriage, claiming that at the time she was neither capable of understanding nor appreciating the contract and her will was over-borne by pressure. The marriage was not annulled because the plaintiff could not establish that she was coerced or that she did not understand what she was doing.

2. *Parihar v. Bhatti* (1980), 17 R.F.L. (2d) 289.

The plaintiff was told that she must submit to an arranged marriage yet she repeatedly told her parents and friends she did not want to go through with it. The marriage was never consummated and the couple never lived together. Previous case law stated that the duress sufficient to set aside the marriage must be of such a nature that her powers of volition were so affected, it really was no consent. The court held that in this case the allegations of fear do not go far enough, and at most it would be unpleasant for her.

3. *Asser v. Peermohamed* (1984), 40 R.F.L. (2d) 299 (Ont. H.C.).

The petitioner married the respondent, a citizen of Kenya, and the parties had not seen each other since the ceremony. The petitioner sought a divorce based on non-consummation of marriage. The petition was dismissed because the marriage was found to be non-existent since the marriage was entered into as a device to facilitate the immigration of the respondent into Canada and contained no matrimonial feelings.

4. *S.(A.) v. S.(A.)* (1988), 15 R.F.L. (3d) 443 (Ont. U.F.C.).

The applicant was married at the age of 16 in Ontario with her mother's consent. Her mother and stepfather received \$500 for arranging the marriage in order to facilitate her husband's immigration, and the applicant alleged that her mother and stepfather pressured her into the marriage. She never lived with her husband nor consummated the marriage, and applied for an annulment, or in the alternative, a divorce. This case gives a clear outline of the Canadian law on parental consent and duress. First, in terms of limited purpose marriages, the judge held that the mere fact that parties go through a form of marriage for a "limited" or "extraneous" purpose will not, of itself, render the marriage invalid. With regards to parental consent, the court found that the quality of consent is not a justiciable issue, and the court is not empowered to determine whether consent was given too readily, or for an improper motive. Moreover, parental consent is not a condition precedent to the validity of a marriage. Turning to duress, the conduct in this case was pressure of a non-physical nature by the applicant's mother and stepfather, who wanted to obtain financial benefit from the marriage. To constitute duress, it must be established that the applicant's mind was so overcome by oppression that there was an absence of free choice. As long as the oppression affects the mind of the applicant in the fashion stated, neither physical force nor the threat of such force is required. The judge held that the applicant had discharged the onus of proof and was entitled to a declaration of nullity.

9.0 SELECTED FRENCH LANGUAGE SOURCES

The following sources were compiled by Michaël Gagnon, Professionnel de recherche et Agent de recherché at the Faculté de droit, Université de Sherbrooke. They seek to provide a foundation for further French language research on the topic of forced marriage, and do not purport to be exhaustive. Since many of the initiatives discussed above occurred within French-speaking countries, we felt that it was important to include a preliminary scan of French literature on the topic.

1. Belgique, Chambre des représentants de Belgique, *Proposition de loi modifiant le Code civil et le Code pénal en vue de faire obstacle aux mariages forcés*, Doc 51 2057/001, 5 novembre 2005. <<http://www.lachambre.be/FLWB/PDF/51/2057/51K2057001.pdf>>
2. Belgique, Conseil des ministres, Communiqué de presse, *Mariages simulés et forcés punissables*, 25 mars 2005. <<http://www.belgium.be/eportal/application?pageid=contentPage&docId=38235>>
3. Conseil de l'Europe, *Les mariages forcés dans les États membres du Conseil de l'Europe—Législation comparée et actions politiques*, Direction générale des droits de l'homme, Strasbourg, 2005. <[http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG\(2005\)1_F.pdf](http://www.coe.int/T/E/Human_Rights/Equality/PDF_CDEG(2005)1_F.pdf)>
4. France, Commission des recours des réfugiés, *Le mariage forcé en Centrafrique*, 13 juin 2006. <http://www.commission-refugies.fr/IMG/pdf/Centrafrique-mariage_force.pdf>
5. France, Commission des recours des réfugiés, *Mariage forcé, violences contre les femmes et crimes d'honneur au Pakistan*, 9 septembre 2004. <http://www.commission-refugies.fr/IMG/pdf/Pakistan-mariage_force.pdf>
6. France, Médiateur de la république, *L'état se resserre sur les mariages forcés*, Médiateur actualités, no 16, mars 2006. <http://www.mediateur-republique.fr/fic_bdd/pdf_fr_fichier/1141151806_Mediateur_16_INTEGRALE.pdf>
7. France, Planning familial, *Réflexion sur la problématique des mariages forcés*, décembre 2005. <<http://www.planning-familial.org/documentation/Documents/mariage.pdf>>
8. Institut national d'études démographiques (INED), *Mariages "arrangés", mariages "forcés": la formation des couples à l'intersection du genre, de l'ethnicité et des rapports entre générations*. <http://www.ined.fr/fichier/t_recherche/NoteDetSimple2006/60416.pdf>
9. Kangambega, Elisabeth, "Le nouveau Code pénal burkinabé : réalités et pénalisation", (1999) 2 *Revue pénitentiaire et de droit pénal* 286.

10. Larribau-Terneyre, Virginie, “La loi contre la tradition: la lutte contre les mariages forcés par le relèvement de l’âge légal du mariage des femmes”, (2005) 5 Droit de la famille 3.
11. Larribau-Terneyre, Virginie, “La pratique des mariages forcés révélée par la jurisprudence”, (2006) 1 Droit de la famille 37.
12. Leborgne, Anne, “Que faire contre les mariages simulés?”, (2003) 4 Revue juridique personne et famille 17.
13. Leborgne, Anne, “Que faire contre les mariages simulés (suite)?”, (2003) 6 Revue juridique personne et famille 20.
14. Lécuyer, Hervé, “Mariage de complaisance, une institution toujours vigoureuse”, (1999) 3 Droit de la famille 13.
15. Lemouland, Jean-Jacques et Vigneau, Daniel, “Mariage. Concubinage. Pacte civil de solidarité”, (2006) 21 Recueil Dalloz Sirey 1414.
16. Marraud des Grottes, Gaëlle, “Recherche d’avantages patrimoniaux et mariage simulé”, (2004) 1 Revue Lamy Droit Civil 30.
17. Massip, Jacques, “Le Ministère public et les mariages simulés”, (1999) 123 Les Petites Affiches 26.
18. Massip, Jacques, “Un nouvel exemple de mariage simulé”, (2001) 22 Les Petites Affiches 20.
19. Moore, Benoît, “L’absence d’intention conjugale: mariage simulé ou erreur sur la personne?”, (2000) 102 Revue du Notariat 245.
20. Ralser, Elise, “La maladie du mariage blanc (à propos de la loi sur l’immigration du 26 novembre 2003)”, (2004) 2 Droit de la famille 6.
21. Sériaux, Alain, “Mariage, une définition civile du mariage (prière d’insérer)”, (2005) 29 Recueil Dalloz Sirey 1966.

10.0 CONCLUSIONS

10.1 SUMMARY OF THE PROJECT

This annotated bibliography is intended to provide a foundation for any future research or policy development in the area of forced marriage. The purpose of this bibliography was to identify the relevant literature and case law relating to Canada's international obligations concerning forced marriages and to provide an overview of what other nations have done to address this issue. The bibliography outlines the initiatives of other nations and provides a brief overview of the topic; however, further research could provide added clarity to the extent of Canada's obligations under the various international treaties which address forced marriage through an examination of case law dealing with these treaties. In addition, obtaining more information and details about the scale of the problem within Canada before proceeding with discussions about policy development would be useful.

10.2 HIGHLIGHTS

- Forced marriage is recognized in many United Nations treaties as an abuse of human rights. Child marriage is also recognized as an abuse of human rights in numerous treaties, and overlaps with forced marriage because minors are deemed incapable of giving consent. As a party to many of these treaties, Canada has an international obligation to address the issue, and to ensure that a prerequisite for marriages within its jurisdiction is the free and informed consent of both parties.
- Common law courts have established that duress in forced marriage cases does not have to be confined to physical coercion, and can also include emotional pressure. However, parental pressure will not always necessarily amount to duress because consent can be "reluctant" or "resentful". What matters is whether the will of the individual has been overborne by the pressure. If this is the case, the marriage is not founded on the free and informed consent of both parties.
- Canada could more closely examine the initiatives from all of the countries included in this paper in order to identify possible policy approaches. The UK initiatives may be particularly useful because of the amount of resources which they have put into investigating and tackling the issue. The British government has created a team to address the issue of forced marriage which has conducted research and consultations, proposed legislation, compiled statistics, and provided support and rescue operations for victims. Some of the measures implemented by other countries include:
 - introducing legislation to criminalize the practice (Norway, Belgium);
 - revising existing offences to criminalize activities associated with forced marriage (Australia, Denmark, Germany);
 - raising the minimum age of marriage (France, Gabon, Indonesia, UK); and

- tightening immigration laws (Denmark).

There are also a wide variety of support and awareness programs in place for victims. By studying the public response to these initiatives, as well as their success rates, Canada can make more informed choices about its preferred action plan.

- There is very little information about the extent of the problem in Canada. The only evidence of forced marriage at this time is through court cases dealing with nullification of marriage or refugee asylum, although some anecdotal reports exist.

10.3 IMPLICATIONS

Since there is very little information regarding forced marriage in Canada, it is difficult to recommend specific steps the government should take to address the issue. As a first step, it would be beneficial to compile further information—statistics, testimonies, and other information from educators, non-governmental organizations, women’s groups, and victims—in order to assess the extent of the situation in Canada.

Using the UK’s initiatives as a template, a “working group” or some similar body could be established in order to gauge how the practice is affecting Canadian citizens, and to weigh the various policy options to determine which ones could be most effective. We believe that suggesting a particular course of action at this point in time would be premature, as it could not take into account the particulars of Canada’s situation, since they are largely unknown and undocumented. It is only after a more thorough investigation which looks at the frequency, location, and extent of the problem that specific policy recommendations could be put forth.

While more information is needed, looking at initiatives which have been introduced in other countries can provide a starting point for discussion and may also help determine where further research is needed. These initiatives include:

- Creating a specific criminal offence of forcing someone to marry;
- Creating guidelines for Foreign Affairs about how to address cases of forced marriage and setting out the country’s position if the case involves someone who has been removed from the country;
- Providing guidance for professionals, including educators, about forced marriage, including its causes and symptoms, and methods for handling cases;
- Providing a framework and funding for support programs and shelters for victims; and
- Reviewing the manner in which cases of asylum based on gender-based persecution, such as forced marriage, are handled and decided.

In addition to obtaining more detailed information on forced marriage in Canada, as outlined above, further research could be done to expand upon what has been covered in this bibliography. Suggested research areas include:

- Child marriage;
- Trafficking in women and children;
- Marriages of convenience and limited purpose marriages;
- An examination of consent in marriage under the laws of the countries where forced marriage is prevalent;
- A study of case law to determine how courts have interpreted obligations under the treaties and covenants which address consent in marriage;
- A thorough study of all case law relating to forced marriage including nullification of marriage;
- Refugee claims resulting from fears about being forced into marriage;
- The degree to which marriages performed abroad are recognized and conflict of laws issues relating to recognition of marriages performed abroad; and
- Further research into the initiatives of nations which are neither English-speaking nor French-speaking, to be performed in one of the official languages of those nations.

The research for this project was not exhaustive, but is perhaps sufficient for understanding the primary areas of concern on the topic. Since this is a topic which is constantly evolving, newspapers proved most useful for determining what initiatives had been introduced, and gave insight into the public response to those initiatives. Government documents were also valuable in determining how the policies were implemented. Although some of the countries and topics had numerous sources confirming the information, it is important to note that for some countries only one or two isolated sources were found, and as such the authors of this report had to at times rely on a single author for their facts. Furthermore, since the research was only conducted in English (apart from the list of relevant French-language sources), some government websites and other secondary sources were not included due to language barriers.