

AMERICAN BAR ASSOCIATION
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association condemns forced marriage as a fundamental
2 human rights violation and a form of family violence and of violence against women;
- 3 FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial,
4 local and tribal governments to amend existing laws, or to enact new laws, to prevent forced
5 marriages in the United States or involving U.S. citizens or residents and to protect and support
6 individuals threatened by forced marriage; and
- 7 FURTHER RESOLVED, That the American Bar Association urges governments to collaborate
8 with legal, social services and advocacy organizations with expertise in forced marriage to
9 develop victim-centered legal remedies, and to promote training for judges, prosecutors, law
10 enforcement, child protection authorities, victim-witness advocates, and attorneys.

REPORT

Introduction

A forced marriage lacks the consent of one or both parties, and typically involves one or more elements of force, fraud, or coercion.¹ Some individuals may choose to have their marriages arranged, asking their families to take the lead in finding their future spouse but retaining the ultimate right to decide whether, when and whom to marry. In a forced marriage, however, parents or other family members may not even consult the parties as to their wishes, let alone seek their consent. The individual to be married feels they have no meaningful say in the matter, and that they cannot say “no” to the marriage without risking serious consequences. Families often have mixed motivations, and family motivations may vary widely. Their reasons may even include thinking that the marriage is in an individual’s best interests. Regardless, the impact on an individual can be devastating. While individuals of either gender can be a victim², the majority are women and girls.³

Forced marriage often involves a parent or other family member’s abuse of power and control over an individual to ensure that the marriage occurs. Physical, psychological, sexual, financial and emotional abuse can be leveraged against the individual to coerce them to marry, and domestic violence, rape, and other harms – including serious health complications such as increased risks in pregnancy and childbirth – can occur within the forced marriage itself. An individual’s freedom to determine their life’s course, including future education and employment opportunities, can also be cut short by a forced marriage.⁴

¹A lack of consent can result from a lack of capacity to consent – for example, when an individual is a minor or has a developmental disability that prevents a mature understanding of what marriage is. *See US Department of State Foreign Affairs Manual 7 FAM 1740*, US Department of State,

<http://www.state.gov/documents/organization/86822.pdf> (a forced marriage is one in which “at least one party does not consent or is unable to give informed consent to the marriage, and some element of duress is generally present”).

²18% of the cases handled by the United Kingdom (UK) government’s Forced Marriage Unit (FMU) in 2013 involved male victims. *See UK Forced Marriage Unit Statistics January to December 2013*, UK Forced Marriage Unit,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291855/FMU_2013_statistics.pdf.

³An estimated 14.2 million girls under age 18 are forced into marriage each year. *See “Marrying Too Young: End Child Marriage”* (UNFPA: New York, 2012), p. 6, *available at*

<http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf>.

⁴The US government considers forced marriage “a violation of basic human rights and in the case of minors, a form of child abuse.” *See Forced Marriage*, US Department of State, Bureau of Consular Affairs,

<http://travel.state.gov/content/passports/english/emergencies/forced.html> (accessed April 24, 2014). The UK government also considers forced marriage to be “a form of violence against women and men, domestic/child abuse and a serious abuse of human rights.” *See UK Forced Marriage Unit*, generally, at <https://www.gov.uk/forced-marriage>.

Several international instruments underscore that there must be free and full consent to marriage. *See, e.g.*, Universal Declaration of Human Rights Article 16(2) and United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Article 16(1)(b), *available at*

<http://www.un.org/en/documents/udhr/index.shtml#a16> and

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>.

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A number of Western countries are beginning to realize that forced marriage is not only a global problem, but also a domestic problem with transnational dimensions.⁵ Several have taken specific steps to address forced marriage when it involves their citizens and residents.⁶ Practical responses include promulgating multi-pronged national plans of action, issuing detailed sector-by-sector best practices guidance, promoting national awareness-raising campaigns, establishing national helplines, and creating a dedicated government unit to develop and implement effective policy and provide expert assistance in particular cases.⁷ Legal responses include changes to immigration laws and processes, such as raising the age to sponsor or be sponsored on a marriage-based visa; changes to marriage laws, such as raising the legal age of marriage or making it easier to invalidate marriages that lack consent; changes to criminal laws, such as establishing a separate criminal offense of forced marriage; and changes to civil laws, such as creating a special “forced marriage protection order.”⁸

The United States lags far behind its Western counterparts, despite an increasing number of research reports⁹ and media accounts¹⁰ that document that forced marriage is a serious problem in the United States impacting many different communities.

⁵The UK, for example, has estimated that 5000-8000 forced marriage cases are annually reported across the country. See *Forced Marriage - Prevalence and Service Response*, Research Report No. DCSF-RR128 (July 2009), available at <https://www.education.gov.uk/publications/eOrderingDownload/DCSF-RR128.pdf>. See also “Forced Marriages in Germany More Prevalent than Thought,” Spiegel Online (November 09, 2011)(study found that 3,443 individuals sought help at counselling and information centers in 2008 because of forced marriages), available at <http://www.spiegel.de/international/germany/new-abuse-figures-forced-marriages-in-germany-more-prevalent-than-thought-a-796760.html>.

⁶Western countries that have taken some action against forced marriage within their borders include Australia, Austria, Belgium, Canada, Denmark, France, Germany, the Netherlands, Norway, Sweden, Switzerland and the UK.

⁷The UK’s establishment in 2005 of a specialized “Forced Marriage Unit” (FMU), a joint operation of its Home Office and Foreign and Commonwealth Office, has been a unique and pivotal part of the government’s response. The FMU acts as the government’s one-stop shop for combating forced marriage and assisting victims. In 2013 the FMU assisted in 1302 cases involving forced marriage. *Supra* note 2.

⁸In the UK, the country that has pioneered this approach, over 575 forced marriage protection orders have been issued. Information provided by UK’s Forced Marriage Unit, via email dated April 29, 2014 (on file with authors).

⁹See, e.g., Vidya Sri and Darakshan Raja, “Voices from the Frontline: Addressing Forced Marriage Within the United States,” (Gangashakti: 2013), available at http://www.hks.harvard.edu/cchp/research/working_papers/VidyaSri_VoicesFromTheFrontline.pdf [hereinafter Gangashakti Report]; Chic Dabby-Chinoy, Asian & Pacific Islander Institute on Domestic Violence, with the Wisconsin Refugee Family Strengthening Project. “Abusive International Marriages: Hmong Advocates Organizing in Wisconsin.” (2012), at: http://cdn.e2ma.net/userdata/1408433/assets/docs/abusive.international.marriages_apiidv_4.2013.pdf; “A Closer Look at Forced & Early Marriage in New York City’s African Immigrant Communities,” Sauti Yetu Occasional Report, Vol. 3 (Sauti Yetu Center for African Women and Families: December 2012)[hereinafter Sauti Yetu Report]; “National Survey on Forced Marriage Among Immigrant Communities in the United States (Tahirih Justice Center: September 2011), available at <http://www.tahirih.org/site/wp-content/uploads/2011/09/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States-September-2011.pdf> [hereinafter Tahirih Report]; Debjani Roy, “An Introduction to Forced Marriage in the South Asian Community in the United States,” *Manavi Occasional Paper No. 9* (2011), available at http://www.manavi.org/documents/Manavi_paper9_pass-6.26.12.pdf [hereinafter Manavi Paper]; see also Alyana Alfaro, “Till death do us part: The forgotten US victims of forced marriage,” *Al Jazeera America* (January 21, 2014)(citing research at the John Jay College of Criminal Justice among families originating from the Middle Eastern, North African and Southeast Asian (MENASA) region).

¹⁰See, e.g., “Shedding light on forced marriage in America,” *On Point with Tom Ashbrook* (NPR Radio, February 3, 2014); Alyana Alfaro, “Meet the cops who save women from forced marriage,” *Al Jazeera America* (January 24,

The Scope of Forced Marriage in the United States is Significant, and Cases Can Involve Severe, Even Life-Threatening Abuse

Thousands of individuals across the United States may be threatened by forced marriage every year. In 2011, the Tahirih Justice Center, a national legal services and advocacy organization serving immigrant women survivors of violence, conducted a first-of-its-kind *National Survey on Forced Marriage in Immigrant Communities in the United States* (Tahirih Survey). Over 500 respondents (including legal and social service providers, advocates, community leaders, educators, medical and mental health professionals, child protection and law enforcement officers, and other professionals) from 47 states reported encountering as many as 3,000 cases of known or suspected forced marriage in the prior two years.¹¹

Encountering forced marriage cases is not a rare phenomenon for many frontlines service-providers in the United States: 41% of respondents to the Tahirih Survey had come across at least one such case.¹² Another striking finding of the Tahirih Survey was the incredibly diverse impact of forced marriage. Respondents reported cases among families originating from at least 56 different countries of origin (including India, Pakistan, Bangladesh, Yemen, the Philippines, Afghanistan, Somalia and Mexico) and among families from varied religious backgrounds (including Muslim, Christian, Hindu, Sikh, Buddhist, Jewish, and others).¹³ While not the focus of the survey, some respondents also reported encountering victims who were “American” or “from the United States,” presumably implying that they were not from immigrant

2014); Alyana Alfaro, “Forced marriage victims coerced into hard-to-detect immigration fraud,” *Al Jazeera America* (January 23, 2014); Sadhbh Walshe, “How a bride forced to marry became ‘unchained at last’,” *Al Jazeera America* (January 22, 2014); Alyana Alfaro, “Till death do us part: The forgotten US victims of forced marriage,” *Al Jazeera America* (January 21, 2014); Lisa Anderson, “Ten things you didn’t know about forced marriage and immigration in the US,” *Thomson Reuters Foundation* (July 29, 2013); Mosi Secret, “Court documents detail a deadly family feud from Brooklyn to Pakistan,” *The New York Times* (May 22, 2013); Ihosvani Rodriguez, “Sahar Thabit, Florida mom, burned daughter over arranged marriage,” *The Huffington Post* (March 20, 2013); “48 Hours Mystery: A family’s honor,” *CBS* (April 7, 2012); Will Carless and Ian Lovett, “Family of Iraqi woman killed in California was in crisis, records show,” *New York Times* (April 5, 2012); Julia Dahl, “‘Honor killing’ under growing scrutiny in the U.S.,” *CBS News.com* (April 4, 2012); David Schwartz, “Phoenix police arrest Iraqi woman for burning daughter,” *Reuters* (February 16, 2012); Michelle Goldberg, “Forced marriage and ‘honor killings’ happen in Britain, U.S. too,” *Newsweek.com* (September 18, 2011).

¹¹ Tahirih Report, *supra* at 2. Given that two-thirds felt there were cases of forced marriage not being identified in the populations with which they work, these findings suggest only the tip of the iceberg on the scope of the problem in the United States. *Id.*, at p. 3. Evidence that the problem is significant and widespread is also supported by other community-based research. *See, e.g.*, Gangashakti Report (analyzing 524 surveys from college students, domestic violence professionals and refugee service providers to find 531 cases of suspected and confirmed forced marriage); Sauti Yetu Report (reflecting findings of a study conducted through focus groups and interviews with 30 young women aged 16-21, that “all but 2 faced pressures to marry or were already married before the age of 18”); and Manavi Paper (surveying frontline advocates at 12 South Asian community organizations across the country that address violence against women, and finding that 83% of these agencies had worked with women in the prior 5 years who faced the issue of forced marriage and the consequences of those marriages, such as domestic violence or sexual assault).

¹² *See also* Gangashakti Report, Executive Summary (finding that more than half of all respondents reported coming across at least one case).

¹³ Tahirih Report, *supra* at 2-3.

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communities.¹⁴ Respondents also reported that victims can be both US citizens and those with other citizenship or immigration statuses who are living in the United States, and that the marriage ceremony can take place either in the United States or in another country.¹⁵ The Tahirih Survey also confirmed that forced marriage affects both genders and all ages.¹⁶

Families may employ a wide range of tactics to force the marriages to occur. Emotional blackmail and abuse, shaming, isolation (including restricting or monitoring movements or communications, or preventing an individual from going to school or work), threats (including threats of physical violence or other harm, and of being cut off from or disowned by the family or ostracized by the community), are common points of leverage. Individuals can also be subjected to beatings or other physical violence. They can be deceived or tricked (for example, they may be told that a family trip abroad is just to visit relatives, when in truth a wedding awaits them). They may also be harassed and stalked; kidnapped; taken to their parents' country of origin and then abandoned there; have their money, phone, or identity documents confiscated; or be held captive in the United States or abroad. Individuals can also be subjected to death threats or may actually be killed if they resist.¹⁷

Domestic violence, sexual violence, and emotional violence often follow in the wake of a forced marriage.¹⁸ Victims' feelings of despair and betrayal can also manifest in severe depression, stress-related illnesses, declining work and academic performance and excessive absences, acting out, alcohol and substance abuse, and self-harm, including attempted suicide and suicide.¹⁹

Existing US Laws and Protection Structures Are Not Being Fully Utilized to Protect Forced Marriage Victims and Are Not Designed to Address Forced Marriage Situations

State-level legal responses to forced marriage are limited, and while existing laws can be tools to prevent forced marriages or protect victims in some cases, they are not widely used or may offer inadequate protections. To begin with, almost all states set the minimum legal age to marry at 18 but permit parental waivers to lower that age to 16, or in some states, even younger. Such

¹⁴ *Id.* at 8. While much of the research and media focus to date has been on immigrant communities, it is clear no community is immune from the problem. For example, a recent NPR show featured a survivor from an Orthodox Jewish community, and a caller shared that when he attended college in Kentucky he came across many forced marriages among Appalachian families with girls as young as 16. *See* "Shedding light on forced marriage in America," *On Point with Tom Ashbrook* (NPR Radio, February 3, 2014). *See also* Julia Alanen, *Shattering the Silence Surrounding Forced and Early Marriage in the United States*, CHILDREN'S LEGAL RIGHTS JOURNAL Vol. 32, No. 2, Summer 2012, at p.7 (citing additional non-immigrant examples).

¹⁵ Tahirih Report, *supra* at 8.

¹⁶ *Id.* at 3.

¹⁷ Emotional blackmail and abuse, isolation and control tactics, making threats, and manipulating fears of being rejected by family or community were reported in the Tahirih Survey as very common tactics. Nearly half of respondents who answered the question also reported that victims had been subjected to physical violence; one-quarter said victims had been threatened with death. *Id.* at 8-9. For further details on the broad range of coercive tactics that families employ, please *see also* Gangshakti Report at 20-25.

¹⁸ *See* Gangshakti Report, *supra* at 14. About half of all respondents who encountered known cases reported emotional, domestic, and physical violence as a consequence of the forced marriage. One-third of students who had encountered known cases also reported rape as a consequence.

¹⁹ *Id.* at 14, 21-22. Half of all respondents who encountered known cases reported depression as a consequence of a forced marriage. *Id.* at 14. *See also* Tahirih Report at 9 (noting that 42 respondents knew victims who had contemplated or attempted suicide).

provisions can conceal situations in which the underage parties themselves do not consent.²⁰ State laws and processes regarding terminating or annulling/voiding a marriage also may not appreciate the particular circumstances of forced marriage victims.

Many elements that can be involved in forced marriage cases constitute criminal actions (such as assault, battery, kidnapping, and false imprisonment) and so could be investigated, charged and prosecuted as such.²¹ However, victims, police and prosecutors alike may be unwilling to pursue such charges except in the most extreme cases. Eight states, as well as the District of Columbia and the US Virgin Islands, also have specific statutes that criminalize forcing someone into marriage in certain circumstances.²² Again, however, their utility may be limited. The majority arise in the context of laws against abduction, prostitution, and/or “defilement,” and some are nearly a century old; some address forced marriage in the context of human trafficking. Overall, these laws had other scenarios of abuse and exploitation in mind, and were clearly not designed to deter parents from forcing their own children into marriage.²³ Some of the statutes also expressly limit the scope of their protection to female victims only, or only to individuals above or below certain ages.²⁴ To date, no forced marriage prosecutions have ever been brought under these specific criminal statutes, against a parent or anyone else.

Civil protection orders could provide another potential legal option. Such orders have proven to be an accessible and effective tool for many victims in domestic violence situations, offering

²⁰See Hannah Cartwright, “Legal Age of Consent for Marriage and Sex in the 50 United States”, Global Justice Initiative (Aug. 21, 2011), <http://globaljusticeinitiative.files.wordpress.com/2011/12/united-states-age-of-consent-table11.pdf>.

²¹Criminal cases with forced marriage dimensions in which prosecutors charged other related crimes include *People v. Hundal*, 2002 WL 31045538 (Cal. Ct. App. Sept 6, 2002)(affirming verdict against defendant for rape, attempted rape, forcible sodomy, and false imprisonment of his wife); *State v. Al-Hussaini*, 6 Neb. App. 978 (1998)(affirming sentence of man who pled guilty to first degree sexual assault of a child after marrying a 13-year-old girl); and *People v. Benu*, 87 Misc. 2d 139 (1976)(finding father guilty of child endangerment because he facilitated the marriage of his 13-year old daughter). See also “Brooklyn man charged with conspiracy to commit honor killings in Pakistan,” Press Release, US Attorney’s Office for the Eastern District of New York (September 25, 2013)(federal authorities charged man with conspiring to commit murder in a foreign country, transmitting threats via interstate communications and visa fraud, in connection with forced marriage of his daughter in Pakistan); “Was Noor Al-Maleki the victim of an honor killing?” *48 Hours* (CBS News.com, April 7, 2012)(man convicted of second-degree murder for running over his daughter, allegedly to punish her for her Westernized ways; he had also earlier attempted to force her into a marriage).

²² See Cal. Penal § 265 (in effect 1872, last amended 1976); DC Code Ann. § 22-2705 (in effect 1910, last amended 2013); Md. Code Ann., Crim. Code § 11-303 (in effect 2002, last amended 2013); Minn. Stat. Ann. § 609.265 (in effect 1963, last amended 1984); Miss. Code Ann. § 97-3-1 (in effect 1980); Nev. Rev. Stat. 201.300 (in effect 1913, last amended 2013); Okla. Stat. Tit. 21 § 1117, § 1118, and § 1119 (in effect 1910, last amended 1999); Va. Code Ann. § 18.2-355 (in effect 1975, last amended 1997); 14 V.I. Code Ann. § 1301 (in effect 1921); and W. Va. Code, § 61-2-14 (in effect 1882, last amended 1984).

²³In at least one state, Minnesota, arguably the criminal statute cannot be leveraged against parents who are themselves the perpetrators of the forced marriage, insofar the crime can only be charged against someone who takes a person under age 18 for the purpose of marriage “without the consent of the parents, guardian, or other person having legal custody of such person” (emphasis added). Minn. Stat. Ann. § 609.265.

²⁴For example, three statutes expressly protect “women”: California, Oklahoma and the Virgin Islands, and Mississippi’s statute only protects victims *over* age 14, while Minnesota’s statute would only reach those *under* age 18 (and as noted above, only where the parents have not consented). See “Criminal Laws Addressing Forced Marriage in the United States,” Tahirih Justice Center (July 2013), available at <http://www.tahirih.org/site/wp-content/uploads/2014/02/Tahirih-MEMO-State-Criminal-Laws-Forced-Marriage-07.29.13.pdf>.

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them a way to protect themselves that does not automatically result in criminal consequences for abusers who are also loved ones. For several reasons, however, domestic violence civil protection orders are often neither available nor adequate to protect victims in forced marriage situations.²⁵

State definitions of domestic violence and child abuse are often not expansive enough to encompass the dynamics of forced marriage. Some states' statutes focus on physical injury, rather than reaching the full range of coercive threats and emotional abuse common in forced marriage cases, or are predicated on a level or imminence of harm that may be hard for victims to show, especially if they are being kept deliberately in the dark as to their family's future plans.²⁶ Most states also limit the circumstances in which a protection order may be sought by or on behalf of a minor, and many rely on a parent to bring the petition. The range of potential respondents is also often too limited, failing to encompass extended family members who may be directly involved in forced marriage situations.²⁷ Finally, the kind of relief that can be ordered under domestic violence civil protective orders is often not broad or flexible enough to enable the instrument to be tailored to forced marriage victims' unique needs. 10 states' statutes do not even include a "catch-all" provision that enables the judge to order whatever relief is necessary and appropriate,²⁸ and in any event, to realize the protective potential of such provisions, judges would need specialized training or guidance on forced marriage.

All these limitations pose special problems for minors. Without a clear legal basis to intervene, child protection authorities may not even see forced marriage as falling within their mandate. Youth who are older than 16 but who have not yet reached the age of majority can also often fall between the cracks of child protection, even as that age group can be at high risk of forced marriage.²⁹ Even when child protection authorities do get involved, their investigation protocols do not factor in the acute flight risk in these cases: at the first sign of inquiry, families may simply expedite their plans and take a child out of the country. A priority placed on keeping families together may fail to appreciate the potential risks posed by extended family, who may agree to foster a victim in order to continue to pressure them.

²⁵For a chart comparing civil protective order statutes in all 50 states and US territories, see "Domestic Violence Civil Protection Orders (CPOs)," American Bar Association Commission on Domestic & Sexual Violence (March 2014), available at <http://www.ambar.org/cdsv> [hereinafter ABA CDSV Chart].

²⁶See, e.g., Connecticut's domestic violence civil protection order statute at Conn. Gen. Stat. §46b-15(a)(providing relief to a victim "who has been subjected to a continuous threat of present physical pain or physical injury by the other person"). Child endangerment statutes provide another example of how current laws can be a misfit with forced marriage situations. Some state statutes are broadly applicable (e.g., New York's, which extends to any knowing acts "likely to be injurious to the physical, mental or moral welfare of a child"), while others are more limited and set much higher bars. See National Center for Prosecution of Child Abuse, National District Attorneys' Association, *Child Endangerment Laws* (September 2012), at <http://www.ndaa.org/pdf/Child%20Endangerment%202012%20Final.pdf>.

²⁷In at least 17 states, a petitioner cannot seek a protection order against any relative, but only based on a more limited set of relationships. ABA CDSV Chart, *supra*. Forced marriage situations can involve multiple perpetrators and facilitators within the immediate and extended family.

²⁸These include Georgia, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Nevada, New Hampshire, North Dakota, and Rhode Island. *Id.*

²⁹40% of the cases handled by the UK's FMU in 2013 involved victims younger than 18. See *supra* note 2.

A host of other state laws and policies fail to adequately address forced marriage situations or may even make it more difficult for minor victims to access help. For example, state laws setting licensure or reporting requirements that bar shelters from accommodating minors, limit the time they can remain in the shelter, or require parents to be notified within hours of the minor's whereabouts, can also limit the options a minor has to avoid or escape a forced marriage. Many states also have laws that expressly prohibit the "harboring" of runaway youth by any individual or organization not holding legal custody, and some have related criminal charges that parents could pursue against someone trying to help a minor victim, such as "interference with custodial rights". Some states also require parental consent for emancipation.³⁰

At a federal level, little effort has been made to address forced marriages involving US citizens or residents. Federal action is needed particularly in cases in which women and girls have been taken out of the United States to force them into marriages abroad. The State Department's Bureau of Consular Affairs website contains some general travel advisories and selected country-specific information for individuals who fear they may be at risk,³¹ and the Foreign Affairs Manual includes basic guidance for consular officers handling forced marriage cases abroad.³² Importantly, the State Department has limitations as to what it can do on its own. It does not engage in domestic efforts to prevent forced marriage (either in general or in particular cases), and it can only step in after a victim has already been taken abroad, when the risks and stakes increase considerably. The State Department can also typically only assist US citizens, and consular officers may have limited diplomatic or practical options (e.g., in the case of dual nationals, or depending on where the victim has been taken). Some other federal agencies are just beginning to take notice of the problem³³, but also suffer from similar scope limitations. Without a concerted and coordinated multi-agency approach—ideally, a joint operation like the UK's Forced Marriage Unit—victims will continue to fall between the narrow mandates and authority of particular offices and agencies.

Victim-Centered Legal Reforms That Appreciate the Unique Dynamics and Risks in Forced Marriage Cases Are Urgently Needed

More engagement by the government and legal community is overdue and critically needed. To date, the vast majority of efforts to galvanize a national movement to address forced marriage in the United States have been driven by non-profit advocates, both community-based agencies and national advocacy organizations.

The dynamics of forced marriage pose challenges to protecting victims and deterring perpetrators. Like domestic violence, forced marriage is a problem often hidden from view, but

³⁰For an overview of all the laws impacting runaway and homeless youth, see *Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth*, National Law Center on Homelessness & Poverty and National Network for Youth (September 2012), pp. 104-107, 221-234, available at http://www.nlchp.org/Alone_Without_A_Home.

³¹ See <http://travel.state.gov/content/passports/english/emergencies/forced.html>.

³² See *supra* note 1.

³³Offices within the Departments of Justice (DOJ) and Health and Human Services (HHS), for example, are helping facilitate outreach and education to certain DOJ and HHS grantees nationwide. The National Institute of Justice, DOJ's research arm, is also partially funding a study to examine the intersection of forced marriage, intimate partner violence and sexual violence among young South Asian women and men in the Washington, D.C. metropolitan area.

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forced marriage cases may pose particular obstacles to detection, prevention and protection. Forced marriage victims may be especially reluctant to seek help from anyone, let alone the authorities. They may not be aware of their legal rights and in particular, that they have the right to say “no” to the marriage; they may be raised to keep such matters private and speak of them only within the family or not at all; they often face considerable pressure to put the family’s wishes and welfare before their own; and they may be especially fearful of the possible criminal (and potentially, immigration) consequences to their families if they seek help from the police, the courts, or other elements of the legal system. Detection, prevention and protection is also complicated in forced marriage cases because the problem often happens in insular families and communities; may manifest with an outward appearance of legitimacy (a marriage); and may result from a longstanding pattern of coercive and controlling behavior and entail primarily emotional abuse, rather than unfold through particular violent incidents. Forced marriage cases also often involve the risk that victims may be taken and potentially left abroad, removed from help. Finally, law enforcement, service-providers and others encountering victims may refrain from asking the right questions, or any questions, for fear of being perceived as culturally insensitive, or may decline to get involved at all in what they see as a “cultural matter.”

Mindful of these obstacles, the United States should proceed carefully and prioritize victim-centered legal solutions that encourage help-seeking. A package of solutions at both the federal and state levels that is well-vetted for unintended consequences, and that gives law enforcement (police, prosecutors, judges, child protection officers) not only the clear authority but also the undeniable mandate to assist victims who ask for help, is critical. Informing and infusing all legal responses with a nuanced understanding of forced marriage is also essential. Adopting one solution alone, for example, will be a disservice to victims, since families’ motivations are varied and thus they may not be deterred by a particular tack. A single-pronged approach may also actually leave victims more vulnerable, if family workarounds further conceal the forced marriage or isolate the victim.

Legal reform alone will be insufficient. It must be made part of a thoughtful implementation and awareness-raising strategy and accompanied by a strong parallel investment in community-based outreach and engagement.

Ultimately, ending forced marriage in the United States will require a change in community norms and values that condone and perpetuate this form of abuse, but the law is a crucial and as-yet-untapped tool to reach that vital goal.

Respectfully Submitted,

Angela Vigil, Chair
ABA Commission on Domestic & Sexual Violence
August 2014

GENERAL INFORMATION FORM

SUBMITTING ENTITY: Commission on Domestic & Sexual Violence
SUBMITTED BY: Angela Vigil, Chair

1. SUMMARY OF RESOLUTION(S).

The Resolution condemns forced marriage as a fundamental human rights violation and form of family violence and violence against women, and urges federal, state, territorial, local, and tribal governments to amend existing laws, or to enact new laws, to prevent forced marriages and protect and support individuals threatened by forced marriage. The Resolution further urges governments to collaborate with legal, social services and advocacy organizations with expertise in forced marriage to develop these victim-centered legal remedies, and to promote training for judges, prosecutors, law enforcement, child protection authorities, victim-witness advocates, and attorneys.

2. APPROVAL BY SUBMITTING ENTITY.

The Commission voted to support the resolution and report on May 6, 2014

3. HAS THIS OR A SIMILAR RESOLUTION BEEN SUBMITTED TO THE HOUSE OR BOARD PREVIOUSLY?

No.

4. WHAT EXISTING ASSOCIATION POLICIES ARE RELEVANT TO THIS RESOLUTION AND HOW WOULD THEY BE AFFECTED BY ITS ADOPTION?

- Recommendation, Report No. 115 (Feb. 2010) (urging Congress to re-authorize and fully fund VAWA)
- Report No. 109 (Aug. 2008) (urging federal, state, and tribal governments to strengthen protection and assistance for victims of gender-based violence); ABA Section of Criminal Justice, Recommendation, Volume 103 (Feb. 1978) (supporting efforts to combat family violence).

These policies would not be adversely affected by the adoption of the proposed policy.

5. WHAT URGENCY EXISTS WHICH REQUIRES ACTION AT THIS MEETING OF THE HOUSE?

A number of Western countries are beginning to realize that forced marriage is not only a global problem, but also a domestic problem with transnational dimensions. The United States lags far behind its Western counterparts, despite an increasing number of research reports and media accounts that document that forced marriage is a serious problem in the United States. Domestic violence, sexual violence, and emotional violence often follow in the wake of a forced marriage. Victims' feelings of despair and betrayal can also manifest in severe depression, stress-related illnesses, declining work and academic performance and excessive absences, alcohol and substance abuse, and self-harm, including attempted suicide and suicide. State-level

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legal responses to forced marriage are limited, and while existing laws can be tools to prevent forced marriages or protect victims in some cases, they are not widely used or may offer inadequate protections. More engagement by the government and legal community is overdue and critically needed.

6. STATUS OF LEGISLATION.

There is currently no legislation related to this resolution.

7. BRIEF EXPLANATION REGARDING PLANS FOR IMPLEMENTATION OF THE POLICY, IF ADOPTED BY THE HOUSE OF DELEGATES.

Upon adoption, the Commission on Domestic & Sexual Violence will work with other national organizations to address forced marriage as a human rights concern, striving to develop appropriate, victim-centered legal responses.

8. COST TO THE ASSOCIATION.

None.

9. DISCLOSURE OF INTEREST.

N/A

10. REFERRALS.

Center for Human Rights
Individual Rights and Responsibilities
Family Law
Criminal Law
Commission on Immigration
SCLAID

11. CONTACT NAME AND ADDRESS INFORMATION.

Vivian Huelgo, Chief Counsel
Commission on Domestic & Sexual Violence
1050 Connecticut Avenue, NW, Suite 400
Washington, DC 20036
Phone: (202) 662-8637
Email: vivan.huelgo@americanbar.org

12. CONTACT NAME AND ADDRESS INFORMATION. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address)

Angela C. Vigil, Esq.
Baker & McKenzie, LLP
Sabadell Financial Center
1111 Brickell Avenue, Suite 1700
Miami, FL 33131
Phone: 305-789-8904
Email: angela.vigil@bakermckenzie.com

EXECUTIVE SUMMARY**1. SUMMARY OF THE RESOLUTION.**

The Resolution condemns forced marriage as a fundamental human rights violation and form of family violence and violence against women, and urges federal, state, territorial, local, and tribal governments to amend existing laws, or to enact new laws, to prevent forced marriages and protect and support individuals threatened by forced marriage. The Resolution further urges governments to collaborate with legal, social services and advocacy organizations with expertise in forced marriage to develop these victim-centered legal remedies, and to promote training for judges, prosecutors, law enforcement, child protection authorities, victim-witness advocates, and attorneys.

2. SUMMARY OF THE ISSUE THAT THE RESOLUTION ADDRESSES.

A number of Western countries are beginning to realize that forced marriage is not only a global problem, but also a domestic problem with transnational dimensions. The United States lags far behind its Western counterparts, despite an increasing number of research reports and media accounts that document that forced marriage is a serious problem in the United States. Domestic violence, sexual violence, and emotional violence often follow in the wake of a forced marriage. Victims' feelings of despair and betrayal can also manifest in severe depression, stress-related illnesses, declining work and academic performance and excessive absences, alcohol and substance abuse, and self-harm, including attempted suicide and suicide. State-level legal responses to forced marriage are limited, and while existing laws can be tools to prevent forced marriages or protect victims in some cases, they are not widely used or may offer inadequate protections. More engagement by the government and legal community is overdue and critically needed.

3. PLEASE EXPLAIN HOW THE PROPOSED POLICY POSITION WILL ADDRESS THE ISSUE.

The proposed policy position urges federal, state, territorial, local, and tribal governments to amend existing laws, or to enact new laws, to prevent forced marriages and protect and support individuals threatened by forced marriage. The Resolution further urges governments to collaborate with legal, social services and advocacy organizations with expertise in forced marriage to develop these victim-centered legal remedies, and to promote training for judges, prosecutors, law enforcement, child protection authorities, victim-witness advocates, and attorneys.

4. SUMMARY OF ANY MINORITY VIEWS.

None to date.