

“I Don’t Take This Man to Be My Lawfully Wedded Husband”: Considering the Criminal Offense of “Forced Marriage” and Its Potential Impact on the Lives of Girls and Young Women with Migrant Backgrounds in Germany

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Abstract

In Germany, the practice of forcing a person to marry against his or her own free will was not explicitly penalized and did not attract much political attention until the beginning of the new millennium. Since the mid-2000s, however, the German legislature has enacted a number of laws concerning forced marriage, possibly due to increased public and media interest in honor-related gender violence in immigrant communities. In 2011, the German Criminal Code (StGB) was amended to include “Forced Marriage,” thus making forcing someone to marry an offense in its own right. In light of similar recent developments criminalizing forced marriages in other European jurisdictions—such as England and Wales—this article aims to critically assess the German legislation and its potential impact on victims and offenders. First, this article considers the German criminal legislation in detail. Second, it contemplates the underlying question of whether the introduction of criminal law as a repressive measure effectively addresses the issue of forced marriage. Third, this article contemplates non-legislative measures that could contribute to affording more holistic protection. Finally, it concludes that improving the situation for victims of forced marriage in practice requires more than adopting criminal law on the matter.

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A. Introduction

I. Forced Marriage in Germany

For decades in Germany, issues concerning forced marriage were neither publicly debated nor on the political agenda.¹ The reason behind the lack of attention to this practice, which often affects persons from immigrant communities, is unclear. Yet, the conduct fits Germany's past philosophy of minimally interfering with affairs of immigrant families to preserve a functioning multicultural society. Moreover, in the past, the dominating concern was that debate on forced marriage in a public forum would discriminate and alienate certain religious or cultural communities living in Germany, thus contravening the objectives of immigration and integration policies.²

Since the introduction of the new forced marriage legislation in 2011, German law defines a forced marriage as a marriage into which a third party coerces the victim by force or by threat with an appreciable harm.³ A forced marriage is therefore characterized by the lack of free will on the part of the victim to enter into a marriage. A forced marriage differs from an arranged marriage, which also involves intervention by third parties, such as relatives, friends, or marriage brokers. In an arranged marriage the spouses may reject the proposed partner, while in a forced marriage they may not.⁴ In Germany, an arranged marriage is not penalized but considered a respected cultural tradition.⁵

Forced marriage is often associated with Muslims of Turkish origin in Germany.⁶ The Turkish population is Germany's largest immigration group and is thus statistically more

¹ Karin Schubert & Isabella Moebius, *Zwangsheirat—Mehr als nur ein Straftatbestand: Neue Wege zum Schutz der Opfer* [Forced Marriage—More Than Just a Criminal Norm: New Ways to Protect Victims], *ZEITSCHRIFT FÜR RECHTSPOLITIK* 33, 33 (2006).

² *See id.* (contemplating the past lack of discourse on the issue); *see also* Klaus Letzgas, *Der neue Straftatbestand der Zwangsheirat* [The New Criminal Offense of Forced Marriage], *FAMILIE PARTNERSCHAFT RECHT* 452, 452 (2011); *DEUTSCHER BUNDESTAG: PLENARPROTOKOLL [BT] 17/96*, at 10981 (During the passing of the 2011 legislation on forced marriages, the Federal Minister of the Interior at the time, Hans Peter Friedrich, pointed out that the new legislation aims to establish new integration policies that are based on the principles of promotion and encouragement ("*Fördern und Fordern*").).

³ *STRAFGESETZBUCH [STGB] [PENAL CODE]*, § 237; *see also* Wieck-Noodt, § 237, in *MÜNCHENER KOMMENTAR ZUM STGB* para. 1 (Wolfgang Joecks & Klaus Miebach eds., 2nd ed. 2012).

⁴ *See* Wieck-Noodt, *supra* note 3, at para. 27.

⁵ Initiative für Münchener Mädchen e.V. [IMMA], *Zwangsheirat verhindern* [Stop Forced Marriage], *STADTRAT DER LANDESHAUPTSTADT MÜNCHEN* 4 (2012), <http://www.ris-muenchen.de/Ril/Ril/DOK/SITZUNGSVORLAGE/2746374.pdf> (last visited Nov. 6, 2014).

⁶ Schubert & Moebius, *supra* note 1, at 34; *see also* Mohamed Fadlalla, *Zwangsheirat—die Änderungen des Personenstandsgesetzes und das neue Gesetz zur Bekämpfung der Zwangsheirat* [Forced Marriage—the Change of the Law on Civil Status], *FAMILIE PARTNERSCHAFT RECHT* 449, 451 (2011) (discussing that while some cultural and

likely to be affected by the practice.⁷ However, forced marriages are not only found in Islamic cultures. The practice of forced marriage has also been described in Buddhist and Hindu societies, as well as in some African and European nations, such as parts of Greece and southern Italy.⁸

Issues relating to forced marriage in Germany are inadequately researched and therefore, for the most part, insufficiently understood.⁹ The little existing evidence available—namely assessments of cases reported to victim support organizations—suggests that girls and young women between the ages of sixteen and twenty-one with migrant backgrounds are mostly affected by the practice.¹⁰ Because the number of females at risk of forced marriage appears much greater, this article focuses on girls and young women, while also acknowledging that boys and men can become victims of this practice. Due to limited research in this area, reliable figures of persons affected by forced marriage in Germany are scarce. Estimates by women's support groups and the Federal Ministry for Family, Senior Citizens, Women and Youth suggest that between 1,000¹¹ and 3,500¹² persons each year are affected in some manner, with a much higher number of unreported cases.¹³

ethnic groups refer to Islam to justify forced marriage, Islam does not promote forced marriages and sets out that women should not marry without consent).

⁷ Starting in the 1950s, shortly after the end of the Second World War, foreign workers from Turkey were invited by the German Government as so-called "guest workers" to support Germany's economy. Many second or third generation people of Turkish descent are now living in Germany. See Gokce Yurdakul & Anna Korteweg, *Gender Equality and Immigrant Integration: Honor Killing and Forced Marriage Debates in the Netherlands, Germany, and Britain*, 41 *WOMEN'S STUD. INT'L F.* 204, 208 (2013).

⁸ Ralph Göbel-Zimmermann & Manuela Born, *Zwangsverheiratung—Integratives Gesamtkonzept zum Schutz Betroffener* [Forced Marriage—Integrative Holistic Concept to Protect Affected Persons], *ZEITSCHRIFT FÜR AUSLÄNDERRECHT* 54, 54 (2007); Wieck-Noodt, *supra* note 3, at para. 2; Monika Schröttle, *Zwangsverheiratung, Gewalt und Paarbeziehungen von Frauen mit und ohne Migrationshintergrund in Deutschland—Differenzierung statt Polarisierung* [Forced Marriage, Violence and Couple Relationships of Women with and Without a Migration Background in Germany—Differentiating Instead of Polarizing], *ZWANGSVERHEIRATUNG IN DEUTSCHLAND* 145, 149 (Bundesministerium für Familie, Senioren, Frauen und Jugend eds., 2008); Jörg Eisele, § 237, in *STRAFGESETZBUCH* (Schoenke & Schroeder eds., 29th ed. 2014).

⁹ See Eisele, *supra* note 8, at para. 3.

¹⁰ Schubert & Moebius, *supra* note 1, at 33. While boys and young men can also be affected by such practices, anecdotal evidence suggests that the risk of girls and women becoming victims is much greater. See Göbel-Zimmermann & Born, *supra* note 8, at 54. According to a study by the Federal Ministry for Family, Senior Citizens, Women and Youth, girls and young women are affected in ninety-three percent of all cases. See Thomas Mirbach, Torsten Schaak & Katrin Triebel, *Zwangsverheiratung*, in *DEUTSCHLAND—ANZAHL UND ANALYSE VON BERATUNGSFÄLLEN—KURZFASSUNG 22* (Bundesministerium für Familie, Senioren, Frauen und Jugend eds., 2011).

¹¹ Estimate by the women's support organization Terre de femme in 2007. See Interview with Myria Böhmecke, *Zwangsehen: Mütter drohen heiratsunwilligen Töchtern mit Selbstmord* [Forced Marriage: Mothers Threaten Their Daughters Who Are Unwilling to Marry with Suicide], *SPIEGEL ONLINE* (Aug. 10, 2007), <http://www.spiegel.de/politik/deutschland/zwangsehen-muetter-drohen-heiratsunwilligen-toechtern-mit-selbstmord-a-499121.html> (last visited Nov. 6, 2014).

Public debate on the issue in Germany has increased since the first decade of the new millennium, possibly generated by the growing media interest in forced marriages and honor-related gender violence in immigrant communities.¹⁴ One case receiving ample media coverage was the 2005 honor-related killing of twenty-three-year-old Hatun Sürücü, a young woman of Turkish and Kurdish descent. Hatun Sürücü grew up in Berlin with her family who had immigrated before her birth. She had divorced her husband, a cousin from Turkey, whom she married at age sixteen. She lived with her son outside the family home in a suburb of Berlin. Although living on her own, the young woman maintained contact with some of her family members. She embraced a western lifestyle without veil and traditional clothing, and the family suspected she engaged in amorous relationships outside of marriage.¹⁵ Hatun Sürücü was killed by her eighteen-year-old brother at a bus stop in Berlin by three shots to the head for motives relating to dishonoring her family. Newspapers alleged that Hatun Sürücü's murder was the sixth honor-related crime in Berlin that year.¹⁶

Increased political attention to the practice of forced marriage accompanied the increased public and media attention. By the mid-2000s, several German states (*Länder*) had drafted legislative initiatives suggesting that the Federal Parliament should enact Federal criminal laws explicitly penalizing forcing someone to marry in all German states.¹⁷ As a

¹² Mirbach, Schaak, & Triebel, *supra* note 10, at 22. The research conducted by the Federal Ministry for Family, Senior Citizens, Women and Youth has been criticized in Germany as not being empirical and, therefore, as only being of suggestive nature. The study did not conduct research on victims of forced marriage itself but sent out questionnaires to support organizations in Germany to evaluate their experiences with victims of forced marriage. The study itself points out that the results of estimated victims have to be qualified as some victims may have sought help with different organization and may therefore be listed more than once. See Ulrike Schwarz, *Zwangsheirat—Probleme in der Praxis* [Forced Marriage—Problems in Practice], *NACHRICHTENDIENST DES DEUTSCHEN VEREINS FÜR ÖFFENTLICHE UND PRIVATE FÜRSORGE* 1, 2 (2013).

¹³ For an overview of older research studies on forced marriage in different German states, see Wieck-Noodt, *supra* note 3, at 16.

¹⁴ Göbel-Zimmermann & Born, *supra* note 8, at 54. For analysis on newspaper coverage of so-called honor killings in Germany, see generally Anna Korteweg & Gökçe Yurdakul, *Islam, Gender, and Immigrant Integration: Boundary Drawing in Discourses on Honour Killing in the Netherlands and Germany*, 32 *ETHNIC & RACIAL STUD.* 218 (2009).

¹⁵ For an overview and update on the case, see Barbara Hans, *Geschwistermord—Die verlorene Ehre der Familie Sürücü*, *SPIEGEL ONLINE* (June 27, 2011), <http://www.spiegel.de/panorama/justiz/geschwistermord-die-verlorene-ehre-der-familie-sueruecue-a-777021.html>. For media coverage of the case in English, see Derek Scally, *Brother Gets Nine-Year Sentence for 'Honour Killing' of Sister*, *IRISH TIMES* (Apr. 14, 2006), <http://www.irishtimes.com/news/brother-gets-nine-year-sentence-for-honour-killing-of-sister-1.1038216>.

¹⁶ Yurdakul & Korteweg, *supra* note 7, at 208.

¹⁷ See, e.g., DEUTSCHER BUNDES RAT: DRUCKSACHEN [BR] 767/04 (the initiative of the German state Baden-Württemberg); DEUTSCHER BUNDES RAT: DRUCKSACHEN [BR] 436/05 (the initiative of Berlin); DEUTSCHER BUNDESTAG: DRUCKSACHEN [BT] 16/1035 (the initiative of the German Parliament); DEUTSCHER BUNDESTAG: DRUCKSACHEN [BT] 17/4401 (the 2010 initiative of the German government, which led to the amendment of the German Criminal Code). For a historic overview of the different legislative initiatives, see Wieck-Noodt, *supra* note 3, at para. 19.

consequence, forcing someone to marry against his or her own free will became punishable as an explicit form of coercion in Germany in 2005.¹⁸ Yet, proponents of the introduction of a specific criminal statute on forced marriage suggested that explicit legislation could increase overall awareness that forcing someone to marry is a punishable criminal offense in Germany.¹⁹ As a consequence, in July 2011 the German Criminal Code (StGB) was amended by the inclusion of Section 237, entitled “Forced Marriage,” making forced marriage an offense punishable by six months’ to five years’ imprisonment.

II. Forced Marriage in Other European Jurisdictions

Other European countries with large immigrant populations—such as France and Britain—are also grappling with the phenomenon of forced marriages.²⁰ France has not adopted explicit criminal legislation on this issue but has chosen to strengthen existing laws to address the situation.²¹

In the past, Britain based its attempts to improve the situation for victims of forced marriage mostly on civil remedies, adopting the Forced Marriage (Civil Protection) Act of 2007 under which Forced Marriage Protection Orders prohibiting a person to force another into marriage can be issued.²² In June 2012, however, the British Government announced that forced marriage would be made a criminal offense in its own right to combat the problem more adequately. On 16 June 2014, offenses relating to forced marriage enshrined in the Anti-social Behaviour, Crime and Policing Act came into force.²³ As a

¹⁸ On the legislative history, see Eisele, *supra* note 8, at para. 1.

¹⁹ See Johannes Eichenhofer, *Das Gesetz zur Bekämpfung der Zwangsheirat* [The Law to Fight Forced Marriage], *NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT* 792, 794 (2011).

²⁰ Brigitte Clark & Claudina Richards, *The Prevention of Forced Marriages—A Comparative Approach*, 57 *INT’L & COMP. L. Q.* 501, 501 (2008). See, e.g., Sundari Anitha & Aisha Gill, *Coercion, Consent and the Forced Marriage Debate in the UK*, 17 *FEMINIST LEGAL STUD.* 165 (2009) (analyzing forced marriages in the UK); see also Esther Efemini, *Til Death Do Us Part: Forced Marriages in the UK*, 79 *CRIM. JUST. MATTERS* 14 (2010). See, e.g., Alicia Lobeiras, *The Right to Say “I Don’t”: Forced Marriage as Persecution in the United Kingdom, Spain, and France*, 52 *COLUM. J. TRANSNAT’L L.* 896 (2014) (analyzing forced marriages in France in regards to asylum laws).

²¹ Aisha Gill & Anicee Van Engeland, *Criminalization or ‘Multiculturalism Without Culture’? Comparing British and French Approaches to Tackling Forced Marriage*, 36 *J. SOC. WELFARE & FAM. L.* 241, 247 (2014).

²² Forced Marriage Protection Orders are injunction orders prohibiting addressees to perform acts related to forcing someone into marriage. See *id.* at 244. For a discussion on whether forced marriage should be treated as a civil rather than a criminal matter and the UK government’s past policy, see Kaye Quek, *A Civil Rather than Criminal Offence? Force Marriage, Harm and the Politics of Multiculturalism in the UK*, 15 *BRIT. J. POL. & INT’L REL.* 626 (2013).

²³ According to § 121 of the Act:

- (1) A person commits an offence in England and Wales if he or she—
- (a) uses violence, threats or any other form of coercion for the

consequence, forcing someone into marriage is punishable with a sentence of up to seven years' imprisonment in England and Wales. Moreover, breaching a Forced Marriage Protection Order is now penalized. Similarly, in European states such as Norway, Denmark, and Austria, forced marriage has been explicitly criminalized.²⁴ In comparison, it has been outlined that in Scotland no intention to penalize forced marriage—and thus follow the initiative of England and Wales—can be detected.²⁵

In light of recent developments in England, Wales, and other European countries, this article seeks to critically explore the effectiveness of criminal legislation governing forced marriage in Germany. In Part B, this article first considers forced marriage from an international perspective and examines what international obligations are placed on Germany in regards to protecting its state nationals from being forced into marriage. Subsequently, in Part C, this article critically assesses the criminal law dealing with forced marriage in Germany, and conceptual problems of the legislation are identified. Part D considers whether criminal law as a repressive measure generally has the potential to protect girls and young women with migrant backgrounds from forced marriages. The article concludes in Parts E and F that criminal law alone does not appear suitable to deal with forced marriage and that additional measures—such as specifically tailored support schemes for victims, intercultural dialogue, and interlinked support structures—may assist in offering affected girls and young women in Germany more holistic protection.

purpose of causing another person to enter into the marriage, and (b) believes, or ought to reasonably believe, that the conduct may cause the other person to enter into the marriage without free and full consent.

(2) In relation to a victim who lacks capacity to consent to marriage, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form of coercion).

(3) A person commits an offence under the law of England and Wales if he or she— (a) practices any form of deception with the intention of causing another person to leave the United Kingdom, and (b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in England and Wales.

The maximum penalty for forced marriage offenses is seven years.

²⁴ Gill & Van Engeland, *supra* note 21, at 246.

²⁵ *Id.* at 247.

B. Forced Marriage as a Human Rights Violation

According to international human rights law, forcing someone to marry constitutes a human rights violation. Germany, as a UN Member State and signatory to numerous treaties and conventions concerned with forced marriage, is therefore obligated to protect the human rights of its citizens.²⁶

According to Article 16(2) of the Universal Declaration of Human Rights, marriage shall be entered into only with the “free and full consent of the intending spouses.”²⁷ Since the adoption of the International Covenant on Civil and Political Rights (ICCPR)²⁸ and the International Covenant on Economic and Social Rights (ICESR),²⁹ which together with the Declaration are often referred to as the International Bill of Human Rights, the obligation that marriage can only be entered into with free and full consent of the future spouse has been enshrined in international treaty law. In addition, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stipulates that Member States shall afford women the right to freely choose a spouse and to enter into marriage with their free and full consent.³⁰

In some UN Member States, the ratification or the accession to an international convention or treaty automatically makes the content of the international instrument part of the Member State’s national law.³¹ Upon ratification, the content of the legally binding

²⁶ For analysis on human rights relating to forced marriage and Germany’s obligations under international human rights law, see Hanna Beate Schoepp-Schilling, *Zwangsverheiratung als Menschenrechtsverletzung, Die Bedeutung der internationalen Rechtsinstrumente* [Forced Marriage as a Human Rights Violation, the Meaning of International Law], 1 *ZWANGSVERHEIRATUNG IN DEUTSCHLAND* 201, 205–11 (Bundesministerium für Familie, Senioren, Frauen und Jugend eds., 2007); see also Letzgas, *supra* note 2, at 452.

²⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

²⁸ International Covenant on Civil and Political Rights, art. 23(3), Dec. 16, 1966, 999 UNTS 171 (entered into force for Germany Mar. 23, 1976); Gesetz zu dem Internationalen Pakt vom 19. Dezember 1966 über bürgerliche und politische Rechte, Nov. 15, 1973, BGBL. II at 1533.

²⁹ International Covenant on Economic and Social Rights, art. 10(1), Dec. 16, 1966, 933 UNTS 3 (entered into force for Germany Jan. 3, 1976); Gesetz zu dem Internationalen Pakt vom 19. Dezember 1966 über wirtschaftliche, soziale und kulturelle Rechte, Nov. 23, 1973, BGBL. II at 1569.

³⁰ Convention on the Elimination of All Forms of Discrimination Against Women, art. 16(1)(b), Dec. 18, 1979, 1249 UNTS 13 (entered into force for Germany July 10, 1985); Gesetz zu dem Übereinkommen vom 18. Dezember 1979 zur Beseitigung jeder Form von Diskriminierung der Frau, Apr. 25, 1985, BGBL. II at 647.

³¹ Referred to as monism. On monism, see generally DAVID WEISSBRODT & CONNIE DE LA VEGA, *INTERNATIONAL HUMAN RIGHTS LAW: AN INTRODUCTION* 343 (2007); see also PETER MALANCZUK, *AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW* 63 (7th ed. 1997); DONALD ROTHWELL ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS WITH AUSTRALIAN PERSPECTIVES* (2010).

international instrument becomes fully justiciable in the national court system.³² In Germany, international treaties are considered to have the same effect as national legislation, where the international law is self-executing, meaning where the law is directly applicable without further clarification.³³ The German judiciary has found treaties to be non-self-executing where their obligations allow States' discretion but also where treaties fail to expressly stipulate that they are self-executing. In these instances, translation legislation is required in Germany.³⁴

The international obligations relating to forced marriage grant Member States discretion on how to best implement and comply with the obligations in order to protect their state nationals from this practice. For example, international law does not specifically obligate Member States to criminalize acts relating to forced marriage.³⁵ Nevertheless, international human rights law places the obligation on Germany to enact efficient measures and to comply with them in order to protect its citizens.³⁶

³² In other Member States, however, international instruments have no direct impact on national legislation until legislation is adopted by the Member State that "transports" these obligations into national law; this is referred to as dualism.

³³ DANA ZARTNER, COURTS, CODES, AND CUSTOM: LEGAL TRADITION AND STATE POLICY TOWARD INTERNATIONAL HUMAN RIGHTS AND ENVIRONMENTAL LAW 97–98 (2014) (classifying Germany as a monist state). Grundgesetz [GG] [Basic Law] art. 59(2) (stating that "treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. In the case of executive agreements the provisions concerning the federal administration shall apply mutatis mutandis").

³⁴ See also Katharine Young, *The Implementation of International Law in the Domestic Laws of Germany and Australia: Federal and Parliamentary Comparison*, 21 ADELAIDE L. REV. 177, 184 (1999). For further explanations on the situation in Germany, see JOSEF ISENSEE, HANDBUCH DES STAATSRICHTS DER BUNDESREPUBLIK DEUTSCHLAND 167 (3rd ed. 2007); see also ERNST BENDA, WERNER MAIHOFFER, & HANS-JOCHEN VOGEL, HANDBUCH DES VERFASSUNGSRICHTS DER BUNDESREPUBLIK DEUTSCHLAND: STUDIENAUSGABE 1466–67 (1995).

³⁵ See Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, arts. 6(1)–(2), 1(c)(i), Sept. 7, 1956, 266 UNTS 3 (entered into force for Germany Jan. 14, 1958); Gesetz ueber den Beitritt der Bundesrepublik Deutschland zum Zusatzübereinkommen vom 7 September 1956 ueber die Abschaffung der Sklaverei, des Sklavenhandels und sklavereiähnlicher Einrichtungen und Praktiken, July 4, 1958, BGBl. II at 203 (stating that an obligation exists to criminalize practices similar to slavery including servile marriage). Whether forced marriages are servile marriages will depend on whether the perpetrator exercises powers attached to ownership. See Frances Simmons & Jennifer Burns, *Without Consent: Forced Marriage in Australia*, 36 MELBOURNE U. L. REV. 970, 984 (2012).

³⁶ In some UN Member States, no international instrument—including legally binding instruments, such as treaties or conventions—has direct force until the State adopts legislation that transports these obligations into national law—the distinction between monist and dualist states. See generally Joseph G. Starke, *Monism and Dualism in the Theory of International Law*, 17 BRIT. Y.B. INT'L L. 6 (1936); Giuseppe Sperduti, *Dualism and Monism, A Confrontation to Be Overcome*, 3 IT. Y.B. OF INT'L L. 31 (1977); David Feldman, *Monism, Dualism and Constitutional Legitimacy*, 20 AUSTL. Y.B. OF INT'L L. 105 (1999).

Possibly in an attempt to comply with its international obligations, Germany adopted the Act to Combat Forced Marriages and to Better Protect Victims of Forced Marriage in 2011.³⁷ While some of the laws enacted amend Germany's immigration laws, this article focuses exclusively on the adopted criminal legislation and its potential to effectively protect girls and women against forced marriage.

C. Germany's Legislative Response to Forced Marriage

I. Legislation Explicitly Criminalizing Forced Marriage in Germany

From 2005 to 2011, the act of forcing someone to marry had been punishable as an expressly named form of coercion under Section 240 of the StGB.³⁸ Yet, in 2011 the legislation was repealed, and German Parliament made "Forced Marriage" a specific criminal offense in its own right.³⁹ It is noteworthy that the title of the criminal offense, "Forced Marriage," replicates common language used to describe this phenomenon while the correct title for the criminal act would be "forcing someone to marry."⁴⁰ Why Parliament has relied on the popular language rather than using the legally more precise term is unclear, but it may be related to wanting to reach perpetrators and victims to ensure that they understand what behavior is considered criminal.⁴¹

In Germany, according to Section 237(1) of the StGB:

Whosoever unlawfully coerces another person by force or threat of appreciable harm to conclude a marriage shall be liable to imprisonment from six months up to five years. The act is unlawful if the use of force or the threat of appreciable harm is deemed inappropriate for the purpose of achieving the desired outcome.⁴²

³⁷ Gesetzes zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheirat sowie zur Änderung weiterer aufenthalts- und asylrechtlicher Vorschriften, June 30, 2011, BGBl. I at 1266–70. The explanatory memorandum to the legislation by the German government explicitly refers to human rights relating to forced marriage and concludes that more than preventative measures are required to protect victims, see DEUTSCHER BUNDESTAG: DRUCKSACHE [BT] 17/4401, at 8.

³⁸ StGB § 240(4)(2); see also Schubert and Mobius, *supra* note 1 (referring to the rule as an aggravation (Regelbeispiel)).

³⁹ StGB § 237.

⁴⁰ Brian Valerius, *Gedanken zum Straftatbestand der Zwangsheirat (§ 237 StGB)* [Thoughts on the Criminal Offence of Forced Marriage (§ 237 StGB)], JURISTISCHE RUNDSCHAU 430, 432 (2011); Eisele, *supra* note 8, at 1.

⁴¹ Valerius, *supra* note 40, at 431.

⁴² StGB § 237(1).

Under Section 237(2), a person who, through violence or threat with harm, forces or lures another person to leave Germany in order to force this person to marry outside of Germany's territorial jurisdiction or to prevent a person from returning to Germany, commits a criminal offense.⁴³

In Germany, forced marriages have been found to frequently occur in the following contexts. First, a forced marriage can be concluded between two persons living in Germany, usually from the same cultural background, where at least one spouse does not consent to the marriage. Second, one spouse from a different country, often the immigrant family's home country, can be brought to Germany to enter into a marriage against the will of at least one of the parties. This form of forced marriage is often referred to as an "import marriage" and is associated with the possibility of obtaining a German visa for the spouse. Finally, a person normally living in Germany can be taken abroad, usually to the family's home country, and be forced to marry there. This form of forced marriage is commonly known as a "holiday marriage."⁴⁴

II. Problems and Shortfalls of the German Legislation

The subsequent assessment mainly focuses on three shortcomings associated with the German legislation: First, the ambiguity of the term "marriage" as used in the provision; second, the limitations of the definition of "threat with an appreciable harm" in light of a "forced" marriage; and third, uncertainties as to who can be considered a perpetrator and an accessory.

1. "Marriage"

German criminal law in Section 237 of the StGB nominates that a "marriage" must have been concluded between two parties. The question arises as to whether "marriage" means a marriage according to German law,⁴⁵ or recognized in Germany,⁴⁶ or whether marriages not recognized in Germany, such as exclusively religious or traditional marriages, also fall within the scope of this section. The question seems particularly important as a 2011 study

⁴³ StGB § 237(2).

⁴⁴ Dagmar Kaiser, *Zwangsheirat* [Forced Marriage], *FAMILIENRECHTSZEITUNG* 77, 77 (2013); DEUTSCHER BUNDESTAG: DRUCKSACHEN [BT] 16/1035, at 6. On the terminology, see also Bernd-Ruediger Sonnen, § 237, in *STRAFGESETZBUCH* at para. 1 (Kindhäuser et al. eds., 4th ed. 2013).

⁴⁵ BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE] § 1310.

⁴⁶ EINFÜHRUNGSGESETZ ZUM BÜRGERLICHEN GESETZBUCH [EGBGB] [INTRODUCTORY ACT TO THE GERMAN CIVIL CODE], arts. 11, 13. See Jens Bülte & Raymond Becker, *Der Begriff der Ehe* [The Term Marriage], *ZEITCHRIFT FÜR INTERNATIONALE STRAFRECHTSDOGMATIK* 61, 63 (2012).

conducted by the Federal Ministry for Family, Senior Citizens, Women and Youth on forced marriage suggests that over thirty percent of forced marriages considered in the study were exclusively religious marriages not recognized under German law.⁴⁷

Some German commentators contend that to afford victims ample protection, any form of marriage must fall within the scope of Section 237, regardless of whether the marriage is formally recognized in Germany.⁴⁸ They assert that forced “marriages” that are not formally recognized in Germany but are highly valued in certain cultural groups and forced marriages that are recognized by German law are often conducted for the same reasons—namely to force daughters into traditional roles and to secure the position of the family within the cultural group.⁴⁹ For this reason, the scholars argue that as long as the marriage is widely morally acknowledged and recognized in the respective country of conclusion it should fall within the scope of Section 237.⁵⁰

Other scholars assert that Section 237 only criminalizes forced marriages that are either concluded under German law or are formally recognized in Germany.⁵¹ Their view is supported by the fact that the terminology of the respective criminal law section and that of German civil law on matrimony is identical when referring to “marriage.”⁵² The similarity in wording suggests that the meaning of marriage is intended to have the same meaning in the two provisions—a marriage either formally conducted or recognized in Germany. Moreover, nothing suggests that German Parliament intended to include marriage-like relationships, not formally recognized as marriages in Germany, in the criminal statute. During consultations prior to the enactment of the legislation, the *Deutscher Juristinnenbund* (German Women Lawyers Association) specifically suggested broadening the scope of the section by including other marriage-like partnerships

⁴⁷ Mirbach, Schaak, & Triebel, *supra* note 10, at 38.

⁴⁸ Letzgas, *supra* note 2, at 455; Jörg Eisele & Christian Majer, *Strafbarkeit der Zwangsheirat nach § 237 StGB im Lichte des Internationalen Straf- und Privatrechts* [Criminal Responsibility According to § 237 StGB in Light of International Criminal and Private Law], *NEUE STRAFRECHTSZEITUNG* 546, 551 (2011).

⁴⁹ Valerius, *supra* note 40, at 432.

⁵⁰ Kaiser, *supra* note 44, at 86.

⁵¹ See Karl Lackner, § 237, in *StGB*, at para. 3 (Lackner & Kuehl eds., 28th ed. 2014); see also Kaiser, *supra* note 44, at 86; Volker Haas, *Der neue Straftatbestand der Zwangsheirat (§ 237 StGB)—eine kriminalpolitische Bewertung* [The New Criminal Law of Forced Marriage (§ 237 StGB)—A Criminal Political Assessment], *JURISTEN ZEITUNG* 72, 78 (2013); Wieck-Noodt, *supra* note 3, at 24. *But see* Valerius, *supra* note 39, at 432; Eisele & Majer, *supra* note 45, at 550.

⁵² *BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE]*, tit. 2 *Eingehung der Ehe* [Concluding marriage]. See also Valerius, *supra* note 40, at 432; Sonnen, *supra* note 44, at 21; Bülte & Becker, *supra* note 46, at 63.

acknowledged abroad but not in Germany.⁵³ This, however, was not explicitly included in the finalized norm, suggesting that the legislature had no intention of expanding criminal responsibility to the act of forcing someone into a marriage-like partnership.⁵⁴ Consequently, forcing someone into an exclusively religious or traditional marriage, such as so-called “Imam-marriages” or “Sinti-marriages,” arguably does not give rise to criminal responsibility under German criminal law on forced marriage.⁵⁵

Those who stress that these “marriages” do not fall within the scope of Section 237 contend that no protection gaps exist. Kaiser explains that a person forcing someone into a religious marriage may not be liable under Section 237 but could instead be criminally responsible for coercion.⁵⁶ This argument, however, serves to highlight the incongruity of the German law reform on forced marriage. It is incomprehensible why the law on forced marriage as a form of coercion would be repealed and a specific norm on the issue introduced, if around thirty percent of all reported forced marriages arguably do not fall within its scope due to their religious nature and recourse to coercion must be taken instead.

The above discussion highlights that the definition of “marriage” in regards to Section 237 has been subject to debate in academic scholarship. Similarly, interpretation problems have arisen in the context of “forcing” someone to marry.

2. Forced Marriage and Consensual Marriage

According to Section 237 of the StGB, a person must be coerced into marriage by force or by threat with an appreciable harm. Under German law, threat requires the perpetrator to allege that he or she has influence over the appreciable harm and the ability to evoke that harm if the victim does not comply.⁵⁷

It must first be said that distinguishing between criminalized forced marriage and a non-punishable arranged marriage appears difficult in practice. In an arranged marriage, the bride and groom are able and allowed to reject the marriage partner in question and

⁵³ Deutscher Juristinnenbund, *Stellungnahme zum Gesetzentwurf der Bundesregierung zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheirat sowie zur Änderung weiterer aufenthalts- und asylrechtlicher Vorschriften*, BT-Drs. 17/4401 (Mar. 10, 2011), <http://www.djb.de/Kom/K5/st11-02/> (last visited Nov. 10, 2014).

⁵⁴ See Bülte & Becker, *supra* note 46, at 63.

⁵⁵ See Sonnen, *supra* note 44, at para. 23; see also Wieck-Noodt, *supra* note 3, at para. 26 (contemplating whether forcing someone into a religious marriage could constitute an unsuccessful attempt of § 237).

⁵⁶ Kaiser, *supra* note 44, at 86; see Bülte & Becker, *supra* note 46, at 66.

⁵⁷ Wieck-Noodt, *supra* note 3, at para. 43.

therefore do not marry against their will.⁵⁸ The threat or force and thereby the absence of the victim's free will to marry characterizes a forced marriage.⁵⁹ Whereas the differences between forced and arranged marriages may be clear in theory, the borders are less transparent in practice.⁶⁰ Ultimately, the differentiating criterion is solely the inner consent of bride and groom to marry. The degree of pressure and manipulation some young women experience from their relatives, as well as the financial and emotional dependency on their families, make it difficult to clearly assess whether a person consented to the marriage, albeit due to external pressure, or was indeed forced.⁶¹

Furthermore, the definition of "threat" in light of Section 237 excludes certain methods of force, thus bringing into question the overall effectiveness of the legislation. As per Section 237, a perpetrator is criminally responsible if he or she either forces the victim to marry or threatens the victim into marriage. Force is defined not only as physical force and includes acts such as hitting, torturing, sexually violating, and constraining the victim, but also arguably withholding the phone or laptop from the victim to prevent calls for help.⁶² "Threat" requires that the perpetrator allege that he or she has influence over the harm the victim is threatened with and make clear that he or she will evoke the harm if the victim does not comply.⁶³ This can include threats that the victim will be excluded from the family unit in case of non-compliance, as well as threats of gender-related honor violence.⁶⁴ Consequently, threatening or pressuring victims with something the perpetrator claims to have no control over does not amount to criminal conduct in Germany.

Some research has identified that a "shotgun marriage," meaning a marriage into which a victim is forced by threat of homicide in case of non-compliance, does not frequently occur in practice.⁶⁵ In Germany, Yerlikaya and Çakir-Ceylan made similar findings based on

⁵⁸ IMMA, *supra* note 5, at 4.

⁵⁹ Schubert & Moebius, *supra* note 1, at 34.

⁶⁰ Göbel-Zimmermann & Born, *supra* note 8, at 54.

⁶¹ See IMMA, *supra* note 5, at 5; Eisele, *supra* note 8, at para. 6 (contemplating the difficulty of the assessment); Mirbach, Schaak, & Triebel, *supra* note 10, at 26. For critical scholarship on distinctions between forced and arranged marriages in the UK context, see Anitha & Gill, *supra* note 20.

⁶² Wieck-Noodt, *supra* note 3, at para. 43.

⁶³ *Id.* at para. 47.

⁶⁴ *Id.* at para. 48; Lackner, *supra* note 51, at para. 3.

⁶⁵ In the U.S. context, see J. Fortheringham, expert in matrimonial law, cited in Julia Alanen, *Shattering the Silence Surrounding Forced and Early Marriage in the United States*, 32 CHILD LEGAL RTS. J. 1, 6 (2012).

interviews with fifteen young women of Turkish descent affected by forced marriage.⁶⁶ The researchers identified that girls and young women were recurrently coerced into marriage by subtle pressure. Yerlikaya and Çakir-Ceylan outline that victims were repetitively confronted with the marriage proposal and told that they would learn how to love the person they were supposed to marry.⁶⁷ In addition, it was pointed out to the women that refusing to get married would dishonor the family.⁶⁸ While in other jurisdictions, such as the United Kingdom, the definition of “force” includes coercing someone into marriage by psychological means, the building up of subtle psychological pressure does not amount to threat or force under German law.⁶⁹ Because the perpetrator does not allege to have any influence over the appreciable harm the young woman is threatened with, namely dishonoring the family in case of non-compliance, the subtle pressure merely creates an uncomfortable position for the affected person and does not amount to a threat in the legal sense. Thus, while girls and young women raised in patriarchal structures may react to such subtle pressure and marry against their own free will, this conduct is not considered criminal under German law.⁷⁰

Furthermore Yerlikaya and Çakir-Ceylan found that in some instances the patriarch merely authoritatively commands that the marriage will take place regardless of the girl’s wishes without mentioning any threatening consequences in case of disobedience.⁷¹ The researchers argue that possibly due to the authoritarian way in which some children are raised in patriarchal family structures, girls and young women fail to oppose these orders despite the fact that they do not wish to marry.⁷² Due to the lack of threat with an appreciable harm, however, this behavior also does not amount to threat in terms of Section 237.⁷³

⁶⁶ See generally Hayriye Yerlikaya & Esmâ Çakir-Ceylan, *Zwangs- und Scheinehen im Fokus staatlicher Kontrolle; Eine Betrachtung des jüngsten Gesetzesentwurfes zur Bekämpfung der Zwangsheirat unter Verhinderung von Scheinehen im Lichte des Opferschutzes* [Forced Marriages and Marriages of Convenience in the Focus of State Control: Considering the Most Recent Draft Bill to Fight Forced Marriages and Prevention of Marriages of Convenience in Light of Victim Protection], *ZEITSCHRIFT FÜR INTERNATIONALE STRAFRECHTSDOGMATIK* 205 (2011), http://www.zis-online.com/dat/artikel/2011_4_546.pdf.

⁶⁷ *Id.* at 207.

⁶⁸ *Id.*

⁶⁹ Kaiser, *supra* note 44, at 79; Eisele, *supra* note 8, at 9; Haas, *supra* note 51, at 76. On the definition of “force” in the UK context, see Forced Marriage (Civil Protection) Act 2007, c. 20, § 63A(6), pt. 4A. On emotional pressure and the “myth of free choice” in the UK context, see generally Anitha & Gill, *supra* note 20.

⁷⁰ Yerlikaya & Çakir-Ceylan, *supra* note 66, at 208; Lackner, *supra* note 51, at para. 3; Eisele, *supra* note 8, at 9.

⁷¹ Yerlikaya & Çakir-Ceylan, *supra* note 66, at 208; Wieck-Noodt, *supra* note 3, at para. 50 (highlighting that the authoritative word of the patriarch does not necessarily constitute a threat with future harm).

⁷² Yerlikaya & Çakir-Ceylan, *supra* note 66, at 208.

⁷³ *Id.*

Consequently, the German legislation excludes two methods reportedly used to coerce victims into marriage: Relying on the honor of the family or not mentioning a specific threat to the victim. The criminal law, therefore, appears to fall short of adequately addressing the phenomenon of forced marriage as it occurs in actuality.⁷⁴

3. Perpetrators and Accessories

Distinguishing between principal perpetrators and accessories to forced marriage is a challenging undertaking in practice,⁷⁵ as forced marriages are reportedly initiated by a number of actors within a family or clan.⁷⁶ For example, it is difficult to substantiate to the legal standard whether a child's mother, in threatening her daughter into a forced marriage, was acting upon the instructions of the child's father or out of her own accord, and should thus be treated as a principal or accessory to the offense. The categorization of principal perpetrators, accessories, and non-actors in a criminal sense seems particularly challenging in patriarchal family structures with a potential power imbalance between female and male family members.⁷⁷ In that regard, it is uncertain whether a wife, by not stopping her husband from forcing his daughter to marry, possibly out of her own fear of repercussions and her gender-specific role in a patriarchal family setting, could be held criminally responsible for her omission. Due to the lack of available case law on forced marriage in Germany, it is unclear how courts would address any of the issues identified above. Thus, much uncertainty currently revolves around the criminal legislation on forced marriage in Germany.⁷⁸

While some of the identified protection gaps and uncertainties could be addressed through law reform, Part D ponders the underlying question of whether a repressive measure, such as legislation penalizing forced marriage, is well-suited to address the issue effectively and to afford victims sufficient protection. Put differently, the subsequent analysis will discuss whether the adoption of criminal legislation on forced marriage has the potential to positively impact the situation of affected persons.

⁷⁴ See Valerius, *supra* note 40, at 433.

⁷⁵ Christian Sering, *Das neue 'Zwangsheirat-Bekämpfungsgesetz'* [The New Law Against Forced Marriage], *NEUE JURISTISCHE WOCHENSCHRIFT* [NJW] 2161, 2163 (2011).

⁷⁶ Yerlikaya & Çakir-Ceylan, *supra* note 66, at 208.

⁷⁷ Sering, *supra* note 75, at 2163.

⁷⁸ Wieck-Noodt, *supra* note 3, at para. 55 (agreeing that it will be difficult to identify the different actors in practice). No criminal verdicts on forced marriage are recorded in the *Juris* database as of July 2015.

D. Legislation as an Effective Tool to Prevent Forced Marriages?

Some advocates for the introduction of specific legislation on forced marriage have suggested that the introduction of a criminal norm is likely to deter offenders to a greater extent, thus affording victims of forced marriage more protection.⁷⁹ While there may be some truth in this argument, the following section outlines why specific legislation alone does not effectively improve the situation for victims.

I. Reporting

Criminal conduct can only be investigated and prosecuted if it is brought to the attention of law enforcement agencies. Reporting rates for forced marriage may increase with the greater visibility of the new legislation. Victims could become more aware of the criminality and could feel more inclined to report the offense.⁸⁰ Increasing reporting rates could be beneficial for effectively targeting this practice.

In the years subsequent to the introduction of the criminal law in 2011, reporting rates have remained low. Only fifty-six cases of forced marriage were recorded in the 2012 crime statistics, sixty-two cases in the 2013 statistics,⁸¹ and fifty-eight cases in the 2014 crime statistics.⁸² It may be that the ongoing low reporting rates are related to the fact that the law has only been in force for a relatively short period and that more time is needed to demonstrate its effectiveness. Yet, it may also be that criminal law alone is ill-suited to deal with forced marriage, as it is not an exclusively legal issue, but also a complex cultural and social issue.

The reasons behind the underreporting of forced marriage have not been subject to ample research in Germany. From the little that is known about victims' reporting behavior, the following factors have been identified as significant: Göbel-Zimmermann and Born argue that some young women do not report attempts to force them into marriage, as they do not wish to incriminate their own parents and families.⁸³ Reporting the conduct could

⁷⁹ DEUTSCHER BUNDESTAG: PLENARPROTOKOLL [BT] 17/84, at 9425.

⁸⁰ Discussed in the UK context in Home Office, *Forced Marriage—A Consultation—Summary of Responses* 12 (June 2012), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157829/forced-marriage-response.pdf.

⁸¹ Bundeskriminalamt [BKA] [Federal Criminal Police Office], *Police Crime Statistics 2013*, http://www.bka.de/DE/Publikationen/PolizeilicheKriminalstatistik/pks__node.html (last accessed Nov. 6, 2014).

⁸² Bundeskriminalamt [BKA] [Federal Criminal Police Office], *Police Crime Statistics 2014*, http://www.bka.de/DE/Publikationen/PolizeilicheKriminalstatistik/pks__node.html?__nnn=true (last accessed July 28, 2015).

⁸³ Göbel-Zimmermann & Born, *supra* note 8, at 60.

make them subject to repercussions in the family and, in the worst-case scenario, to violence and homicide. In any case, incriminating their parents would likely estrange victims and their families, thus threatening victims' cultural identities.⁸⁴ Others are unwilling to incriminate their parents due to financial concerns and problems relating to adequate housing when they are forced to leave the family home after reporting their parents to criminal justice authorities.⁸⁵

The suggested reasons for underreporting in Germany, namely fear of repercussions within the family, lack of financial support, fear of being alone, and loss of cultural identity, have not been adequately resolved by the introduction of the new criminal legislation on forced marriage. It is therefore unrealistic to expect that the underreporting will automatically end with the introduction of a new statute that "clarifies" the legislation and enables young women to say that forced marriages are "criminalized in their own right and thus illegal."⁸⁶ As long as social, cultural, and economic issues prevail, girls and young women will likely abstain from reporting this offense to relevant authorities.

While victims may not only continue to refrain from reporting, the introduction of criminal law on the issue may even lead some girls and young women to abstain from seeking the help of victim support services due to fear of criminal repercussions for their relatives.⁸⁷ This could potentially remove the problem of forced marriage from the public sphere and turn it into an underground issue,⁸⁸ eventually isolating victims further and aggravating their situation.

While the introduction of the criminal legislation may not have any significant influence on increasing the currently very low reporting rates, it may also have no deterring effect on perpetrators for reasons explained below.

II. Procedural Problems and Detering Perpetrators

Where cases of forced marriage are reported and enter the criminal justice system, perpetrators can only be convicted if the offense is established to the standard required by law. In German criminal cases, the judge must be fully persuaded that an alleged fact is true (*Volle richterliche Überzeugung*).⁸⁹ In a case of forced marriage, the judge would have

⁸⁴ Kaiser, *supra* note 44, at 89.

⁸⁵ Schubert & Moebius, *supra* note 1, at 33.

⁸⁶ DEUTSCHER BUNDESTAG: PLENARPROTOKOLL [BT] 17/84, at 9425 (comment by Monika Lazar).

⁸⁷ See Yerlikaya and Çakir-Ceylan, *supra* note 66, at 213.

⁸⁸ Home Office, *supra* note 80, at 9 (discussing the issue in the UK context).

⁸⁹ JULIANE KOKOTT, *THE BURDEN OF PROOF IN COMPARATIVE AND INTERNATIONAL HUMAN RIGHTS LAW* 203 (1998).

to be persuaded that the victim was threatened with appreciable harm or force and thus did not consent to marriage.

Proving these issues to the required standard, however, appears fraught with evidentiary and procedural problems. In a case of forced marriage, most victims, defendants, and potential witnesses are relatives. While in Germany the accused has the right to remain silent or even to lie in court, witnesses generally have to testify the truth. Witnesses, including victims, who are close family relations to the accused, are afforded the right not to testify.⁹⁰ Where the accused remains silent or lies about the voluntariness of the marriage or the motives behind bringing the victim abroad, and where key witnesses or the victim herself refuse to testify, it will be very difficult to prove the alleged elements to the required standard.⁹¹ It can be imagined that due to potential power imbalances in patriarchal families, many female family members may not testify in court.⁹² Particular problems exist in proving the intent to bring someone abroad and forcing them to marry there. It has been found in the British context that numerous trips occur under the premise of taking a family holiday, and victims are unaware of the planned wedding.⁹³ This makes it especially difficult to produce any evidence of the defendant's intent to force a girl into marriage abroad when leaving Germany. Consequently, the accused would be acquitted at trial. In case of an acquittal, victims may remain traumatized by their court experience while possibly also having to face severe repercussions from family members, including the defendant. All of this places victims in an extremely vulnerable position.⁹⁴

That the introduction of legislation relating to forced marriage and coercion in 2005 and the new legislation in 2011 has not increased the number of convictions of forced marriage is evidenced by the fact that, since the introduction of the legislation, no relevant verdicts dealing with the criminal offense in question have been published by German criminal courts.⁹⁵ A deterring effect in legislation has been linked to, *inter alia*, a high risk for perpetrators of being incriminated and convicted for the criminal conduct.⁹⁶ Yet, the low

⁹⁰ STRAFPROZESSORDNUNG [STPO] [CODE OF CRIMINAL PROCEDURE] §§ 52, 55.

⁹¹ See R. Kalthegener, *Strafrechtliche Ahndung der Zwangsverheiratung: Rechtslage-Praxiserfahrung-Reformdiskussion* [Criminalization of Forced Marriage, Law, Practice, Reform Discussion], in *ZWANGSVERHEIRATUNG IN DEUTSCHLAND, FORSCHUNGSREIHE 221* (Bundesministerium für Familie, Senioren, Frauen und Jugend eds., 2007); Wieck-Noodt, *supra* note 3, at 78.

⁹² In relation to the likelihood of victims not testifying out of fear, see Letzgus, *supra* note 2, at 456.

⁹³ Home Office, *supra* note 80, at 12.

⁹⁴ Letzgus, *supra* note 2, at 456.

⁹⁵ No criminal court verdicts are recorded in the *Juris* database as of June 2015.

⁹⁶ Haas, *supra* note 51, at 76.

reporting and even lower conviction rates for forced marriage and, relatedly, the overall marginal risk for perpetrators render a deterring effect of the legislation unlikely.

While some commentators have pointed towards the deterring effect as justification for the criminal legislation, others contend that the benefits of the legislation are not associated with deterrence in the traditional sense. Rather, they argue the benefits of the legislation stem mainly from its symbolic value and the message it aims to send.

III. Symbolic Value and Stigmatization of Minorities

According to the German Government, the reason behind the introduction of the specific provision concerning forced marriage, in comparison to only criminalizing forced marriage as a form of coercion, was to raise “the awareness of the general public for injustice of forced marriages.”⁹⁷ Furthermore, the Government wanted to send out the clear “signal” that forced marriages are not a “tolerable tradition from past times and different cultures.”⁹⁸ It is unclear, however, whether the symbolic message the legislation aims to send will reach perpetrators and change their attitudes towards the practice.⁹⁹

Nothing suggests that the creation of a new criminal offense by itself is sufficient to reach actors in certain cultural communities in which forced marriages have occurred for centuries.¹⁰⁰ Haas asserts that perpetrators often stem from cultural groups in which a patriarchal understanding of family and marriage prevails and whose conduct is dominated by an honor code.¹⁰¹ In the British context, Gill and Engeland have explained that many ethnic minority communities in Britain originate from clan- or tribe-like structures where the loyalty to the clan takes “precedence” over the individual clan members and their individual relationships.¹⁰² Because many perpetrators with such backgrounds may reject individualist values and the freedom to choose a marital partner, it appears unlikely that the message behind the legislation will reach these perpetrators and change their views.¹⁰³ Based on the above considerations, it seems doubtful that the symbolic message will have a significant effect in practice.

⁹⁷ DEUTSCHER BUNDESTAG: DRUCKSACHEN [BT] 17/4401, at 1.

⁹⁸ *Id.* at 9.

⁹⁹ See Yerlikaya & Çakir-Ceylan, *supra* note 66, at 213.

¹⁰⁰ Valerius, *supra* note 40, at 431.

¹⁰¹ Haas, *supra* note 51, at 76.

¹⁰² Gill & Van Engeland, *supra* note 21, at 246; see Wieck-Noodt, *supra* note 3, at 4 (concurring that forced marriage in Germany is mostly based on tribal customs and patriarchal family structure).

¹⁰³ Haas, *supra* note 51, at 76.

That the adoption of criminal legislation on forced marriage may not have any significant impact on the actual situation for victims, but rather may be more symbolic in nature, had already been identified in parliamentary debates prior to the enactment of the legislation. During discussions, politicians frequently expressed the view that the planned legislation would likely not deter perpetrators. They argued, however, that adopting legislation would also not make the situation worse and should thus be undertaken.¹⁰⁴ This shows that the adoption of criminal law on forced marriage was possibly more symbolic than an attempt to adopt practically effective measures.¹⁰⁵ The view that introducing said legislation “can’t hurt” and might have a symbolic meaning ultimately overlooks the risks associated with the adoption.

Criminalizing forced marriage harbors the danger that affected groups or communities could perceive the legislation as the undesired involvement of cultural outsiders. This might cause a blanket rejection by respective communities to consider the issue of forced marriages further, thus not improving the situation for victims in practice. Furthermore, the legislation may stigmatize certain cultural groups, as mostly minorities with migrant backgrounds are affected by the practice. German political associations with right-wing tendencies could exploit this by discriminating against immigrant minorities in Germany on that basis. For this reason, similar legislative developments in the UK have been criticized as creating “Ghetto” legislation.¹⁰⁶

Additionally, the introduction of merely symbolic criminal law overlooks that the object of criminal law is the protection of society and not the creation of symbolism. Utilizing criminal law for the purpose of expressing a general political attitude towards a certain matter holds the risks of devaluing the whole system of criminal law and procedure in a democratic state like Germany.¹⁰⁷

The reasons outlined above raise doubt as to whether the criminal law statute is sufficient to holistically protect victims of forced marriage. Part E contemplates what additional measures could contribute to improving the actual situation for victims.

¹⁰⁴ See Letzgus, *supra* note 2, at 453.

¹⁰⁵ Schubert & Moebius, *supra* note 1, at 35.

¹⁰⁶ See Amrit Wilson, *The Forced Marriage Debate and the British State*, 25 RACE & CLASS 25, 36 (2007); Quek, *supra* note 22, at 636–37 (discussing statements by proponents of the criminalization of forced marriage in the UK); see also Home Office, *supra* note 80, at 14 (discussing responses to criminalization of forced marriage in the UK and the perception that cultural outsiders do not understand the culture and criticism on their involvement).

¹⁰⁷ See Yerlikaya and Çakir-Ceylan, *supra* note 66, at 213.

E. Additional Measures to Address Forced Marriage

I. Further Research on Forced Marriage

The necessity to introduce a criminal norm on forced marriage to better combat the practice suggests that forced marriages are widespread in Germany.

Surprisingly, it remains uncertain how widespread the phenomenon of forced marriage in Germany actually is and whether the numbers of forced marriages have been increasing, decreasing, or stagnating over the years. No undisputed empirical data exists on this issue and no conclusive research in the area of unreported cases, so called “dark figures,” has been conducted. It is noteworthy that Section 240(4)(2) of the StGB governing forced marriage as a form of coercion between 2005 and 2011 was repealed without assessment of its effectiveness.¹⁰⁸ The new legislation on forced marriage was introduced in 2011 without sufficient empirical research on the issue. Instead, previous legislative initiatives on forced marriage relied on data estimated by individual victim support organizations.¹⁰⁹ Undertaking additional research on affected persons is critical. It may be argued that the number of forced marriages occurring each year is irrelevant because even if the practice were sporadic it would be intolerable.¹¹⁰ While this is true, without empirical evidence the number of victims in Germany remains only speculative.

To improve the situation for victims more holistically, further research is needed on the responses and needs of victims of forced marriages, as well as the motives behind this practice. These research findings could broaden the current understanding of the psychological, emotional, and economic situation of victims and could aid in the introduction of specifically tailored support services, policies, and procedures in line with identified needs. As pointed out, subtle psychological pressure does not fall within the definition of “force,” despite subsequent research suggesting that this method is used in practice to force victims into marriage. This demonstrates that a better understanding and conceptualization of force and threat in relation to forced marriage is important to avoid introducing legislation removed from the actual practice.¹¹¹

¹⁰⁸ Sonnen, *supra* note 44, at para. 5.

¹⁰⁹ DEUTSCHER BUNDESTAG: DRUCKSACHEN [BT] 16/1035, at 6.

¹¹⁰ Clark & Richards, *supra* note 20, at 503 (citing *Mission d'information sur la famille et les droits des enfants* for the argument that the practice is intolerable).

¹¹¹ DEUTSCHER BUNDESTAG: DRUCKSACHEN [BT] 17/2491, request 7. The Green party requested a Parliamentary inquiry into the effectiveness on the criminal law of coercion governing forced marriage. This request was unsuccessful.

Greater knowledge of the motives behind forced marriage could also improve the overall understanding of the phenomenon and allow intercultural dialogue with communities. For example, identifying the specific reasons as to why girls and young women are forced into marriage, currently associated with the traditional understanding of marriage, the family's standing within the community, visa rights, and economic reasons,¹¹² would allow for specifically tailored campaigns against forced marriage. Identified issues could be more precisely targeted, enhancing the practical relevance of campaigns.

II. Dialogic Approach with Communities

Initiating and furthering intercultural dialogue could contribute to effectively targeting the practice of forced marriage within communities. In light of the analysis in this article, it seems possible that a continuing dialogic approach and community engagement could help raise awareness of forced marriage as a human rights violation and as an unacceptable practice to a greater extent than the creation of a criminal norm.¹¹³ While intercultural dialogue is not without risks, as it could empower self-announced spokespersons within certain groups and strengthen power hierarchies in communities,¹¹⁴ care should be taken to avoid these risks. Ultimately, only changed social and cultural attitudes and practices are likely to fully and effectively protect girls and young women from forced marriage.

While additional research and dialogue on the issue seems important to better protect victims, the situation cannot be holistically addressed without the introduction or advancement of specifically tailored support services as preventative measures.

III. Strengthening and Interlinking Support Services for Victims of Forced Marriages and Government Involvement

In response to the report "Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage" prepared by the UN High Commissioner for Human Rights, Germany outlined measures implemented to combat forced marriage on the German federal level in December 2013.¹¹⁵ Mainly three "prevention and intervening" measures were described in the response. First, an online counseling service project on forced marriage was created,

¹¹² See Eisele, *supra* note 8, at 3; Eisele & Majer, *supra* note 48, at 547; Haas, *supra* note 51, at 74–75.

¹¹³ See Valerius, *supra* note 40, at 431.

¹¹⁴ See Fauzia Shariff, *Towards a Transformative Paradigm in the UK Response to Forced Marriage: Excavating Community Engagement and Subjectivising Agency*, 21 *SOC. & LEGAL STUD.* 549, 549 (2012).

¹¹⁵ Response of the Federal Republic of Germany in preparation of UN High Commissioner for Human Rights' report *Strengthening Efforts to Prevent and Eliminate Child, Early and Forced Marriage* in Light of UN Human Rights Council Resolution A/HRC/24/23, <http://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/Germany.pdf> (Dec. 13, 2013) (last visited Nov. 7, 2014).

but support was withdrawn in 2010. Second, the operation of a federal telephone hotline for women affected by domestic violence was founded. This hotline, so Germany's response suggested, could also be utilized by victims of forced marriage. Lastly, a thirty-two-page brochure titled "The Right to Freely Choose One's Partner" was published and offered online to prepare teachers for discourse on the matter.¹¹⁶

According to Germany's response, only two measures classified as efforts to prevent forced marriage currently exist on the German federal level: The telephone hotline open to all female victims of violence and the brochure that can be downloaded from the Federal Government website. The overall effectiveness of these two measures in addressing forced marriage has not been researched and appears limited. Possibly realizing the limitations, Germany's response points out that the introduction of support services for victims of forced marriage is foremost the responsibility of German states and the municipalities, not of the Federal Government.¹¹⁷ Whether and to what extent such support services for victims of forced marriages are being offered in German states, however, is not included in the response to the UN High Commissioner for Human Rights.

Few German states appear to have issued specific reports on the support situation for victims of forced marriage in their jurisdiction, making it difficult to assess the available services in Germany as a whole.¹¹⁸ In a 2012 report on the support available for victims of forced marriage in Munich, Bavaria, one of Germany's biggest cities, it has been found that singular institutions, government entities, and individuals in Munich have been confronted more or less frequently with issues relating to forced marriage and the support of victims and persons at risk.¹¹⁹ The support offered for victims of forced marriage in Munich, the report suggests, occurs in isolation, and the different agencies and actors are generally not interconnected.¹²⁰ One issue reportedly raised by support workers was the lack of information available on the topic and the need to receive more ample training in this particular area.¹²¹ A lack of training for support staff risks that potential victims of forced marriage are not supported appropriately, potentially increasing the risk of victimization.

¹¹⁶ The brochure can be downloaded on the German Federal Government website, <http://www.bundesregierung.de/Content/DE/Publikation/IB/leitfaden-fuer-schulen-zum-umgang-mit-zwangsverheiratungen.pdf> (last visited Nov. 6, 2014).

¹¹⁷ Response of the Federal Republic of Germany, *supra* note 115, at 2.

¹¹⁸ Schwarz, *supra* note 12, at 2 (suggesting that a support service structure is missing particularly in rural areas in Germany).

¹¹⁹ IMMA, *supra* note 5, at 14.

¹²⁰ *See id.*

¹²¹ *See id.* at 15.

The report on Munich may be indicative of the situation in other German cities and states. To improve the support system for victims across Germany in the future, it could be beneficial to interconnect and further strengthen support services. The interlinking could not only occur between different entities in the individual German states, but also between different entities across the whole of Germany. This may offer more holistic assistance for victims, and more adequate training and information opportunities for support workers.

In the Munich study, support workers suggested that a central body should be established, responsible for consulting on forced marriages, interconnecting different agencies, and coordinating seminars on the issue for staff training purposes.¹²² The feasibility of establishing interlinked support services for victims of forced marriages in Germany and putting into place a central coordinating body, possibly also on the German federal level, should be explored further. Examples of central bodies concerned with forced marriage can be found in other European jurisdictions. In England, for example, the Forced Marriage Unit, a government agency, was established in 2005 with the aim to lead and coordinate the British Government's work and policy on forced marriage.¹²³ While the Unit provides support and advice on the issue of forced marriage to nationals within its jurisdictions, it is also tasked with providing assistance to British nationals overseas. Furthermore, the Unit runs and provides training courses on an annual basis aimed at both professional support workers and potential victims of forced marriage. The Unit initiates media campaigns against forced marriage and compiles statistics on the issue.¹²⁴ The introduction of a similar government body in Germany may enhance the support structure for victims of forced marriage throughout Germany and could assist in advancing research on this matter.

IV. Cost Implications

Conducting further research, expanding support structures for victims, and establishing a leading government entity on forced marriage does not come without cost implications. It is inevitable that effective protection of victims of forced marriage requires making sufficient funding available. In comparison, the possibly more symbolic legislation explicitly criminalizing forced marriage may currently not be very cost intensive as few prosecutions, if any, occur. The effectiveness of the legislation by itself appears limited. A holistic protection of victims from human rights violations justifies making funding in this area available.

¹²² *See id.*

¹²³ More information on the work of the Forced Marriage Unit, *available at* www.gov.uk/forced-marriage (last accessed Nov. 6 2014). The Unit was first launched in 2000 under the title Community Liaison Unit. *See* Shariff, *supra* note 114, at 552.

¹²⁴ *Id.*

F. Conclusion

After decades of silence, Germany has recently placed the issue of combatting forced marriage on the political agenda. While ending the silence on forced marriage is a positive development, the German criminal legislation governing forced marriage contains a number of uncertainties and shortfalls. Overall, the effectiveness of the enacted legislation remains unclear. Legislation criminalizing forced marriage alone, as a repressive measure, does not seem likely to afford victims of forced marriage ample protection in actuality. This may be because forced marriage is not an exclusively legal, but also a complex cultural and social issue that must be addressed from multiple angles. Accordingly, additional well-researched and specifically tailored support measures and structures for victims of forced marriage, as well as intercultural dialogue with communities, are required to address the situation more holistically. While Germany may have taken a first step towards ending the silence on forced marriage by introducing criminal laws on the matter, it should take further steps to comprehensively improve the protection of girls and women affected by this practice.