

PAUL
HASTINGS



VIOLENCE AGAINST YOUNG WOMEN: A HUMAN RIGHTS VIOLATION

FULL REPORT



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PREFACE

Legislation on human rights first appeared in the context of World War II, when leaders of the world’s Nations met in San Francisco in June 1945 to form the United Nations and bring peace, freedom, and dignity to a world destroyed by 30 years of cruelty, discrimination, and oppression. Such mission has been pursued through (i) the creation and maintenance of peaceful conditions among member states of the United Nations (“UN Member States”); (ii) the settlement of International disputes among UN Member States, which could otherwise disrupt a peaceful relationship among them; and (iii) positive and effective actions to prevent or suppress breaches of International peace.

The Charter of the United Nations (the “UN Charter”), which so far has been ratified by 193 Nations, promotes and encourages “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹ According to Article 2, paragraph 2 of the UN Charter, “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”²

The two principal organs of the United Nations are the Security Council,³ governed by Chapter V of the UN Charter, and the International Court of Justice, governed by Chapter XIV of the UN Charter. The International Court of Justice is the principal judicial organ of the United Nations, whose decisions must be complied with by UN Member States.⁴

On December 10, 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights (“UDHR”), the first International treaty to set forth a general definition of human rights.⁵ Since 1948, UN Member States have pledged to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

After more than 50 years, the principles and underlying message of the UDHR have inspired many International and European treaties, bilateral and multilateral conventions, as well as national and federal constitutions, legislations, and policies. The UDHR has also facilitated the growth of an International political movement aimed at securing human rights worldwide and bringing human rights issues to the attention of the International community.

However, only in recent years has the issue of violence against human beings – and, in particular, against women and children – been recognized as a human rights violation and been prioritized by the International community.⁶

Trends and statistics regarding specific aspects of a woman’s life in general, are collected and set out in a publication titled “World’s Women: Trends and Statistics” (the “World’s Women”), which the United Nations has issued every five years since 1995.⁷ The World’s Women 2010 addresses critical aspects of a woman’s life: population, families, health, education, work, power and decision making, violence against women, environment, and poverty.⁸

With respect to violence against women, statistics indicate that it is a universal phenomenon that takes many forms – physical, sexual, psychological, and economic – both within and outside a woman’s home.⁹ In 2005, the United Nations highlighted that, to a greater or lesser degree, women are subjected to violence in all societies regardless of income, class, or culture. Further, a woman’s low social and economic status can be both a cause and a consequence of this violence. The World’s Women 2010 emphasizes the importance of developing comparative statistics on violence against women, which is a major prerequisite to accurately analyzing this phenomenon across time and place, but also concedes that the numerous and varied roots of such violence make this type of monitoring challenging.¹⁰

Regarding the issue of violence against children, the world report on Violence against Children (the “World Report”)¹¹ noted that “violence against children exists in every State and cuts across boundaries of culture, class, education, income, ethnic origin and age” (World Report, page 5). The World Report also refers to a variety of studies that indicate that “while some violence against children is perpetrated by strangers, the vast majority of violent acts are perpetrated by people who are part of the child victim’s immediate environment: parents and the wider family, boyfriends or girlfriends, spouses and partners, teachers, schoolmates, and employers” (World Report, page 11).

As a result of these studies, the International community has been focusing its attention on preventing and condemning all forms of violence as a major human rights violation as well as a form of discrimination often based on age, sex, and ethnicity.

¹ Article 55, paragraph 1, letter c) of the UN Charter.

² It was, however, controversial whether the UN Charter imposes legal obligations upon UN Member States – as expressed by H. Lauterpacht in *“International Law and Human Rights”* (Steven & Sons Ltd., 1950) 147-149 – or whether its purpose *“is limited to setting out a program of action for the Organization of the United Nations to pursue, in which the Members are pledge to cooperate.”* Leading members of this school of thought include M.O. Hudson, “Integrity of International Instruments,” *The American Journal of International Law* 42 (1948) 105-108, 1948 and H. Kelsen, “The Law of the United Nations,” (1950) 29-32.

³ Pursuant to Articles 34 and 35 of the UN Charter, the Security Council *“may investigate any dispute or any situation which might lead to International friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of International peace and security”* and any UN Member State *“may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.”*

⁴ Pursuant to Article 94, paragraph 2 of the UN Charter, *“If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”*

⁵ Article 1 of the UDHR states that *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*

⁶ For example, see the Study of the Independent Expert for the United Nations Secretary-General on violence against children issued in October 2006, which is an extensive study of the scale, forms, and consequences of violence against children from the combined perspectives of human rights, public health, and child protection.

⁷ The first World’s Women was published in 1991. In 1995, Governments participating in the Fourth World Conference on Women, during which they adopted the Beijing Declaration expresses their commitment *“to advance goals of equality, development and peace for all women everywhere in the interest of humanity.”* To track the achievement of these goals, the Beijing Platform for Action specifically provides that the World’s Women is produced by the United Nations every 5 years.

⁸ The World’s Women 2010 covers 196 Countries. For statistical data see paragraph, page xiii of the World’s Women 2010

⁹ The World’s Women 2010 benefits from the increased availability of gender statistics in the last 10 years. The majority of countries are now able to produce sex-specific statistics on population, employment, and parliament representation. While surveys on violence against women are conducted in both developed and developing countries, international standards in these areas are not yet uniform and thus, even when statistics are available, they are hard to compare.⁹

¹⁰ Difficulties in obtaining comparable statistics and in identifying relevant causes of violence against women are better identified in the World’s Women 2010, page 130.

¹¹ The World Report explores the issue of violence against children in the context of families, schools, alternative care institutions and detention facilities, workplaces, and communities (World Report, page 4). See also the Annual Report of the Special Representative of the Secretary-General on violence against children (A/HRC/19/64, dated January 13, 2012), which reads that *“a high-profile, global independent advocate on the prevention and elimination of all forms of violence against children”* with a mandate framed by the United Nations Study on Violence against Children.

INTERNATIONAL SCENARIO

1. Women and Children in the International Field

Human history has revealed that women and children are the weakest members of the human community. Due to their nature, they are more exposed to – and, therefore, have often faced greater – abuse and violence at all levels. In the past, women have been treated as mere objects belonging to others (mainly men). Despite the economic and social progress of the last 50 years, many women are still objectified or face other types of abuse.

To combat such abuses, certain conventions, including the Convention on the Rights of the Child (“CRC”) and the “Convention on the Elimination of All Forms of Discrimination against Women” (“CEDAW”), implemented the principles and values of the UDHR – in particular, the principles of non-discrimination, equality of each individual as a human being, dignity, the right to self-determination, security, and peace.

Moreover, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (the “Palermo Trafficking Protocol”) adopted by the United Nations in Palermo (Italy) in 2000 provides an Internationally accepted definition of “*Trafficking in Human Beings*” as “*the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*”¹² According to the Palermo Trafficking Protocol the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth above have been used.¹³

The United Nations has also pursued the criminalization of any form of violence against women and children in other ways and through other means in an effort to address such violence and to bring its iniquity to the attention of the International community.

However, almost none of these International treaties, conventions, and United Nations instruments refer to the sub-category of victims comprised of women under the age of 18. Hence, to address the issues faced by this demographic, it is necessary to refer more generally to conventions on women and children’s rights, which creates a potential for overlap of applicable measures.¹⁴

¹² The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime has been dopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of November 15, 2000. It entered into force on December 25, 2003 and by June 2012, had been signed by 117 countries.

¹³ Article 3, Paragraph (b), of Palermo Trafficking Protocol.

¹⁴ For more information on this matter, see the following excerpt from the Section of the World Report titled “*Overarching recommendations*,” which states that “*Girls and boys are at different risk for different forms of violence across different settings. All research into violence against children and into strategies to prevent and respond to it should be designed to take gender into account. In particular, the Study has found a need for men and boys to play active roles and exercise leadership in efforts to overcome violence*” (World Report, page 22).

2. United Nations — The Declaration of Rights of the Child and the Convention on the Rights of the Child

Since the formation of the United Nations, the International community has recognized the need to protect the rights of children.¹⁵ One of the first International instruments to address the safeguarding and protection of children’s rights was the Declaration of Rights of the Child (“DRC”), which was adopted by the United Nations General Assembly in 1959.¹⁶ Article 2 of the DRC states, “*The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.*” Under the DRC a child is also entitled to receive protection and relief with priority, and to a name, nationality, adequate nutrition, housing, recreation, medical services, and education.¹⁷

Subsequently, on November 20, 1989 the United Nations General Assembly adopted the Convention on the Rights of the Child (“CRC”), which is considered one of the most complete legislative documents dealing with the rights of children.¹⁸ Pursuant to Article 1 of the CRC, “*a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*” However, many States Parties have given different protection to children – especially in the criminal field – depending on the age of the victims, the age of the perpetrators and/or the type of crime.

The CRC focuses on, *inter alia*, the protection of children in terms of their health and their physical and mental integrity. Article 19 of the CRC states that each State Party shall take appropriate actions in order to “*protect the child from physical or mental violence, injury abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.*” The CRC also recommends that each State Party shall take appropriate measures “*with a view to abolishing traditional practices prejudicial to the health of children*”¹⁹ and pursue full implementation of such rights.

Some of the most important obligations under the CRC are set forth by Article 34, Article 35, and Article 37. Notably, Article 34 provides for each State Party “*to protect the child from all forms of sexual exploitation and sexual abuse.*” Article 35 states that “*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*” and Article 37 states that each State Party shall ensure, *inter alia*, that no child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment, capital punishment or life imprisonment, or be deprived of his or her liberty unlawfully or arbitrarily.

¹⁵ For further informationon this matter, see the UNICEF Handbook for Parliamentarians n. 13 – 2007 titled “*Eliminating Violence against Children.*”

¹⁶ The DRC was adopted by the League of Nations in 1924.

¹⁷ “*Only a small proportion of all acts of violence against children is reported and investigated, and few perpetrators are held to account. Violence is under-reported for various reasons. Very young children lack the capacity to report violence. Children often fear reprisals by perpetrators or interventions by authorities, both of which may worsen their overall situation. Sometimes parents are perpetrators of violence against children, or parents may remain silent when violence is committed by other family members or by powerful members of the community or society. Violence implicated in a child’s death may not be identified as a factor if the death is not sufficiently investigated.*” Please refer to UNICEF Handbook for Parliamentarians n. 13 – 2007 “Eliminating Violence against Children.”

¹⁸ Other International instruments dealing with violence against children (as well as women) date back to the beginning of 1900, including the International Agreement of 1904 for the Suppression of the White Slave Traffic, the 1910 International Convention for the Suppression of the White Slave Traffic, the 1921 International Convention for the Suppression of the Traffic in Women and Children, the 1923 International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, and the 1926 League of Nations Slavery Convention.

¹⁹ Article 24, paragraph 3 of the CRC.

In order to pursue further the purposes of the CRC and demonstrate its commitment to promote and protect the rights of the child, on May 25, 2000 the United Nations General Assembly adopted two optional protocols to the CRC (the “Optional Protocols”).²⁰ In particular, the Optional Protocol to Convention of the Rights of the Child on the Sale of Children, Child Prostitution was introduced in response to the State Parties’ grave concern (i) “*at the significant and increasing International traffic in children for the purpose of the sale of children, child prostitution and child pornography*” and (ii) “*at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography.*”²¹ Since the adoption of these Optional Protocols, the International community has given increasing attention to these phenomena. In 2010, the United Nations Secretary General launched a global campaign for the universal ratification of the Optional Protocols; this campaign was launched in cooperation with other organizations within the United Nations system, and different regional organizations and political groups.²²

In addition to the conventions and declarations on the rights of children, the Special Representative of the Secretary-General of the United Nations implements and monitors the UN's efforts to prevent and eliminate all forms of violence against children focusing in particular on: “(a) *the development in each State of a national comprehensive strategy to prevent and respond to all forms of violence; (b) the introduction of an explicit legal ban on all forms of violence against children, in all settings; and (c) the consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence against children.*”²³

According to the UNICEF Handbook for Parliamentarians n. 13 – 2007 titled “*Eliminating Violence against Children,*” violence against children also has a gender-based dimension. For example, girls are more likely to experience sexual violence than boys. Traditional practices such as FGM and son preference affect girls exclusively. FGM has subjected millions of girls and women to health risks and life-threatening consequences and daughters are more likely to face severe neglect in societies where son preference is pronounced. On the contrary, in some societies, it appears that boys are more likely than girls to experience severe violent punishment, and more boys than girls are detained in juvenile justice systems and suffer violent punishments within them.²⁴

²⁰ Such Optional Protocols are the Optional Protocol to Convention of the Rights of the Child on the Sale of Children, Child Prostitution, and the Optional Protocol to Convention of the Rights of the Child on the Involvement of Children in Armed Conflict.

²¹ The Preamble to the Optional Protocol to Convention of the Rights of the Child on the Sale of Children, Child Prostitution.

²² See Annual Report of the Special Representative of the Secretary-General on violence against children, A/HRC/19/64, page 9.

²³ Annual Report of the Special Representative of the Secretary-General on violence against children, A/HRC/19/64, page 3.

²⁴ UNICEF Handbook for Parliamentarians n. 13 – 2007 titled “Eliminating Violence against Children” page 40.

3. United Nations — Convention on the Elimination of All Forms of Discrimination against Women and Declaration on the Elimination of Violence against Women

On December 18, 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), which is a milestone of the International community's efforts to protect and promote women's rights. The CEDAW aims at, and provides specific actions for, achieving equality and equal protection before the law for men and women. It implies that discrimination against women violates the principles of equal rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic, and cultural lives of their countries, hampers the prosperity of society and the family, and impedes the ability of women to serve their countries and humanity.

The CEDAW specifically obligates States parties to eliminate and condemn any form of discrimination, whether carried out by a single person, an organization, or a company, through all appropriate measures, including legislation, in order to promote the full development and advancement of women.²⁵ In particular, Article 1 states that “*the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence*” and that “*discrimination against women*” shall mean “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*”²⁶

Although the CEDAW does not directly deal with violence against women, such issues have been addressed in recommendations issued by the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”). The CEDAW Committee was established by the CEDAW primarily to monitor the implementation of the CEDAW and each state party's progress in the fight of violence.

In particular, Article 21 of the CEDAW empowers the CEDAW Committee to make suggestions and general recommendations based on reports and information received from States parties. Recommendation 19 of the CEDAW Committee addresses the general issue of violence against women, viewing it as a form of discrimination, while Recommendation 14 of the CEDAW Committee deals with a specific form of violence against women, female circumcision.²⁷

²⁵ In Article 2 of CEDAW.

²⁶ These rights and freedoms include: “(a) *The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of International or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.*”

²⁷ Recommendation 14 recommends “*that States parties: (a) Take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include: (i) The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices; (ii) The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women; (iii) The encouragement of politicians, professionals, religious and community leaders at all levels, including the media and the arts, to co-operate in influencing attitudes towards the eradication of female circumcision; (iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision; (b) Include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel, including traditional birth attendants, to explain the harmful effects of female circumcision; (c) Invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices; (d) Include in their reports to the Committee under articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.*”

On December 22, 2000, the Optional Protocol to the CEDAW entered into force and empowered the CEDAW Committee to receive and consider complaints from individuals or groups within its jurisdiction. Namely, the CEDAW Optional Protocol contains two procedures, both applicable to the States parties to the CEDAW. Firstly, the CEDAW Optional Protocol sets forth a communication procedure allowing individual women, or groups of women, to submit claims of violations of rights protected under the CEDAW to the CEDAW Committee.²⁸ Secondly, the CEDAW Optional Protocol creates an inquiry procedure enabling the CEDAW Committee to initiate inquiries into instances of grave or systematic violations of women’s rights.²⁹

The issue of violence against women is also addressed by the Declaration on the Elimination of Violence against Women (“DEVAW”) adopted on December 20, 1993 by a resolution of the United Nations General Assembly. The DEVAW also recognizes that violence against women³⁰ constitutes both a violation of the rights and fundamental freedoms of women – since it impairs or nullifies their enjoyment of those rights and freedoms – and a form of discrimination based on gender since *“it is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”*

In addition, the United Nations has stepped up other activities aimed at combating violence against women. In particular, the General Assembly adopted four resolutions between 2006 and 2009³¹ to intensify efforts to eliminate all forms of violence against women, emphasizing numerous countries’ concerns about the issue. At the same time, the United Nations is undertaking work to define and identify the different forms this violence takes in order to enable accurate assessment and quantification.³² The overall objective is to raise public awareness and increase political will and resources.³³

The World’s Women 2010 set forth a detailed analysis of the prevalence and incidence of violence against women based on statistical surveys conducted by a number of countries.³⁴ The main outcomes of such report, in relevant part, are briefly summarized as follows:

- (i) As concerns physical abuse against women:
 - a) the proportion of women exposed to physical abuse in their lifetimes ranges from 12 percent in China, Hong Kong SAR to about 50 percent or more in Australia, Mozambique, the Czech Republic, and Zambia;³⁵

²⁸ The CEDAW Optional Protocol establishes numerous prerequisites to submitting individual claims for consideration by the CEDAW Committee, including the exhaustion of domestic remedies.

²⁹ However, the CEDAW Optional Protocol includes an “opt-out clause,” allowing States upon ratification or accession to declare that they do not accept the inquiry procedure.

³⁰ Article 1 of DEVAW expressly states that 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 in private life.”

³¹ General Assembly resolutions 61/143 of 2006, 62/133 of 2007, 63/155 of 2008, and 64/137 of 2009.

³² This has been reflected in the Secretary-General’s Campaign, Unite to End Violence against Women.

³³ One of the five key outcomes to be achieved in all countries by 2015 is the establishment of data collection and analysis system on the prevalence of various forms of violence against woman. In this respect, for better details see World’s Women 2010, page 128.

³⁴ The United Nations Statistics Division undertook the compilation of data collected by such surveys (to the extent applicable) based on a list of indicators listed in the World’s Women 2010 (essentially percentages of women subjected to physical and sexual violence in their lifetime and in the 12 months prior to data collection, see page 129 of the World’s Women 2010).

³⁵ These results should take into account that different methodologies have been applied to carry out the survey and that the definitions of violence and collecting methods were not identical.

- b) violence suffered by women from their intimate partners carries particularly serious and potentially long-lasting consequences, and statistics reveal significant differences in the prevalence of intimate partner physical abuse across the world;³⁶
 - c) the severity of violence experienced by women varies by country, with particular countries where more women experience severe violence than moderate physical abuse;³⁷ and
 - d) young women are more likely to be exposed to physical abuse than older women.
- (ii) As concerns sexual violence, the World’s Women 2010 outlined:
- a) the consequences of this type of violence usually severely affect the victim for a prolonged period of time;
 - b) the percentage of women experiencing sexual violence at least once in their lifetime ranges from around 4 percent in Azerbaijan and 5 percent in France to a quarter or more women in Switzerland, Australia, Czech Republic, Costa Rica, and Mexico;³⁸ and
 - c) the percentages of women who have experienced sexual violence from their intimate partner vary significantly from country to country;³⁹ and
- (iii) As concerns “*femicide*” (which means the gender-based murder of woman), femicide most often occurs by a male intimate partner.

In the International context, the creation of the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”), was voted for unanimously by the General Assembly on July 2, 2010. The UN Women is the United Nations organization dedicated to gender equality and empowerment of women and was established to accelerate progress on obtaining women’s rights worldwide. This entity focuses on five priority areas, including ending violence against women. The report issued by UN Women, titled “*Progress of the World’s Women: In Pursuit of Justice, 2011 – 2012*” (“UN Women Report”), outlines remarkable advances over the past century in the quest for gender equality and women’s empowerment.

The UN Women Report clearly explains that gender equality and, in particular, a material contribution to the end of violence against women, can be pursued by making justice systems responsive to women. As demonstrated in the UN Women Report, a number of strategic litigations have challenged gender discrimination and violence against women.⁴⁰

³⁶ Percentages of ever-partnered women that suffered physical abuse perpetrated by a current or former partner at least once in their lifetime ranges from 6 percent in China, Hong Kong SAR to over 48 percent in Zambia, Peru-city.

³⁷ For example 50 percent of women in poor-provinces experienced severe violence.

³⁸ World’s Women 2010, page 133 and table 6.5.

³⁹ This percentage was reported as around 3 percent of women in Albania, Azerbaijan, Switzerland, and the Philippines and significantly higher in Peru-province, Bangladesh-province, Salomon Islands, and Ethiopia-province.

⁴⁰ In particular, pages 17 to 21 reported examples of cases in which challenges led competent courts to identify instances of violence against women as violations of human rights and change the laws accordingly.

On the one hand, the UN Women Report reported specific data concerning domestic violence against women revealing that the governments’ ambivalence toward regulating family and intimate relationships has led to a lack of legislation protecting women in the private sphere or condemning marital rape, and other legislation exempting perpetrators from liability in cases of “*crimes of honor*.” This has contributed to the perception that abuse of women in the private sphere is acceptable.⁴¹

On the other hand, the UN Women Report also outlined significant steps taken by States to enact and implement legislation to prohibit violence against women and girls. In particular, the report states that as of April 2011, 125 countries have passed legislation on domestic violence, and two-thirds of all countries have also passed laws to prohibit sexual harassment, taking steps to make workplaces and public spaces safer for women.

Another important step to fight violence against women and girls, as outlined in the UN Women Report, is to ensure that no custom, tradition, or religious tenet may be used to justify such violence. Among positive recent developments is the Protocol to the African Charter on Human and Peoples’ rights on the Rights of Women in Africa (the “Maputo Protocol”), stipulating that State Parties shall prohibit and condemn all forms of harmful practices that negatively affect the human rights of women and are contrary to recognized International standards. This includes the prohibition, through legislative measures backed by sanctions, of all forms of FGM.

4. The International Court of Justice

The International Court of Justice (“ICJ”) is the primary judicial body of the United Nations. Its role is (a) to settle, in accordance with International law, contentious cases submitted to it by States; and (b) to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

As per Article 38 of the ICJ’s statute, the ICJ shall apply International law and, more precisely, International conventions, International customs, and the general principles of law recognized by civilized nations.

Since its creation in 1946, the ICJ has addressed numerous matters related, directly or indirectly, to violent crimes committed against children and women, such as, for example:

- (i) forced recruitment of child soldiers (e.g. Case concerning armed activities in Congo – *Democratic Republic of the Congo v. Uganda*, General List No. 116, 2005 ICJ Lexis 1, decided on December 19, 2005);
- (ii) forcibly transferring children of one group to another group by committing rape and abuse of women and children in the areas of armed conflict (e.g. Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Bosnia and Herzegovina v. Serbia and Montenegro*, General List No. 91, 2007 ICJ Lexis 7, decided on February 26, 2007) (the “BH v. SM Case”);

⁴¹ UN Women Report, page 32, figure 1.4 showed how in 17 out of 41 countries, a quarter or more people think that it is justifiable for a man to beat his wife.

- (iii) rape and sexual assault “*of the most horrible forms imaginable*” committed against thousands of women and girls (e.g. Case concerning armed activities on the territory of the Congo, *Democratic Republic of the Congo v. Rwanda*, General List No. 126, 2006 ICJ Lexis 6, decided on February 3, 2006).

In particular, in BH v. SM Case, it emerged that (i) there were “*recurring and substantiated reports of widespread rape and abuse of women and children in the areas of armed conflict in the former Yugoslavia, in particular its systematic use against the Muslim,*” and (ii) in the Manjaea Camp, Muslim male prisoners were forced to rape female prisoners, who were raped repeatedly during their stay (despite the Brdanin Trial Judgment’s conclusion that no evidence suggested detainees were subject to “acts of sexual degradation”).⁴²

Although the ICJ has a very specific scope of review and does not prosecute individuals, its rulings represent an important point of reference that shall be considered by State parties due to the ICJ’s political weight, its worldwide jurisdiction, and the complex and delicate matters it is called to resolve.

5. Crimes against Humanity

Recently, the International community has turned its attention to the recognition and conviction of crimes against human beings, which for decades were only considered an International problem in the context of conflict or mass violence. Particular attention has been paid to categories of human beings that are historically “weaker” and therefore more susceptible to abuse, such as women and children. This attention has focused not only on the International human rights’ declaration but also on International humanitarian laws, which are generally implicated during armed conflicts, and International criminal laws.

The first steps taken by the International community to address general violence against humans came with the implementation, in the 1990s, of two special International Courts for the prosecution and conviction of crimes against humanity committed during the civil wars in former Yugoslavia and Rwanda. The International Criminal Tribunal for former Yugoslavia (“ICTY”)⁴³ and the International Criminal Tribunal for Rwanda (“ICTR”)⁴⁴ resulted from the general consensus that impunity for violation of International humanitarian laws is unacceptable. However, the ICTY and the ICTR were established to prosecute crimes committed only within a specific time-frame and during a specific conflict. Therefore, there was a general agreement that an independent, permanent criminal court was needed, which led to the creation of the International Criminal Court (“ICC”).

⁴² See among others (i) paragraph No. 283 where reference is also made to General Assembly Resolution No. 48/143 (1993); and (ii) paragraph No. 316 containing the conclusions of the Report of the Commission of Experts, Vol. IV, Annex VIII (pages 53-54).

⁴³ The ICTY was established to prosecute “Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.”

⁴⁴ The ICTR was established to prosecute “Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994.”

The ICC is governed by the Rome Statute, adopted in Rome on June 17, 1992,⁴⁵ and is the first permanent, treaty-based, International criminal court established to help convict perpetrators of the most serious crimes of concern to the International community. With its creation, the International community has achieved an important milestone by successfully articulating a legal basis for establishing a permanent International Criminal Court.⁴⁶

The ICC Statute expressly defines “*crime against humanity*,”⁴⁷ which often includes crimes against women and children. Under the ICC, the term gender applies to the two sexes, male and female: “*For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.*”⁴⁸

Article 6 of the ICC Statute deals instead with the crime of “*genocide*,” which is one particular “*crime against humanity*” and is often committed against women and children.⁴⁹

6. Most Important Decisions of the ICC involving Crimes Committed against Women and Children

Article 25 of the Rome Statute invests the ICC with jurisdiction over natural persons who commit crimes against humanity and are, therefore, individually responsible and liable for punishment by the ICC.⁵⁰

Pursuant to the Rome Statute, a public prosecutor can initiate an investigation on the basis of a referral from any State party or from the United Nations Security Council. In addition, the Prosecutor may initiate investigations *proprio motu* for crimes within the ICC’s jurisdiction based on information received from individuals or organizations.

So far, three States parties to the Rome Statute – Uganda, the Democratic Republic of the Congo, and the Central African Republic – referred situations occurring in their territories to the ICC. In addition, the Security Council referred to the ICC the situation in Darfur, Sudan, and Libya. All such situations have been investigated by the ICC. In 2010 and 2011, the Prosecutor also opened an investigation *proprio motu* into the situations in Kenya and Côte d’Ivoire.⁵¹

Furthermore, prosecutors are now conducting preliminary examinations into a number of situations falling within the jurisdiction of the ICC in other countries, including Afghanistan, Georgia, Guinea, Colombia, Honduras, Korea, and Nigeria.

In most of the cases and situations listed above, the pre-trial and trial chambers of the ICC have investigated or decided a number of cases where actual or former ministers, presidents, ambassadors, commanders of armed forces, and other politicians have been convicted or treated as indirect co-perpetrators for certain crimes against humanity, including rape and other form of sexual violence, committed under their control or with their knowledge in the relevant territories.

Although the offenses were, in some cases, committed against certain specific ethnic or religious communities, they also mainly involved women and children. As prime examples, the ICC examined a case in relation to the civil wars in Congo and Uganda, where boys and girls were enlisted by the army and used to actively participate in hostilities.

In Congo, in particular, the ICC determined that children (both boys and girls) under the age of 15 years were taken away from their families – whether voluntarily or by coercion – and sent to training camps, where they were recruited as soldiers and bodyguards of senior officials. Children were also exposed to many different forms of violence, such as murder, brutal trainings, torture, ill treatment, rape, and other forms of sexual violence, sexual slavery, and forced marriage.⁵²

In the majority of trials regarding the violence in Congo, the ICC convicted the perpetrators and issued warrants of arrest; however, only one perpetrator that was found guilty by the ICC was actually sentenced to imprisonment since the other co-perpetrators are still at large.⁵³ In terms of the ICC cases regarding the violence in Uganda, none of the co-perpetrators have been imprisoned – although the ICC has issued warrants of arrest in all cases – since all perpetrators are still at large, apart from one that died on August 12, 2006.⁵⁴

⁴⁵ For more details on the Rome Statute and the activity of the ICC please refer to <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>.

⁴⁶ Pursuant to Article 5 of the Rome Statute, the ICC has jurisdiction over the most serious crimes concerning the International community as a whole. In particular, its jurisdiction is limited to the following crimes: (i) the crime of genocide; (ii) crimes against humanity; (iii) war crimes; (iv) the crime of aggression.

⁴⁷ The term “crime against humanity” was first used in the Nuremberg Charter in order to prosecute German Nazi leaders for the atrocities committed during War World II. Article 7, paragraph 1 of the ICC Statute states that “‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of International law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under International law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

⁴⁸ Article 7, paragraph 3 of the ICC Statute.

⁴⁹ Article 6 of the ICC Statute states that “‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (i) Killing members of the group; (ii) Causing serious bodily or mental harm to members of the group; (iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (iv) Imposing measures intended to prevent births within the group; (v) Forcibly transferring children of the group to another group.”

⁵⁰ In particular, Article 25, paragraph 3 of the Rome Statute states that “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (i) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (ii) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (iii) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission; (iv) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime.

(v) In respect of the crime of genocide, directly and publicly incites others to commit genocide; (vi) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person’s intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.”

⁵¹ For more details on those situations and cases refer to: <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>.

⁵² The ICC stated that “sexual violence is an intrinsic element of the criminal conduct of “use to participate actively in the hostilities” and that “there is additionally a gender-specific potential consequence of unwanted pregnancies for girls that often lead to maternal or infant’s deaths, disease, HIV, psychological traumatization and social isolation.”

⁵³ For more details about the situation in Congo see: <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200104/>.

⁵⁴ For more details about the situation in Uganda see: <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200204/>.

EUROPE

1. The European Commitment to Protection of Human Rights

The protection and development of human rights has always been a key objective and mission of the Council of Europe,⁵⁵ the European Union,⁵⁶ and the States forming the European Union (“EU Member States”). Such commitment has drawn its inspiration from the UDHR and other International Treaties on the protection of human rights.⁵⁷

Therefore, in the last 50 years, enormous efforts have been made by different International and supranational entities in Europe, such as the European Union and the Council of Europe, and by Europe’s Jurisdictional Courts (the European Court of Justice and the European Court of Human Rights) in preventing and fighting all forms of moral and physical violence, in particular against women, children, the disabled, and minorities. These human rights violations are very often rooted in social structures of inequality and discrimination.

In particular, the Council of Europe and the European Union – although representing separate entities with different, yet complementary, roles – share the same fundamental values in relation to the protection of human rights, democracy, and the rule of law.

The actions of these entities have been driven by the acknowledgment that there is no freedom, security, or justice without a strong commitment to prevent and combat any threats that, in the 21st century, still jeopardize the fundamental rights of all human beings, in particular those who are in special need of protection because of their age, sex, physical and mental conditions, sexual orientation, or race.

The European Union and the Council of Europe have also implemented a special program, called the “Daphne Programme,” with the purposes of fighting violence against women, young people, and children, protecting victims and groups at risks, and promoting health care, well-being, and social cohesion. For the period of 2007 to 2013, this program is known as the Daphne III Programme, and also grants funding for International actions, activities carried out by the European Commission, and initiatives promoted by non-profit organizations. Since its implementation in 1997, the Daphne Programme has financed several human rights projects, including projects for the prevention of female genital mutilation (“FGM”).⁵⁸

⁵⁵ The Council of Europe was founded by the Statute of London, signed by 10 state parties (i.e. Belgium, Denmark, France, Ireland, Italy, Luxembourg, Norway, the Netherlands, UK, and Sweden) on May 5, 1949. The Council of Europe counts today 47 State parties, including certain countries that are not members of the European Union, such as the Russian Federation, Switzerland, San Marino, Bosnia and Herzegovina, Ukraine, and Turkey. The additional countries that participate in the Council of Europe as “observer States” are Canada, Holy See, Israel, Japan, Mexico, and the United States.

⁵⁶ The European Union was founded with the Maastricht Treaty, signed by 12 EU Member States (i.e. Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, UK, and Spain) on February 7, 1992 and became bidding on November 1, 1993. The European Union counts today 27 EU Member States.

⁵⁷ For example, the CRC and the CEDAW.

⁵⁸ See “Ending FGM – A Strategy for the European Union Institutions,” page 29.

2. The Council of Europe: The European Convention of Human Rights and the European Court of Human Rights

Two of the main activities of the Council of Europe are (i) bringing together governments from across Europe – and beyond – to agree on minimum legal standards on a number of different areas of law, and (ii) monitoring how the countries apply the standards that they have agreed to adopt.

On November 4, 1950 the Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”)⁵⁹ with the aim of (i) affirming the fundamental rights and freedoms of all human beings,⁶⁰ and (ii) fighting any form of discrimination based on age, gender, race, color, language, religion, political or other opinion, national or social origin, property, birth, or other status. The ECHR and its amending protocols bind all State parties that ratified the ECHR and the additional Protocols (“High Contracting Parties”)⁶¹ to secure within their own national territories the rights granted to natural persons under the ECHR.⁶²

The ECHR also founded the European Court of Human Rights (the “Court”), which has permanent jurisdiction over any violation, by the High Contracting Parties, of the rights granted by the ECHR.

Among the cases examined by the Court, a number refer to young girls and women as victims of human rights violations. In particular, on matters of immigration law and determination of refugee status, the Court has often considered whether young women and children would be exposed to potentially inhumane treatment if they were deported to their home countries. In these trials, the matter within the Court’s jurisdiction was not the human rights violation itself, but whether substantial grounds existed to suggest that the refugees in question, if deported, would face treatment contrary to the rights granted by the ECHR (i.e. that deportation would endanger refugee’s life or freedom based on his or her religion, race, political opinion, or membership in a particular social group) such that the relevant High Contracting Party could be held accountable for issuing the deportation order. Where the countries of origin provided some degree of protection, either through their legal or judicial systems, or through effective measures implemented by non-profit organizations,⁶³ the Court could not revoke the deportation order or issue any protective measures. This is true even if the domestic countries’ protection would be of a degree far below that offered by the High Contracting Party, such as relocation to another area of the country or the free care of a local humanitarian organization. Among the types of violence examined by the Court was the possible exposure of young girls and women (both below and above the age of 15) to different forms of FGM, prostitution, child maltreatment by foster parents or custodians, domestic slavery, and forced marriage. However, in most cases the Court denied the refugees’ application based on either lack of evidence that the refugee was at serious risk of experiencing inhuman treatments upon deportation or failure to show the absence or an inadequate level of protection in the domestic countries.⁶⁴

⁵⁹ See <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>.

⁶⁰ Such rights are listed in Section I (Articles 2-18) of the ECHR and include, among others, the right to life, the prohibition of torture, the prohibition of slavery or forced labour, right to liberty, and security.

⁶¹ The accession of the European Union to ECHR became a legal obligation under the Treaty of Lisbon, which entered into force on December 1, 2009.

⁶² In particular, the Court “may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right” (Article 34 of the ECHR).

⁶³ This is known as the principle of “Exhaustion of all effective domestic remedies.”

⁶⁴ See, for example, Application No. 8969/10 by Mary Magdalene, Omeredo v. Austria, Application No. 22255/11 by Stella-Maris Ekaette Okon and Daniella Victoria, Okon v. Ireland, Application No. 4539/11 by Nkechi Clareth Ameh and Others v. the United Kingdom, Application No. 39030/97 by Rebecca Ivison v. the United Kingdom, Application No. 43408/08 by Enitan Pamela Izevbekhai and Others v. Ireland, and Application No. 35745/11 R.W. and Others v. Sweden.

One important case of the Court involves a situation where a 15-year old girl was subjected to forced slavery by a couple who took advantage of her vulnerable and dependent position as an illegal alien.⁶⁵ In particular, in *Siliadin v. France*, the couple was prosecuted on charges of, among others, having obtained the performance of services without payment or in exchange for payment that was manifestly disproportionate to the work being carried out, and having subjected an individual to working and living conditions that were incompatible with human dignity.⁶⁶ In this case, the Court declared the application admissible and analyzed its merits on the basis that “*slavery and servitude are not as such classified as offenses under French criminal law,*” and other provisions of the French criminal code “*did not deal specifically with the rights guaranteed under Article 4 of the ECHR, but concern, in a much more restrictive way, exploitation through labor and subjection to working and living conditions that are incompatible with human dignity.*” The applicant was entitled to the Court’s protection since the criminal law of the High Contracting Party, France, did not hold her perpetrators’ responsible. In particular, the Court held that the French laws in force at that time did not afford the applicant, a minor, practical and effective protection from the enslavement that she experienced. Therefore, the Court held that the respondent High Contracting Party was to pay the applicant the costs and expenses of the trial; however, compensation for damages were not claimed by the applicant and therefore not granted by the Court.

Other cases discussing young girls, women, and children as victims of human rights violations were examined by the Court in relation to Article 2 (*Right to life*), Article 3 (*Prohibition of inhuman or degrading treatment*), Article 8 (*Right to respect for private and family life*), Article 13 (*Right to an effective remedy*), and Article 14 (*Non-discrimination*) of the ECHR. In particular:

- (i) In *Opuz v. Turkey* (European Court of Human Rights, Application No. 33401/02, judgment of June 9, 2009), the Court found that Turkey had violated Articles 2 (*Right to life*), 3 (*Right to be free from torture or cruel, inhuman or degrading treatment*) and 14 (*Non-discrimination*) because it had failed to act with diligence to protect the applicant, a young Turkish woman, and her mother from domestic violence perpetrated by the applicant’s former husband. Therefore, the Court imposed on Turkey an obligation to protect the rights of women and to take positive action when required.
- (ii) In *Aydin v. Turkey* (European Court of Human Rights, Application No. 29289/95, judgment of September 25, 1997), the Court, interpreting the ECHR, found Turkey to be in violation of Article 3 (*Torture or inhuman or degrading treatment of punishment*) owing to a deficiency in its criminal law, which failed to effectively protect women from sexual violence. This case held that lack of consent, and not the use of physical force, threats or resistance of the victim, is the critical factor in establishing whether a rape has occurred.⁶⁷ In particular, in this case, the applicant, a 17-year-old woman, was arrested and detained without explanation; during the detention she was blindfolded,

⁶⁵ *Siliadin v. France*, Application No. 73316/01, judgment of October 26, 2005.

⁶⁶ It is also worth noting that this case reported that a new form of slavery, namely domestic slavery, appeared in France in 2000 to 2001 involving mainly female victims (95%), primarily originating from West Africa (Ivory Coast, Togo, and Benin) but also from Madagascar, Morocco, Sri Lanka, and the Philippines. These victims are left in a situation of total vulnerability and exposed to physical and/or sexual violence.

⁶⁷ The Court also addressed sexual violence through Article 8(1) (*Right to private life*) in the case of *M.C. v. Bulgaria*, European Court of Human Rights, Application No. 397272/98, judgment of December 3, 2003.

⁶⁸ PINESCHI, *La tutela internazionale dei diritti umani*, Milan, 2006, 388; RUSSO and QUAINI, *La Convenzione europea dei diritti dell’uomo e la giurisprudenza della Corte di Strasburgo*, Milan, 2006, 108.

beaten, stripped naked, and raped by a member of the security force. She was then beaten again for about an hour by several people. This especially cruel case of violence and rape has been considered by several authors as a leading case on fighting violence against young women.⁶⁸ In this case, the Court found that the accumulation of acts of physical and mental violence inflicted on the applicant, and especially the cruel act of rape, amounted to torture in violation of Article 3 (*Prohibition of torture*). The Court stressed therefore that “*the rape of a detainee by a State official had to be considered an especially grave and abhorrent form of ill-treatment which left deep psychological scars on the victim.*”⁶⁹

- (iii) In *M.C. v. Bulgaria* (European Court of Human Rights, Application No. 39272/98, with final decision on December 3, 2003), the Court showed its intention to develop a dynamic concept of violence and torture, explaining that State parties had the obligation to prosecute any non-consensual sexual act, even where the victim had not resisted physically. The Court underscored that “*victims of sexual abuse, especially young girls, often failed to resist, for psychological reasons (either submitting passively or dissociating themselves from the rape) or for fear of further violence.*”⁷⁰
- (iv) In *D.P. & J.C. v. UK* (European Court of Human Rights, Application No. 38719/97), a sister and brother were both sexually abused by their stepfather from the age of around 8 and 10 respectively. They claimed they informed the local social services authority of the abuse, but the authorities failed to protect them. The girl attempted to commit suicide after being raped by her stepfather, and developed a personality disorder. The boy later suffered from epilepsy. Both experienced long term depression and trauma. The Court found a violation of Article 13 of the ECHR because the children had no effective remedy or access to compensation based on their allegations under UK law.
- (v) In *E. & Others v. UK* (European Court of Human Rights, Application No. 33218/96), three sisters and their brother were for many years abused physically (all four children) — and the girls sexually by their mother’s boyfriend, including after his conviction for assaulting two of the girls, when he came back to live with the family, in violation of the conditions of his probation. The man forced the children, among other things, to hit each other with chains and whips in front of and sometimes with him. The girls all suffered severe post-traumatic stress disorder, and the boy had personality problems as a result. The Court found that social services failed to protect the children and that UK law offered no effective remedy for these abuses, in violation of Article 13 of the ECHR.

⁶⁹ As illustrated in the Press Unit of the ECHR, April 2012.

⁷⁰ As illustrated in the Press release of the ECHR, April 2012: “*The applicant, aged 14 (which was the age of consent for sexual intercourse in Bulgaria), was raped by 2 men; she cried during and after being raped and was later taken to hospital by her mother, where it was found that her hymen had been torn. Because it could not be established that she had resisted or called for help, the perpetrators were not prosecuted. The Court found violations of Articles 3 (prohibition of degrading treatment) and 8 (right to respect for private life), noting the universal trend towards recognizing lack of consent as the essential element in determining rape and sexual abuse.*”

There are other cases in which the Court condemned the relevant High Contracting Party, in the context of addressing domestic violence against women and children, for its failure to protect the family and the children’s lives.⁷¹

3. European Union Initiatives Protecting Human Rights, and the Court of Justice of the European Union

In terms of human rights, the European Union seeks to implement and uphold the same values and standards as the Council of Europe when drawing up the legal instruments and agreements that apply to its 27 EU Member States. Furthermore, the European Union regularly asks the Council of Europe to monitor those countries that are Council of Europe members.

On December 7, 2000, the European Union adopted the Charter of Fundamental Rights of the European Union (the “Human Rights Charter”). The aim of the Human Rights Charter is to affirm that the European Union is founded on the indivisible and universal values of human dignity, freedom, equality, and solidarity, is based on the principles of democracy and the rule of law; and places the individual at the heart of its activities by creating an area of freedom, security, and justice.

The Human Rights Charter came into effect with the ratification of the Treaty of Lisbon and gained the same legal force as the Treaty of European Union (“TEU”) and the Treaty on the Functioning of the European Union (“TFEU”).⁷² Although the Human Rights Charter does not expand the jurisdiction of the European Union, it is now legally binding on European Union bodies and institutions as well as on EU Member States in their implementation of European Union Laws.⁷³

Articles 1 through 26 of the Human Rights Charter deal with the declaration of the fundamental rights of dignity, freedom, and equality of all human beings. Moreover, Article 24 of the Human Rights Charter deals with the rights of children and recognizes them as having distinct rights, including the rights to care and protection and to the promotion of their best interests in all areas of law (criminal, civil, and family law).

The Treaty of Lisbon strengthened the protection of the rights of women and children because it (i) incorporated the principles of equal treatment of men and women and children’s rights into the purposes of the European Union; (ii) underscored that the protection of human rights and in particular children’s rights is a crucial purpose of the European Union in its relationship with other International organizations; and (iii) allowed the European Parliament and the European Council to adopt specific measures to fight and eliminate sexual exploitation of and trafficking in women and children.

⁷¹ Case *Kontrová v. Slovakia*, Application No. 7510/04, final decision on May 31, 2007; case *Bevacqua and S. v. Bulgaria*, Application No. 71127/01, final decision on June 12, 2008; case *Branko Tomašić and Others v. Croatia*, Application No. 46598/06, final decision on January 15, 2009; case *Opuz v. Turkey*, Application No. 33401/02, final decision on June 9, 2009; case *E.S. and Others v. Slovakia*, Application No. 8227/04, final decision on September 15, 2009; case *A. v. Croatia*, Application No. 55164/08, final decision on October 14, 2010; case *Hajduová v. Slovakia*, Application No. 2660/03, final decision on November 13, 2010; case *Kalucza v. Hungary*, Application No. 57693/10, final decision on April 24, 2012. Other cases in which the European Court of Human Rights condemned the relevant state for failure to protect children pursuant to ECHR are the following: *Tyrer v. UK*, Application No. 5856/72, decision on April 25, 1978; *A. v. UK*, Application No. 25599/94, decision on September 23, 1998; *K.U. v. Finland*, Application No. 2872/02, decision on December 2, 2008; *Scozzari and Giunta v. Italy*, Applications Nos. 39221/98 and 41963/98, decision on July 13, 2000; *Z. and others v. UK*, Application No. 29392/95, decision on May 10, 2001; *Kontrová v. Slovakia*, Application No. 7510/04, decision on May 31, 2007; *E.S. and others v. Slovakia*, Application No. 8227/04, decision on September 15, 2009; *C.A.S. and C.S. v. Romania*, Application No. 26692/05, decision on March 20, 2012.

⁷² The Treaty of Lisbon was adopted on December 13, 2007 and entered into force on December 1, 2009, after being ratified by all the EU Member States. The Treaty of Lisbon amended the Treaty of European Union (TUE), and the Treaty on the Functioning of the European Union (TFEU). Article 6 of TEU sets forth that “*The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties*” and that “*Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the EU Member States, shall constitute general principles of the Union’s law.*” The consolidated versions of the treaties are available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML>.

⁷³ See Article 6 of the TUE.

In particular, Articles 82 and 83 of the TFEU set forth the principles of judicial cooperation of EU Member States on criminal matters. Article 83, paragraph 1, provides, in particular, that “*The European Parliament and the Council may, by means of directives, establish minimum rules concerning the definition of criminal offenses and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature and impact of such offenses or from a special need to combat them on a common basis*”. In addition to the areas of crime already listed in Article 83, paragraph 1, the Council, acting unanimously with the European Parliament, “*may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph*”.

At the moment, the legislative competence of the European Union on human rights violation field is limited only to the adoption of specific measures to fight and eliminate sexual exploitation of and trafficking in women and children. Many other human rights violations – including female genital mutilation, domestic and sexual slavery and forced marriage – cannot be addressed on a common basis by European Union legislative measures.

The European Union has also founded the Court of Justice of the European Union (“ECJ”) with the aim of allowing National courts to uniformly apply European Union laws by asking the ECJ to interpret unclear points of European Union laws. The ECJ also settles legal disputes between European Union governments and European Union institutions. Individuals, companies, or organizations may also challenge, before the ECJ, EU decisions or actions if they feel their rights have been infringed by an EU institution.

For example, in one case, the ECJ declared that a EU Member State failed to fulfill its obligations under the provisions of the European Union, “*by failing to abolish[...] regulations which impose conditions on married female workers which are not imposed on their married male counterparts in respect of the grant to employees of family or marriage allowances, which are taken into account in determining their income for the purposes of calculating pensions rights.*”⁷⁴

The ECJ, on several occasions, has shown its interest in contributing to strengthening the protection of women and children, underscoring that violence against women, sexual abuse, sexual exploitation of children, and child pornography constitute serious violations of fundamental rights.⁷⁵ However, the ECJ is not competent to directly adjudicate the crimes committed by European Union and non-European Union citizens within European Union territory, or to issue sentences that are directly enforceable against the relevant perpetrators by other European Union bodies, victims, or National judges.

The European Union has taken several other initiatives to fight and eliminate violence against women and children. In particular:

- (i) in November 2008, the European Council adopted the “*Guidelines on Violence against Women and Girls*,” where it underscored the importance of fighting violence against women, characterized as one of the major human rights violations;

⁷⁴ Case C-187/98, ECR 1999, Application dated May 18, 1998, decision dated October 28, 1999.

⁷⁵ For example, see Case C-348/09, ECR 2012, Application dated August 31, 2009, decision on May 22, 2012, where the ICJ stated “sexual abuse and sexual exploitation of children constitute serious violations of fundamental rights in particular, the rights of children to the protection and care necessary for their well-being.” In Case C-105/03, ECR 2005, Application dated March 5, 2003, decision on November 11, 2004–June 16, 2005, the ECJ specified that “children are vulnerable and are therefore at a greater risk of falling victim of trafficking” and that “children are entitled to special care and assistance.”

- (ii) in 2010, the European Commission carried out a feasibility study to assess the possibilities, opportunities, and needs to standardize national legislation on violence against women and children and violence based on sexual orientation (“Feasibility Study Report”).⁷⁶ The Feasibility Study Report stated that national criminal law is one of the major areas for standardization at the European Union level. However, the ability of the European Union to adopt legislative measures (directives) on criminal law matters that involve human rights violations is still very limited. In particular, according to Article 83 of the TFEU, the relevant crimes that the European Union could legislatively address are human trafficking and the sexual exploitation of women and children; therefore, very serious human rights violations that do not fall within those categories (such as FGM and forced marriage) cannot be addressed by European Union legislative measures; and
- (iii) in 2011, the European Union intensified instruments to promote and protect human rights and good governance and to combat gender inequality. In December 2011, the Commission and the High Representative presented a Joint Communication on “*Human rights and democracy at the heart of EU external action – towards a more effective approach.*”⁷⁷ The aim of such joint communication is tailoring the promotion of human rights to local conditions and envisages ways in which the collective weight of the European Union could be harnessed.⁷⁸

This limitation on European Union action still represents a significant impediment to the harmonization of criminal statutes among EU Member States and to the implementation of more effective actions and remedies to combat gender-based violence and violence against children.⁷⁹ This lack of legislative power should be addressed by the European Council and the European Parliament through an amendment of Article 83 of the TFEU to identify all human rights violations as crimes with a cross-border dimension that require a common legislative approach at the European Union level.

4. Ending FGM, Human Trafficking and Sexual Exploitation of Children as a High Priority in Europe

Since the accession of the European Union to the ECHR with the Treaty of Lisbon, the European Union’s activities have increased in many areas where the Council of Europe already had significant experience, knowledge, and expertise. This has led to extensive cooperation between the European Union and the Council of Europe on issues such as fighting human trafficking, the sexual exploitation of children, and violence against women, including FGM. Those violations of fundamental human rights are discussed below:

⁷⁶ “Feasibility study to assess the possibilities, opportunities and needs to standardize national legislation on violence against women, violence against children and sexual orientation violence” EU Commission, Luxembourg, Publications Office of the European Union, 2010.

⁷⁷ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>.

⁷⁸ In 2011, over 130 strategies were finalized, having taken into account the views of civil society. See, EU actions in 2011, including FGM, European Commission, Brussels, August 6, 2012, COM(2012), 444 final.

⁷⁹ Possible alternatives to legislative measures are non-binding measures such as soft law and policies, which already provide a good source for information and analysis at both the international and European level.

4.1 FGM

Among all inhuman treatments, FGM has recently received a high degree of attention as a result of strong campaigns and humanitarian missions by international organizations, such as UNICEF, WHO, the United Nations, Amnesty International, the Council of Europe, and the European Commission, working in partnership with a number of national organizations.⁸⁰

As defined in the 1997 joint WHO/UNICEF/UNFPA statement, “*Female Genital Mutilation (FGM) comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.*” Four categories of FGM have been identified,⁸¹ and FGM is expressly defined as a violation of human rights and children’s rights that should incur individual criminal responsibility.⁸²

FGM raises a number of human rights concerns, in particular, the State’s responsibility to protect the right to be free from torture or cruel, inhuman, or degrading treatment, the right to health, the right to an effective remedy, and the right to non-discrimination and equal protection of the law. It can also raise concerns related to the right to life when the procedure results in death. A state violates these rights if it fails to act with due diligence to prevent, investigate, and punish acts of FGM.

The WHO estimates that around 100 to 140 million women and girls have been subjected to FGM, with an estimated 3 million at risk each year. Another estimate reported in 2008 in an interagency statement made by international organizations, including UNESCO, UNICEF, and WHO, showed that around 90 percent of FGM cases include clitoridectomy, excision, or other cases where the girls’ genitals are not removed, and around 10 percent are infibulations (Type III).

Although this practice is most common in African regions, some countries in the Middle East and some communities in Latin America and Asia also follow this custom.⁸³ Due to its cultural, social, or gender-related origin,⁸⁴ it is still a cross-border phenomenon since it is also performed in western countries, including European countries, where this tradition has been implemented by refugees, immigrants, and aliens seeking asylum.⁸⁵

The health consequences of FGM are life-lasting and often expose women to the risk of several physical and physiological traumas when they give birth, including harm to or the death of the child.⁸⁶ However, due to the deep roots of FGM in some communities and, most importantly, among women of certain ethnic groups, the various campaigns and information initiatives carried out by international organizations initially encountered (and sometimes still do) strong opposition by both men and women living in the affected communities due to

⁸⁰ As illustrated by the report, “*Ending FGM – A Strategy for the European Union Institutions*,” the organizations participating in such campaigns are HILFE in Austria, GAMS in Belgium, MIGS in Cyprus, Vantaan Nice-hearts RY in Finland, GAMS in France, AkiDwa in Ireland, AIDOS in Italy, APF in Portugal, Female Integrity in Sweden, FORWARD in the United Kingdom, Moteru informacijos in Lithuania, and FSAN in the Netherlands.

⁸¹ Such categories are: (i) Type I – Partial or total removal of the clitoris and/or the prepuce (clitoridectomy); (ii) Type II – Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision); (iii) Type III – Narrowing of the vaginal orifice through creation of covering seal by cutting and repositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation); and (iv) Type IV – All other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping, and cauterization.

⁸² The rights violated by the practice of FGM are listed in various international treaties and conventions, including – among others – the Convention on the Elimination of all Forms of Discrimination against Women, the Conventions on the Rights of the Child, UNESCO Universal Declaration on Cultural Diversity, the ECHR, and the Human Rights Charter.

⁸³ See table on Estimated prevalence of FGM in girls and women 15-49 years old on page 7 of “*Ending FGM – A Strategy for the European Union Institutions*.”

⁸⁴ It is worth mentioning that FGM, although predominant among Muslims, is also practiced among Christians, Jews, and animists. Hence, despite popular opinion, FGM is not specifically linked to a particular religion – considering, for example, that the majority of Muslims worldwide do not practice it – but to ethnic groups and social traditions.

⁸⁵ A resolution adopted by the European Parliament (European Parliament Resolution on combating FGM in the EU 2008/2071(INI), March 24, 2009) states that an estimated 500,000 women and girls living in Europe have been subjected to FGM. However, to date, there is no harmonized data collection procedure that would help in assessing the size of the issue within the European Union.

⁸⁶ For more information, see “*Ending FGM – A Strategy for the European Union Institutions*,” pages 6 and 7.

the possible negative consequences that girls who refuse to undergo it may face in their ethnic groups.⁸⁷

Moreover, a number of medical associations have raised concerns regarding the health risks associated with FGM, including the possible death of the victims, especially since it is generally performed in unhygienic conditions by traditional excisors (not medical doctors) at the request of the family. In response, some doctors have proposed the medicalization of FGM as a possible solution, so that the procedure may be performed in hospitals under hygienic conditions by trained physicians, thus reducing the health risk for young women.

As a response to these issues, anti-FGM campaigns have intensified efforts at informing local communities that (i) FGM is a gender-based human rights violation seeking control over women's sexuality, and (ii) the International community also strong disapproves of such practices at a political level. Consequently, certain countries, such as Nigeria, have passed laws prohibiting all forms of FGM.

Although this is an important step in fighting FGM, it is still practiced in some local communities as a family tradition or to avoid the negative social consequences that attach to girls (especially daughters from poor families in search of husbands) who refuse to be mutilated. As a result, even when FGM is practiced in violation of the law, it is unlikely that local law enforcement will arrest, prosecute, and convict the perpetrators, generally family members of the girls or persons belonging to the same local community.

Hence, it is a priority of the European Union to guide and coordinate those actions implemented at the EU Member State level to fight FGM, either by introducing specific laws that criminalize the practice or by supporting non-profit organizations operating within national territories.⁸⁸ In particular, the European Union may play an important role in:

- (i) collecting relevant data and coordinating research within the European Union to determine the prevalence of the practice among the EU Member States and draw comparative analysis;
- (ii) enhancing the capacity of the health care sector and counselors to assist women and girls that have been subjected to FGM;
- (iii) encouraging EU Member States to introduce legislative measures for the prevention of FGM and protection of the victims;
- (iv) promoting a standard policy within the European Union to be applied to women seeking asylum on the grounds of FGM; and
- (v) actively supporting and sponsoring campaigns in the regions where FGM is still performed in cooperation with other International organizations.

⁸⁷ A report of the United Nations (United Nations Children's Fund, "Changing a Harmful Social Convention: FGM/cutting", Innocenti Digest, 2005) showed that "FGM is an important part of girls' and women's cultural gender identity and the procedure may also impart a sense of pride, of coming of age and a feeling of community membership. Girls who undergo the procedure are provided with rewards, including celebrations, public recognitions and gifts. Moreover, in communities where FGM is almost universally practiced, not conforming to the practice can result in stigmatization, social isolation and difficulty in finding a husband."

Based on the European Union actions, most EU Member States have passed laws whereby FGM is defined as a criminal offense, either as an independent crime or as an act of bodily harm or injury.⁸⁹

In addition, Article 38 of the "Convention on Preventing and Combatting Violence against Women and Domestic Violence," adopted by the Council of Europe on April 12, 2011, provides an obligation for the State parties to take necessary legislative and other measures to ensure the criminalization of FGM.

4.2 Human trafficking and sexual exploitation of children

4.2.1 Human trafficking and sexual exploitation of children in the legal framework of the Council of Europe

On May 16, 2005 the Council of Europe approved the Convention on Action against Trafficking in Human Beings of the Council of Europe (the "Trafficking Convention"), which entered into force on February 1, 2008. The purposes of the Trafficking Convention are "a. to prevent and combat trafficking in human beings, while guaranteeing gender equality; b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution; [and] c. to promote International cooperation on action against trafficking in human beings."⁹⁰

The Trafficking Convention includes several provisions intended to provide protections for victims of human trafficking, including, among others, a minimum 30-day "recovery and reflection period" — i.e. whenever there are reasonable grounds for believing that a person is a victim of human trafficking, such person is granted a "recovery and reflection" period during which she may not be subject to any deportation order. This period is meant to provide the potential victim enough time to recover and escape the influence of traffickers and/or to make an informed decision on whether to cooperate with the competent authorities.

The Trafficking Convention obligates State parties to establish some form of extraterritorial jurisdiction on crimes contemplated by the Trafficking Convention, and in particular for crimes committed, among other cases, by "one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offense is punishable under criminal law where it was committed or if the offense is committed outside the territorial jurisdiction of any State" or "against one of its nationals."⁹¹

⁸⁸ For more information, see "Ending FGM – A Strategy for the European Union Institutions," page 16.

⁸⁹ Such provisions have been adopted by Austria, Belgium, Cyprus, Denmark, Italy, Portugal, Spain, Sweden, and the UK while in other EU Member States FGM may be addressed under general criminal law. The large majority of EU Member States have included the principle of extraterritoriality in the criminal provisions, enabling the prosecution of FGM when the practice is committed outside the EU when, for example, the offender or victim (or both) are citizen or have permanent residence in the European Union and, in some circumstances, if FGM is also considered an offense in the country where the crime is committed (double incrimination).

⁹⁰ Article 1 of the Trafficking Convention (CETS no. 197).

⁹¹ Article 31 of the Trafficking Convention (CETS no. 197).

On October 25, 2007 the Council of Europe approved a Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the “Sexual Exploitation and Sexual Abuse Convention”), which came into force on July 1, 2010. The purposes of the Sexual Exploitation and Sexual Abuse Convention are “a. *to prevent and combat sexual exploitation and sexual abuse of children; b. protect the rights of child victims of sexual exploitation and sexual abuse; [and] c. promote national and International co-operation against sexual exploitation and sexual abuse of children.*”⁹² The Sexual Exploitation and Sexual Abuse Convention provides for preventative measures, including recruiting, training, and raising the awareness of persons working in contact with children,⁹³ and educating children on the risks of sexual exploitation and abuse,⁹⁴ protective measures to assist victims, and provisions aimed at the criminal prosecution of offenders, including provisions envisioning the assertion of extraterritorial jurisdiction by State parties (particularly relevant in the fight against child sex tourism).⁹⁵

4.2.2 Human trafficking and sexual exploitation of children in the legal framework of the European Union

Trafficking in human beings is explicitly prohibited by Article 5 of the Human Rights Charter: “1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. Trafficking in human beings is prohibited.”

The European Union is fully committed to the prevention of and fight against trafficking in human being. ⁹⁶ The focus of the European Union’s actions is the prevention of human trafficking, protection of victims, and prosecution of criminals. The fields of intervention by the European Union are:

- (i) legal measures, most notably the recent Directive 2011/36/EU “on preventing and combating trafficking in human beings and protecting its victims” (the “Anti-trafficking Directive”) and Directive 2011/92/EU on “combating the sexual abuse and sexual exploitation of children and child pornography”;
- (ii) International cooperation, and in particular participation in International agreements and joint projects with non-EU Member States and International institutions; and
- (iii) other initiatives, including funding programs and policy documents, such as the Stockholm Programme, adopted by the European Council in December 2009⁹⁷ and the Action Oriented Paper on trafficking in human beings adopted by the European Council on November 30, 2009.

⁹² Article 1 of the Sexual Exploitation and Sexual Abuse Convention (CETS No. 201).
⁹³ Article 5 of the Sexual Exploitation and Sexual Abuse Convention (CETS No. 201).
⁹⁴ Article 6 of the Sexual Exploitation and Sexual Abuse Convention (CETS No. 201).
⁹⁵ In particular, each State party shall take the necessary legislative or other measures to establish its jurisdiction when an offense is committed, among other cases, “by one of its nationals; or by a person who has his or her habitual residence in its territory” (Article 25 of the Sexual Exploitation and Sexual Abuse Convention (CETS No. 201)).
⁹⁶ See Communication on the European Union Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 (COM(2012) 286 final), page 3.
⁹⁷ The Stockholm Programme (17024/09), *inter alia*, calls for the development of a “consolidated EU policy against trafficking aiming at further strengthening the commitment of, and efforts made, by the EU and the EU Member States to prevent and combat trafficking” and the establishment by the Council of an European Union Anti-Trafficking Coordinator (“ATC”).

In particular, the Anti-trafficking Directive sets forth a series of principles and provisions in the areas of criminal law and prosecution, prevention, and victim protection and support that EU Member States are mandated to adopt within their legal systems. The Anti-trafficking Directive adopts an “*integrated, holistic and human rights approach*”⁹⁹ and constitutes a new milestone in the European Union policies against human trafficking.

Article 2 of the Anti-trafficking Directive adopts a comprehensive definition of human trafficking: “*the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*”¹⁰⁰

As to criminal laws and prosecution of human trafficking, EU Member States are required to investigate and prosecute any crime of human trafficking committed in whole or in part in their territory or, in case the crime was not committed in the territory of a EU Member State, in the EU Member State where the offender is a national.¹⁰¹ EU Member States may also elect to establish jurisdiction over any crime of human trafficking committed outside their territories, “*inter alia, where: (a) the offense is committed against one of its nationals or a person who is an habitual resident in its territory; (b) the offense is committed for the benefit of a legal person established in its territory; or (c) the offender is an habitual resident in its territory.*”¹⁰²

The Anti-trafficking Directive exempts a victim of human trafficking from prosecution and punishment for his/her involvement in criminal activities that he/she has been compelled to commit as a direct consequence of the crime of human trafficking.¹⁰³

Pursuant to the Anti-trafficking Directive, EU Member States are urged, by April 6, 2013, to take appropriate measures to prevent human trafficking, including education and training initiatives to discourage and reduce the demand for any form of exploitation, information and awareness-raising campaigns, research, and education programs to reduce the risk of people (including women and children) becoming victims of human trafficking, and regular training for officials likely to come into contact with victims or potential victims of human trafficking.¹⁰⁴

The legal framework outlined by the Anti-trafficking Directive is complemented by Directive 2004/81/EC of April 29, 2004 “on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with

⁹⁸ The Anti-trafficking Directive replaced the Council Framework Decision 2002/629/JHA.
⁹⁹ See recital 7 of the Anti-trafficking Directive.
¹⁰⁰ Exploitation includes “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.” The definition set forth in Article 2 of the Anti-trafficking Directive builds upon the definition of “trafficking in persons” under Article 3 of the UN, “Protocol to prevent, suppress and punish Trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime” of 2000 (one of the so called Palermo Protocols) and of “trafficking in human beings” of Article 4 of the Trafficking Convention.
¹⁰¹ Article 10.1 of the Anti-trafficking Directive.
¹⁰² Article 10 of the Anti-trafficking Directive.
¹⁰³ Article 8 of the Anti-trafficking Directive.
¹⁰⁴ Article 18 of the Anti-trafficking Directive.

*the competent authorities” and Directive 2009/52/EC of the European Parliament and of the European Council of June 18, 2009 “providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.”*¹⁰⁵

Moreover, in relation to sexual abuse, sexual exploitation of children, and child pornography, the European Union implemented Directive 2011/92/EU¹⁰⁶ aimed at combating and preventing sexual abuse and sexual exploitation of children and child pornography and protecting victims. Like the Anti-trafficking Directive, there are circumstances in which EU Member States may elect to establish jurisdiction over any crimes of sexual abuse, sexual exploitation of children, and child pornography committed outside their territories.¹⁰⁷

As for preventive measures, EU Member States are required to take appropriate measures to discourage and reduce the demand for sexual exploitation of children, raise awareness on this issue and reduce the risk of children becoming victims of sexual abuse and exploitation, and promote training of officials likely to come into contact with victims or potential victims.¹⁰⁸

¹⁰⁵ Article 7 of the Anti-trafficking Directive.

¹⁰⁶ Directive 2011/92/EU makes explicit reference to the UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000, and the Sexual Exploitation and Sexual Abuse Convention of October 25, 2007.

¹⁰⁷ Article 17 provides that a EU Member State must exercise jurisdiction when the offense is committed in whole or in part within its territory or the offender is a national of that EU Member State. A EU Member State may exercise jurisdiction, *inter alia*, where (a) the offense is committed against one of its nationals or a person who is an habitual resident in its territory; (b) the offense is committed for the benefit of a legal person established in its territory; or (c) the offender is an habitual resident in its territory.

¹⁰⁸ Article 23 of the Directive 2011/92/EU.

FRANCE

1. Introduction

Pursuant to French law and case law, violence can be defined as forcing someone to do something against his will through strength or intimidation. Several types of violence may occur within the family, including physical and sexual abuse (such as beating, raping, or otherwise harming) and psychological abuse (exerting influence on a person through threats or domination). The seriousness of the abuse often depends on its repeated and systematic nature.

2. Protections for the Victim

Only 8% of women who experience violence dare to file a complaint. It is the Police and Authorities’ responsibility to support the victims and to show that they are on the victims’ side.

Moreover, the French Parliament has recently adopted a Law on Violence Against Women,¹⁰⁹ a protective order intended to protect victims of violence occurring within marriage, a civil union, or cohabitation by a spouse, partner, or co-habitant. The beneficiary (or his or her children) either has to be in danger, or the beneficiary has to be threatened with forced marriage.

Based on this law, the Family Judge can, in an emergency, evict the violent spouse, decide which party will be financially responsible for family housing, and temporarily rule on the custody of the children. The Family Judge can also allow the victim to hide where she is domiciled.¹¹⁰ This order can only last four months¹¹¹ and is therefore only temporarily enforceable, unless otherwise stipulated by the judge.¹¹²

A person who does not comply with the obligations or prohibitions mentioned in the order of protection can be punished by up to 2 years imprisonment and a fine of Euros 15,000.¹¹³ In addition, if the violent partner does not report his change of residence while he is responsible for child support or maintenance payments, he may be sentenced to 6 months imprisonment and Euros 7,500 in fines.¹¹⁴

Also to ensure the violent spouse is staying away from the family home, it is possible to order electronic surveillance of him.¹¹⁵ The police can also arrest any person placed on probation, as long as there exist plausible reasons to think that the person has not complied with his obligations.¹¹⁶

¹⁰⁹ Law No. 2010-769 of July 9, 2010. This Order is governed by articles 515 - 9 and 515 - 13 of the French Civil Code.

¹¹⁰ See Library of Congress, *France: Law on Violence Against Women*, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402253_text (last updated Sept. 20, 2010).

¹¹¹ See Article 515-12 of the French Civil Code.

¹¹² See Article 1136-7 of the French Code of Civil Procedure.

¹¹³ See Article 227-4-2 of the French Criminal Code.

¹¹⁴ See Article 227-4-3 of the French Criminal Code.

¹¹⁵ See Articles 142-12-1 and 131-36-12-1 of the French Civil Code.

¹¹⁶ See Article 141-4 of the French Criminal Code.

3. Crimes against Women and Children

Violence against women is not limited to assault and battery. It takes multiple forms.

3.1 Physical Violence

Criminal category of the offense	Applicable Text and Penalties
Voluntary violence causing unintentional death	Offense punishable by imprisonment of 15 years (article 222-7 of the French Criminal Code), and by imprisonment of 20 years (article 222-8 1° and 6° of the French Criminal Code) when the offense is committed against a minor under 15 years old or by the spouse or cohabitee of the victim or the partner of the victim in a civil solidarity pact (<i>“Pacte civil de solidarité”</i>).
Assault and battery resulting in permanent disability or mutilation	Offense punishable by imprisonment of 10 years and by a fine of Euros 150,000 (article 222-9 of the French Criminal Code), and by an imprisonment of 15 years when the victim is a minor under 15 years old (article 222 -10 of the French Criminal Code). When the violence is committed against a minor under 15 years old by a legitimate, natural, or adopted ascendant, or any other person having authority over the minor, the incurred penalty is imprisonment of 20 years (article 222-10 of the French Criminal Code).
Violence resulting in complete work disability (<i>“incapacité totale de travail”</i>) for more than 8 days	Article 222-12 of the French Criminal Code provides for 5 years imprisonment and a fine of Euros 75,000 when the offense is committed against a minor under 15 years old (222-12, 1°) or by the spouse or cohabitee of the victim or the partner of the victim in a civil solidarity pact (article 222-12, 6° of the French Criminal Code).
Violence resulting in complete work disability for 8 days or less committed by the spouse or cohabitee	Article 222-13 of the French Criminal Code provides for 3 years imprisonment and a fine of Euros 45,000 when the offense is committed against a minor under 15 years old (222-13, 1°) or by the spouse or cohabitee of the victim or the partner of the victim in a civil solidarity pact (article 222-13, 6° of the French Criminal Code).

The statute of limitations for prosecution of these crimes (*“crimes”*)¹¹⁷ and offenses (*“délits”*)¹¹⁸ was extended to 20 years from the date that the victim becomes an adult for:

- (i) crimes of violence leading to permanent disability or mutilation committed against minors;¹¹⁹
- (ii) offenses of violence resulting in complete work disability of more than 8 days, committed against minors.¹²⁰

Further, Law No. 2006-399 of April 4, 2006 addresses the aggravating circumstance that may apply to the physical or psychological violence discussed above based on the perpetrator’s status as current or former spouse or partner of the victim.

3.2 FGM

Each year, 2 million girls worldwide are victims of FGM, including female circumcision. These practices, which are occurring mainly in Africa (Guinea, Eritrea, Mali, Burkina Faso, etc.), also affect certain immigrant populations living in France.

In French law, these practices are currently prosecuted and punished as crimes of physical abuse (see table above). Thus, many parents and circumcisers have been sentenced by French Criminal courts (*“Cour d’assise”*) under physical violence laws, some to mandatory imprisonment.¹²¹

Legal action for cases of FGM may be initiated until 20 years after the victim reaches the age of majority, or until the victim is age 38. Moreover, the applicability of French law has been recently extended to minors having foreign citizenship, who usually reside in France and have experienced sexual mutilation abroad.¹²²

The French Criminal Code provides for the waiver of professional privilege, including doctor-patient privilege, in cases of sexual abuse committed against a minor or any person who is not able to protect himself/herself because of his/her age or his/her physical or mental disability.

In France, reconstructive surgery on the clitoris is now possible for adults. These treatments can at least stop the pain and are reimbursed by the French social security system.¹²³

¹¹⁷ See Article 7 the French Code of Criminal Procedure.
¹¹⁸ See Article 8 of the French Code of Criminal Procedure.
¹¹⁹ See Article 222-10 of the French Criminal Code.
¹²⁰ See Article 222-12 of the French Criminal Code.
¹²¹ See Article 222-10 of the French Criminal Code.
¹²² See Articles 222-16-2 of the French Criminal Code. In particular, article 222-16-2 provides that, “in cases where crimes and offenses provided by articles 222-8, 222-10 or 222-12 are committed abroad on a minor victim ordinarily resident on French territory, French law is applicable notwithstanding the provisions of Article 113-7” of this Code, which normally requires the victim to be a French citizen.
¹²³ See Article 226-14, 1° of French Criminal Code.

3.3 Psychological Violence

The offense of psychological violence was only recently introduced in the French system.¹²⁴ While French case law already sanctioned such psychological assaults, courts can now refer to an explicit text when punishing this crime. Thus, French criminal law now recognizes that emotional and psychological violence may be no less harmful than physical violence.

3.4 Rape and other sexual assaults

Rape is punished by 15 years of imprisonment;¹²⁵ the punishment increases to 20 years of imprisonment when the offense is committed against a minor under the age of 15 or by an ascendant, in a group, or by a person having control over the victim;¹²⁶ and the punishment increases to 30 years of imprisonment when it results in the death of the victim.¹²⁷ The sentence is increased to life imprisonment when preceded, accompanied, or followed by torture or acts of barbarity.¹²⁸

The victims have the right to file a complaint for 10 years time from the date of the crime. For acts committed after Law No. 2004-204 of March 10, 2004 took effect, crime victims who are minors have the right to file a complaint until 20 years after reaching the age of majority-that is, until they are 38 years old.

The French Criminal Code also prohibits sexual offenses other than rape, committed by violence, coercion, threat, or surprise.²⁹ These offenses are punishable by 5 years of imprisonment and a fine of Euros 75,000. The sentence increases to 7 years of imprisonment and a fine of Euros 100,000 when the sexual offense is committed against a minor under 15 years old,¹³⁰ or by a spouse or cohabitee of the victim, or the partner of the victim in a civil solidarity pact.¹³¹ The sentence increases to 10 years of imprisonment and a fine of Euros 150,000 for sexual assault on a child under 15 years old with aggravating circumstances, such as an assault committed by an ascendant of the victim.¹³²

These other sexual offenses are not all explicitly defined by the French Criminal Code, but include, for example, sexual touching, forced masturbation, forcing someone to take or view pornographic pictures under duress, and sexual exhibitionism.

Even if committed without violence, coercion, threat, or surprise, a sexual assault occurs whenever the victim is a minor under 15 years old. If the victim is between 15 and 18 years old, an offense of sexual assault only occurs when committed by an ascendant, or a person in a position of power abusing his authority.¹³³

¹²⁴ See Law of July 9, 2010; see also Article 222-14-3 of the French Criminal Code.

¹²⁵ See Article 222-23 of the French Criminal Code.

¹²⁶ See Article 222-24 of the French Criminal Code.

¹²⁷ See Article 222-25 of the French Criminal Code.

¹²⁸ See Article 222-26 of the French Criminal Code.

¹²⁹ See Articles 222-22 and 222-27 of the French Criminal Code.

¹³⁰ See Article 222-29 of the French Criminal Code.

¹³¹ See Article 222-28 of the French Criminal Code.

¹³² See Article 222-30 of the French Criminal Code.

¹³³ See Articles 227-27 of the French Criminal Code.

Victims who are over 18 years old have 3 years from the date of the crime to file a complaint. For crimes committed against minors before Law No. 2004-204 (effective on March 10, 2004) entered into effect, the time limit for public prosecution is 10 years from when the victim achieves the age of majority, meaning until the victim is 28 years old. When aggravating circumstances are present (for instance, the victim was under 15 years old or otherwise vulnerable, the assault occurred in a group, or the assault involved a weapon), a minor victim has the right to file a complaint until 38 years of age.

Article 2270-1 of the French Civil Code provides that the victim can sue the perpetrator for civil liability (that is, can seek money damages from the perpetrator) for 10 years from the rape or sexual assault, or from the event of damages related thereto. Law No. 98-468 of June 14, 1998 extends this time limit to 20 years when the damage is caused by torture, barbarous acts, violence, or sexual assault committed against a minor.

3.5 Prostitution

Prostitution has been defined as follows: “*Prostitution consists of physical contacts of any kind for remuneration in order to satisfy the sexual needs of someone else.*”¹³⁴ The French Criminal Code defines prostitution very broadly to also include any situation that exploits the prostitution of others.¹³⁵ This broad definition is particularly useful for addressing new forms of prostitution (including on the Internet).

Thus, helping, assisting, protecting, benefiting from, or sharing in the earnings of prostitution, or receiving subsidies, hiring, training for, or pressuring someone to engage in or continue engaging in prosecution constitutes an offense. This offense is punishable by imprisonment for up to 5 years and a fine of up to Euros 15,245. The convicted persons also lose their civil and family rights. Prostitution itself is punishable by imprisonment of 7 years and by a fine of Euros 150,000.

Articles 225-7 and 225-7-1 of the French Criminal Code defines the crime of aggravated prostitution. This crime is punishable by 10 years of imprisonment¹³⁶ and by a fine of Euros 1.5 million. For procuring offenses committed against a child under 15 years old, the sentence is 15 years of rigorous imprisonment and a fine of Euros 3,000,000. Thus, the fact that the victim is a minor under 15 years old constitutes an aggravating circumstance of the offense of prostitution.

Child Prostitution is defined as “*soliciting, accepting or obtaining, for remuneration or for a remuneration promise, a sexual relationship with a minor, engaged in prostitution including on an occasional basis.*”¹³⁷ This offense is punishable by 3 years of imprisonment and by a fine of Euros 45,000. Under Article 225-12-2 of the French Criminal Code, “*the penalties are increased to five years of imprisonment and to a fine of Euros 75,000: (i) when the offense is consistently committed against a minor or is committed against several minors; (ii) when the perpetrator entered in contact with the child by using, for the dissemination of messages to an unrestricted public, a communication network; (iii) when the act is committed by a person abusing the authority deriving from his functions. The penalty is increased to 7 years of imprisonment and to a fine of Euros 100,000 if the minor is under fifteen.*”

¹³⁴ The French Supreme Court, in 1996.

¹³⁵ See Article 225-5 of the French Criminal Code.

¹³⁶ Which means to stay in jail during at least half of the time of the imprisonment as issued by in the judgment.

¹³⁷ See Article 225-12-1 of the French Criminal Code.

The primary effect of the above mentioned provision is to extend protection against sexual exploitation to all minors, including those from 15 to 18 years old.¹³⁸ The trial court shall assess the age of the victim at it sole discretion. Further, attempted prostitution is a punishable offense under the new provision; no relationship, touching, or completed sexual act is required. Similarly, the mere promise to pay is sufficient to constitute an offense.

3.6 Trafficking Human Beings

The crime of human trafficking is punishable by 10 years imprisonment and a fine of Euros 1.5 million. The same punishment applies when committed against a minor, by an organized gang, or through the use of torture or barbarity. This offense is intended to criminalize and effectively respond to International prostitution networks.

In 2003, France incorporated human trafficking into Article 225-4-1 of the French Criminal Code, which defines it as an offense punishable by the criminal court by 7 years imprisonment and a Euros 150,000 fine.¹³⁹

The definition of human trafficking is particularly broad in scope. The definition covers the entire trafficking process, from recruitment to transport. As compared to the offense of prostitution, this offense can be used to prosecute those who organize the trafficking at higher levels. Further, the individual intent of the organizer to carry out human trafficking is on its own sufficient to constitute an offense, even if commission of the offense never occurs.

In addition, under the French Criminal Code a person can be prosecuted for being complicit in attempted human trafficking. Finally, the law supports a theory of conspiracy to traffic human beings when several people are in a conspiracy to commit the offense.

The aggravating factors for the offense of human trafficking are more or less the same as the aggravating factors for prostitution. Thus, certain characteristics of the victim or the perpetrator aggravate the penalties of the crime.

In order to facilitate the initiation of proceedings to prosecute the perpetrators, victims of human trafficking and prostitution are granted special rights. For instance, foreign victims may have a right to stay in France in exchange for their cooperation. In addition, to facilitate the dismantling of networks, a temporary waiting allowance (“ATA”) may be granted to the foreign person in exchange for their filing a complaint or testifying against the perpetrator. Victims may also benefit from the witness protection program provided under the French Criminal Code and in particular, may testify anonymously.¹⁴⁰

¹³⁸ See Article 225-7 of the French Criminal Code.
¹³⁹ Following the adoption of Law No. 2003-239 of March 18, 2003.
¹⁴⁰ See Article 706-58 of the French Code of Criminal Procedure.

Finally, since Law No. 75-299 of April 9, 1975, associations fighting against prostitution or assisting prostitutes have standing to bring a civil action. This possibility is, however, subject to the association being granted a so-called “*public utility*” label.

3.7 Forced Marriage

Article 146 of the French Civil Code announces one of the major principles of law regarding marriage in France: there is no marriage when there is no consent.

The Law of April 4, 2006 strengthened the struggle against forced marriages by making the legal age of marriage for women the same as that for men (18 years instead of 15 years).

Law 2010-769 of July 9, 2010 also addresses forced marriages, representing a simple principle: all women must be free to choose the life they wish. Thus, forced marriage is considered an aggravating circumstance in murder or attempted murder,¹⁴¹ barbaric acts,¹⁴² voluntary violence causing an unintentional death,¹⁴³ violence causing mutilation or an indefinite infirmity,¹⁴⁴ and violence causing a person to be incapable of working, whether for over 8 days¹⁴⁵ or under 8 days.¹⁴⁶ This law still applies even if the crime is committed abroad as long as the victim usually lives in France.

3.8 Violence of Honor

Crimes of honor, as they are generally premeditated, can qualify as murder if the premeditation is not proved in accordance with Article 221-3 of the French Criminal Code. Crimes of honor are punished by life imprisonment.

3.9 Sexual Harassment

The crime of sexual harassment has been recently amended by Law No. 2012-954, which was passed on August 6, 2012 and came into force on August 7, 2012.¹⁴⁷ Pursuant to this law, sexual harassment is an act “*to impose on someone, repeatedly, words or actions of a sexual nature that either undermine the person’s dignity because of their degrading or humiliating character, or create a situation for the person that is intimidating, hostile or offensive.*” The French legislator intentionally defined the offense of sexual harassment broadly: the “*actions*” could be any words, behavior, or written acts that are imposed on the victim. The act must be repeated (twice is enough and there is no time limit between the acts) and of a sexual nature, but a simple sexual connotation is enough to characterize the offense.

¹⁴¹ See Article 221-4, 10° of the French Criminal Code.
¹⁴² See Article 222-3, 6° of the French Criminal Code.
¹⁴³ See Article 222-8, 6° bis of the French Criminal Code.
¹⁴⁴ See Article 222-10, 6° bis encore of the French Criminal Code.
¹⁴⁵ See Articles 222-12, 6° bis of the French Criminal Code.
¹⁴⁶ See Article 222-13, 6° bis of the French Criminal Code.
¹⁴⁷ By the circulaire CRIM 2012-15/ E8-07.08.2012.

Moreover, any pressure on someone for sexual favors will be treated as sexual harassment: it is sexual harassment “*to use any form of severe pressure in order to obtain a real or apparent act of a sexual nature, whether in favor of the perpetrator or a third party.*” For instance, it is sexual harassment to request a sexual favor in exchange for a job offer or promotion, or to threaten to fire someone unless they perform a sexual act. Judges will appreciate the offense in its global context.

The offense is punished by 2 years of rigorous imprisonment and a fine of Euros 30,000.¹⁴⁸

4. Recent Statistics on Crimes against Young Women

A study conducted by the Ministry of the Interior shows that, in France in 2010, 146 women were killed by their partner or ex-partner (83.91% of the victims of intimate violence),¹⁴⁹ and 6 children were victims of fatal violence by their father or mother.

Domestic violence occurs on a daily basis and continues based on the abuser’s power or domination over the victim, becoming routine in the victim’s life and generally remaining private and secret.

On average, a woman dies every 2.5 days due to family violence whereas a man dies every 13 days. Violent deaths due to domestic violence represent 21.82% of the manslaughters in the country. In addition, 75,000 women are victims of rape each year, and 8,000 teenagers per year are threatened with forced marriage.

Faced with this unacceptable situation, François Fillon, former Prime Minister, declared violence against women “*the most important national cause*” for 2010.

¹⁴⁸ These penalties are increased to 3 years’ imprisonment and a fine of Euros 45,000 where the offense is committed: (i) by a person abusing the authority conferred by his functions; (ii) against a minor under fifteen years; (iii) against a person whose particular vulnerability, due to age, illness, infirmity, a physical or mental disability, or to pregnancy, is apparent or known to the perpetrator; (iv) against a person whose particular vulnerability or dependence resulting from its precarious financial or social situation is apparent or known to the perpetrator; (v) by several persons acting as perpetrators or accomplices.

¹⁴⁹ Whereas 28 men were killed by their partner or ex-partner (16.09% of the victims of intimate violence).

GERMANY

1. Introduction

There are two distinct legal regimes on the federal and state level, which give the German federal and state police authorities, respectively, the authority to take preemptive measures against threats to public safety, including threats to the rights of young women.

The strongest measure available in the context of protecting young women’s rights in Germany is the application of the provisions of the German Criminal Code (*Strafgesetzbuch*” – “StGB”), which makes certain acts punishable as criminal offenses. The main offenses set forth in the StGB for the protection of young women’s rights are briefly explained below.

2. Relevant Criminal Offenses against Young Women and Children

2.1 Crimes against Sexual Self-determination

Section 174 StGB – Abuse of position of trust – makes it an offense for a person to engage in sexual activity (i) with a person under 16 years of age who is entrusted to the perpetrator for upbringing, education, or care; (ii) with a person under 18 years of age who is entrusted to the perpetrator for upbringing, education, or care or who is the perpetrator’s subordinate in an employment or a work relationship, by abusing the dependence associated with the upbringing, educational, care, employment, or work relationship; or (iii) with one’s biological or adopted child not yet 18 years of age, or to allow such person to engage in sexual activities with oneself.¹⁵⁰

Section 176 StGB – Child abuse – provides that whosoever engages in sexual activity with a person under 14 years of age (“child”) or allows the child to engage in sexual activity with himself shall be liable to imprisonment from 6 months to 10 years. Section 176a StGB (Aggravated Child abuse) provides for more severe criminal liability in certain cases. Sections 176 et seq. StGB include most cases of pedophilia.¹⁵¹

Pursuant to Section 177 (1) StGB – Sexual assault by use of force or threats – it is punishable to coerce another person (i) by force; (ii) by threat of imminent danger to life or limb; or (iii) by exploiting a situation in which the victim is unprotected and at the mercy of the offender, to suffer sexual acts by the offender or a third person on the victim’s person or to actively engage in sexual activity with the offender or a third person.¹⁵²

Pursuant to Section 180 (1) StGB – Causing minors to engage in sexual activity – whosoever encourages a person under 16 years of age to engage in sexual activity with or in the presence of a third person or whosoever encourages sexual acts of a third person with a person under 16 years of age (i) by acting as an intermediary; or (ii) by creating an opportunity for such acts, shall be sentenced to imprisonment.¹⁵³

¹⁵⁰ Pursuant to Section 174 StGB, the crime of abuse of position of trust is punishable with imprisonment from 3 months to 5 years.

¹⁵¹ Pursuant to Section 176 StGB, the crime of child abuse is punishable with 6 to 10 years’ imprisonment.

¹⁵² Pursuant to Section 177 (1) StGB, the crime of sexual assault by use of force or threats is punishable with imprisonment for a minimum of 1 year.

¹⁵³ Pursuant to Section 180 (1) StGB, the crime of causing minors to engage in sexual activity is punishable with imprisonment not exceeding 3 years or a fine. Section 180 (2) and (3) StGB provides for more severe criminal liability in certain cases.

Section 182 (1) StGB – Abuse of juveniles – prohibits the abuse of persons under 18 years of age by taking advantage of an exploitative situation by (i) engaging in sexual activity with the person or causing the person to actively engage in sexual activity with oneself; or (ii) by inducing the person to engage in sexual activity with a third person or to suffer sexual acts committed on their body by a third person. Pursuant to Section 182 (2) StGB, the same penalty shall apply to a person over 18 years of age who abuses a person under 18 years of age by engaging in sexual activity with him/her or by inducing the person to suffer sexual acts committed on him/her body for a financial reward. Section 182 (3) StGB makes it punishable for anyone over 21 years of age to abuse a person under 16 years of age by (i) engaging in sexual activity with the person; or (ii) by inducing the person to engage in sexual activity with a third person or to suffer sexual acts committed on his/her body by a third person, and thereby to exploit the victim’s lack of capacity for sexual self-determination.¹⁵⁴

Section 184f StGB – Prostitution likely to corrupt juveniles – sets forth the penalties for whosoever engages in prostitution (i) in the vicinity of a school or other locality which is intended to be visited by persons under 18 years of age; or (ii) in a house in which persons under 18 years of age live, in a way which is likely to morally corrupt these persons.¹⁵⁵

2.2 Crimes against the Person

Sections 223 et seq. StGB include most cases of physical and some cases of moral violence (for the latter cf. Tröndle/Fischer, Strafgesetzbuch, 54th edition, § 223, recital 3 et seq.), including honor based violence. In particular, pursuant to Section 223 StGB – Causing bodily harm – whosoever physically assaults or damages the health of another person, shall be sentenced to imprisonment not exceeding 5 years or subject to a fine. Sections 224, 226, and 227 StGB provide for more severe criminal liability in certain cases.

FGM constitutes a criminal offense under Section 223 StGB to which the justification of the consent of the parents or other persons entitled to custody of the child pursuant to Section 228 StGB is not applicable.¹⁵⁶ FGM usually qualifies as a causing of bodily harm by dangerous means under Section 224 (1) no. 2 alternative 2 StGB and often also as an abuse of position of trust under Section 225 StGB, both subject to criminal liability by means of imprisonment from 6 months to 10 years.

2.3 Crimes against Life

Pursuant to Section 211 (1) StGB (Murder under specific aggravating circumstances), whosoever commits murder under the conditions of this provision shall be liable to imprisonment for life. Section 211 (2) StGB provides for a murderer being any person who kills a person for pleasure, for sexual gratification, out of greed or otherwise base motives, by stealth or cruelty or by means that pose a danger to the public or in order to facilitate or to cover up another offense. In general, homicides known under the expression honor killing (Ehrenmord) qualify as murders due to the offender acting with otherwise base motives (cf. Tröndle/Fischer, Strafgesetzbuch, 54th edition, § 211, recital 14). Only within a very narrow scope such otherwise base motives might not apply if the offender is not aware of the realities of such legal evaluation. This requires

¹⁵⁴ Please note that Section 176 StGB prohibits any sexual activity with children under the age of 14. The abuse of juveniles under Section 182 (1) StGB and Section 182 (2) StGB is punishable with imprisonment not exceeding 5 years. Less severe penalties are provided for cases falling under Section 182 (3) StGB.

¹⁵⁵ Pursuant to Section 184f StGB, the crime of prostitution likely to corrupt juveniles is punishable with imprisonment not exceeding 1 year or a fine.

¹⁵⁶ Tröndle/Fischer, Strafgesetzbuch, 54th edition, § 223, recital 6b.

that the offender just recently immigrated from a foreign cultural sphere in which honor killings in cases like the case at hand are generally accepted and still strongly dominates the offender’s moral attitude, and without the offender being aware of the different moral view in Germany.¹⁵⁷ If any such case applies, the honor killing, as an exception, may be sentenced as manslaughter pursuant to Section 212 StGB.¹⁵⁸

Section 225 StGB (Abuse of position of trust) provides for criminal liability of criminal offenses regarding the ill-treatment of an individual placed in the charge of another with the offender being liable to imprisonment from 6 months (in certain cases not less than 1 year) to 10 years.

2.4 Crimes against Personal Liberty

Section 232 (1) StGB – Human trafficking for the purpose of sexual exploitation – prohibits exploiting another person’s predicament or helplessness arising from being in a foreign country with the intention of inducing such person to engage in or to continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person, or to suffer sexual acts committed on their person by the offender or a third person. The punishment for human trafficking for the purpose of sexual exploitation is imprisonment from 6 months to 10 years. Whosoever induces a person under 21 years of age to engage in or to continue to engage in prostitution or any of the sexual activities mentioned above shall incur the same penalty.¹⁵⁹

Assisting in human trafficking is also punished. Section 233a (1) StGB – Assisting in human trafficking – prohibits assisting in human trafficking under Section 232 by recruiting, transporting, referring, harboring, or sheltering another person.¹⁶⁰

Section 236 StGB – Child trafficking – provides criminal liability to: (i) whosoever in gross neglect of his duties of care and education leaves his child, ward, or foster child under 18 years of age with another for an indefinite period of time for material gain or with the intent of enriching himself or a third person; and (ii) whosoever in cases as above takes the child, ward, or foster child into his home for an indefinite period and awards compensation for the same.¹⁶¹

Section 237 StGB – Forced marriage – prohibits the coercion of another person to enter into marriage.¹⁶² Whosoever, for the commission of the offense, by force, by threat of serious harm, or by deception takes the victim into a territory where the StGB does not apply or causes the victim to adjourn in such place, or deters the victim from returning from such place, shall be liable for the same crime. This provision was introduced to the German Criminal Code in 2011. However, criminal liability for such conduct existed already before this. Since 2005, forced marriage had typically constituted a criminal offense under Section 240 (4) no. 1 alternative 2 StGB as an aggravated case of criminal coercion punishable with imprisonment from 6 months

¹⁵⁷ BGH 5 StR 538/01, cited in: Oberwittler, Dietrich/Kasselt, Julia, Ehrenmorde in Deutschland 1996-2005, Eine Untersuchung auf der Basis von Prozessakten, page 159; cf. Tröndle/Fischer, Strafgesetzbuch, 54th edition, § 211, recital 14.

¹⁵⁸ Pursuant to Section 212 StGB (Manslaughter), whosoever kills a person without being a murderer under section 211 shall be convicted of manslaughter and be liable to imprisonment of not less than 5 years.

¹⁵⁹ Pursuant to Section 232 (1) StGB, the crimes of human trafficking for the purpose of sexual exploitation and the inducement to prostitution of persons under the age of 21 years are punishable with imprisonment from 6 months to 10 years.

¹⁶⁰ Section 233a (1) StGB makes the crime of Assisting in human trafficking punishable with imprisonment from 3 months to 5 years.

¹⁶¹ Pursuant to Section 236 StGB, the crime of child trafficking, as specified, is punishable with imprisonment not exceeding 5 years or fines.

¹⁶² Pursuant to Section 237 StGB, the crime of forced marriage is punishable with imprisonment from 6 months to 5 years.

to 5 years. Before 2005, forced marriage typically constituted a criminal offense under Section 240 StGB – Criminal coercion.

Section 239 (1) StGB (Unlawful imprisonment), relates to the imprisonment of a person or the deprivation of his/her freedom,¹⁶³ and shall be liable to imprisonment not exceeding 5 years or a fine. Section 239 (3) and (4) StGB provides for more severe criminal liability in certain cases.

3. Recent Statistics on Crimes against Young Women

In Germany, there is a relatively good criminological database with information on the above offenses. However, it should be kept in mind that many cases remain unknown to the public and hence unrecorded by public authorities due to social circumstances such as interpersonal dependencies and (misunderstood) family ties. Consequently, there is an estimated high number of unknown cases.¹⁶⁴

4. Criminological Aspects of Honor Killings (Ehrenmord) in Germany

Homicides falling under the expression “honor killing” (*Ehrenmord*) generally qualify as murder because the offender’s mental state fulfills the “otherwise base motives” prong required by the statutory provision on murder.¹⁶⁵ There is only a narrow exception, in the presence of which the “otherwise base motives” prong could be found lacking in an honor killing case. As indicated before, the exception may only apply if the perpetrator was unaware of the German law condemning honor killings.

Honor killings are typically associated with the killing of young women. In such cases, women and girls are killed because they strive for independence (e.g., demonstrated by their leaving the family home unmarried), live a “western” lifestyle, become pregnant outside of marriage, or because they enter into a relationship with a boy or man against their family’s will (the boy or man potentially being unaccepted by the family or community either because he is not part of the same community or because the girl’s or woman’s relationship to him stands in contrast to a previously arranged but not yet consummated forced marriage). Finally, married women may be at risk of becoming victims of honor killings when attempting to separate from or divorce their husband in a way that conflicts with the honor code of their community.¹⁶⁶

Traditionally, the victim’s male blood relatives (the family’s eldest son in particular) are in charge of executing the crime and of reestablishing the family’s honor. However, in a number of instances other family members, including the victim’s mother, uncles, and nephews have participated in the preparation of the crime and morally supported it. It appears that in some cases the task of committing the crime has been deliberately delegated to younger family members, who under German criminal law benefit from their status as juveniles and, if younger than 14 years, cannot be subject to criminal charges at all. There is, however, no evidence that this would be a systematic approach in honor killing cases.

¹⁶³ The offender shall be liable to imprisonment not exceeding 5 years or a fine. Section 239 (3) and (4) StGB provides for more severe criminal liability in certain cases.

¹⁶⁴ *Honour Related Violence, European Resource Book and Good Practice* (2005), page 155; also cf. Mirbach, Thomas/Schaak, Torsten /Triebel, Katrin, Zwangsverheiratung in Deutschland – Anzahl und Analyse von Beratungsfällen, p. 7; also cf. Oberwittler, Dietrich/Kasselt, Julia, Ehrenmorde in Deutschland 1996-2005, Eine Untersuchung auf der Basis von Prozessakten, p. 56.

¹⁶⁵ Tröndle/Fischer, Strafgesetzbuch, 54th edition, § 211, recital 14.

¹⁶⁶ *Honour Related Violence, European Resource Book and Good Practice* (2005), page 152; cf. Oberwittler, Dietrich/Kasselt, Julia, Ehrenmorde in Deutschland 1996-2005, Eine Untersuchung auf der Basis von Prozessakten, pp. 24, 97 et seq.

Between 1996 and 2005, there were 78 cases of honor killings (*Ehrenmord*) recorded in Germany. During that period, there was neither a substantial increase nor decrease in the number of such crimes.

In Germany, male victims account for 43% of the victims of honor killings. Usually they are the unwanted male partners who are attacked alongside the female victims or alone.

Over 90% of the offenders are first generation immigrants who for the most part have not acquired German citizenship and still maintain strong family and other ties to their countries of origin. The offenders usually belong to a marginalized ethnic group, are poorly educated and qualified for the workforce, and come from low income backgrounds.

5. Criminological Aspects of Forced Marriages (Zwangsheirat) in Germany

Section 237 StGB was introduced into the German Criminal Code in 2011. Between 2005 and 2011, forced marriage typically qualified as a criminal offense if the case fell within the aggravated cases provided for in Section 240 (4) no. 1 alternative 2 StGB applied. Before 2005, forced marriage typically constituted a criminal offense under Section 240 StGB. As a consequence, for information on the period before 2011, criminological data must be sought from files concerning cases relating to Section 240 (4) no. 1 alternative 2 StGB.

In 2008, German information and counseling centers registered approximately 3,200 cases involving young women and girls (and approximately 250 young men and boys) affected or threatened by forced marriage.¹⁶⁷ Although forced marriages can in very rare cases also be found in very traditional areas of Germany, the issue has for the most part reached the country by way of immigration. The affected women and girls (as well as young men and boys) come from many different countries and regions and have diverse ethnic, cultural, and religious backgrounds.¹⁶⁸ However, approximately one third of the victims were born in Germany and approximately 44% of them have acquired German citizenship.¹⁶⁹

¹⁶⁷ Mirbach, Thomas/Schaak, Torsten /Triebel, Katrin, Zwangsverheiratung in Deutschland – Anzahl und Analyse von Beratungsfällen, page 7.

¹⁶⁸ *Honour Related Violence, European Resource Book and Good Practice* (2005), page 152; see also Mirbach, Thomas/Schaak, Torsten /Triebel, Katrin, Zwangsverheiratung in Deutschland – Anzahl und Analyse von Beratungsfällen, pages 8, 22, 34 et seq.; and *Terre des Femmes*, cited in: *Amnesty International, Menschenrechtsverletzungen an Frauen (MaF)* available at <http://www.amnesty-frauen.de/Main/Zwangsheirat>.

¹⁶⁹ Mirbach, Thomas/Schaak, Torsten /Triebel, Katrin, Zwangsverheiratung in Deutschland – Anzahl und Analyse von Beratungsfällen, pages 28 et seq.

6. Public Authorities Supporting Young Women’s Rights

In Germany all public authorities are constitutionally obligated to protect the rights of young women as part of their civil rights and liberties.¹⁷⁰ In particular, this obligation is made concrete by Section 152 (2) StPO, which mandates the public prosecution of any criminal offense.

Awareness of the importance of issues related to the defense of the rights of young women and girls has been growing in German politics during the last few years. This has resulted in intense debates, media coverage, and legislative activities, such as the introduction of Section 237 StGB making forced marriages a criminal offense of their own in 2011.

Furthermore, the juridical system and public authorities such as the Federal Ministry for Families (*Bundesfamilienministerium*), the Federal Ministry of the Interior (*Bundesministerium des Innern*), the Federal Ministry of Justice (*Bundesministerium der Justiz*), the Federal Criminal Police Office (*Bundeskriminalamt*), institutions of the health care system, police authorities, schools, social services offices (*Sozialämter*), child/youth welfare/protective departments (*Jugendämter*), and public women’s shelters (*Frauenhäuser*), as well as public girls’ refuges (*Mädchenhäuser*) are all committed to the protection of the rights of young women and girls.

¹⁷⁰ Article 1 et seq., 20 (3) German Constitution (*Grundgesetz*).

ITALY

1. Introduction

In general, criminal legislation in Italy dealing with violence against minors has improved in the twentieth century and in the first decades of the twenty-first century, during which, for the first time, the broad concept of “abuse against minors” was introduced.

Italian criminal legislation addressing the protection of young women against violence (in its different forms and degrees) is mainly contained in the Royal Decree 19 October 1930, No. 1398 (as subsequently amended and supplemented, the “Criminal Code”). Specific crimes against women and girls are also provided for in Law No. 194 May 22 1978 (as subsequently amended and supplemented, the “Law 194/1978”). Furthermore, the Italian civil code sets forth provisions envisaging certain protections of minors against abuses perpetrated by their parents (or based on their parents’ failure to protect them from abuse by third parties). These provisions allow a competent court to issue orders revoking a parent’s parental rights or otherwise protecting the child based on the specific abuse that occurred.¹⁷¹

Under the Criminal Code, the protection of young women against violence is achieved, not only by provisions addressing young women specifically, but by a combination of provisions dealing with crimes committed against women (which may be aggravated when the victim is under 18) and provisions dealing with crimes perpetrated against individuals in general (again, with age as a potentially aggravating circumstance). In particular, young women are protected whenever (i) the crime protects individuals in general (irrespective of whether the victim is a man or woman) and the relevant penalty is aggravated in the event that the victim is a minor; (ii) the law protects women in general and the applicable penalty is aggravated if the victim is a minor; and (iii) a specific crime protects children in general or girls only.

¹⁷¹ It is also worth mentioning that on May 3, 2011, the Congregation for the Doctrine of the Faith (*Congregatio pro Doctrina Fidei*), which plays a role in overseeing the doctrine of the Catholic Church, recommended that all Episcopal Conferences worldwide adopt guidelines on the sexual abuse of children committed by church officials.

In line with this recommendation, on January 26, 2012, the Italian Episcopal Conference adopted official guidelines to respond to this situation.

Those guidelines are composed of two sections: the first section highlights the Canon law provisions setting out disciplinary measures within the clerical system (i.e. the legal system within the Catholic Church); the next section addresses the Italian laws applicable to those crimes, with particular reference to cooperation between Catholic and Italian civil authorities.

First, Canon law considers sexual abuse of children as “*delicta graviora*,” the most serious offenses in the Catholic Church. As soon as a competent bishop notices that a church official within his diocese has sexually abused a child, he is empowered to limit the official’s contact with children and to trigger a proceeding which, following an investigation conducted by Catholic authorities having the right to defend the church official being investigated, might result in the disciplinary penalties set out in the Canon Code. Church officials found guilty of sexual abuse of children are subjected to two sorts of penalties: 1) limitations on the right to perform sacred rituals, especially with children, and 2) ecclesiastic penalties, such as the exclusion from clerical status.

These guidelines also make reference to the agreement between Italy and the Holy See that exempts the bishops from interrogation by the Italian civil authorities, but recommend that, nonetheless, they provide full cooperation with the Italian civil authorities in instances of abuse against children committed by churchmen. Further, as proceedings within the Catholic Church are completely autonomous, the Italian Episcopal Conference recommended that the Italian bishops take any disciplinary actions as soon as they learn of any proceeding against a church official conducted by the Italian public authorities.

While the guidelines briefly summarized above do not, in fact, add any specific rule to prevent sex abuse against children within the Catholic Church, they are highly significant in that, after many years of scandals without an official position from the Catholic Church, they finally officially and publicly acknowledge such a phenomenon.

As a general note, the Criminal Code, unlike other legislations, does not provide that a victim’s status as a minor is a general aggravating circumstance (*i.e.* a circumstance that may lead the judge to increase the applicable penalty and applies generally to all crimes).¹⁷² Instead, a victim’s status as a minor is a specific aggravating circumstance (*i.e.* a circumstance with respect to a specific crime only).

On September 19, 2012, the Italian Parliament adopted the Law No. 172 (the “2012 Reform of Crimes Against Children Act”), which was signed by the President on October 1, 2012 and was published in the Official Gazette on October 8, 2012. The 2012 Reform of Crimes Against Children Act has ratified the Sexual Exploitation and Sexual Abuse Convention and will enter into effect on October 23, 2012, implementing material changes to the Criminal Code.¹⁷³ The 2012 Reform of Crimes Against Children Act reworded certain provision of the Criminal Code, increased the penalties for the crimes already contemplated by Italian law, as well as for the abovementioned aggravating circumstances, and introduced a few more crimes.

In addition, the 2012 Reform of Crimes Against Children Act introduced, for the crimes of FGM, sexual violence against children under the age of eighteen, sexual acts with children, corruption of minors, sexual violence exercised by a group of individuals, enticement of minors and child prostitution and pornography, a number of ancillary penalties which shall apply automatically rather than at the court’s discretion, as did those penalties prior to such reform.¹⁷⁴

Furthermore, the 2012 Reform of Crimes Against Children Act expressly requires that at any stage of the investigation and subsequent proceeding the minor may be required to provide additional information to a child psychology or psychiatry expert in a confidential setting. Emotional and psychological assistance is also guaranteed to the minor by the presence, at any stage of the investigations and the proceeding, of the parents, or any individual or association with experience in the relevant matter, as long as the child consents.¹⁷⁵

Furthermore, as a general rule, with respect to all crimes against sexual self-determination, the Criminal Code does not consider any mistake of the perpetrator concerning the age of the victim (and the perpetrator cannot claim any such mistake as a defense in court).

¹⁷² In any event, it should still be noted that Article 61 of the Criminal Code provides for certain general aggravating circumstances that may be indirectly connected to the age of the victim. In particular, the following general aggravating circumstances are provided: (a) Article 61 No. 5 has been amended to specifically include any event under which the perpetrator takes advantage of the age of the victim, and (b) Article 61 No. 11 includes any abuse of authority or domestic relationships (which most often occur with respect to minors who are subject to parental authority or the authority of third persons exercising educational custody or similar authority). Further, the Law of July 15, 2009 has provided for an additional aggravating circumstance under Article 61, No. 11-ter, which applies when a crime is committed against a minor inside of or adjacent to a school.

¹⁷³ The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is described under Paragraph 4.1 (Ending FGM and human trafficking as high priority in Europe) in Section “Europe” of the present report.

¹⁷⁴ The list of those ancillary penalties now includes: (i) the confiscation of any goods or profits (or an equivalent amount thereof) arising out of those crimes; and (ii) the disqualification of the perpetrator from (a) parental authority or permanent guardianship (if the perpetrator is parent or guardian), (b) any right to parental allowance and the ability to be an heir of the victim, (c) any public offices; (d) working in or going near schools or places frequented by minors; and (e) the winding up of the businesses in which the crime has been committed.

¹⁷⁵ In addition, the 2012 Reform of Crimes Against Children Act provides free legal aid to the victims of most of the crimes addressed therein, notwithstanding the income requirements provided under free legal aid regulations.

2. Protection of Young Women under the Criminal Code and Law 194/1978¹⁷⁶

2.1 Crimes with Specific Aggravating Circumstances if Committed against Minors

Under the Italian legal system, the protection of minors against violence is mostly based on provisions that provide for aggravating circumstances when the victim is a minor (thus increasing the penalty faced by the perpetrator), which already exists for most violent crimes. Generally, with respect to Italy’s criminal laws, there is no distinction based on the sex of the child victim and the laws apply equally to girls and boys. However, in specific cases, the gender of the victim may be relevant to the extent that certain crimes can only be committed against women (in this case with aggravating circumstances applying when the victim is a minor) and young women.¹⁷⁷

The presence of a specific aggravating circumstance based on the victim’s age may result in (i) an increase in the penalty by up to two thirds of the original penalty¹⁷⁸, or (ii) in many cases, a different penalty than which would have applied if the relevant crime was committed against an adult.¹⁷⁹ In addition, under the Italian legal system, other aggravating circumstances may coincide with the victim’s status as a minor, further increasing the penalty for crimes committed against minors.

The following violent crimes are aggravated by the age of the victim:

- (i) *Domestic violence*: Article 572 of the Criminal Code punishes whoever abuses a member of his or her family, any cohabitant or any other individual in the care of the perpetrator, even if such care is for educational or custodial reasons. The 2012 Reform of Crimes Against Children Act sets forth an aggravating circumstance if the victim is under age 14;
- (ii) *Slavery or servitude*: Article 600 of the Criminal Code provides for the crime of slavery or servitude and punishes any person treating another person as property, or keeping a person enslaved, requiring that person to work or perform sexual acts, forcing that person to beg, or otherwise exploiting that person (*i.e.* bringing a person into slavery or keeping him enslaved);¹⁸⁰
- (iii) *Trade of individuals, purchase and sale of slaves*: Articles 601 and 602 of the Criminal Code criminalize the trade, purchase, and sale of slaves or individuals (i) who are in the conditions of enslavement as provided for in the abovementioned Article 600 of the Criminal Code, or (ii) who are forced by the perpetrator to enter, stay, or exit Italy with the purpose of committing a crime under Article 600 above;

¹⁷⁶ The crimes discussed under Paragraph 2 do not provide an exhaustive list of measures enacted to protect children under the Italian legal system, which also regulates or punishes other situations posing a danger to minors and other circumstances where abuse of the victim (with consideration of the victim’s age) is relevant. This report aims to deal with those situations that may have the most severe consequences for a minor.

¹⁷⁷ In this respect please see Paragraph 2.2 below.

¹⁷⁸ Prior to the 2012 Reform of Crimes Against Children Act, those aggravating circumstances generally resulted in an increase of up to 1/3 of the original penalty.

¹⁷⁹ More than one different aggravating circumstance, in certain cases, may also be applied cumulatively and therefore may lead to a penalty significantly higher than the original thresholds.

¹⁸⁰ In this respect, the Criminal Division of the Italian Supreme Court, deemed guilty individuals who bought children (already subjected to exploitation) and kept them enslaved, forcing them to steal and deliver to the perpetrators stolen goods (Supreme Court, Section V, 90/4852).

- (iv) *Kidnapping*: Article 605 of the Criminal Code punishes whoever deprives another person of his or her personal freedom. If the victim is a minor, the penalty is aggravated; if the child is under 14, the relevant penalty is further aggravated and the perpetrator may face imprisonment of up to 15 years;
- (v) *Sexual violence*¹⁸¹: Article 609-bis of the Criminal Code punishes the general crime of sexual violence, punishing whoever commits any violation of the sexual self-determination of a victim through violence, threats, or the abuse of authority with imprisonment of 5 to 10 years. Article 609-ter sets out specific aggravating circumstances for sexual violence committed against children. In particular, sexual violence committed against children under 14, or under 16 when the abuse is committed by any ancestor, parent (birth parents or otherwise), or guardian of the child, results in 6 to 12 years imprisonment. Sexual violence against a minor under 10 years of age is punishable by imprisonment of 7 to 14 years.
- The definition of the crime of sexual violence has long been considered by Italian Scholars and criminal courts, and the current broad formulation of Article 609-*bis* includes any act against sexual self-determination (regardless of whether the act involves the genitals as long as another “erogenous” part of the body is involved¹⁸²). Further, a recent amendment provides that it is an aggravating circumstance when the crime of sexual violence occurs inside or in the immediate vicinity of an educational or training institution;
- (vi) *Sexual violence exercised by a group of individuals*: Article 609-*octies* establishes an independent crime, providing a higher penalty, when a crime of sexual violence (as set out in Article 609-bis) is committed by a group of individuals. The same aggravating circumstances set forth under Article 609-*ter* (outlined above) also apply to crimes committed under Article 609-*octies*;
- (vii) *Forced abortion and FGMs*: Article 18 of Law 194/1978 criminalizes a person that forces another individual to obtain an abortion. Paragraph 5 provides for an aggravating circumstance when the victim of the forced abortion is a girl under 18. Similarly, Article 583-*bis* of the Criminal Code provides for an aggravating circumstance when the crime of FGM is perpetrated against a minors (see Paragraphs 2.2.1. and 2.2.2 below).

¹⁸¹ Article 609-bis was implemented by Article 3 of Law No. 66 February 15, 1996, which replaced previous legislation in the Criminal Code that classified crimes against sexual self-determination as crimes against the public morality. This shift in classification, recognizing these as crimes against the individual rather than moral offenses, had a significant impact on the general perception of crimes of sexual violence. Since 1996, the Italian legal system has provided a unique punishment for any instance of sexual abuse, replacing the previous system wherein different punishments correlated to sexual abuse involving different parts of the body. Now, Article 609-bis of the Criminal Code punishes any violation of sexual self-determination deriving from violence, threat, or abuse of authority.

¹⁸² In this respect, see Cass. Pen. Sez. IV, 1997/4426 and Cass. Pen. Sez. IV, 21167/2006. Among the activities included in this concept of sexual violence are fondling, touching, or rubbing an intimate part of the body.

2.2 Crimes against Women

The Criminal Code and Law 194/1978 identify certain crimes that can only be committed against a woman: forced abortion and genital mutilation. In both cases, the laws provide for specific aggravating circumstances in the event the victim is a minor.

2.2.1 Forced Abortion

Forced abortion is the intentional termination of a woman’s pregnancy, which requires the death of the conceived without her consent, and is regulated by Article 18 of Law 194/1978¹⁸³ (repealing the crimes “against health and integrity of the lineage,” as in force before the entry into force Law 194/1978 – the first law to legalize abortion in certain instances).

Law 194/1978 distinguishes between three types of behaviors that may interfere with, and ultimately terminate, a woman’s pregnancy: (i) interruption of the pregnancy caused by negligence; (ii) forced abortion without the consent of the woman; and (iii) interruption of the pregnancy with the consent of the woman but otherwise violating the provisions of Law 194/1978.

Regarding girls under 18, the fifth paragraph of Article 18 and the fifth paragraph of Article19 of Law 194/1978 provide specific protection for young girls. In particular, the fifth paragraph of Article 18 sets out a specific aggravating circumstance when the forced interruption of a pregnancy occurs in relation to a minor (even when the perpetrator intended only to harm the victim, not terminate the pregnancy), while the fifth paragraph of Article 19 establishes an independent crime where the age of the victim is an essential element thereof. Thus, crimes committed under Article 19, paragraph five, can only occur as against girls under 18 years old (as further outlined in Paragraph 2.3 below).

In accordance with the prevailing view, Italian law holds that the woman’s consent must be obtained at the time of the abortion and is deemed not granted if obtained with violence, deception, or threat.

2.2.2 FGM

Law No. 7 January 6, 2006 , in order to implement the Beijing Declaration, supplemented the Criminal Code with legislation aimed at preventing and protecting women against FGM or genital injury, as currently provided for in Article 583-*bis* of the Criminal Code, which envisions two different criminal behaviors.

The first paragraph of Article 583-*bis* punishes whoever causes any FGM, without a therapeutic purpose, with imprisonment of 4 to 14 years. The second paragraph of Article 583-*bis* criminalizes any injury, other than that provided for in the first paragraph, caused by the perpetrator to female genitals, without a therapeutic purpose and with the purpose of diminishing the victim’s sexual functions.

As set out in Paragraph 2.1 above, the basic penalty is aggravated when the victim is under 18, as is most often the case according to recent statistics.¹⁸⁴

¹⁸³ Law 194/1978 legalizes abortion within the first 90 days of the pregnancy, and requires the consent of the mother even if she is a minor. In this case, the consent of the young woman must be authorized by one of her parents or legal guardians. However, the law provides an exception to this requirement in an emergency situation or where the involvement of the parents is otherwise unreasonable; in such cases, the competent Court is responsible for authorizing the abortion.

¹⁸⁴ In this respect, see Paragraph 3 below.

Further, the crime of FGM may also be prosecuted in Italy if committed abroad (i) by an Italian citizen or by an individual resident in Italy, or (ii) against an Italian citizen or a woman resident in Italy. In the event that FGM perpetrated by the child’s parents or guardians, the perpetrator automatically and permanently loses custody and authority over the minor. If a doctor is sentenced for the crime of FGM, the doctor is also suspended from practicing medicine for a period of 3 to 10 years.

In addition, Article 8 of Law No. 7 January 6, 2006 on FGM has amended the Legislative Decree 8 June 2001, No. 231 on administrative liability of companies in order to, under the new Article 25, impose liability on any private or public health facility in which any crime set forth under Article 583-*bis* of the Criminal Code is committed. A facility that violates this law may be forced to shut down and to pay heavy fines.

2.3 Specific Crimes Protecting Young Women

As briefly outlined above, the Criminal Code provides for a numbers of crimes that protect minors in general, irrespective of their sex. In other circumstances, the victim’s gender is relevant as the specific crime may only be committed against a woman (and aggravated if the victim is a minor, such as forced abortion and FGM). Finally, in one case, (*i.e.* abortion with the consent of the minor) the crime may only be committed against girls under age 18. Below is a brief description of crimes for which the age of the victim is an essential element – that is, the same behavior would not be treated as a crime if committed against an adults – and of the specific crime of abortion with the consent of the minor.

2.3.1 Abortion with the Consent of the Girl

The fifth paragraph of Article 19, Law 194/1978 provides for an autonomous crime,¹⁸⁵ punishing whoever performs an abortion with the consent of a girl under 18 but in violation of the procedures set out in Law 194/1978. This crime only targets the narrow subset of abortions that do not comply with requirements of Law 194/1978 for failure to obtain the necessary authorizations of a parent or judge.¹⁸⁶

2.3.2 Sexual Acts with Minors¹⁸⁷

Article 609-*quarter* of the Criminal Code expressly punishes whoever engages in sexual acts with (i) a child under 14, or (ii) a child under 16, if the perpetrator is a parent (birth parent or otherwise), ancestor, live-in partner of a parent or guardian, or any other person who has been entrusted with the child’s care, even for educational or custodial reasons.¹⁸⁸ If a parent, ancestor, live-in partner of a parent or guardian, or any other person who has been entrusted with the child’s care, even for educational or custodial reasons, engages in sexual acts with the minor in abuse of his or her position (even if the minor is older than 16), he or she is punished under Article 609-*quarter*.¹⁸⁹ In the event that the child is under 10, there is a presumption of the exercise of violence and the punishment is 7 to 14 years imprisonment. The behavior under Article 609-*quarter* differs from the one of sexual violence under Article 609-*ter* as Article 609-*quarter* does not require violence.

¹⁸⁵ In this respect, Cass. Pen. Sez. V, 87/7217 under which the Supreme Court expressed the view that the provision under Article 19, fifth paragraph of Law 194/1978 is not only an aggravating circumstance but a specific and autonomous crime as the sanctioned behavior differs from the one under the first paragraph of the same article.

¹⁸⁶ In contrast to the law governing abortions with an adult’s consent that violate Law 194/1978, this law does not punish the girl, only the person who performs the abortion.

¹⁸⁷ Cass. Pen. Sez. III, 04/15287 has stated that the provisions of Article 609-*quarter* set up an independent crime rather than an aggravating circumstance to the crime of sexual violence.

¹⁸⁸ Sexual relations between minors are permitted, provided that the difference in age between the 2 minors is less than 3 years and neither of them is younger than 13 years of age.

¹⁸⁹ The above provisions were enacted by Law No. 38 February 6, 2009.

2.3.3 Corruption of Minors

Under Article 609-*quinqües* of the Criminal Code, whoever commits a sexual act in the presence of a child under 14 with the purpose of making the child assist in the act is punished with imprisonment of 1 to 5 years¹⁹⁰. Unless it constitutes more serious offense, the same penalty applies to anyone who shows pornographic material to a child under 14 for the purpose of engaging him in sexual acts. In both cases, if the perpetrator is a parent, ancestor, live-in partner of a parent or guardian, or any other person who has been entrusted with the child’s care, even for educational or custodial reasons, the penalty is increased up to one half of the ordinary penalty.

This crime does not envision any physical contact between the perpetrator and the minor and is punished irrespective of any consent and without any assessment of whether the minor’s morals were violated.

2.3.4 Child Prostitution and Pornography

Law No. 269 August 3, 1998 sets out criminal provisions protecting against pedophilia, the most relevant of which for our purposes are Articles 600-*bis* (child prostitution) and 600-*ter* (child pornography) of the Criminal Code.

Before the enactment of the above legislation, legal protection for children forced into prostitution was limited to the application of a general aggravating circumstance to exploitation and prostitution crimes. As a result of this legal framework, most of the individuals having sexual intercourse with minors for money could not be punished, unless the act was identified as sexual abuse.

Article 600-*bis* of the Criminal Code penalizes two different situations: (i) when any person recruits or induces someone under 18 to engage in prostitution, or exploits or aids such an activity (600-*bis*, first paragraph);¹⁹¹ and (ii) when any person has sexual intercourse with children under 18 for money, absent any violence (600-*bis*, second paragraph).¹⁹² The 2012 Reform of Crimes Against Children Act amended Article 600-*bis* in order to strengthen the penalties as follows: situations under number (i) above are punished with imprisonment from 6 to 12 years and heavy fines; situations under number (ii) above are punished with imprisonment from 1 to 6 years and a fine.

The enactment of Article 600-*ter* (child pornography) condemns any behavior that, although perpetrated without profit-making purposes, jeopardizes the health and growth of the child, as long as there is a concrete possibility of diffusion of the relevant material.¹⁹³

Article 600-*ter* punishes 5 different behaviors: (i)(a) the realization or production of pornographic materials involving minors, and (i)(b) the recruitment or induction of minors to participate in pornographic events; (ii) the merchandising of pornographic materials; (iii) the diffusion, distribution, or advertising, with whatsoever

¹⁹⁰ Prior to the 2012 Reform of Crimes Against Children Act, Article 609-*quinqües* punished such a crime with imprisonment of 6 months to 3 years.

¹⁹¹ The Supreme Court, Sez. III, 06/33470 has stated that this crime is also committed when the perpetrator induces the minor to engage in sexual acts only with himself and not necessarily with others.

¹⁹² This latter provision used to criminalize only sexual intercourse with children under 16. It was amended by Law 6 February 2006, No. 38 to punish the perpetrator for engaging in sexual intercourse with anyone under the age of 18. If the crime is committed with a child under the age of 16 the penalty is aggravated.

¹⁹³ See Supreme Court, Sez. U., 00/13.

means, of child pornography, or the diffusion or distribution of information aimed at soliciting or exploiting minors; (iv) the offer or delivery to another person of pornographic material involving minors; and (v) the attendance to pornographic events involving minors¹⁹⁴. Law No. 38 February 6, 2006 introduced a specific aggravating circumstance, which applies in case of large quantities of child pornographic material.

Other provisions of the Criminal Code have been introduced by Law No. 269 August 3, 1998 to address child pornography. Among these provisions is Article 600-*quinquies*, which sanctions any act carried out for the purpose of organizing or advertising travel to engage in child prostitution; violators may permanently lose their tour operating licenses.

Article 17 Law No. 38 February 6, 2006 requires that tour operators provide a disclaimer in their merchandising materials stating that Italian law punishes child prostitution and pornography, even if committed abroad.

Finally, Article 600-*quarter* of the Criminal Code punishes whoever consciously retains or obtains, by any means, pornographic material involving minor, with imprisonment up to 3 years and a fine.

2.3.5 Instigation to Pedophilia and Pornography Practices

The 2012 Reform of Crimes Against Children Act introduced into the Criminal Code Article 414-*bis*, for the first time in Italian legislation, the word pedophilia. This new provision punishes with imprisonment from 1 year and 6 months to 5 years whoever publicly incites another to commit the following crimes against a minor: child prostitution and pornography, sexual violence, sexual acts with minors and corruption of minors. The same penalty applies to whoever publicly attempts to defend those crimes. The law expressly states that artistic, literary, historical or traditional reasons shall not be deemed as justification.

2.3.6 Enticement of Minors

The 2012 Reform of Crimes Against Children Act introduced Article 609-*undecies* in the Criminal Code, which provides that whoever entices a child under 16 years old to commit the crimes of slavery or servitude, child prostitution and pornography, sexual violence, sexual acts with minors and sexual violence exercised by a group of individuals, is punished with imprisonment from 1 to 3 years, unless it constitutes a more serious offense. The law specifies that “*enticement*” shall include any action aimed at obtaining the trust of a minor through trickery, flattery or threat, as well as actions committed via the internet or other means of communications.

¹⁹⁴ The behavior under letter (v) has been introduced through the 2012 Reform of Crimes Against Childern Act. After the amendments to Article 600-ter of the Criminal Code adopted on September 2012, conducts under items (i) and (ii) are punished with imprisonment from 6 to 12 years and heavy fines; conducts under item (iii) with imprisonment from 1 to 5 years and heavy fines; and conducts under letter (iv) and (v) with imprisonment up to 3 years and a fine.

3. Recent Statistics on Crimes against Young Women

According to the latest available statistics by the National Institute of Statistics on sexual abuses,¹⁹⁵ about 32% of women in Italy between 16 and 70 years of age have experienced physical or sexual violence at least once in their lives; among them, 4.8% (*i.e.* about 1 million women) have experienced rape and 14.3% of women confirmed having been abused by their partner; in particular, 12% of these women were victims of physical violence and 6.1% were victims of sexual abuse. The other 24.7% of women experienced abuse by strangers, relatives, or at work; of this abuse, 9.8% was physical violence and 20.4% was sexual abuse. In terms of rapes, 2.4% of women confirmed having been raped by their partner and 2.9% by other individuals. Of those women who reported that they were abused by their partner, 93% did not to report it to the Public Authorities; where the perpetrator was not a partner, 96% decided not to report it.

Based on a recent report prepared by the Equal Opportunity Italian Ministry,¹⁹⁶ about 35,000 women in Italy have been subjected to genital mutilation. This government report notes that most of these women suffered those practices in their home countries and then immigrated to Italy from Africa. The report concludes that approximately 3,500 young women in Italy are currently in danger of becoming victims of genital mutilation.

In June 2012, Rashida Manjoo, UN Special Rapporteur on violence against women, reported ¹⁹⁷ that according to available data, 127 women have been killed by men in 2010. In 54% of these cases, the perpetrator was a partner or a former partner; only in 4% of the cases was the perpetrator a complete stranger to the victim. R. Manjoo appreciated the efforts of the Italian authorities in adopting laws and policies that fight violence against women, but demonstrated that the actions had failed to reduce the number of violent crimes against women. The UN Special Rapporteur concludes that Italy does not have effective measures to reduce domestic violence.

¹⁹⁵ Istat, La violenza e i maltrattamenti contro le donne dentro e fuori la famiglia, February 2006, available at the following website: http://www3.istat.it/dati/catalogo/20091012_00/Inf_08_07_violenza_contro_donne_2006.pdf.

¹⁹⁶ Available at the following website: http://www.pariopportunita.gov.it/images/stories/documenti_vari/UserFiles/II_Dipartimento/report_mgf_piepoli.pdf.

¹⁹⁷ See the declaration by R. Manjoo available at the following website: http://www.pangeaonlus.org/download/progetti/advocacy/cedaw/Written_statement_Rashida-Manjoo.pdf.

UNITED KINGDOM

1. Introduction

There has been a significant development in the law and legal remedies available in the United Kingdom, to protect women and children from violence and bring perpetrators to justice over the past decade. This chapter briefly sets out the criminal law remedies that are designed to respond to, and protect young women and children’s rights.

2. Relevant Criminal Offenses against Young Women and Children

2.1 Physical, Moral (i.e. psychological) and Sexual Violence

The UK Government and the Association of Chief Police Officers (“ACPO”) have addressed many forms of abuse suffered by young women in its definition of “domestic violence,” which encompasses physical, psychological, and sexual violence as “*any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between family members, regardless of gender or sexuality.*”¹⁹⁸

From 2004 this definition has included violence from family members as well as specific forms of violence such as forced marriage and FGM. Some forms of domestic violence have specific legal remedies and/or criminal offenses while others do not.

2.2 Domestic Violence and Sexual Harassment

Although there is no specific criminal offense of “*domestic violence*,” there are a number of criminal offenses that may be committed by perpetrators.

These offenses can be found in the Protection from Harassment Act 1997 (“PFHA 1997”) and the Offenses Against the Person Act 1861 and include harassment, common assault, assault occasioning actual bodily harm, threats to kill, and murder. The range of criminal offenses is extensive and the sanctions for criminal offenses include custodial prison sentences ranging from 6 months to life imprisonment. However, the usefulness of the criminal law in protecting those experiencing violence is dependent on the effectiveness of the criminal justice system and the response of the police.

The Crime and Security Act 2010 offers protection to young women who are the victims of repeated domestic violence. Pursuant to this act, Domestic Violence Protection Notices (“DVPNs”) and Domestic Violence Protection Orders (“DVPOs”) can be made by police officers in Greater Manchester, Wiltshire, and West Mercia. DVPNs can be obtained by applying for a DVPO from a local magistrates court. Such orders can order a perpetrator to leave the family home and can forbid him from using threatening violence against the person whose benefit they are made.¹⁹⁹

¹⁹⁸ Please see archived Crime Reduction website at <http://tna.europarchive.org/20100413151441/http://www.crimereduction.homeoffice.gov.uk/violentcrime/dv01.htm>.
¹⁹⁹ Please see http://www.legalservices.gov.uk/docs/cds_main/Domestic_violence_prevention_order.pdf.

The Family Law Act 1996 (“FLA”) provides two types of civil remedies that enable a woman to obtain an injunction to protect her from domestic violence:

- (i) Non-molestation orders, which forbid an abuser from using or threatening violence, harassing, or intimidating another person; and
- (ii) Occupation orders, which regulate who lives in the family home and can require an abuser to leave the home.

Such orders are available against a broad range of perpetrators and include, with particular relevance for young women, people who live together or are related. They are available from either a county court or family proceedings court; and protection is available for the victim herself, and any relevant children. Both non-molestation and occupation orders can be obtained without notice to the abuser and can provide protection in emergency situations.²⁰⁰

The Domestic Violence Crime and Victims Act 2004 (“DVCVA 2004”) provided further support by making a breach of a non-molestation order a criminal offense punishable by up to 5 years imprisonment, and extended the scope of protection to include acts committed by extended members of the young woman’s family.

The PFHA 1997 creates criminal offenses and civil remedies that are designed to protect young women from harassment or stalking. It states that a person must not pursue a course of conduct that amounts to harassment of another, and which that persons knows, or ought to know, amounts to harassment of another.

A young woman who is experiencing harassment or who is in fear of violence can report this to the police and can also apply to the county courts for a restraining order against the person who is harassing her.

The DVCVA 2004 again supports the operation of restraining orders by providing that such order will be made in situations where the court deems it necessary to protect a person from harassment, whether or not the perpetrator has been convicted of a criminal offense.

The PFHA 1997 additionally extends to cover acts of harassment of young women by email or by other computer related means such as discussion forums.²⁰¹

²⁰⁰ For more information, please see Rights of Women, Domestic Violence Injunction Handbook, Second Edition 2006.
²⁰¹ In addition, in England and Wales under Section 1 of the Malicious Communications Act 1988 it is an offense to send an indecent, offensive or threatening letter, electronic communication, or other article to another person and under Section 43 Telecommunications Act 1984 it is a similar offense to send a telephone message that is indecent, offensive, or threatening. Both offenses are punishable with up to 6 months imprisonment and/or a fine.

2.3 Child Maltreatment

The Children Act 1989 introduced the concept of “*significant harm*” as the threshold that justifies compulsory intervention in family life in the best interests of children and young people. It gives local authorities a duty to make inquiries to decide whether they should take action to safeguard or promote the welfare of a child who is suffering, or likely to suffer, significant harm.²⁰² This was amended by the Adoption and Children Act 2002 to include, “*impairment suffered from seeing or hearing the ill-treatment of another.*”

2.4 Sexual Violence

There is no commonly used definition of sexual violence. Law and policy in the UK to prevent and prohibit sexual violence against young women has focused on prosecuting perpetrators through the criminal justice system. Criminal offenses or sexual assault and rape are seen as integral to what constitutes “*sexual violence.*”²⁰³

Sexual violence could also be commonly thought to include a wider spectrum of acts of violence involving violation of a woman’s genitalia and sexual autonomy, such as prostitution, forced marriage, trafficking of women for sexual exploitation, and FGM.

The Government has created legal remedies to prevent and prohibit sexual violence through the Sexual Offenses Act 2003 (“SOA”). Section 1 SOA details the offense of rape, which includes the forced penetration of the mouth with a penis as well as the vagina and anus. Section 2 SOA created the new offense of assault by penetration, which carries a maximum life sentence – meaning that penetration with an object other than a penis can be punished to the same degree as rape.

The 2 other main sexual offenses are sexual assault (Section 3 SOA) and causing a person to engage in sexual activity (Section 4 SOA). Sexual assault covers any forced sexual touching and carries a maximum sentence of 10 years imprisonment. Causing a person to engage in sexual activity makes it illegal to coerce someone to perform a sexual act upon themselves or upon someone else. If the activity involves penetration then the perpetrator can be sentenced to life imprisonment and, if not, then the maximum sentence is 10 years.

All the four main sexual offenses above must contain the element that the victim is not consenting to the sexual activity and that the defendant (perpetrator) does not reasonably believe that the victim is consenting. Consent is defined in Section 74 SOA as follows: “*a person consents if she agrees by choice and has the freedom and capacity to make that choice.*”

Under the SOA, a young woman can legally consent to sexual activity only if she is 16 years old or over and it is an offense for anyone to engage in sexual activity with her (unless the child is between the ages of 13 to 16 and the perpetrator has a reasonable belief that the child concerned was 16 years old or over).

²⁰² “*Working Together to Safeguard Children*”: HM Government 2006 and “*Safeguarding Children: Working Together Under the Children Act 2004: Welsh Assembly Government – WAG*”. This was amended by the Adoption and Children Act 2002 to include, “impairment suffered from seeing or hearing the ill-treatment of another.”

²⁰³ HM Government, “*Together We Can End Violence Against Women and Girls: A Strategy*”, November 2009, page 15. See http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/s15_grooming/.

Consequently a number of offenses in the SOA refer to the age of the complainant. Section 5 creates the offense of rape of a child under 13, and Section 6 the offense of assault of a child under 13 by penetration. Both crimes are punishable by life imprisonment. Section 7 creates the offense of sexual assault on a child under 13, and Section 8, the offense of causing or inciting a child under 13 to engage in sexual activity. Both crimes carry a maximum punishment of 14 years’ imprisonment. Section 9 creates the offense of sexual activity with a child between the ages of 13 and 16 unless the person has a reasonable belief that the child was 16 years old or over. Similarly Section 10 (Causing or inciting a child to engage in sexual activity) is only an offense if the perpetrator did not have reasonable belief that the child was at least 16 years old.

2.5 Pedophilia

The term “*pedophilia*” is used in a broad manner to encompass one or more sexually-based crimes that relate to legally underage victims.

These crimes may include sexual acts involving contact with children (including statutory rape), and offenses involving online grooming, child pornography, stalking, and indecent exposure.

Offenses relating to sexual activities including children, which do not involve actual physical contact with children, are contained in Sections 10 and 11 of the SOA. Section 11 SOA creates the crime of engaging in sexual activity in the presence of a child for the purpose of obtaining sexual gratification, while Section 12 SOA creates the offense of causing a child to watch a sexual act.

The Internet may be the vehicle of communication for the offense of arranging or facilitating the commission of a child sex offense (Section 14 SOA), and the “grooming” offense under Section 15 SOA. The Protection of Children and Prevention of Sexual Offenses (Scotland) Act 2005 delivers similar provisions for Scotland. It is now a crime to befriend a child on the Internet or by other means and to meet or intend to meet the child with the intention of abusing them. The maximum sentence is 10 years imprisonment. A new civil preventative order, the “Risk of Sexual Harm Order,” may be imposed, which will prohibit adults from engaging in inappropriate behaviour such as sexual conversations with children online. Any knowledge by an institution of such activity must be reported to the police right away.

With regard to child pornography – specifically, the making, distribution, showing, and advertisement of indecent photographs – the two main offense provisions in this area are Section 1 of the Protection of Children Act 1978 (“PCA 1978”) and Section 160 of the Criminal Justice Act 1988 (“CJA 1988”).

PCA 1978 addresses certain aspects of the sexual exploitation of children by penalizing the making, distribution, showing, and advertisement of indecent photographs of them. The test to be applied in respect of indecent images of children is whether or not it is indecent. The word “*indecent*” has not been defined by the PCA 1978, but cases gives the jury the authority to decide based on the recognized standards of propriety.

A person who is convicted of an offense under the Protection of Children Act is also likely to be banned from working with children in the UK, and ordered to sign the Sex Offenders Register. They are also barred from working in the legal and medical professions and will be dishonorably discharged from HM Armed Forces. The Rehabilitation of Offenders Act 1974 does not apply to sex offenses, even if under 2.5 years.

Section 160 CJA 1988 covers the offense of possession of an indecent photograph of a child. Anyone convicted of possession of indecent photographs of a child can be sentenced to up to 5 years in prison and may be forced to pay a fine.

2.5.1 Case law

In *R v. CB* (2010) EWCA Crim 3009 D 29, the defendant contacted two 14-year-old girls over the Internet. The messages became sexual and meetings were arranged. The first girl attended with a friend and left when she realized the defendant's age. The defendant did not attend the second meeting. The defendant was sentenced to 24 months' imprisonment. The sentencing judge stated this was deliberate and persistent grooming although no sexual contact occurred.²⁰⁴

There have been some landmark cases that have applied the PCA 1978 and Section 160 CJA 1988 with varying effect; the most important ones are listed below.

In *R v. Land* (1988), the age at which a person is considered a “child” is ultimately for the jury to determine.²⁰⁵

In *R v. Owen* (1988), it was held that the age of the child in a photograph is a consideration the jury should bear in mind when deciding whether or not the image is “indecent.” Owen was a professional photographer who had taken a number of photographs of a 14-year-old girl who, it was claimed, wanted to become a model. In these photographs the girl was scantily dressed and showing her bare breasts. The defence argued that the image should be judged as it stood, disregarding evidence of the girl's age – presumably thinking that a similar image showing a 16-or 17-year-old girl would not be considered indecent (at that time – since then, the age of a child has been increased to 18).²⁰⁶

2.6 Honor Based Violence

“Honor based violence” is a crime or incident, which has or may have been committed to protect or defend the honor of the family and/or community.²⁰⁷

“Honor based violence” can be distinguished from other forms of violence, as it is often committed with some degree of approval and/or collusion from family and/or community members. It is a collection of practices, which are used to control behavior within families or other social groups to protect perceived cultural and religious beliefs and/or honor. Such violence can occur when perpetrators perceive that a relative has shamed the family and/or community by breaking their honor code. So-called “Honor Based Violence” is not associated with particular religions or religious practice: it has been recorded across Christian, Jewish, Sikh, Hindu, and Muslim communities.

²⁰⁴ See http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/s15_grooming/.
²⁰⁵ See *R v. Land* (1998) 1 Cr App R 301 Archbold 31 - 109.
²⁰⁶ See *R v. Charles William Owen* (1988) 86 Cr App R 291 Archbold 31 - 108a.
²⁰⁷ For more information refer to http://www.cps.gov.uk/legal/h_to_k/honour_based_violence_and_forced_marriage/#a21 and <http://www.acpo.police.uk/documents/crime/2008/200810CRIHBV01.pdf>.

As there is no specific criminal offense for “Honor Based Violence,” cases will be prosecuted under the specific offense committed. Examples may include murder, attempted murder, un-explained death (suicide), controlling sexual activity, physical violence and harassment, child abuse, rape, kidnapping, false imprisonment, threats to kill, assault, harassment, and forced abortion. This list is not exhaustive and crimes such as domestic violence, forced marriage, and FGM are likely to occur within the context of honor based violence, and as such the respective remedies similarly apply.

2.6.1 Case law

In *B-M* (Children) (2009) EWCA Civ 205, the first known case to reach the Court of Appeal involving Honor Based Violence in care proceedings, three children born in a Pathan family of Pakistani origin were taken away from their parents and placed into care with a non-Muslim foster family. The case started after the mother's sister-in-law fled her marital home amid suspicions that her first child died from injuries inflicted by other family members. She and her second child were moved to various safe locations four times as other family members succeeded in tracking them down and even tried to incriminate her in an arson attack on their homes.

2.7 Forced Marriage

A forced marriage is a marriage in which one or both parties to the marriage do not consent to the marriage taking place and duress is involved. The definition of duress used by the UK Government includes physical, psychological, sexual, financial, and emotional pressure.²⁰⁸ Forced marriage is not an arranged marriage into which, while families may be involved in choosing the marriage partner, both parties enter freely. Forced marriage is often in itself an “Honor Based Violence” crime, used as a punishment for girls who defy parental authority and as a means to increase masculine control over a woman.²⁰⁹

On June 8, 2012, the UK Government announced that forcing someone to marry will become a criminal offense in its own right in England and Wales. The new law will be accompanied by a range of measures to increase protection and support for victims with a continuing focus on protection.²¹⁰

The act of forcing someone into a marriage can involve a number of criminal offenses including assault, rape, sexual assault, theft of passport, failing to ensure a child's education, and false imprisonment.

The Forced Marriage (Civil Protection) Act 2007 (“FMA”) came into force in November 2008 and created a new civil law remedy for those affected by forced marriage and for the first time, provided a legal framework for state intervention in forced marriage.

²⁰⁸ HM Government, *Multi-agency practice guidelines: Handling cases of forced marriage* (2009).
²⁰⁹ Home Office, *A choice by right: the report of the working group on forced marriage* (2000), page 295.
²¹⁰ Please see <http://www.homeoffice.gov.uk/media-centre/news/forced-marriage-new-law>. In terms of existing legislation, forced marriage is contrary to UK law, including the Matrimonial Causes Act 1973, which states that a marriage shall be voidable if “either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise.”

Those at risk or who have experienced forced marriage can now apply to the county court or the High Court for a forced marriage protection order (“FMPO”). A FMPO can forbid a perpetrator from a wide range of behaviors, including using or threatening violence, making arrangements for a marriage or taking the victim abroad, as well as ordering them to hand over passports and travel documents or revealing the whereabouts of the victim.

FMPOs are only available in a number of designated courts, including the High Court in London (“Royal Courts of Justice”), the Principal Registry of the Family Division (central London), and certain county courts. Importantly, the courts have been willing to make orders in respect of women who are not permanent residents in England and Wales and whose immigration position is insecure.

2.7.1 Case law

Over the past few years the High Court has made orders to protect young women affected by forced marriage. In the case of *Re SK*²¹¹ the High Court made an order in respect of a British citizen in Bangladesh who, as reports suggested, was being forced into a marriage. Her parents were ordered to disclose her whereabouts and assist her visit the British High Commission in Dhaka to be interviewed alone. They were forbidden to allow her to undergo a marriage or from using or threatening to use violence against her.

2.8 Sex Trafficking

Trafficked victims are identified as those persons who are exploited at the hands of their traffickers and victims of criminality as defined in Article 3(a) of the Palermo Trafficking Protocol, which is reflected in UK legislation.²¹²

Loss of freedom is a defining feature of trafficking. For example, trafficked victims are often not allowed to leave the premises where they are held or if they do, they are accompanied by a trafficker. Victims suffer frequent and severe abuse, both physical and psychological. Violence and physical harm are the hallmarks of trafficked women, in particular.

The SOA made it a criminal offense to:

- (i) Traffic a person into the UK for sexual exploitation (Section 57);
- (ii) Traffic a person out of the UK for sexual exploitation (Section 59);
- (iii) Traffic a person within the UK for the purposes of sexual exploitation (Section 58).

The maximum sentence for these offenses is 14 years’ imprisonment. The offenses enable a prosecution to be brought against a person who is involved in any part of the trafficking operation.

“*Sexual exploitation*” is defined in the legislation by reference to the non-consensual sexual offenses (for example, rape) as well as offenses that relate to pedophilia, prostitution, and pornography. The consent or purported consent of the trafficked woman is irrelevant, as is whether it can be shown that the person

²¹¹ *Re SK (An Adult) (Forced Marriage: Appropriate Relief)*, 2004 EQHC 3302 (Fam).

²¹² Please refer to the Paragraph on the International Scenario for the relevant definition.

concerned was trafficked for financial or other gain. The age of the woman or girl trafficked does not affect the criminal responsibility given to the perpetrator.

Prostitution is not itself illegal in the UK; however, activities associated with it, such as soliciting and advertising using cards in telephone boxes, are. The exploitation of the prostitution of others is also criminalized through offenses that deal with brothel-keeping and controlling prostitution.

Other offenses deal with abuse of children. The law on prostitution has recently been overhauled with the Policing and Crime Act 2009 (“PCA 2009”), which made a number of significant changes.

Section 14 creates a new criminal offense in England and Wales of paying for the sexual acts of a prostitute who is, or has been, subject to force. Similar provisions relate to Northern Ireland (Scotland has a different legal framework).

Section 19 creates a new offense of soliciting a person in a street or public place for the purpose of obtaining sexual acts from them as a prostitute.

Section 21 and Schedule 2 introduce powers allowing the police to seek a court order prohibiting access to premises associated with certain prostitution or pornography-related offenses.

Section 17 introduces a new “*Engagement and Support Order*,” which will be an alternative penalty to a fine for people convicted of loitering or soliciting.

The offense of “*Conspiracy to traffic*” may involve the doing of an act by one or more of the parties, or the happening of an event, in a place outside England and Wales. Section 1A of the Criminal Law Act 1977 provides that where (a) an act or event would be an offense by the law of that place and (b) it would also be an offense in the UK (but for the fact that it takes place outside the jurisdiction), then a person in England or Wales who becomes a party to the agreement or, being a party, does anything in pursuance of the agreement (even before its formation) can be charged with conspiracy. Prosecutors should note, however, that by virtue of Section 4(5) of the same act, the prior consent of the Attorney General is required to prosecute offenses to which Section 1A applies.²¹³

2.8.1 Case law

The following cases provide guidelines on sentencing and reflect the degree of coercion, force, and violence used in the exploitation of their victims:

R v. Plakici (2005) 1 Cr.App.R.(S.) 19, Attorney General’s Reference (No 6 of 2004) dealt with a series of individual offenses that amounted to an extremely serious case of trafficking. The offender had arranged for the illegal entry of women and young girls into the UK in circumstances that involved both deception and coercion and forced them to work as prostitutes. Counts of illegal entry attracted sentences of 5 years, of living on immoral earning, 5 years, of kidnapping, 10 years, and of incitement to rape, 8 years. A total sentence of 23 years was imposed.

²¹³ For more information see http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a09.

R v. Maka (2006) 2 Cr.App.R.(S.) 14. Sentences totalling 18 years were upheld, on a guilty plea, in the case of a man who trafficked a 15-year-old girl into the UK and repeatedly sold her to others for the purposes of prostitution. The court endorsed the comment of the sentencing judge that human trafficking was a degrading activity producing untold misery around the world and that the case had echoes of slavery with the girl being sold from one procurer to another. It added that the offense was intended to embrace a wide variety of different forms of conduct, identified as trafficking for sexual exploitation.

R v. Roci and Ismailaj (2006) 2 Cr.App.R.(S.) 15. In this case the appellants were concerned about the importation and the control in the UK of prostitutes from Lithuania. While the women came to the UK willingly, they were then coerced to work in unpleasant circumstances and ways contrary to their wishes, and to pay over most of their earnings. The sentence on the appellant who was concerned in all these matters was reduced from 11 years’ to 9 years’ imprisonment.

R v. O (2008) EWCA Crim 2835. This case involved the prosecution for an immigration offense of a 17-year-old Nigerian girl who had been trafficked for sexual exploitation in an adult criminal court. The court in this case allowed her appeal. There remains a lack of awareness in the criminal justice system about trafficking and how victims should be identified and protected. As police investigations are made on the basis that the person involved is a “credible” victim of trafficking, rather than using the “reasonable grounds” test, there is a danger that errors can be made (as in this case) that the police wrongly identify a woman as an immigration offender rather than a victim of trafficking.

2.9 FGM

FGM has been a criminal offense in England and Wales since 1985 and the law was strengthened by the Female Genital Mutilation Act 2003. It is a criminal offense to perform, or to aid and abet another person to perform, FGM on a girl or woman within England and Wales or (if she is a British national or has permanent residence in the UK) to take her abroad for FGM to be performed. This new legislation increased the punishment for this criminal offense to 14 years imprisonment and/or a fine. However, as of July 2011 there have been no prosecutions under this legislation and it is clear that much work needs to be done to ensure that women and girls are adequately protected.

FGM is also a form of child abuse. Under the Children Act 1989 (“Children Act”) local authorities have an obligation to promote and safeguard the welfare of children in their area. If a local authority becomes aware that a child is at risk of FGM they may apply for orders, such as an emergency protection order or care order, in order to make decisions about the child’s future, such as what medical treatment she receives. Similarly if one parent becomes concerned that the other parent is making arrangements for FGM to be performed on a child, she or he can apply to the court under the Children Act for orders, such as a prohibited steps order or specific issue order, such that would forbid the other parent from removing the child from her or his care, taking the child abroad, or handing over the child’s passport.

2.9.1 Case law

In *Fornah v. Secretary of State for the Home Department* (2006) UKHL 46, the UK courts has found that if FGM is suffered by a certain social group in the country of origin, then the individual can claim that the threat and fear of FGM on the return of the applicant to the country of original is a basis for asylum in the UK.

In such case, the appellant was a citizen of Sierra Leone who claimed asylum in the UK on her arrival, aged 15, on the basis that if returned to Sierra Leone, she would be at risk of subjection to FGM, which was practiced by all indigenous ethnic groups in that country, including the tribe to which she belonged. Her claim to asylum was rejected by the Secretary of State on the basis that girls who were at risk of being subjected to FGM did not form a particular social group within art. 1A(2). On appeal, it was judged that the relevant social group could be defined as “uninitiated indigenous females in Sierra Leone” or more widely defined as all Sierra Leonean women. Either group had an existence independent of the persecution complained of.

3. Recent Statistics on Crimes against Young Women

Up to 3 million females across the UK experience rape, domestic violence, forced marriage, sexual exploitation and trafficking, FGM, or so called honor based violence each year.²¹⁴

3.1 Physical and Psychological Violence

A recent NSPCC report found that: (i) 6.9% of children have experienced physical violence; and (ii) 11.5% have experienced severe physical violence at the hands of a parent or guardian.²¹⁵ In the UK, 6,668 children were the subject of a child protection plan or on the child protection register under a category that includes physical abuse in 2011.

Domestic violence accounts for ¼ of all recorded violent crime and one incident is reported to the police every minute.²¹⁶

3.2 Sexual Abuse and Pedophilia

In 2010-2011 the police in England and Wales recorded:

- (i) 5,115 offenses of rape of a female child under 16;
- (ii) 4,301 offenses of sexual assault on a female under 13;
- (iii) 5,806 offenses of sexual activity involving a child under 16;
- (iv) 152 offenses of abuse of children through prostitution and pornography;
- (v) 310 offenses of sexual grooming; and
- (vi) 146 offenses of abuse of a position of trust involving a child under 18.²¹⁷

On March 31, 2010, 37,225 individuals were registered as sexual offenders in England and Wales.²¹⁸ It is not possible to establish the number of sexual offenders against children in the UK, as the age of the victim of the sex offense is not given. Therefore these figures include both sex offenders against adults and children.

²¹⁴ See “A Different World is Possible: Promising practices to prevent violence against women and girls” (June 2011).

²¹⁵ Child abuse and neglect in the UK today, 2011.

²¹⁶ See http://www.womensaid.org.uk/domestic_violence_topic.asp?section=0001000100220036§ionTitle=Statistics.

²¹⁷ All these statistics are taken from the *Crime in England and Wales 2010/11: findings from the British Crime Survey and police recorded crime*.

²¹⁸ For more information see the Multi-Agency public protection arrangements annual report 2010/11.

The majority of perpetrators sexually assault children known to them, with about 80% of offenses taking place in the home of either the offender or the victim.

Although we have not been able to obtain precise statistics of the percentage of court trials and convictions that have resulted from the offenses reported above, we note that the conviction rates for rape in particular are now at their lowest, far lower than other crimes. Only 5.7% of reported rape cases end in a conviction for the perpetrator.²¹⁹

3.3 Forced Marriage and Honor Based Violence

The Forced Marriage Unit (“FMU”) received reports of 1468 incidents of forced marriage in 2011, 78% of which involved women;²²⁰ but experts believe the true total is as high as 8,000 a year. However, forced marriage is widely regarded as an underreported problem and the statistics from the FMU are believed to represent only the tip of the iceberg. As of March 31, 2010, 131 Forced Marriage Prevention Orders had been issued in England and Wales.

3.4 Sex Trafficking

The 2009-2010 Child Exploitation and Online Protection Centre Strategic Threat Assessment on Child Trafficking in the UK states a total of 287 children from 47 countries were identified as potential victims of trafficking in that year alone. Where type of exploitation was identified (219 cases), 35% of children (76) were sexually exploited, most of whom were female.

There were 114 prosecutions for human trafficking for the purposes of sexual exploitation in 2008-2009 and 102 in 2009-2010. There were 31 convictions for trafficking for sexual exploitation in 2008 and 18 convictions in 2009.²²¹

3.5 FGM

In their 2007 research, “*A Statistical Study to Estimate the Prevalence of FGM in England and Wales*,” the Foundation for Women’s Health Research and Development estimates that 20,000 girls under the age of 16 are at risk for FGM in the UK each year and that nearly 280,000 women living in the UK have undergone FGM. However, the paucity of statistical evidence of the extent of FGM in the UK, together with a lack of prosecutions under existing legislation indicate a real need for improvements regarding how FGM is addressed in the UK.

There have been no prosecutions under the FGM Act 2003 as of July 2011, even though 100 investigations were carried out by the police in the 2 year period leading up to such date.²²²

²¹⁹ See Kelly, Lovett, and Regan, “*A gap or a chasm? Attrition in reported rape cases.*”
²²⁰ For more information see <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage>.
²²¹ See http://www.ecpat.org.uk/sites/default/files/child_trafficking_in_the_uk_a_snapshot.pdf.
²²² See <http://www.guardian.co.uk/lifeandstyle/2011/jul/22/female-genital-mutilation-laws-families>.

CHINA

1. General Overview

Within the legal framework of the People’s Republic of China (the “PRC”), there is no clear statutory definition for a “*young woman*”. However, the term “*minor*” refers to persons under the age of 18 and the term “*girl*” refers to a female under the age of 14. As such, to the extent of this research we define a “*young woman*” as a woman under the age of 18.

There are no laws or regulations in China specifically protecting young women from the crimes of physical and mental abuse, pedophilia, honor-based violence, forced marriage, sexual trafficking and genital mutilation. However, PRC Criminal Law, Law of the PRC on the Protection of Minors²²⁴ (the “Minors’ Protection Law”), Law on Protection of Women’s Rights and Interests of the PRC²²⁵ (the “Women’s Protection Law”), Law of the PRC on Penalties for Administration of Public Security²²⁶ (the “Public Security Law”), and other related regulations provide general protection for young women.

2. Chinese Laws and Regulations for the Protection of Young Women

2.1 Physical and Mental Abuse

General physical and mental abuse of young women covers a broad spectrum of acts, such as beatings, physical abuse, physical punishment, personal insults, and acts of indecency.

2.1.1 Specific Violations Under the Criminal Law

If an offender commits an act of general physical or mental abuse towards a young woman constituting a violation of the Criminal Law, the act is punishable in accordance with the Criminal Law. The types of punishment provided by the Criminal Law include (i) death, (ii) life imprisonment, (iii) fixed-term imprisonment, and (iv) criminal detention.²²⁷ As shown in the descriptions of the crimes below, the victim’s young age is deemed an aggravating factor for certain harmful acts towards girls under the age of 14. With the exception of Maltreatment of Family Members and Public Humiliation, the other crimes described in this section are subject to public prosecution. In other words, most of the crimes falling under this item will be prosecuted by the public prosecutor once such crimes come to the authorities’ attention, even if the victim does not report to the police or file a lawsuit.

²²³ 《中华人民共和国刑法》 in Mandarin, promulgated by the National People’s Congress on March 14, 1997 and amended on February 25, 2011.
²²⁴ 《中华人民共和国未成年人保护法》 in Mandarin, promulgated by the Standing Committee of the National People’s Congress on March 14, 1997 and amended on December 29, 2006.
²²⁵ 《中华人民共和国妇女权益保障法》 in Mandarin, promulgated by the Standing Committee of the National People’s Congress on April 3, 1992 and amended on August 28, 2005.
²²⁶ 《中华人民共和国治安管理处罚法》 in Mandarin, promulgated by the Standing Committee of the National People’s Congress and effective on March 1, 2006.
²²⁷ In short, criminal detention varies from 1 month to 6 months and is executed by the public security bureaus; imprisonment is no less than 6 months and is executed by prisons. Crimes that are subject to criminal detention are much less severe than those which are subject to imprisonment.

A. Mistreatment of Family Members

Whoever maltreats a member of one’s family shall, if the circumstances are flagrant, be sentenced to fixed-term imprisonment of not more than 2 years, criminal detention, or public surveillance.

Whoever commits the crime mentioned in the preceding paragraph and causes serious injury or death of the victim shall be sentenced to fixed-term imprisonment of not less than 2 years but not more than 7 years.

However, prosecution for any crime of mistreatment of family members requires a formal complaint by the victim.

B. Rape

Whoever rapes a woman with violence, coercion, or by any other means shall be sentenced to a fixed-term imprisonment of not less than 3 years, but not more than 10 years.

Whoever has sexual intercourse with a girl under the age of 14 shall be deemed to have committed rape and be subject to a heavier punishment.

Whoever rapes a woman or has sexual intercourse with a girl under the age of 14 shall, in the presence of any of the following circumstances, be sentenced to a fixed-term imprisonment of not less than 10 years, life imprisonment, or death: (i) if the action took place in public or was made public; (ii) the offense included raping a number of women or girls under the age of 14; (iii) the raping a woman was before the public in a public place; (iv) raping a woman by one or more perpetrators in succession; or (v) if the offense caused serious injury to or the death of the victim, or any other serious consequences.

C. Acts of Indecency or Insults Towards a Woman (age 14 or older) or a Child (Including Boys under the Age of 14)

Whoever acts indecently towards, or insults a woman through the use of violence, coercion, or any other forcible means shall be sentenced to a fixed-term imprisonment of not more than 5 years or criminal detention.

Whoever gathers together a number of people in order to commit the crime mentioned in the preceding paragraph or commits the crime before the public in a public place shall be sentenced to a fixed-term imprisonment of not less than 5 years.

Whoever acts indecently towards a child shall be subject to a heavier punishment in accordance with the provisions of the preceding two paragraphs.

D. Kidnapping

Any person who kidnaps another person for the purpose of extorting money or property or takes another person as hostage shall be sentenced to a fixed-term imprisonment of not less than 10 years or life imprisonment and subject to a fine or confiscation of property imposed concurrently. In the absence of aggravating circumstances, the person shall be sentenced to a fixed-term imprisonment of not less than 5 years but not more than 10 years, accompanied by the concurrent imposition of a fine.

Where commission of the crime mentioned in the preceding paragraph causes the death of the kidnap victim or where the perpetrator kills the victim, the perpetrator shall be sentenced to death and a confiscation of property imposed concurrently.

Any person who steals a baby or an infant for the purpose of extorting money or property shall be punished in accordance with the provisions set forth in the preceding two paragraphs.

2.1.2 Specific Violations under the Public Security Law

If an act of violence towards a young woman does not constitute a crime under the Criminal Law, the Public Security Law will apply. Penalties for acts against the administration of public security include a warning, fine, and administrative detention. Examples of conduct punishable under the Public Security Law include general mental abuse, general physical abuse, indecent acts, and mistreatment.

A. General Mental Abuse

A person who commits one of the acts identified by the Public Security Law as an act of general mental abuse shall be detained for up to 10 days or be subject to a fine. The list of acts constituting general mental abuse includes, *inter alia*, repeatedly dispatching pornographic, humiliating, intimidating, or other information aimed at disturbing the normal life of another person or secretly taking photos, eavesdropping, or exposing the privacy of another person.

B. General Physical Abuse

A person who beats or intentionally physically hurts another shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be subject to a fine. Certain violations are subject to heightened penalties comprising detention for not less than 10 days but not more than 15 days. Such violations include committing battery on and hurting a pregnant woman or a person under the age of 14.

C. Indecent Acts

A person who acts indecently towards another person or intentionally exposes his/her body in a public place shall, if aggravating circumstances are present, be detained for not less than 5 days but not more than 10 days. A person who acts indecently towards a mentally disabled person, a person suffering from a mental disorder, or a person under the age of 14, or who commits such act in the presence of other aggravating circumstances, shall be detained for not less than 10 days but not more than 15 days.

D. Mistreatment

A person who commits one of the following acts shall be detained for not more than 5 days or be given a warning: (i) mistreating a family member if the victim demands investigation of the matter; or (ii) abandoning a dependent person who is unable to live independently.

2.1.3 Specific Violations Under the Women’s Protection Law and Minors’ Protection Law

The Women’s Protection Law also contains relevant provisions aimed at protecting women and girls from life threatening and health-related offenses. The law sets forth the following prohibitions:

A. No Discrimination

The discrimination, maltreatment, abandonment, and physical abuse of women is prohibited.

B. No Offense to Life and Health

Women have an inviolable right to life and health. Cruel infanticide of female babies by drowning, abandoning, or in any other manner is prohibited. Discrimination or mistreatment of women who give birth to female babies or women who are sterile is also prohibited. Further, cruel treatment of women leading to bodily injury or death, due to superstitious reasons or by means of violence, is prohibited. Mistreating or abandoning ill, disabled, or aged women is also prohibited.

C. No Domestic Violence

Domestic violence against women is prohibited. The departments of public security, civil affairs, judicial administration, etc., together with urban and rural mass organizations of self-government at the grass roots level as well as public organizations shall, within the scope of their respective duties, prevent and stop domestic violence and provide support to female victims.

The Minors’ Protection Law also contains relevant provisions aimed at protecting minors from physical and mental abuse. According to this law, domestic violence against minors is prohibited. Mistreating or abandoning minors is prohibited. Infanticide by drowning, brutally injuring, or in any other manner is prohibited. Female or handicapped minors shall not be discriminated against.

Furthermore, teaching and administrative staff in schools, kindergartens, and nurseries shall respect the personal dignity of minors. They may not subject minors to corporal punishment or disguised forms thereof, or commit any other acts that would violate the personal dignity of minors. Abducting, trafficking in, kidnapping, or mistreating minors is prohibited. Sexual harassment of minors is prohibited. Coercing or luring minors into begging or using them in begging, or arranging for them to give performances (such as street performances) which are harmful to their physical or mental health is prohibited.

However, neither the Women’s Protection Law nor the Minors’ Protection Law contain specific provisions on penalties or liability for violations of the two laws. They merely stipulate that violations of the Minors’ Protection Law or the Women’s Protection Law are punishable in accordance with other applicable laws, such as the Criminal Law.

2.2 Pedophilia

Under PRC law, there is no statutory definition for “*pedophilia*.” However, if a pedophilia-related act constitutes a violation of the Criminal Law or other laws, the offender will be subject to punishment under such other laws.

2.3 Honor Based Violence

“*Honor Based Violence*” is a term used to describe violence committed in the context of the extended family and motivated by a perceived need to restore standing within the community, which has presumably been lost due to the behavior of the victim. Although Honor Based Violence is not a distinct category of violence under PRC law, offenders of such acts are subject to punishment under the Criminal Law and other laws if the violence committed constitutes violation of such laws.

2.4 Forced Marriage

The Criminal Law prohibits interfering with another person’s freedom to choose marriage by use of violence. Whoever uses violence to interfere with another person’s freedom of marriage shall be sentenced to fixed-term imprisonment of not more than 2 years or criminal detention. Such crime may only be prosecuted at the victim’s initiative. Whoever commits the crime mentioned in the preceding paragraph and causes the victim’s death shall be sentenced to a fixed-term imprisonment of not less than 2 years but not more than 7 years.

The Minors’ Protection Law prohibits parents or other guardians of minors from forcing minors to marry or from making marriage contracts on their behalf. However, the Minors’ Protection Law does not provide any specific punishment for forced marriage and only generally stipulates that whoever violates its provisions shall be subject to criminal or civil liability depending on whether the wrongful act violates the Criminal Law or a relevant civil law.

2.5 Sexual Trafficking

If an act relating to sexual trafficking constitutes a crime under the Criminal Law (as listed below), the perpetrator shall be subject to criminal liability.

A. Abducting and Trafficking in Women and Children

Whoever abducts and participates in trafficking women or children shall be sentenced to a fixed-term imprisonment of not less than 5 years but not more than 10 years and shall also be fined. If the perpetrator falls within any of the categories listed below, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment accompanied with fines or confiscation of property. In the presence of aggravating circumstances, the offender shall be sentenced to death and subject to the confiscation of property. The relevant categories are: (i) being a ringleader of a gang engaged in abducting and trafficking women and children; (ii) abducting and trafficking 3 or more women and/or children; (iii) raping a woman who is abducted and trafficked; (iv) enticing or forcing the abducted and trafficked woman to engage in prostitution or selling such woman to another person who would force her to engage in prostitution; (v)

kidnapping a woman or child by means of violence, coercion, or anaesthesia for the purpose of selling the victim; (vi) stealing a baby or an infant for the purpose of selling the victim; (vii) causing serious injury or death of a woman or child who is abducted and trafficked, or to such person's relatives, or any other serious consequences to the same; or (viii) selling a woman or child to a foreign country.

Abducting and trafficking a woman or child covers any of the following acts: abducting, kidnapping, buying, trafficking, fetching, sending, or transferring a woman or child for the purpose of selling the victim.

B. Buying Abducted Women and Children

Whoever buys an abducted woman or child shall be sentenced to a fixed-term imprisonment of not more than 3 years, criminal detention, or public surveillance. Whoever buys an abducted woman and forces her to have sexual intercourse with him shall be convicted and punished in accordance with the provisions regarding rape. Whoever buys an abducted woman or child and illegally deprives the victim of his or her personal freedom or restricts his or her personal freedom, or commits any criminal act such as harming or humiliating the victim, shall be convicted and punished in accordance with the relevant provisions of the Criminal Law. Whoever buys an abducted woman or child and commits a criminal act as specified in the second or third paragraph of this item shall be punished in accordance with the provisions regarding combined punishment for several crimes. Whoever buys an abducted woman or child and subsequently sells the victim shall be convicted and punished in accordance with the provisions regarding abducting and trafficking in women and children. Whoever buys an abducted woman or child but does not obstruct the woman from returning to her original place of residence as she wishes or does not maltreat the child or obstruct his or her rescue may be exempted from being investigated for criminal liability.

C. Abducting Children

Whoever abducts a minor under the age of 14, thereby separating the child from his family or guardian, shall be sentenced to a fixed-term imprisonment of not more than 5 years or criminal detention.

D. Organized or Forced Prostitution

Whoever arranges for or forces another person to engage in prostitution shall be sentenced to a fixed-term imprisonment of not less than 5 years but not more than 10 years and be subject to fines. In the presence of any of the following circumstances, the perpetrator shall be sentenced to a fixed-term imprisonment of not less than 10 years or life imprisonment, and also be fined or subject to confiscation of property: (i) making arrangements for another person to engage in prostitution in the presence of aggravating circumstances; (ii) forcing a girl under the age of 14 to engage in prostitution; (iii) forcing a number of persons to engage in prostitution or repeatedly forcing a person to engage in prostitution; (iv) forcing the victim to engage in prostitution after raping her; or (v) causing serious injury, death, or other serious consequences to the victim forced to engage in prostitution.

Whoever falls within any of the categories mentioned in the preceding paragraph shall, in the presence of particularly aggravating circumstances, be sentenced to life imprisonment or death and also be subject to confiscation of property. Whoever recruits or transports persons on behalf of an organizer of prostitution or

otherwise assists in arranging for another person to engage in prostitution shall be sentenced to fixed-term imprisonment of not more than 5 years and subject to fines. In the presence of aggravating circumstances, the perpetrator shall be sentenced to fixed-term imprisonment of not less than 5 years but not more than 10 years and be subject to fines.

E. Luring a Person into Prostitution

Whoever lures another person into prostitution, shelters prostitution, or procures another person to engage in prostitution shall be sentenced to a fixed-term imprisonment of not more than 5 years, criminal detention, or public surveillance and shall also be subject to a fine. In the presence of aggravating circumstances, the perpetrator shall be sentenced to fixed-term imprisonment of not less than 5 years and to fines. Whoever lures a girl under the age of 14 to engage in prostitution shall be sentenced to a fixed-term imprisonment of not less than 5 years and to fines.

F. Engaging Girls for Sexual Services

Whoever engages a girl under the age of 14 for sexual services shall be sentenced to a fixed-term imprisonment of not less than 5 years and shall also be fined.

If activities related to sex trafficking fail to constitute a crime under the Criminal Law, the Public Security Law will apply. A person who seduces, shelters, or introduces another person to prostitution shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined up to RMB5,000 yuan. In the presence of mitigating circumstances, the perpetrator shall be detained for not more than 5 days or be fined up to RMB500 yuan.

The Women's Protection Law prohibits activities related to (i) arranging, forcing, or luring women into prostitution, providing shelter for prostitution, inducing women to engage in prostitution, or acting indecently towards women and (ii) arranging, forcing, or luring women into giving obscene performances. In addition, abducting, trafficking in, or kidnapping women is prohibited. Buying women who have been abducted, trafficked, or kidnapped is also prohibited. Further, obstructing the rescue of women who are abducted, trafficked, or kidnapped is prohibited.

According to the Minors' Protection Law, abducting, trafficking in, kidnapping, or maltreating minors is prohibited. Sexual harassment of minors is prohibited. Also, coercing or luring minors into begging or using them in begging, or arranging for them to give performances (such as street performances) which are harmful to their physical or mental health is prohibited.

2.6 FGM

Although FGM does not constitute a distinct category of violence under PRC law, acts of genital mutilation may be subject to punishment under the Criminal Law or other laws if the acts constitute violations of such laws.²²⁸

²²⁸ The specific crimes and wrongful acts punishable under such other laws are listed in Paragraphs 2A and B above.

3. Recent Statistics on Crimes against Young Women

Unlike in certain developed countries, there is no official or publicly accessible resource in the PRC with relevant data regarding, for example, the types of violence committed against women and children (sexual abuse, mental abuse, sexual trafficking, and genital mutilation); the identity of those committing such wrongful acts (family members, relatives, or strangers); the percentages of reported and unreported crimes, and court trials and convictions.

Even the statistics available on the official website of the United Nations Children’s Fund (“UNICEF”) lack most data regarding the PRC. However, there is some publicly accessible data (even if not official) on Trafficking in Women and Children.

It is reported that a national anti-trafficking campaign launched by the Chinese government in April 2009 had by the end of 2010 resulted in the resolution of 9,165 cases of trafficking in women and 5,900 cases of trafficking in children. During the campaign, a total of 9,388 abducted children and 18,000 women were rescued.²²⁹ In addition, according to the 2010 Annual Report of the Supreme People’s Court of the PRC, the PRC courts had in 2010 reviewed 1,924 cases regarding trafficking in women and children and a total number of 3,817 criminals were convicted of such crimes. The provinces where severe cases were found were Guizhou, Fujian, Shandong, and Zhejiang.²³⁰

3.1 Sexual Assault on Underage Babysitters

According to a survey dating from 2005, nearly 6% of babysitters under 18 years of age have experienced sexual assault in the PRC. Due to fear and a lack of legal rights, most of the victims did not report the cases to the authorities.²³¹

3.2 Sexual Assault Against Girls in Guangdong Province

As reported by the Women’s Federation of Guangdong Province, the number of cases regarding sexual assault of females under the age of 18 accepted by the provincial procuratorate totaled 1,708 cases with 2,506 victims between 2008 and June 2011. Among such cases, the top 3 crimes were rape, indecent acts, and sexual trafficking. Of the victims, 49.28% were girls under the age of 14 years. Of the offenders, 65.74% were acquaintances, most often neighbors, relatives, or teachers. Young men under the age of 20 and older men above the age of 50 were the most common offenders. Due to fear and the ignorance of young female victims, most cases had not been reported to the authorities.

²²⁹ See <http://english.peopledaily.com.cn/90001/90776/90785/7439867.html>
²³⁰ See http://www.court.gov.cn/qwfb/sfsj/201105/t20110525_100996.htm
²³¹ See <http://www.wsic.ac.cn/academicnews/71439.htm>

4. National Working Committee on Children and Women and All-China Women’s Federation in Defense of Young Women’s Rights

The National Working Committee on Children and Women (“NWCCW”)²³² organized under the State Council of the PRC was established in 1990. NWCCW is a coordinating working committee comprising 33 national governmental and quasi-governmental entities.²³³ NWCCW has set up its office in the auspices of the All-China Women’s Federation, the largest women’s organization in the PRC.

NWCCW’s main role is to act as a coordinating body among its members, facilitating the enactment of national policies on the protection and welfare of women and children. Among its duties and activities it: (i) has assisted the State Council in enacting the National Programs for Women’s Development and the National Programs for Children’s Development, including the most recent programs covering the period of 2011–2020; and (ii) supervises the relevant governmental entities on the implementation of International conventions on the protection of women’s and children’s rights and interests to which the PRC is a party, such as the UN Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

The All-China Women’s Federation (“ACWF”)²³⁴ was established in March 1949 and is the largest women’s organization in the PRC. ACWF can be viewed as a quasi-governmental entity, since it relies financially on the PRC government and its staff enjoys a status similar to that of civil servants working for the PRC government. It keeps the PRC government informed of women’s views and the issues faced by women, and makes recommendations on possible solutions. One of ACWF’s goals and missions is “*to safeguard the legitimate rights and interests of women and children through, inter alia, putting forward suggestions and recommendations to the relevant government departments at all levels, pushing and assisting relevant authorities to investigate and deal with violations of rights and interests of women and children, and providing assistance to the victims.*”²³⁵

ACWF’s past activities include, among others, the following:

- (i) ACWF introduced the idea of drafting the Women’s Protection Law and drafted the Women’s Protection Law together with the relevant PRC governmental entities;
- (ii) ACWF has established the Legal Assistance Center (“ACWF Legal Assistance Center”),²³⁶ which, *inter alia*, provides legal help and assistance to women and children, organizes research and training on the protection of women’s and children’s rights and interests, and participates in International exchanges and the promotion cooperation with domestic and foreign entities with respect to the protection of women and children;

²³² See <http://www.nwccw.gov.cn/?action=category-catid-135>
²³³ *E.g.*, Ministry of Justice, Ministry of Public Security, Ministry of Education, Ministry of Health, Ministry of Foreign Affairs, Legislative Affairs Office of the State Council, All-China Federation of Trade Unions, All-China Women’s Federation.
²³⁴ See <http://www.womenofchina.cn>
²³⁵ See <http://www.womenofchina.cn/html/womenofchina/folder/84-1.htm>
²³⁶ See <http://www.12338.cn/> In 2008, the age of consent in Canada was increased from 14 to 16 years.

- (iii) ACWF (including its local counterparts) has been coordinating with the Ministry of Justice. With the assistance of ACWF, the Ministry of Justice has set up legal aid centers all over the country, providing legal aid to young women and to other people in need of legal aid;
- (iv) ACWF (including its local counterparts) has been coordinating with the PRC courts of different levels to establish specialized tribunals to hear and adjudicate civil cases involving the protection of women’s and children’s rights and interests.

In addition to legal assistance, ACWF (together with its local counterparts) also provides a variety of non-legal help for women and children, including shelter, medical care, and psychological counseling.

CANADA

1. General Overview

Canada’s criminal laws appear to reflect an understanding of the unique threats posed to young, vulnerable women. Canada has taken measures to criminalize a number of crimes that disproportionately affect this section of the population, including proscriptions on FGM, human trafficking, and sexual exploitation of minors.

Through the Canadian Criminal Code, the Canadian legislature has taken a number of steps to help protect of the rights of young women. By criminalizing acts of violence, sexual trafficking, and FGM, the Canadian government has attempted to deter the kinds of acts that have plagued young women in other countries throughout the world. Further, the government has made clear that it will aid these women in the preservation of their rights. The Canadian government has expressed its continuing commitment to gender equality and the advancement of women’s rights internationally, making it likely that even more protections will be added in the future.

2. Proscribed Acts Under the Canadian Criminal Code

2.1 Sexual Offenses Involving Minors

The Canadian Criminal Code generally does not criminalize non-exploitative, consensual sexual activity with or between persons who are 16 years of age or older.²³⁷ However, sexual activity between adults and children under 18 is prohibited when the relationship between the adult and child is one of trust or dependency. Despite the legislature’s hesitancy to criminalize consensual sexual activity, there are several prohibitions and limitations on the kinds of sexual activity in which minors may engage.²³⁸

2.2 Sexual Interference and Invitation to Sexual Touching

Sections 151 and 152 of the Canadian Criminal Code prohibit virtually all kinds of sexual contact with children under 16. Section 151 states that “every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years” will be guilty of the offense of sexual interference. Section 152 states that “every person who, for a sexual purpose, invites, counsels, or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years” will be guilty of the offense of invitation to sexual touching. The defense of consent is unavailable for these offenses as well as for any sexual assault offenses in respect of both male and female victims under 16.

The maximum available penalty for sexual interference or invitation to sexual touching is 10 years’ imprisonment for those prosecuted by way of indictment. Both offenses are punishable by minimum terms of imprisonment, making a conditional sentence unavailable.

²³⁷ Canadian law recognizes certain exceptions to these offenses for people who are close in age.
²³⁸ These exceptions make sure the law does not label consensual sexual activities between young people as criminal offenses. It is not a criminal offense if: (i) a young person aged 14 or 15 consents to sexual activity with someone less than 5 years older; or (ii) a young person aged 12 or 13 consents to sexual activity with someone less than 2 years older. These exceptions only apply if the older person is not in a position of authority or trust and there is no exploitation.

2.3 Sexual Exploitation of a Young Person

Section 153 of the Canadian Criminal Code prohibits the “*sexual exploitation*” of a “*young person*,” which is defined as a person between the ages of 16 and 18. Sexual exploitation takes place when the accused is in a relationship of trust or authority with the complainant, the complainant is in a relationship of dependency with the accused, or the relationship is exploitative of the young person, and the accused engages in either sexual interference or an invitation to sexual touching. A judge may infer that a relationship is exploitative of a young person from the nature and circumstances of the relationship, including the age of the young person, the age difference between the accused and the young person, the evolution of the relationship, and the degree of control or influence by the accused over the young person. Consent is not relevant when this type of relationship exists. The maximum available penalty is 10 years’ imprisonment for those prosecuted by way of indictment. Minimum terms of imprisonment apply to the offense of sexual exploitation and, therefore, a conditional sentence cannot be imposed.

2.4 Trafficking of Minors

Canadian criminal law also addresses the threat of sex trafficking by criminalizing the removal of a child from Canada in certain circumstances. Section 273.3 of the Canadian Criminal Code provides in relevant part that no person shall do anything for the purpose of removing a Canadian resident from Canada if:

- (i) the person being removed is under 16 years old, and is being removed with the intention that an act of sexual interference or an invitation to sexual touching be committed outside Canada in respect of that person; or
- (ii) the person being removed is between 16 and 18 years old, and is being removed with the intention that an act of sexual exploitation be committed outside of Canada in respect of that person; or
- (iii) the person being removed is under 18 years old, and is being removed with the intention that an act be committed outside Canada that if it were committed in Canada would constitute incest, bestiality, assault, aggravated assault, bodily harm, sexual assault, or aggravated sexual assault in respect of that person.

Any person found to be in contravention of this section is guilty of: (i) an indictable offense and is liable to imprisonment for a term not exceeding five years; or (ii) an offense punishable on summary conviction.

2.5 FGM

The Canadian Criminal Code has formally recognized FGM as a form of aggravated assault. Section 268 of the Criminal Code states that anyone who wounds, maims, disfigures or endangers the life of the complainant is guilty of an aggravated assault. The section goes on to say that the terms “*wounds*” or “*maims*” includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where the procedure is performed by a person duly qualified by provincial law to practice

medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or the person is at least 18 years of age and there is no resulting bodily harm. Apart from these two narrow exceptions, no other form of consent to FGM will be considered valid in Canada.

In February 2012, the Society of Obstetricians and Gynaecologists of Canada published an update to its policy statement on FGM, calling the practice a violation of the human rights of girls and women. A representative from the organization noted that in Canada, the women who have undergone this procedure have been mainly from Africa and countries which consider it a traditional rite of passage that can beautify women, prevent promiscuity, and protect girls from rape.

UNITED STATES OF AMERICA

1. Federal Criminal Law and Violence Against Women Act

Federal criminal protections for young women against physical violence and sexual exploitation are contained in Title 18 of the United States Code. Most criminal protections in the United States exist at the state level and therefore vary from state to state. In contrast to these state laws, federal laws addressing criminal activity, in order to fall within Congress’ power to regulate under the Commerce Clause, require some interstate or multi-jurisdictional element. In other words, federal protections generally require that the crime have contacts with more than one state or country, or occur in a military jurisdiction or special U.S. territory. While federal criminal laws generally do not target any particular demographic, those discussed below are crimes most likely perpetrated against young women.

The Violence Against Women Act (“VAWA”) was originally enacted in 1994, prompted by a perceived indifference and inadequate legal response to violence against women.²³⁹ In addition to providing for various grant programs to deal with this violence, VAWA also aimed to “*enhance investigations and prosecutions of sex offenses*,” establishing certain new offenses and heightening the penalties for other existing offenses.²⁴⁰ Since 1994, Congress has reauthorized VAWA on two occasions, first in 2000 and again in 2005. The latter reauthorization expired in fiscal year 2011; however, VAWA grant programs continue to receive federal funding, and both the House and the Senate have since drafted proposed Reauthorization Acts.²⁴¹

As originally enacted, VAWA created a civil cause of action for victims of violent crimes motivated by gender, irrespective of whether criminal charges were pursued: “*A person . . . who commits a crime of violence motivated by gender and thus deprives another of the right [to be free from crimes of violence] shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.*”²⁴²

However, in 2000, the Supreme Court struck down 18 U.S.C. § 13981, holding that this provision exceeded the powers of Congress under the Commerce Clause and Equal Protection Clause.²⁴³

As a result, VAWA no longer provides victims of gender motivated violence the right to sue their attackers in federal court.

VAWA is widely considered “the largest and best-known law” addressing violence targeting and faced primarily by women.²⁴⁴ It is particularly significant because it “*improved federal, state, and local responses to sexual assault by spurring changes in public attitudes, policy, and law.*”²⁴⁵ The following sections will consider, in turn, each of the four crimes that VAWA addresses: domestic violence, dating violence, and sexual assault.

²³⁹ See Lisa M. Seghetti & Jerome P. Bjelopera, Cong. Research Serv., R42499, The Violence Against Women Act: Overview, Legislation, and Federal Funding 1 (2012).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² 42 U.S.C. § 13981(c) (1994).

²⁴³ *U.S. v. Morrison*, 529 U.S. 598 (2000).

²⁴⁴ See, e.g., Nat’l Task Force to End Sexual and Domestic Violence Against Women, Toolkit Subcomm., “*The Violence Against Women Act (VAWA): A Toolkit for Educating Policy Makers About Reauthorization*” 2 (2011) (hereinafter Task Force to End Sexual and Domestic Violence).

²⁴⁵ See Kristen J. Roe, Nat’l Alliance to End Sexual Violence, “*The Violence Against Women Act and Its Impact on Sexual Violence Public Policy: Looking Back and Looking Forward*” (2004).

2. Crimes Against Women and Children

2.1 Domestic Violence

Federal protection against domestic violence lies in 18 U.S.C. § 2261 (2006). Section 2261(a) addresses domestic violence in two contexts: first, where the abuser travels in interstate or foreign commerce to engage in domestic violence and, second, where the abuser causes the victim, by force, coercion, duress or fraud to travel in interstate or foreign commerce. Specifically, section 2261(a)(1) makes it a crime “*to travel in interstate or foreign commerce with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that person.*” Section 2261(a)(2), in turn, addresses the second scenario, wherein the abuser commits a violent crime during or after causing the partner to travel.

In each of these instances, the penalties largely depend on the severity of the victim’s injury and the use of a deadly weapon. While all crimes may result in fines, the statute presents four categories of crimes associated with different terms of imprisonment.²⁴⁶

The Violence Against Women Act provides additional protections to victims of domestic violence, generally interpreted as “*intimate partner violence*”.²⁴⁷ In contrast to 18 U.S.C. § 2261, which extends protection to “*a spouse, intimate partner, or dating partner,*” VAWA originally acknowledged only “*domestic violence*” in § 13925(a). Not until the 2000 did Congress identify the related crime of “*dating violence*” in §§ 13925(a)(8).²⁴⁸

For purposes of VAWA, domestic violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse, a person who shares a child with the victim, a person who currently or formerly cohabited with the victim, a person similarly situated to a spouse in the relevant jurisdiction, or another person against whom the victim would be protected under the domestic violence laws of the jurisdiction.²⁴⁹ Dating violence, on the other hand, is defined as violence committed by a person who is or has been in a “*social relationship of a romantic or intimate nature with the victim*”.²⁵⁰ The existence of a relationship based on the length and type of relationship, and how frequently the pair interacted.²⁵¹

2.2 Sexual Assault and Sexual Abuse

While “*sexual assault*” is not specifically defined in the U.S. Code, sexual abuse and aggravated sexual abuse are addressed in 18 U.S.C. §§ 2241 *et seq.* These provisions criminalize abuse occurring in the special maritime and territorial jurisdiction of the U.S. or in a federal prison. Section 2241 prohibits an individual from knowingly engaging (or attempting to engage) in a sexual act with someone who is either incapable of appraising the nature of the conduct or declining to participate, or knowingly causing another person to engage in a sexual act through threats or placing that person in fear.²⁵² Such sexual abuse is deemed

²⁴⁶ Crimes resulting in the victim’s death are punishable by imprisonment for life or for any term of years; crimes resulting in “permanent disfigurement or life threatening bodily injury” result in no more than 20 years imprisonment; crimes resulting in “serious bodily injury” result in a maximum sentence of 10 years; and all other crimes are punishable by no more than 5 years.

²⁴⁷ See Seghetti & Bjelopera, *supra* note 239, at 5.

²⁴⁸ See Violence Against Women Act, Nat’l Network to End Domestic Violence, available at <http://www.nnedv.org/policy/issues/vawa.html> (last visited June 22, 2012).

²⁴⁹ 42 U.S.C. § 13925(a)(6)(2006).

²⁵⁰ *Id.* § 13925(a)(8)(A).

²⁵¹ *Id.* § 13925(a)(8)(B).

²⁵² 18 U.S.C. § 2242 (2006).

aggravated when the perpetrator uses force or threatens death, serious bodily injury, or kidnapping to cause the victim (or attempt to cause the victim) to engage in a sexual act.²⁵³ Aggravated sexual abuse also occurs when sexual abuse occurs after the perpetrator has rendered the victim unconscious or otherwise drugged the person so as to substantially impair her ability to appraise or control her conduct.²⁵⁴

In both instances, the statute provides heightened penalties when the victim is a minor. Sexual abuse of a child between ages 12 and 16, where the perpetrator is at least 4 years older than the victim, is accompanied by fines and/or a maximum sentence of 15 years.²⁵⁵

In contrast, any sexual abuse of a child under age 12 is considered “*aggravated sexual abuse*”. In these instances, or where aggravated sexual abuse of a child between the ages of 12 and 16 occurs, the statute imposes a mandatory minimum sentence of 30 years to life.²⁵⁶ For repeat offenders, the statute mandates life imprisonment, unless the death penalty is imposed.²⁵⁷ When the victim is younger than 12, the perpetrator’s knowledge of that fact is irrelevant.²⁵⁸

Sexual assault, while often encompassed by domestic violence, is treated separately by VAWA, which defines sexual assault as any conduct that may be described as sexual abuse or aggravated sexual abuse according to the U.S. Code.²⁵⁹ As with crimes such as domestic violence and stalking, women face a higher risk of sexual assault than do men.²⁶⁰

VAWA played an important role in enacting certain of the criminal provisions discussed above. For instance, in an attempt to encourage victims of sexual assault to bring claims against their abusers, VAWA doubled penalties for repeat sex offenders and enhanced federal penalties for sex crimes.²⁶¹ Further, VAWA caused a number of procedural changes, including a mandatory restitution statute similar to that for stalking violations.²⁶² These changes have, in turn, positively impacted state laws, for instance, by urging states to treat date or spousal rape as an equal crime to stranger rape.²⁶³

2.3 Sexual Exploitation and Other Abuse of Children

Sexual exploitation and abuse of children is treated in Chapter 10 of Title 18, which governs topics such as selling and buying children, child pornography, and failure to report child abuse. Like those federal statutes discussed above, each provision necessarily includes an element conferring federal jurisdiction, such as interstate or foreign transportation or travel, the use of a facility or means of interstate or foreign commerce,

or the occurrence of the offense in a special maritime or territorial jurisdiction of the U.S.

2.4 Child Pornography

18 U.S.C § 2251 addresses the sexual exploitation of children and outlines numerous prohibitions centered around employing, using, or enticing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct. The prohibitions apply in the following contexts:

- (i) A person cannot employ, use, or entice a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct,²⁶⁴ or for the purpose of transporting into the United States a visual depiction of that conduct;²⁶⁵
- (ii) A parent or guardian cannot permit a minor to engage in sexually explicit conduct for the above purpose;²⁶⁶
- (iii) A person cannot advertise to receive, trade, buy, or distribute a visual depiction of a minor engaging in sexually explicit conduct or to participate in any sexually explicit conduct with a minor for this purpose.²⁶⁷

For first time offenders, a mandatory minimum penalty of 15 years and a maximum penalty of 30 years apply to these offenses. Repeat offenses result in enhanced penalties of 25 to 50 years for the second offense and 25 years to life for the third offense. However, still stricter penalties apply to the buying and selling of children, governed by § 2251A. A first time offender who sells²⁶⁸ or purchases a minor (or offers to do so), knowing that the minor will be portrayed in a visual depiction of sexually explicit conduct, is subject to 30 years to life.

Sections 2252 and 2252A criminalize other actions involving a visual depiction of a minor engaging in sexually explicit conduct or child pornography, which is defined more broadly in 18 U.S.C. § 2256(8)(A)-(C).²⁶⁹ Section 2252 criminalizes certain other actions involving a visual depiction of a minor engaging in sexually explicit conduct.

2.5 Trafficking

Victims of trafficking are typically employed as sex workers or unregulated black market laborers. The illegality of these forced occupations creates a precarious legal position, trafficked individuals are not only victims but also perpetrators of a crime. Most trafficking victims perceive that both their criminal status and undocumented immigration status close off any possible assistance from official channels.²⁷⁰ This perception is often actively encouraged by their victimizers, who inform their victims that should authorities learn of

²⁵³ *Id.* § 2241(a).
²⁵⁴ *Id.* § 2241(b).
²⁵⁵ *Id.* § 2243(a).
²⁵⁶ *Id.* § 2241(c).
²⁵⁷ *Id.*
²⁵⁸ *Id.* § 2241(d). Note that sexual contact other than that specifically delineated in §§ 2241 and 2242 is addressed in 18 U.S.C. § 2244 (2006). Under this section, penalties for abusive sexual conduct double when the victim is under the age of 12. 18 U.S.C. § 2244(c) (2006).
²⁵⁹ See Seghetti & Bjelopera, *supra* note 239, at 7.
²⁶⁰ *Id.* at 4-5.
²⁶¹ Roe, *supra* note 245, at 5.
²⁶² 18 U.S.C. § 2248 requires the defendant to pay the victim the “full amount of the victim’s losses” including those costs outlined in reference to mandatory restitution for stalking.
²⁶³ Roe, *supra* note 245, at 5.

²⁶⁴ 18 U.S.C. § 2251(a) (2006).
²⁶⁵ *Id.* § 2251(c).
²⁶⁶ *Id.* § 2251(b).
²⁶⁷ *Id.* § 2251(d).
²⁶⁸ In particular, § 2251A(a) applies to a parent or guardian who is prevented from selling or transferring custody of a child knowing or intending that the child will engage in pornography.
²⁶⁹ In addition to visual depictions of a minor engaging in sexually explicit conduct, the term “*child pornography*” also includes a visual depiction that is indistinguishable from that of a minor engaging in sexually explicit conduct as well as a visual depiction that has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. *Id.* § 2256(8)(A)-(C).
²⁷⁰ For more information, see <http://www.nytimes.com/2009/12/04/nyregion/04trafficking.html>.

their existence, they would be jailed for years or immediately deported. Congress’ desire to remedy this vulnerability was a driving purpose behind passage of the Trafficking Victims Protection Act in 2000 (“TVPA”). In the past decade, state and federal legislatures have taken positive steps to provide legal options for the estimated 17,500 individuals who are trafficked into the U.S. annually.²⁷¹ This new legislative framework and the attendant law enforcement efforts on the federal and state level, while insufficient to address the scope of the current problem, nevertheless form an appreciable and systematic change in how human trafficking is treated in the U.S.

The TVPA introduced a number of new federal criminal provisions which target human traffickers. Thus, 18 U.S.C. §1589 criminalizes anyone who: “*knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means (i) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (ii) by means of serious harm or threats of serious harm to that person or another person; (iii) by means of the abuse or threatened abuse of law or legal process; or (iv) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished [by fine or imprisonment of not more than 20 years, or both, or, if the violation includes kidnapping, attempted kidnapping, aggravated sexual abuse, or attempted homicide, by fine or imprisonment of any term of years up to life, or both].*”²⁷²

The statute targets not only traffickers, but also those individuals who knowingly purchase or benefit from trafficked labor. Specifically, the law criminalizes “[w]hoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any the means described [with respect to traffickers], knowingly or in reckless disregard of the fact that the venture has engaged in the providing of labor or services by any of such means, shall be punished [by fine or imprisonment of not more than 20 years, or both, or, if the violation includes kidnapping, attempted kidnapping, aggravated sexual abuse, or attempted homicide, by fine or imprisonment of any term of years up to life, or both].”²⁷³ The statute defines “serious harm” as “any harm ... including psychological, financial, or reputational harm that is sufficiently serious ... to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm”.²⁷⁴

While there are general parallels between the labor and sexual trafficking statutes, the sex trafficking statutes governing the trafficking of children contains elements absent from the labor trafficking statute. Specifically, it criminalizes: “(a) Whoever knowingly— (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion, or any combination

of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished [by a fine and imprisonment for 15 years to life if the trafficked individual had not attained 14 years of age or 10 years to life if the trafficked individual was older than 14 years of age but had not obtained 18 years of age.]”²⁷⁵

Where the accused individual had a reasonable opportunity to observe the alleged victim, the government need not prove the victim’s age.²⁷⁶

There is also general, catchall provision, criminalizing, inter alia, “[w]hoever knowingly and willfully ...brings within the United States any person ... held [in involuntary servitude]” and setting the punishment at a fine or imprisonment “for not more than 20 years, or both [or, should death result from the violation or if the violation includes kidnapping, aggravated sexual abuse or attempts of such abuse or attempts to kill, then for any term to life or a fine, or both.]”.²⁷⁷

Relating to and supporting each of the above statutes is 18 U.S.C. § 1593, which criminalizes the confiscation or destruction by traffickers of any immigration papers in an attempt to blackmail or coerce trafficking victims. Any such attempt is punishable by 5 years in prison.²⁷⁸

Additionally, under 18 U.S.C. § 1593, a court is entitled to order restitution of “*the full amount of the victim’s losses*” defined as those losses defined under 18 U.S.C. § 2259(b)(3) and, in addition, “*the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act*”²⁷⁹ for violation of the above statutes, or any other trafficking related crime described in that chapter.

Aside from the above-described statutes, which issued from the TVPA, there are a number of additional statutes available to prosecutors when targeting traffickers:

- (i) Importation of Alien for Immoral Purpose: forbidding “[t]he importation ... of any alien for the purpose of prostitution, or for any other immoral purpose ... or ... hold[ing] or attempt[ing] to hold any alien for any such purpose in pursuance of such illegal importation”;²⁸⁰
- (ii) Transportation for Illegal Sexual Activity and Related Crimes: forbidding the “*transport[] [of] any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense*”;²⁸¹

²⁷¹ Mirela Iverac, WNYC.org, “Even as arrests Increase, Human Trafficking Remains a Problem,” Available at <http://www.wnyc.org/articles/wnyc-news/2012/jan/31/trafficking-remains-problem/>
²⁷² 18 U.S.C.S. §1589(a).
²⁷³ 18 U.S.C.S. §1589(b).
²⁷⁴ 18 U.S.C.S. §1589(c)(2).

²⁷⁵ 18 U.S.C.S. §1591.
²⁷⁶ 18 U.S.C.S. §1591(c).
²⁷⁷ 18 U.S.C.S. §1584(a).
²⁷⁸ 18 U.S.C.S. §1592.
²⁷⁹ 18 U.S.C.S. §1593(b)(3).
²⁸⁰ 8 U.S.C.S. §1328.
²⁸¹ 18 U.S.C.S. §2421.

- (iii) Coercion and Enticement: criminalizing anyone who “*knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense [or using the mail to do the same]*”;²⁸²
- (iv) Transportation of Minors: criminalizing anyone who “*knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, ... or who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct ... or who travels in foreign commerce, and engages in any illicit sexual conduct with another person*”.²⁸³

Recent years have seen a marked increase in enforcement efforts by state and federal agents. In New York, for instance, arrests in sex trafficking cases have risen over 500% in 3 years, from 9 in 2008 to 50 in 2011.²⁸⁴ In total, since New York’s state anti-trafficking law came into effect in 2007, there have been 96 arrests and 31 convictions.²⁸⁵ On the national level, since their enactment in 2000 and up to 2009 federal anti-trafficking provisions have resulted in 196 cases with convictions against 419 individuals.²⁸⁶

2.6 FGM

FGM has increasingly become a focus of concern within the International community, including the United States.²⁸⁷ The U.S. has passed legislation making FGM a federal criminal offense and States have passed analogous criminal statutes in a number of jurisdictions.²⁸⁸ Under the Immigration and Nationality Act (“INA”), a discretionary grant of asylum or suspension of deportation may be awarded to female aliens who have undergone FGM or have a well-founded fear of being subjected to FGM in the future. A mandatory withholding of deportation will be granted to female aliens who are able to sustain an even higher burden of proof that their lives or freedom are endangered by their membership in a particular social group. Finally, FGM may serve as a basis for U-visa eligibility for immigrants under the VAWA in certain circumstances.

An estimated 3 million girls worldwide are at risk of undergoing the FGM practice each year.²⁸⁹ Most commonly, FGM is practiced in countries in the Middle East and Africa,²⁹⁰ particularly in Egypt and

Ethiopia.²⁹¹ In Africa, survey data suggests that 91.5 million girls and women above the age of nine have undergone the procedure, which is usually performed on girls under the age of 15.²⁹² However, FGM is occasionally performed on older women just before marriage or around the time of pregnancy or childbirth.²⁹³

Although most prominent in Africa, many women who have been subjected to FGM live in African immigrant communities around the world, including within the United States.²⁹⁴ According an analysis of 2000 Census data conducted by the African Women’s Health Center at Brigham and Women’s Hospital, an estimated 228,000 women in the United States have undergone some form of FGM, or are at risk of undergoing the procedure, because they belong to an ethnic community that engages in the cultural practice.²⁹⁵

In the United States, FGM is a federal crime. Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, “*whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.*”²⁹⁶ The statute provides an exception only in the event that a circumcision performed by a licensed medical practitioner is necessary to the health of the individual or performed for medical purposes on a woman who has just given birth in connection with the that labor.²⁹⁷ The statute makes clear that this exemption is to be interpreted narrowly, specifying that an individual’s belief that the operation is required “as a matter of custom or ritual” shall not be taken into account.²⁹⁸ Notably, no published court cases to date have interpreted this provision of the federal statute.

The practice of FGM has also been criminalized in 18 states.²⁹⁹ The states that have passed criminal legislation include California, Colorado, Delaware, Illinois, Maryland, Minnesota, Missouri, Nevada, New York, North Dakota, Oregon, Rhode Island, Tennessee, Texas, West Virginia, Wisconsin,³⁰⁰ and, most recently, Georgia.³⁰¹

²⁹¹ See World Health Organization, “An Update on WHO’s Work on Female Genital Mutilation (FGM)”, Progress Report 2 (2011), available at http://whqlibdoc.who.int/hq/2011/WHO_RHR_11.18_eng.pdf.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ Center for Reproductive Rights, Legislation on FGM in the United States 2 (Nov. 2004), available at http://reproductiverights.org/sites/default/files/documents/pub_bp_fgmlawsusa.pdf.

²⁹⁵ Stephanie Chen, “Pressure for Female Genital Cutting Lingers in the U.S.,” *CNN Health* (May 21, 2010) available at http://articles.cnn.com/2010-05-21/health/america.female.genital.cutting_1_female-circumcision-cultural-beliefs-somali-immigrant?_s=PM:HEALTH.

²⁹⁶ 18 U.S.C. § 116(a).

²⁹⁷ *Id.* at §116(b)(1).

²⁹⁸ *Id.*

²⁹⁹ Rebecca Tuhus-Dubrow, “USA: Rites and wrongs: Is outlawing FGM enough to stop it from happening here?,” The Female Genital Cutting Education and Networking Project (February 11, 2007) available at http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1171249392&archive=&start_from=&ucat=1&.

³⁰⁰ Center for Reproductive Rights, Legislation on FGM in the United States 5-10 (Nov. 2004), available at http://reproductiverights.org/sites/default/files/documents/pub_bp_fgmlawsusa.pdf.

³⁰¹ Rebecca Tuhus-Dubrow, “USA: Rites and wrongs: Is outlawing FGM enough to stop it from happening here?,” The Female Genital Cutting Education and Networking Project (February 11, 2007) available at http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1171249392&archive=&start_from=&ucat=1&.

²⁸² 18 U.S.C.S. §2422.

²⁸³ 18 U.S.C.S. §2423.

²⁸⁴ Mirela Iverac, WNYC.org, “Even as arrests Increase, Human Trafficking Remains a Problem,” available at <http://www.wnyc.org/articles/wnyc-news/2012/jan/31/trafficking-remains-problem/>.

²⁸⁵ *Id.*

²⁸⁶ Joseph Berger, “Despite Law, Few Trafficking Arrests,” NY Times, Dec. 3, 2009, available at <http://www.nytimes.com/2009/12/04/nyregion/04trafficking.html>.

²⁸⁷ Center for Reproductive Rights, Legislation on FGM in the United States 2 (Nov. 2004), available at http://reproductiverights.org/sites/default/files/documents/pub_bp_fgmlawsusa.pdf.

²⁸⁸ *Id.* at 3, 5.

²⁸⁹ See World Health Organization, “An Update on WHO’s Work on Female Genital Mutilation (FGM)”, Progress Report 1 (2011), available at http://whqlibdoc.who.int/hq/2011/WHO_RHR_11.18_eng.pdf.

²⁹⁰ See World Health Organization Fact Sheet.

Glossary of Defined Terms

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