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Note

Trafficked: Domestic Violence, Exploitation in Marriage, and the Foreign-Bride Industry

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INTRODUCTION

Sized at 32 billion dollars,¹ the human-trafficking industry is the second largest and fastest growing criminal industry in the world, exploiting upwards of 12.3 million people at any given time.² Direct profits and reported abuses, however, represent only the tip of the iceberg,³ as these figures do not capture the expansive and destructive economic, political, and societal consequences that permeate national economies, global business, transnational borders, private homes, human relationships, and world culture. Human trafficking, or trafficking in persons, is a form of modern-day slavery.⁴ Such trafficking is internationally defined as the recruitment, transport, transfer, harboring, or receipt of persons through means of threat, force, fraud, coercion, deception, payment, or abuses of power or vulnerabilities for the purpose of exploitation.⁵

Omnipresent, human trafficking takes numerous forms. Persons may be trafficked into sex exploitation, prostitution, forced labor, slavery, practices similar to slavery, forced combat, child begging, servitude, or organ removal.⁶ Sex exploitation is the most common form of trafficking, constituting 79 percent of reported cases and often resulting in pornography, bride-enslavement, and the sexual abuse of children, among

1. U.N. Office on Drugs and Crime, UNODC Launches Global Initiative to Fight Human Trafficking, <http://tinyurl.com/25d857z> (last visited Sept. 23, 2010) [hereinafter UN GIFT].

2. The size of the human trafficking industry is tied with that of the nuclear arms market and is second only to the narcotics trade. U.S. Dep't of Health & Human Servs., Admin. for Children & Families, *About Human Trafficking*, <http://tinyurl.com/yg4pohc> (last visited Sept. 23, 2010).

The International Labor Organization (ILO) "estimates that there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time." U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 8 (2009)* [hereinafter TIP REPORT 2009]. Moreover, given the global economic crisis, rates of trafficking are likely to further escalate with the demand for cheap labor and human capital. *Id.* at 37 (placing states in tiers based on their efforts toward implementing the Trafficking Victims Protection Act's definition of trafficking).

3. UN GIFT, *supra* note 1.

4. U.N. OFFICE ON DRUGS AND CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS 6 (2009)*, available at <http://tinyurl.com/lq25x9> [hereinafter UNODC REPORT].

5. United Nations Convention Against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children art. 3, *opened for signature* Dec. 15, 2000, T.I.A.S. No. 13127, 2225 U.N.T.S. 209 (entered into force Sept. 29, 2003) [hereinafter Palermo Protocol].

6. Palermo Protocol, *supra* note 5, art. 3; UNODC REPORT, *supra* note 4, at 6.

other types of exploitation.⁷ For this reason, it is not surprising that trafficked persons are disproportionately female (79 percent total; 66 percent are women and 13 percent are girls).⁸ Forced labor is the second-most common form of trafficking, constituting 18 percent of cases.⁹

Veiled behind the widely celebrated and sanctified institution of marriage and behind protections of liberty and privacy,¹⁰ one segment of the human-trafficking industry continues to be overlooked, tolerated, and often excluded from criminalization: the trafficking of foreign brides. By analyzing two seemingly disparate foreign-bride markets — the Chinese market for North Korean brides and the United States market for foreign brides — this Note argues that the foreign-bride industry constitutes human trafficking under international law and calls for both immediate legal reforms and the ultimate criminalization and prosecution of foreign-bride trafficking. This Note also examines conceptions of consent, exploitation, and marriage under U.S. and international trafficking laws and how those concepts may be used to hinder or advance efforts to regulate the trafficking of foreign brides.

Part I of this Note will present the two leading definitions of human trafficking as advanced by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (commonly known as the “Palermo Protocol”)¹¹ and the United States’ Trafficking Victims Protection Act (TVPA).¹² Part I will highlight the differences between the “means element” and “purpose(s) of exploitation element” in the Palermo Protocol and the TVPA. Both elements can limit or expand the activities and relationships that constitute trafficking.¹³ This Part will argue that the United States’ definition of trafficking is incomplete because it focuses on “severe forms of trafficking,” requiring a level of physical force, fraud, or coercion that fails to recognize the power dynamics and realities of human trafficking.¹⁴ Advocating for the Palermo Protocol’s definition of trafficking, Part I will argue that the international definition is more complete, inclusive, and realistic because it recognizes that traffickers exploit the vulnerabilities of trafficked persons in order to force submission and it focuses on the

7. UNODC REPORT, *supra* note 4, at 6.

8. *Id.* at 11.

9. *Id.* at 6.

10. See *infra* notes 231–33 and accompanying text (discussing protections of liberty, privacy, and the right to marry, including consent to marriage).

11. Palermo Protocol, *supra* note 5.

12. Trafficking Victims Protection Act, 22 U.S.C. §§ 7101–12 (2006).

13. Palermo Protocol, *supra* note 5, art. 3; 22 U.S.C. § 7101(b)(2)–(8).

14. See *infra* notes 28–40 and accompanying text (discussing the realities of trafficking that the Palermo Protocol addresses).

exploitation of trafficked persons rather than the severity of physical force or coercion exerted by traffickers.

Part II will examine two seemingly disparate foreign-bride markets: the North Korean bride market in China and the foreign-bride market in the United States. In particular, this Part will discuss the transfer of North Korean refugee women to men in China and the “brokering” of foreign brides via “international marriage brokers (IMBs)” or “international marriage broker-traffickers (IMB-Ts)” (used interchangeably)¹⁵ to men in the United States. Part II will also discuss the endemic exploitation, violence, and abuse that foreign brides within these marriages often experience.

Part III will highlight the striking commonalities across the foreign-bride industry, namely, similarities in the abuse of power and vulnerability as the means of trafficking and similarities in violence and exploitation in marriage as the purposes of foreign-bride trafficking. This Part will advance four arguments. First, the transfer of North Korean refugee women as brides to men in China and the brokering of foreign women as brides to men in the United States through IMB-Ts constitute trafficking under the Palermo Protocol. Second, foreign-bride enslavement, conducted under the guise of marriage, often results in domestic violence, abuse, and exploitation in marriage, and it is facilitated by the abuse of power differentials that exist between foreign brides and receiving grooms and between sending and receiving countries.¹⁶ Thus, Part III will argue that the foreign-bride industry constitutes trafficking

15. The terms “international marriage broker-trafficker,” “IMB-T,” “enslaved marriage,” “bride-slave,” and “enslaving husband” are not commonly used. They are used in this Note for four purposes: first, to highlight the effect of language on perceptions of certain industries and institutions, thus combating normalization produced by the term “international marriage broker” and the positive connotations of “marriage”; second, to emphasize the exploitative purposes of such marriages, which constitute a modern form of slavery; third, to emphasize that trafficking itself constitutes modern form of slavery, thus combating the trivialization of the word and practice of “trafficking”; and fourth, to identify the roles of trafficking in the facilitation of foreign marriages. These terms are not intended to further objectify or dehumanize persons trafficked into exploitative marriages. They are employed to emphasize the severity of such forms of trafficking.

International marriage brokers (IMBs) or IMB-traffickers (IMB-Ts) (used interchangeably) are agencies that profit from connecting U.S. men to foreign women for the purposes of marriage. IMB-Ts may receive payment for dating or social referral services, including managing communications between parties and filing immigration documents. *See infra* Part II.B.1 (explaining how IMB-Ts operate). IMB-Ts may not be able to receive payment upon marriage, as these contracts may be found void and unenforceable as a matter of public policy. *See Ureneck v. Cui*, 798 N.E.2d 305, 306 (Mass. App. Ct. 2003) (finding an international matchmaking services agreement arranged by marriage broker unenforceable as a matter of public policy because such contracts have been “condemned and declared unenforceable in [U.S.] jurisprudence without exception or equivocation”).

16. Under the Palermo Protocol, the “abuse of power or of a position of vulnerability” is recognized as a means of trafficking. Palermo Protocol, *supra* note 5, art. 3.

under international law and should therefore be criminalized and prosecuted. To believe otherwise is to buy into the constructed spectrum of force and consent discussed in this Part, to believe that force, fraud, or coercion are necessary to establish the means of trafficking, and to trivialize the exploitation in marriage that foreign brides experience. Third, U.S. law follows a longstanding practice of prioritizing physical force as the keystone to crimes of violence against women, creating a spectrum of force and consent that protects the virility of the bride trafficking industry by ignoring the power differentials that drive bride trafficking. Fourth, the institution of marriage creates a legal fiction of consent and obscures exploitation in trafficked marriages, marginalizing bride trafficking as a legally non-cognizable harm.

Finally, this Note will conclude by discussing potential interim and supplementary measures that may be taken in advance of achieving the ultimate goal of prohibiting and criminalizing the foreign-bride industry as trafficking under U.S. and international law.

I. HUMAN TRAFFICKING DEFINED

There are two leading definitions of trafficking in international and national discourse: the international definition advanced by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol),¹⁷ and the definition advanced by the United States' Trafficking Victims Protection Act of 2000 (TVPA).¹⁸ This Part discusses the definitions set forth by the Palermo Protocol and the TVPA and the significance of these definitions in combating human trafficking. Figure 1 presents and contrasts the Palermo Protocol and the TVPA's definitions of trafficking.

17. *Id.*

18. Trafficking Victims Protection Act, 22 U.S.C. § 7101(b)(2)–(8) (2006).

FIGURE 1: DEFINITIONS OF TRAFFICKING UNDER THE UNITED STATES' TRAFFICKING VICTIMS PROTECTION ACT (TVPA) AND UNDER THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN (PALERMO)

UNITED STATES' (TVPA) DEFINITION OF TRAFFICKING		
Act	Means	Purpose of Exploitation
<ul style="list-style-type: none"> • Recruitment • Harboring • Transportation • Provision OR <ul style="list-style-type: none"> • Obtaining (or attempt) of person 	<ul style="list-style-type: none"> • Force • Fraud • Coercion 	<ul style="list-style-type: none"> • Commercial sex act • Involuntary servitude • Peonage • Debt bondage • Slavery
PALERMO PROTOCOL'S DEFINITION OF TRAFFICKING		
Act	Means	Purpose of Exploitation
<ul style="list-style-type: none"> • Recruitment • Transport • Transfer • Harboring • Receipt 	<ul style="list-style-type: none"> • Threat • Use of force • Other forms of coercion • Abduction • Fraud • Deception • Abuse of power or a position of vulnerability • Giving / receiving of payments or benefits to achieve consent 	E.g., <ul style="list-style-type: none"> • Prostitution • Sex exploitation • Forced labour / services • Slavery / practices similar to slavery • Servitude • Removal of organs

The Palermo Protocol entered into force in 2003 and has been widely accepted as the first global, legally binding instrument with an agreed definition of trafficking.¹⁹ The Protocol's definition of trafficking aligns with the conception of trafficking set forth by the United Nations General Assembly (GA) in 1997 and affirmed by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the *Kunarac* case of 2001.²⁰ The Palermo Protocol defines "trafficking in persons" as

19. The Palermo Protocol boasts 117 signatories and 133 parties. United Nations Office on Drugs and Crime, Signatories to the United Nations Convention Against Transnational Crime and its Protocols, <http://tinyurl.com/2b975cc> (last visited Sept. 23, 2010) [hereinafter Palermo Protocol Signatories].

20. In 1994, the GA defined trafficking as "illicit and clandestine movement of persons . . .

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.²¹

If any of the means of trafficking have been established or if the trafficked person is a minor, the consent of the trafficked person is irrelevant under international law.²²

Despite the Protocol's positive international reception, its authority as an international treaty, and the United States' active role in its drafting,²³ the United States continues to advance an alternate definition of trafficking through the TVPA.²⁴ Although the TVPA is a national law, its definition of trafficking is internationally significant and problematic for three reasons. First, the United States ratified the Palermo Protocol with three reservations, the second of which limits U.S. implementation of the Protocol to the extent provided by U.S. federal law and the fun-

with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations [including domestic labor and false marriages] for the profit of recruiters, traffickers, and crime syndicates." Special Rapporteur on Violence Against Women, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Comm'n on Human Rights, U.N. Doc. E/Cn.4/1997/47, 19 (Feb. 12, 1997) (by Radhika Coomaraswamy). This definition does not require a showing of coercion because the GA found that a trafficked person could not consent to trafficking because the acts are inherently exploitative. *Id.*

In *Prosecutor v. Kunarac*, Case No. IT-96-23-T, Judgment, ¶¶ 537, 541–42 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001), the ICTY found that while there was no definition of enslavement in the ICTY statute, the International Law Commission's (ILC) definition of enslavement as a crime against humanity constitutes customary international law. The ICTY stated that under the ILC's definition of enslavement, which includes trafficking, "[t]he consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example . . . the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions." *Id.* (emphasis added).

21. Palermo Protocol, *supra* note 5, art. 3.

22. *Id.*

23. President Clinton was eager to spearhead the drafting of the Palermo Protocol; however, the U.S. Congress had a different view and passed domestic legislation that employed selective and often misleading references to Palermo norms while using a different definition of trafficking. Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437, 439–40, 449 (2006).

24. 22 U.S.C. § 7102(8); TIP REPORT 2009, *supra* note 2, at 6–7 (discussing trafficking under the Palermo Protocol's definition).

damental principles of U.S. federalism.²⁵ This reservation declares that “U.S. federal criminal law, which regulates conduct based on its effect on interstate or foreign commerce, or another federal interest, such as the Thirteenth Amendment’s prohibition of ‘slavery’ and ‘involuntary servitude,’ serves as the principal legal regime within the United States for combating the conduct addressed in this Protocol.”²⁶ The Palermo Protocol consequently only applies in the United States for a narrow, virtually non-existent band of “conceivable situations” or “rare offenses of a purely local character” where the criminal conduct does not involve interstate or foreign commerce or other federal interests, including the Thirteenth Amendment.²⁷

In effect, the United States’ reservations to the Protocol authorize the TVPA to regulate human trafficking in the United States and to reject U.S. implementation of the Protocol’s definition of trafficking.²⁸ Such reservations and the United States’ rejection of the Protocol’s definition of human trafficking are significant because they undermine the United States’ obligations under international law and because the United States is a destination country²⁹ for thousands of trafficked persons each year, with estimates ranging from 14,500 to 50,000 persons trafficked into the United States yearly.³⁰ As such, U.S. services for victims of trafficking and U.S. prosecution of trafficking crimes are limited by the scope of the TVPA’s definition of trafficking.

Second, the TVPA and the United States’ reservations to Palermo are concerning because if other countries follow suit, similar reservations will render the Palermo Protocol’s definition of trafficking meaningless. Third, the TVPA authorizes the United States to impose unilateral sanctions against countries that do not sufficiently comply with the U.S. government’s “minimum standards for the elimination of trafficking” — minimum standards that are based upon the TVPA’s definition of trafficking.³¹ The threat of U.S. sanctions has compelled an “unprecedented number of governments worldwide” to pass anti-trafficking legislation

25. Palermo Protocol Signatories, *supra* note 19.

26. *Id.*

27. *Id.*

28. *Id.*

29. TIP REPORT 2009, *supra* note 2, at 57.

30. COALITION AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS 17 (2001), available at www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf [hereinafter CATW]; AMY O’NEILL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 3 (1999); HEATHER J. CLAWSON ET AL., U.S. DEP’T OF HEALTH AND HUMAN SERVICES, STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS 2 (2009); *see infra* notes 127–29 and accompanying text.

31. Trafficking Victims Protection Act, 22 U.S.C. § 7106 (2006).

and to develop domestic infrastructure to meet U.S. minimal standards. Figure 2 depicts global law enforcement trends from 2003 to 2008.³²

FIGURE 2: GLOBAL TRAFFICKING LAW ENFORCEMENT DATA

GLOBAL LAW ENFORCEMENT DATA, U.S. STATE DEP'T, TIP REPORT 2009			
Year	Prosecutions	Convictions	New or Amended Legislation
2003	7,992	2,815	24
2004	6,885	3,025	39
2005	6,178	4,379	40
2006	5,808	3,160	21
2007	5,682	3,427	28
2008	5,212	2,983	26

Thus, the TVPA is internationally significant because it dictates U.S. trafficking prosecutions,³³ and it imposes and elevates U.S. norms over international norms by advancing the United States' definition of trafficking over that of the international community.³⁴

As illustrated by Figure 1, the Palermo Protocol and the TVPA's definitions of trafficking diverge with regard to the "means" required to establish trafficking and with regard to the "purposes of exploitation." First, the TVPA's definition of trafficking requires force, fraud, or coercion to satisfy its "means element."³⁵ The U.S. government defines "force, fraud, and coercion" in the following way:

Force involves the use of rape, beatings and confinement to control victims. Forceful violence is used especially during the early stages of victimization, known as the 'seasoning process,' which is used to break victim's resistance to make them easier to control. *Fraud* often involves false offers that induce people into trafficking situations. For example, women and children will reply to advertisements promising jobs as waitresses, maids and dancers in other countries and are then trafficked for purpose of prostitution once they arrive at their destinations. *Coercion* involves threats of serious harm to, or physical restraint of, any

32. Chuang, *supra* note 23, at 439, 464; TIP REPORT 2009, *supra* note 2, at 47.

33. See Palermo Protocol Signatories, *supra* note 19 (listing U.S. reservations to the Palermo Protocol).

34. Chuang, *supra* note 23, at 439, 465; TIP REPORT 2009, *supra* note 2, at 47.

35. 22 U.S.C. § 7102(8)(A).

person; any scheme, plan or pattern intended to cause victims to believe that failure to perform an act would result in serious harm to or physical restraint against them; or the abuse or threatened abuse of the legal process.³⁶

Conversely, the Palermo Protocol's definition of trafficking includes a broader list of potential means, including the "abuse of power or of a position of vulnerability."³⁷ Unlike the TVPA, the Protocol's incorporation of power differentials recognizes that traffickers often exploit a trafficked person's vulnerabilities, for example, through threats of violence or fear of harm, starvation, or survival for oneself or for one's family. Inspired by anti-trafficking advocates, the Palermo Protocol's means element was purposefully made more inclusive in order to cover "the reality of what happens" to trafficked persons by encompassing situations where the victim "has no real and acceptable alternative but to submit to the abuse."³⁸ In effect, the Palermo Protocol does not mistake submission for consent and addresses the evidentiary burden imposed by the traditional means element standard of "force, fraud, and coercion"³⁹ that is often difficult to prove in the contexts of human trafficking.⁴⁰ The Protocol focuses on exploitation rather than coercion, affording protection to all trafficked persons, drawing no distinctions between those who can prove they were forced and those who cannot, and offering traffickers no defense based on the alleged consent of the victim.⁴¹ This recognition of the abuse of power or vulnerability as a means of trafficking is also important because trafficking is a transnational crime that requires the incorporation of global experiences that range across socioeconomic class, culture, and religion and spans varying protections afforded by both sending and receiving countries. Application of the TVPA's definition or other similar definitions of trafficking significant-

36. The Campaign to Rescue & Restore Victims of Human Trafficking, *Fact Sheet: Human Trafficking*, U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, <http://tinyurl.com/oqs6pr> (last visited Sept. 24, 2010) (emphasis added); see also 22 U.S.C. § 7102(2) (defining coercion).

37. Palermo Protocol, *supra* note 5, art. 3.

38. Ad Hoc Comm. on the Elaboration of a Convention Against Transnational Organized Crime, Addendum, Interpretative Notes for the Official Records (*Travaux Préparatoires*) of the Negotiation for the Elaboration of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, U.N. Doc. A/55/383/Add.1, 63 (Nov. 3, 2000) [hereinafter Palermo Protocol *Travaux Préparatoires*]; CATW, *supra* note 30, at 13.

39. See *infra* note 262 and accompanying text (discussing and presenting the U.S. government's definition of force, fraud, and coercion).

40. See *Successfully Prosecuting Sex Traffickers: Hearing Before the Comm. on the Judiciary*, 110th Cong. (Nov. 1, 2007) (testimony of Dorchen A. Leidholdt) (explaining the difficulties of proving force, fraud, or coercion); Jessica Neuwirth, President of Equality Now, Statement to the New York City Council (June 11, 2008), available at <http://tinyurl.com/22mv6qy> (same).

41. CATW, *supra* note 30, at 25.

ly limits the cases that constitute trafficking, thus reducing the chances that traffickers will face prosecution and that the trafficked victims will receive relief and protection.⁴²

Second, the Palermo Protocol defines trafficking with a broader, more flexible, and non-exclusive list of exploitative purposes, while the TVPA advances an exclusive list of purposes.⁴³ The Protocol advances an inclusive definition of trafficking through a simple “e.g.,” indicating that the exploitative purposes listed are merely examples of forms that trafficking may take.⁴⁴ In contrast, the TVPA’s list of exploitative purposes is textually exclusive.⁴⁵ This distinction may not affect the most common forms of trafficking, such as forced labor or commercial sex acts,⁴⁶ but it may exclude and marginalize less prevalent, but equally exploitative, forms of human trafficking, such as child begging, child labor, organ removal, enforced pregnancy, or bride enslavement. For example, just as the U.S. State Department’s 2009 Report misleadingly references the Palermo Protocol and international norms while enforcing a more limited definition of trafficking in practice,⁴⁷ the U.S. State Department Report’s references to child beggars, child soldiers, and organ removal⁴⁸ in no way guarantee that less prevalent or new forms of human trafficking will be confronted by U.S. law or even constitute trafficking under U.S. law. As such, the Protocol guarantees inclusion for less common and newly recognized or identified exploitative purposes, taking into consideration the complex and diverse forms of modern-day slavery that have and may evolve, while the TVPA has no such provision.

In sum, the Protocol’s definition of trafficking is more comprehensive, inclusive, and realistic than the TVPA’s definition as it recognizes that traffickers exploit the vulnerabilities of trafficked persons in order to force submission, and it focuses on the exploitation of trafficked persons rather than the severity of physical force or coercion exerted by human traffickers.

42. See *infra* Part III.A.2 (discussing U.S. trafficking law).

43. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B) (2006); Palermo Protocol, *supra* note 5, art. 3.

44. Palermo Protocol, *supra* note 5, art. 3.

45. 22 U.S.C. § 7102(8)(B).

46. UNODC REPORT, *supra* note 4, at 6.

47. See Chuang, *supra* note 23, at 439–40, 449 (discussing the United States’ misleading presentation of the Palermo Protocol).

48. TIP REPORT 2009, *supra* note 2, at 7, 17, 20.

II. THE EXPERIENCES OF TRAFFICKED FOREIGN BRIDES IN NORTHEAST CHINA AND IN THE UNITED STATES

This Part examines two seemingly disparate foreign-bride markets: the sale of North Korean refugee women in China and the use of international marriage brokers in the United States, a use that is similarly practiced in Western Europe, Canada, Australia, and New Zealand.⁴⁹ An exploration of these markets will provide a better understanding of the foreign-bride industry and of the experiences of foreign brides.

These two case studies have been selected for two reasons. First, these cases are seemingly disparate in their location, culture, politics, and scope. In the context of North Korea's human rights crisis, the experience of North Korean refugee women in China dynamically reveals how the abuse of vulnerability or power satisfies the trafficking "means element." The juxtaposition of the Chinese-North Korean bride market with the foreign-bride market in the United States highlights a common abuse of vulnerability or power that exists across the foreign-bride industry in its current forms and across seemingly disparate contexts and relationships between receiving and sending countries. Specifically, these markets highlight a common "means element" of abuse of power and the exploitation of vulnerable populations, and they reveal the "purposes of exploitation" of trafficked marriages, which include forced labor, servitude, sex exploitation, and domestic violence. Accordingly, this juxtaposition counters assumptions that bride trafficking must only happen in certain regions or must be accompanied by physical violence. Second, the IMB-T market in its current form in the United States parallels the IMB-T markets in Western Europe, Canada, Australia, and New Zealand.⁵⁰ Such similarities evidence the pervasiveness of IMB-Ts and, thus, of bride trafficking. Accordingly, these cases have been selected because they confront assumptions about the localized nature of bride trafficking and because their lessons are applicable to the foreign-bride industry at large.

49. See *Human Trafficking: Mail Order Bride Abuses: Hearing Before Subcomm. on E. Asian & Pac. Affairs of the S. Comm. on Foreign Relations*, 108th Cong. 18 (2004) (statement of Michele A. Clark, Co-Director, Protection Project of the Foreign Policy Institute, Johns Hopkins University) [hereinafter *Clark Statement*]; Christine S.Y. Chun, Comment, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PA. J. INT'L ECON. L. 1155, 1167 (1996); Christina Del Vecchio, Note, *Match-Made in Cyberspace: How Best to Regulate the International Mail-Order Bride Industry*, 46 COLUM. J. TRANSNAT'L L. 177, 188 (2007).

50. See *Clark Statement*, *supra* note 49, at 18; Chun, *supra* note 49, at 1167; Del Vecchio, *supra* note 49, at 188.

A. *The Sale of North Korean Refugee Women into Enslaved Marriages with Chinese Men*

China is a country of origin, transit, and destination for human trafficking.⁵¹ The majority of domestic trafficking cases in China involve sex exploitation, forced labor, and forced marriage.⁵² Ninety percent of China's domestic trafficking cases involve trafficked women and children.⁵³ Of the tens of thousands of North Korean refugees hiding in China, in 2008, it was estimated that a disproportionate number, nearly two-thirds of the refugee population, were women.⁵⁴ Of these women, 70 to 80 percent of North Korean refugee women are trafficked into forced marriages, commercial sex exploitation, and exploitative labor.⁵⁵ More recently, North Korean refugee women have also been forced into Internet stripping.⁵⁶ Attributing increased incidents of trafficking to the increasing profitability of selling North Korean women, an aid worker estimated in 2010 that women make up 80 percent of North Korean refugees in China and that more than 90 percent of North Korean refugee women become victims of trafficking.⁵⁷

This Section presents the case of North Korean refugee women in China who are recruited, transferred, and sold to Chinese men for the purposes of marriage. The Section explores why North Korean refugee women flee North Korea, their experiences upon entering China, and their experiences of enslaved marriage with Chinese men.

1. *Why North Koreans Flee North Korea*

Understanding the plight of North Korean refugee women in China requires an understanding of the political situation in North Korea — a highly oppressive country, home to perhaps the worst human rights cri-

51. U.S. CONG. EXEC. COMM'N ON CHINA, 110TH CONG., ANNUAL REPORT 118 (2008) [hereinafter U.S. CONG. REPORT].

52. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 91–94 (2008) [hereinafter TIP REPORT 2008].

53. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 91 (2006) [hereinafter TIP REPORT 2006].

54. Yoonok Chang et al., *Migration Experiences of North Korean Refugees: Evidence from China* 8 (Peterson Institute, Working Paper No. WP 08-4, 2008) (presenting large-scale survey of 1346 North Korean refugees at eleven sites from August 2004 to February 2005 in China).

55. U.S. CONG. REPORT, *supra* note 51, at 121 (citing Mark P. Lagon, Ambassador-at-Large and Director, Office to Monitor and Combat Trafficking in Persons, U.S. Dep't of State, *A Struggle for Survival: Trafficking of North Korean Women*, Remarks at the Woodrow Wilson International Center for Scholars (Mar. 3, 2008)).

56. Lee Tae-hoon, *Female North Korean Defectors Priced at \$1500*, KOREA TIMES NATION, May 14, 2010, <http://tinyurl.com/32r3pj9>.

57. *Id.*

sis in the world.⁵⁸ North Korea's human rights calamity is a product of decades of autocratic rule that mandates total adherence and loyalty to the deified "great leader," Kim Jong Il.⁵⁹ Closely monitored by Kim Jong Il's regime, the North Korean people are punished for any alleged signs of "defection," in violation of their right to free thought.⁶⁰ Such punishment comes in the form of imprisonment without charge or trial in North Korea's "gulags" or internment camps, torture, forced labor, starvation, and often death.⁶¹ Additionally, more than 2.5 million North Koreans were killed by mass starvation in the late 1990s as a result of a constructed famine of food non-distribution that aimed to silence challenges to Kim Jong Il's regime and to exert maximum control over the North Korean people.⁶² Continued and staggering hunger in North Korea is only made worse by the country's failed economy.⁶³ Thus, "[c]hronic food shortages, political repression, and poverty have driven tens of thousands of North Koreans into China."⁶⁴

58. Richard V. Allen & Stephen J. Solarz, *Preface* to U.S. COMM. FOR HUMAN RIGHTS, THE NORTH KOREAN REFUGEE CRISIS: HUMAN RIGHTS AND INTERNATIONAL RESPONSE 7, 7 (Stephan Haggard & Marcus Noland eds., 2006) [hereinafter THE NORTH KOREAN REFUGEE CRISIS].

59. The commission of human rights violations in North Korea has continued since the country's formal establishment in 1948, through the Korean War of the early 1950s, and after the 1994 death of its leader Kim Il Sung. In 1994, Kim Il Sung's son, Kim Jong Il obtained command of the country and heightened the government's perpetration of human rights violations to maintain control over the North Korean people. See DLA PIPER & U.S. COMM. FOR HUMAN RIGHTS IN N. KOR., FAILURE TO PROTECT: A CALL FOR THE UN SECURITY COUNCIL TO ACT IN NORTH KOREA 12, 23, 28 (2006) (presenting the human rights atrocities perpetrated in North Korea); GLYN FORD & SOYOUNG KWON, NORTH KOREA ON THE BRINK: STRUGGLE FOR SURVIVAL 50 (2008) (discussing the monitoring of free thought in North Korea); RYO HAGIWARA, KIM JONG IL'S HIDDEN WAR: SOLVING THE MYSTERY OF KIM IL SUNG'S DEATH AND THE MASS STARVATIONS IN NORTH KOREA 16 (Ken Hijino trans., 2006) (discussing the monitoring of free thought in North Korea); DAVID HAWK, U.S. COMM. FOR HUMAN RIGHTS IN N. KOR., THE HIDDEN GULAG: EXPOSING NORTH KOREA'S PRISON CAMPS 24 (2003) (exposing North Korea's "gulags" for signs of citizen defection); ANDREW S. NATSIOS, THE GREAT NORTH KOREAN FAMINE 109, 234 (2001) (discussing North Korea's mass-starvations as human rights violations); KONGDAN OH & RALPH C. HASSIG, NORTH KOREA: THROUGH THE LOOKING GLASS 134 (2000) (discussing North Korea's human rights situation); David Marcus, *Famine Crimes in International Law*, 97 AM. J. INT'L L. 245, 259 (2003).

60. FORD & KWON, *supra* note 59; HAGIWARA, *supra* note 59, at 16.

61. HAWK, *supra* note 59, at 24. North Korea's six to eight internment camps, located primarily in the country's northern provinces, imprison upwards of 200,000 North Koreans and their families for alleged disloyalty. *Id.*

62. DLA PIPER, *supra* note 59, at 12, 23, 28; HAGIWARA, *supra* note 59, at 23; NATSIOS, *supra* note 59, at 234; OH & HASSIG, *supra* note 59, at 145-47 (2000); WORLD FOOD PROGRAMME, PROTRACTED RELIEF AND RECOVERY OPERATIONS - DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA 200114, at 3-8 (2006), available at <http://tinyurl.com/2ftaxz3>; Marcus, *supra* note 59, at 245.

63. OH & HASSIG, *supra* note 59, at 7.

64. U.S. CONG. REPORT, *supra* note 51, at 126; Yoonok Chang, *North Korean Refugees in China: Evidence from a Survey*, in THE NORTH KOREAN REFUGEE CRISIS, *supra* note 58, at 14; Bill Powell, *North Korea's Deadly Exit*, TIME, Mar. 2008, available at <http://tinyurl.com/yds3m38>;

Two-thirds of North Korean refugees hiding in China are women.⁶⁵ The high ratio of North Korean refugee women is likely the product of geographic proximity,⁶⁶ “demographic advantage” (the fact that women are more likely to survive severe food shortages and famine),⁶⁷ gender discrimination, and the “feminization of poverty.”⁶⁸ First, the majority of North Korean refugees come from the northern Hamgŏyng provinces,⁶⁹ which were most severely affected by the mass-starvations of the late-1990s, partly because of allegations that North Koreans in these provinces were critical of Kim Jong Il’s regime.⁷⁰ As survival rates from famine and continuous food deficit are higher for women than for men,⁷¹ the combination of geographic proximity and demographic advantage contributes to the disproportionate representation of both female-headed households in Hamgyŏng and of North Korean refugee women in China.

Second, the flight of many North Korean refugee women may be further compelled by the “feminization of poverty.”⁷² As there are likely more female-headed households in the Hamgyŏng provinces because of the disproportionate number of women in this region, and as gender, class, and political discrimination in North Korea limit economic opportunities for North Korean women,⁷³ the need for North Korean women to support their households may further contribute to their flight and to the substantial representation of women among North Korean refugees in China.

Chang et al., *supra* note 54, at 1.

65. U.S. CONG. REPORT, *supra* note 51, at 121.

66. Chang, *supra* note 64, at 17; Chang et al., *supra* note 54, at 4.

67. Chang et al., *supra* note 54, at 8 (citing Kate Macintyre, *Famine and the Female Mortality Advantage*, in *FAMINE DEMOGRAPHY: PERSPECTIVES FROM THE PAST & PRESENT* 240, 240–60 (Tim Dyson & Cormac Ó Gráda eds., 2002)).

68. See MEGAN THIBOS ET AL., J. MCDONALD WILLIAMS INST., *THE FEMINIZATION OF POVERTY* 1 (2007) (exploring the concentration of poverty among women, particularly female-headed households); Diana Pearce, *The Feminization of Poverty: Women, Work, and Welfare*, *URBAN & SOC. CHANGE REV.* 11, 28–36 (1978) (same).

69. Chang, *supra* 64, at 17; Chang et al., *supra* note 54, at 4 (finding that approximately three-fourths of North Korean refugees are from North Korea’s northern-most provinces).

70. See *id.* (discussing the reasons why North Korean refugees primarily come from north-eastern North Korea); see also *supra* note 49 and accompanying text (noting that one of the political purposes of North Korea’s mass-starvations in the late 1990s was to silence opposition to Kim Jong Il’s regime).

71. Chang et al., *supra* note 54, at 8 (citing Macintyre, *supra* note 67, at 240–60).

72. See THIBOS, *supra* note 68 (positing that, in many areas of the world, more females than males are living in poverty); see also Pearce, *supra* note 68.

73. See COMM. FOR HUMAN RIGHTS IN NORTH KOREA, *LIVES FOR SALE* 17 (2009) [hereinafter *LIVES FOR SALE*] (discussing the factors compelling flight from North Korea).

2. *Experiences of North Korean Refugee Women upon Entering China*

North Korean refugee women who have fled from North Korea to China are extremely vulnerable to exploitation, deportation, imprisonment, and death, as well as to traffickers who manipulate and profit from these vulnerabilities.⁷⁴ Crossing into Northeast China, a relatively poor and underdeveloped region,⁷⁵ North Korean refugees face constant fear of arrest and deportation.⁷⁶ In 2007, before the 2008 Beijing Summer Olympic Games, China intensified its crackdown on North Korean refugees, installing electronic sensors along the border, raiding homes, fining and imprisoning Chinese residents who were harboring refugees, and offering rewards for informants who identified North Korean refugees.⁷⁷ At present, North Korean and Chinese law enforcement continue to patrol the North Korea–China borderlands, shooting North Koreans on sight⁷⁸ or arresting and deporting North Koreans.⁷⁹ Deported North Korean refugees face internment or death upon deportation to North Korea as punishment for their treasonous flight.⁸⁰ Upon deportation, North Korean refugee women face additional risks of forced abortion, infanticide, or separation from older children, as the North Korean regime denounces marriages between North Korean women and Chinese men and may not allow entry of Chinese-Korean children.⁸¹

China's deportation of North Koreans violates the United Nations Convention Relating to the Status of Refugees (Refugee Convention),⁸² which classifies North Koreans as refugees entitled to asylum, safe haven, and protection,⁸³ as well as the United Nations Convention Against

74. *Id.* at 11–17.

75. *Id.* at 20 (citing U.N. DEV. PROGRAM & CHINA DEV. RESEARCH FOUND., CHINA HUMAN DEVELOPMENT REPORT (2005)).

76. According to a survey of 1,346 North Korean refugees, 67% stated that they most feared arrest upon crossing the border. U.S. CONG. REPORT, *supra* note 51, at 124–25; Chang et al., *supra* note 54, at 2, 9.

77. U.S. CONG. REPORT, *supra* note 51, at 124–25.

78. Ser Myo-Ja, *Aid Groups Say North Is Heading for Major Famine*, JOONGANG DAILY, May 27, 2008, <http://tinyurl.com/2a9ptjf>.

79. U.S. CONG. REPORT, *supra* note 51, at 124–25.

80. *Id.* at 125; HAWK, *supra* note 59, at 10, 26; INT'L CRISIS GROUP, PERILOUS JOURNEYS: THE PLIGHT OF NORTH KOREANS IN CHINA AND BEYOND 11 (2006) [hereinafter ICG REPORT]; U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, A PRISON WITHOUT BARS: REFUGEE & DEFECTOR TESTIMONIES OF SEVERE VIOLATIONS OF FREEDOM OF RELIGION OR BELIEF IN NORTH KOREA 2 (2008).

81. HAWK, *supra* note 59, at 7, 11, 14, 46, 51, 60, 62, 66, 67, 69; Chang et al., *supra* note 54, at 6.

82. Convention Relating to the Status of Refugees art. 1, Apr. 22, 1954, 19 U.S.T. 6223, 189 U.N.T.S. 137.

83. *Id.*

Torture (CAT),⁸⁴ which prohibits deportation when torture is a likely consequence.⁸⁵ Despite China's obligations under international treaty law, China maintains a policy of classifying North Korean refugees as "economic migrants" and continues to deport North Korean refugees because of their alleged threat to China's economy.⁸⁶ Moreover, China continues to deny outside access to these borderlands, despite its obligations under the Refugee Convention and despite the pleas of the UN Refugee Agency (UNHCR) and international relief agencies.⁸⁷ In 2008 and 2009, the U.S. State Department reported that China continues to ignore the trafficking of North Korean women within its borders and that China refuses to provide legal alternatives to the unlawful deportation of North Korean refugees.⁸⁸

In addition to law enforcement, two types of traffickers — marriage brokers and pimps — target North Korean refugee women almost immediately after they cross the border into China, and sometimes even before they leave North Korea.⁸⁹ Traffickers exploit China's deportation policy, the fear of torture and internment in North Korea, and the absence of UNHCR presence in Northeast China in order to recruit, imprison, transport, transfer, sell, and often recapture and resell North Korean refugee women into forced labor, prostitution, and enslaved marriage.⁹⁰ Third-party traffickers or "brokers" are paid between \$120 and \$1890 (USD) for their North Korean bride-slaves.⁹¹ Chinese women, by comparison, are sold for \$3780 to \$6300 (USD).⁹² These amounts are substantial for poor Chinese farmers, many of whom face long-term debt for the cost of purchasing their bride.⁹³

In one area of Northeast China, the male to female ratio among those of marriageable age is estimated to be 14:1, driving substantial demand

84. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, *opened for signature* Dec. 10, 1984, S. TREATY DOC. No. 100-20 (1988), 1465 U.N.T.S. 85 (entered into force June 26, 1987) [hereinafter CAT].

85. *Id.*

86. TIP REPORT 2009, *supra* note 2, at 105, 107; Stephen Haggard & Marcus Noland, *Introduction to THE NORTH KOREAN REFUGEE CRISIS*, *supra* note 58, at 9; Donald Macintyre Yanji, *Nowhere to Run, Nowhere to Hide*, TIME, June 18, 2001, available at <http://tinyurl.com/23kgt6y>; Chang et al., *supra* note 54, at 7.

87. U.S. CONG. REPORT, *supra* note 51, at 126–27; TIP REPORT 2009, *supra* note 2, at 105, 107; Haggard & Noland, *supra* note 86, at 9; Yanji, *supra* note 86.

88. U.S. CONG. REPORT, *supra* note 51, at 126; TIP REPORT 2009, *supra* note 2, at 104–06; TIP REPORT 2008, *supra* note 52, at 7.

89. See U.S. CONG. REPORT, *supra* note 51, at 126; Park Jong-in & Lee Hark-joon, *On the Border: Human Trafficking Thrives Across North Korea-China Border*, CHOSUN ILBO ONLINE, May 8, 2009, <http://tinyurl.com/2bgso9w>.

90. LIVES FOR SALE, *supra* note 73, at 9, 15–16.

91. *Id.* at 21; ICG REPORT, *supra* note 80, at 13.

92. ICG REPORT, *supra* note 80, at 13.

93. LIVES FOR SALE, *supra* note 73, at 21.

for North Korean “bride-slaves”⁹⁴ who are sold by marriage-broker-traffickers into forced marriages with Chinese men.⁹⁵ The significant imbalances in the population in Northeast China can be attributed to several socioeconomic forces, including female infanticide and selective female abortion due to China’s “one-child policy” and the country’s historic preference for male children,⁹⁶ and economic migration to urban areas of the country, where light-industry employers have a preference for hiring young Chinese women.⁹⁷ The men who remain in China’s rural northeast region are consequently disproportionately unmarried, ill, disabled, or suffering from alcohol and gambling addiction.⁹⁸

Traffickers initiate contact with North Korean women in North Korea or upon crossing into China⁹⁹ and often lie about work opportunities in China.¹⁰⁰ Other traffickers live along the border, speak both Korean and Chinese, and pretend to offer sympathy and help while brokering enslaved marriages.¹⁰¹ Some traffickers employ “runners” to notify them when North Korean refugee women cross into China.¹⁰² In some instances, North Korean refugee women are drugged in transit by their traffickers.¹⁰³ In others, North Korean refugee women are forced into marriages with Korean-Chinese and Chinese men by their own neighbors and relatives, who receive payment in exchange.¹⁰⁴ In many cases, North Korean refugee women may know that they will be sold into marriage, but they may not realize how harsh the conditions will be,¹⁰⁵ or they may believe that they have no other options for survival.

94. See *supra* note 15 and accompanying text (explaining the use of the term “bride-slave”).

95. LIVES FOR SALE, *supra* note 73, at 9; JOEL R. CHARNY, ACTS OF BETRAYAL: THE CHALLENGE OF PROTECTING NORTH KOREANS IN CHINA 10–11 (Refugees Int’l ed., 2005), available at <http://tinyurl.com/2gay69y>.

96. U.S. CONG. REPORT, *supra* note 51, at 119; TIP REPORT 2008, *supra* note 52, at 92; TIP REPORT 2006, *supra* note 53, at 91; LIVES FOR SALE, *supra* note 73, at 16, 20; Sharon LaFraniere, *Chinese Bias for Baby Boys Creates a Gap of 21 Million*, N.Y. TIMES, Apr. 11, 2009, at A5; *Gendercide: The Worldwide War on Baby Girls*, ECONOMIST, Mar. 4, 2010, at 77–80.

97. LIVES FOR SALE, *supra* note 73, at 20.

98. *Id.*; Blaine Harden, *N. Korean Women Who Flee to China Suffer in Stateless Limbo: Many Are Sold into Marriage*, WASH. POST, June 10, 2009, at A08.

99. U.S. CONG. REPORT, *supra* note 51, at 126; TIP REPORT 2008, *supra* note 52, at 198–99; LIVES FOR SALE, *supra* note 73, at 28–49; ICG REPORT, *supra* note 80, at 13.

100. U.S. CONG. REPORT, *supra* note 51, at 126; TIP REPORT 2008, *supra* note 52, at 198–99; LIVES FOR SALE, *supra* note 73, at 28–49; ICG REPORT, *supra* note 80, at 13.

101. LIVES FOR SALE, *supra* note 73, at 20.

102. ICG REPORT, *supra* note 80, at 13.

103. LIVES FOR SALE, *supra* note 73, at 28–29.

104. *Id.* at 19.

105. *Id.* at 13.

3. *Experiences of North Korean Women in Enslaved Marriages*

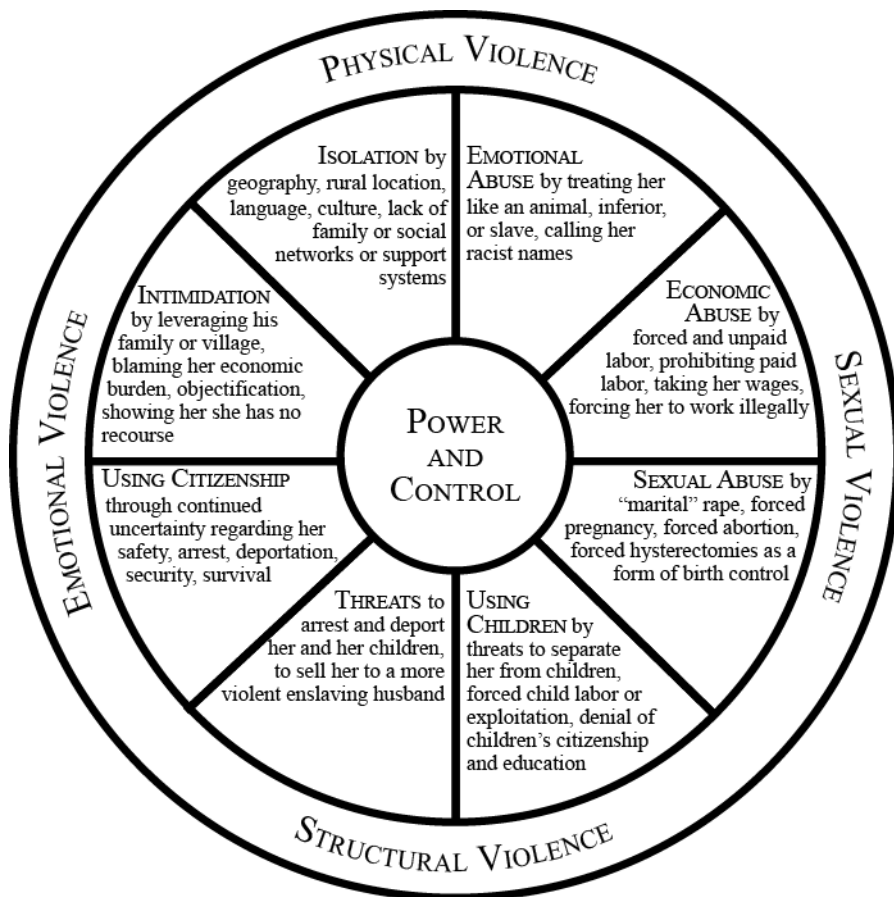
Once trafficked into enslaved marriages, North Korean refugee women experience psychological and physical violence from their new “enslaving husbands and families,”¹⁰⁶ who obtain total power and control over the lives, movement, labor, reproductive rights, and bodies of their new bride-slaves. Even if trafficked North Korean women are able to flee from their enslaved marriages, they face ongoing risks of arrest, deportation, and repeat trafficking.¹⁰⁷ Enslaving husbands maintain power and control over their bride-slaves through threats of arrest and deportation, intimidation, geographic and cultural isolation, emotional abuse, economic abuse, sexual abuse, and threats against their children. Figure 3 presents the immigrant power and control wheel as it relates to trafficked North Korean bride-slaves in China, depicting modes of abuse, manipulation, and violence used to obtain power and control over foreign brides.¹⁰⁸

106. *See supra* note 15 and accompanying text.

107. *See supra* Part II.A.2; *see also* Harden, *supra* note 98 (discussing testimonies of North Korean refugee women at North Korea Freedom Week 2009 in Washington, DC, where Bang Mi Sun testified that she was trafficked and sold into marriage three times in China).

108. These methods of power and control align with “The Power and Control Wheel,” a model developed in 1984 from the experiences of battered women in Duluth, Minnesota, to reveal the mechanisms of manipulation, coercion, violence, and abuse perpetrated by battering intimate partners. The Power and Control Wheel has been translated into over 40 languages and adapted to contexts of child abuse and human trafficking. Domestic Abuse Intervention Programs, Wheel Gallery, DOMESTIC ABUSE INTERVENTION PROGRAMS, <http://tinyurl.com/24kqkkh> (last visited Sept. 18, 2010).

FIGURE 3: POWER AND CONTROL WHEEL (AS IT RELATES TO TRAFFICKED NORTH KOREAN BRIDE-SLAVES IN CHINA)¹⁰⁹



In 2005, Citizens' Alliance for North Korean Human Rights found that 60 to 70 percent of trafficked North Korean women experience physical and mental violence.¹¹⁰ Human Rights Watch and International Crisis

109. Adapted from the original *Power and Control Wheel* and the *Immigrant Power and Control Wheel*. See *Wheel Gallery*, DOMESTIC ABUSE INTERVENTION PROGRAMS, <http://tinyurl.com/24kqkqh> (last visited Oct. 7, 2010) (presenting the original Power and Control Wheel); *Immigrant Power and Control Wheel*, NATIONAL CENTER ON DOMESTIC AND SEXUAL VIOLENCE, <http://tinyurl.com/2b3t5bg> (last visited Oct. 17, 2010) (adapted from original wheel by Domestic Abuse Intervention Programs, see *supra* note 108 and accompanying Figure).

110. NKHR Delegation at the 61st UNCHR Meeting in Geneva 7 April 2005, A WOMEN'S VOICE INTERNATIONAL, <http://awomansvoice.org/n11-2005-4.html> (last visited Sept. 18, 2010). It should be noted that available accounts of trafficked North Korean women do not indicate a 60 to 70 percent incidence of physical violence. It is possible that this discrepancy is because those surveyed were in less physically violent relationships as they were, after all, alive and had either re-

Group have expressed concern that North Korean bride-slaves are subjected to severe domestic violence and are unable to escape or report their situations because of their illegal status in China.¹¹¹ The power and control that enslaving husbands exert over their trafficked brides reinforce the real and substantial likelihood that North Korean bride-slaves experience domestic violence in their enslaved marriages.

Already isolated, North Korean bride-slaves are also often trafficked into rural areas of Northeast China, making flight, relief, and support networks nearly impossible.¹¹² While a large Korean-Chinese population in Northeast China often fosters assimilation, the challenges of language and cultural barriers still remain. Moreover, while some new “family members” and neighbors protect North Korean enslaved brides from arrest and repatriation,¹¹³ it is often difficult for North Korean refugees to truly become part of a family or community because they are often objectified and controlled as slaves, outsiders, and animals.¹¹⁴ Ultimately, the continued threat and fear of deportation, risks of repeat trafficking,¹¹⁵ forced pregnancy, the desire to protect and retain custody of their children, geographic isolation, physical restraints,¹¹⁶ and continued emotional abuse and post-traumatic stress disorder dating back to their experiences in North Korea paralyze North Korean bride-slaves and prevent flight.¹¹⁷ In fact, Professor Chang’s survey shows that while relatively few North Korean refugees wish to remain in China — rather, most want to resettle permanently in South Korea — North Korean ref-

settled outside of China or were able to speak with foreign interviewers in Northeast China. It is also possible that the women interviewed did not want to discuss physical and sexual violence perpetrated against them. See, e.g., LIVES FOR SALE, *supra* note 73 (interviewing North Korean refugee women in Northeast China); Harden, *supra* note 98 (discussing statements made by North Korean refugee women who had obtained safe haven outside of China); Chang et al., *supra* note 54 (interviewing North Korean refugee women in Northeast China).

111. ICG REPORT, *supra* note 80, at 13–14 (“Husbands may be abusive, and many keep their purchased brides under virtual house arrest lest she run away or be discovered by authorities.”); HUMAN RIGHTS WATCH, THE INVISIBLE EXODUS: NORTH KOREANS IN THE PEOPLE’S REPUBLIC OF CHINA 13–14 (2002), available at <http://tinyurl.com/2dhfeyf>; Kathleen Davis, *Brides, Bruises and the Border: The Trafficking of North Korean Women into China*, 26 SAIS REV. 131, 134 (2006).

112. LIVES FOR SALE, *supra* note 73, at 19, 22.

113. *Id.* at 19.

114. Harden, *supra* note 98 (quoting Bang Mi Sun, a North Korean refugee woman who escaped to South Korea in 2004, saying that “North Korean women are being sold like livestock in China”).

115. *Id.* (discussing testimonies of North Korean refugee women at North Korea Freedom Week 2009 in Washington, DC, where Kim Young Ae testified that she was trafficked and sold into marriage three times in China); see also ICG REPORT, *supra* note 80, at 13–14 (“A broker may sell a woman into marriage and instruct her to run away once he has received payment only to catch and sell her again, sometimes repeating the scheme several times.”).

116. ICG REPORT, *supra* note 80, at 13–14; Davis, *supra* note 111, at 134.

117. LIVES FOR SALE, *supra* note 73, at 10, 22, 23; Chang et al., *supra* note 54, at 14.

ugee women tend to remain in China for longer durations than North Korean refugee men, likely indicating that some women had been sold into enslaved marriage and other forms of servitude and were therefore unable to realize their original intent to leave China.¹¹⁸

North Korean bride-slaves are physically and sexually exploited by their enslaving husbands as domestic laborers, sex slaves, and for their reproductive capacities.¹¹⁹ As the Chinese government does not recognize marriages between trafficked North Korean refugee women and Chinese men, North Korean women are unable to obtain the proper *shēnfēnzhèng* (ID card) or *hùkǒu* (residence permit) to obtain employment in China.¹²⁰ As a result, some trafficked bride-slaves are forced to work at home, while others are forced to work illegally outside of the home and give their wages to their husbands,¹²¹ thereby centralizing economic power and control with enslaving husbands. Some trafficked North Korean bride-slaves end up pursuing prostitution to earn money to fulfill the needs or debts of their enslaving husbands and families.¹²² Granted, the level of violence and exploitation depends on the enslaving husband and enslaving family. However, there have been cases where North Korean bride-slaves have faced forced pregnancy, and there have also been cases where North Korean women were forced by their enslaving husbands and families to abort their children or undergo hysterectomies, often under unsterile conditions, because the enslaving husband and family did not want the additional burden of another child.¹²³ Forced pregnancy, forced abortion, and forced hysterectomies are all forms of abuse, violence, and control over the reproductive rights, bodily integrity, and liberties of North Korean women.

Additionally, where North Korean bride-slaves do have children, enslaving husbands and families may use their children to assert power and control over their bride-slaves. While children born to Chinese men may be registered as legal citizens under the child's Chinese father's name, thereby entitling children to education and other national benefits,¹²⁴ enslaving husbands often fail to register their children. The fail-

118. Chang et al., *supra* note 54, at 8.

119. LIVES FOR SALE, *supra* note 73, at 50–53; MIKE KIM, ESCAPING NORTH KOREA: DEFIANCE AND HOPE IN THE WORLD'S MOST REPRESSIVE COUNTRY 83–84, 90–91 (2008).

120. LIVES FOR SALE, *supra* note 73, at 23; *see also* ICG REPORT, *supra* note 80, at 13; Chang et al., *supra* note 54, at 8.

121. LIVES FOR SALE, *supra* note 73, at 28–49.

122. *Id.*

123. *Id.*

124. *Id.* at 10, 24; *see also* U.S. CONG. REPORT, *supra* note 51, at 126 (discussing Chinese law that guarantees all children born in China to at least one parent of Chinese nationality citizenship and entitlement to compulsory and free education, regardless of sex, nationality, or race); ICG REPORT, *supra* note 80, at 13.

ure to register North Korean-Chinese children produces “stateless children” who are technically Chinese citizens but face fear of deportation to North Korea due to their maternity, the denial of repatriation from North Korea, and separation from their mothers due to their paternity.¹²⁵ Thus, when North Korean bride-slaves do have children, enslaving husbands and families may leverage the welfare and status of such stateless children to maintain power and control and to psychologically and physically abuse and exploit North Korean bride-slaves.

In sum, North Korean refugee women experience psychological and physical violence, abuse, and exploitation from their new enslaving husbands and families, who obtain total power and control over their lives, bodies, and rights. As discussed in Part III, this recruitment, sale, and transfer of North Korean refugee women to Chinese men for the purposes of exploitation in marriage constitutes trafficking under international law.

B. “International Marriage Brokers” in the United States

The United States is a destination country for thousands of men, women, and children trafficked from around the world.¹²⁶ As of 1999, the U.S. government estimated that 50,000 women and children are trafficked into the United States each year,¹²⁷ although this number has fluctuated in past years, with estimates as low as 14,500,¹²⁸ demonstrating the difficulties of quantifying, monitoring, and prosecuting trafficking crimes.¹²⁹

Trafficked persons may enter the United States as foreign fiancées or as foreign spouses. In 2009, the U.S. Department of Homeland Security (DHS) reported that 27,754 foreign fiancées and 15,419 foreign spouses were admitted to the United States on “K1” or “K3” visas.¹³⁰ Of these foreign fiancées and spouses, one-third to one-half of foreign fiancées

125. Chang et al., *supra* note 54, at 6.

126. TIP REPORT 2009, *supra* note 2, at 57.

127. CATW, *supra* note 30, at 17; AMY O’NEILL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 3 (1999).

128. U.S. DEP’T OF HEALTH & HUMAN SERVS. ET AL., STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS 2 (2009).

129. U.S. DEP’T OF JUSTICE ET AL., ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS 15 (2006).

130. Foreign spouses include the spouses of U.S. citizens and permanent residents. These statistics do not include the children of foreign fiancé(e)s or spouses. Numbers seem to have peaked in 2007 at 32,991 foreign fiancé(e)s and 22,025 foreign spouses. U.S. DEP’T OF HOMELAND SECURITY, YEARBOOK OF IMMIGRATION STATISTICS: 2009, tbl.25, available at <http://tinyurl.com/275pt9d> (last visited Oct. 5, 2010).

and spouses may have met their husbands through IMB-Ts.¹³¹ Accordingly, in 2009, over 500 IMB-Ts are believed to have matched 14,000 to 22,000 women with U.S. men.¹³² IMB-T brides often come from the former Soviet Republic, Eastern Europe, Southeast Asia, and Latin America, with high representation from Russia, Ukraine, the Philippines, China, Vietnam, Thailand, Colombia, Brazil, and Costa Rica.¹³³ While the international community has largely tolerated relationships with foreign women via IMB-Ts under the auspices of civil liberties or “online dating rights,”¹³⁴ these relationships have also received substantial scrutiny and regulation because of the likelihood that many of these relationships result in domestic violence.¹³⁵ In fact, growing concerns of

131. See *Frequently Asked Questions, International Marriage Broker Regulation Act of 2005 (IMBRA)*, TAHIRIH JUSTICE CENTER, available at <http://tinyurl.com/2fmtunk>, (last visited Oct. 5, 2010) [hereinafter TAHIRIH IMBRA FAQs]; see also *supra* note 15 and accompanying text (defining “international marriage broker-traffickers” (IMB-Ts)).

132. This estimate was first advanced by the United States Immigration and Naturalization Service (INS), whose responsibilities were redistributed in 2003 to the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS). The original statistic stated that approximately 4,000 to 6,000 marriages occur between U.S. men and foreign brides through “mail order bride” services. This 14,000 to 22,000 statistic was extrapolated by the Tahirih Justice Center using 2007 immigration figures to reflect increases in the immigration of foreign spouses and fiancé(e)s to the United States. See TAHIRIH IMBRA FAQs, *supra* note 131; see also IMMIGRATION & NATURALIZATION SERVS., INTERNATIONAL MATCHMAKING ORGANIZATIONS: A REPORT TO CONGRESS 12 (1999), available at <http://tinyurl.com/2ehboac> (citing SCHOLES, *infra*) [hereinafter INT’L MATCHMAKING CONG. REPORT]; ROBERT J. SCHOLES, IMMIGRATION & NATURALIZATION SERVS., THE ‘MAIL-ORDER BRIDE’ INDUSTRY AND ITS IMPACT ON U.S. IMMIGRATION 3 (1999), available at <http://tinyurl.com/2es9qvc>. For more information on the number of IMBs, which has grown substantially in the past decade, see *Human Trafficking: Mail Order Bride Abuses: Hearing Before the Subcomm. on E. Asian & Pac. Affairs of the S. Comm. on Foreign Relations*, 108th Cong. 7 (2004) (statement of Sen. Maria Cantwell) [hereinafter *Sen. Cantwell Statement*]; see also Daniel Epstein, *Romance is Dead: Mail Order Brides as Surrogate Corpses*, 17 BUFF. J. GENDER, L. & SOC. POL’Y 61, 68 (2009) (noting that by 2003, the 1998 estimates of 4,000 to 6,000 IMB-T brides had more than doubled to 8,000 to 12,000); Kirsten M. Lindee, Note, *Love, Honor, or Control: Domestic Violence, Trafficking, and the Question of How to Regulate the Mail-Order Bride Industry*, 16 COLUM. J. GENDER & L. 551, 552 (2007) (noting that by 2004, the 1998 estimates of 4,000 to 6,000 “mail-order brides” had likely increased to 9,500 to 14,000).

133. See *Clark Statement*, *supra* note 49; SCHOLES, *supra* note 132, at 1; INT’L MATCHMAKING CONG. REPORT, *supra* note 132, app. A; Lindee, *supra* note 132, at 559; Del Vecchio, *supra* note 49, at 189–90; LOVEME.COM, <http://www.loveme.com/women/search.htm> (last visited Oct. 5, 2010).

134. See ONLINE DATING RIGHTS, <http://www.online-dating-rights.com> (last visited May 16, 2010) (advocating dating rights of men with foreign women).

135. Even despite data challenges in quantifying the number of IMB-T-facilitated marriages that result in domestic violence, the INS concluded that there was “‘considerable’ potential for abuse in such marriages, and ‘numerous opportunities for exploitation,’” including foreign immigrant status, isolation, economic inequality, men’s unrealistic expectations, and the profiles of men who use IMB-Ts. TAHIRIH IMBRA FAQs, *supra* note 131; see also INT’L MATCHMAKING CONG. REPORT, *supra* note 132, at 2–6, 15–16, 19; SCHOLES, *supra* note 132, at 4 (citing MILA GLODAVA & RICHARD ONIZUKA, MAIL-ORDER BRIDES: WOMEN FOR SALE (1994) and Uma Narayan, “Male-Order” Brides: Immigrant Women, Domestic Violence, and Immigration Law, 10

domestic violence perpetrated against “mail-order brides” or brides delivered by IMB-Ts compelled the U.S. Congress to enact legislation regulating IMB-Ts in 2005 (the International Marriage Broker Regulation Act (IMBRA)),¹³⁶ and compelled Cambodia¹³⁷ and the Philippines¹³⁸ to ban IMB-Ts in 2008 and 1990, respectively. Moreover, the IMB-T industry is fueled by biases, power differentials, and hierarchies that exist between IMB-T brides and IMB-T husbands and between the economies of sending and receiving countries.¹³⁹ This Section examines IMB-Ts as they facilitate the transfer of foreign women to the United States for the purposes of marriage with U.S. men, exploring how IMB-

HYPATIA 104 (1995)). Moreover, these conclusions are supported by extensive literature on the subject, the experience of domestic violence service providers, and studies that indicate that immigrant victims suffer more severe abuse and are three times more likely to suffer abuse than the general U.S. population. TAHIRIH IMBRA FAQs, *supra* note 131 (listing numerous sources in n.2); *see also* Dorchen A. Leidholdt, *From Sex Trafficking to FGM: Emerging Issues Confronting Advocates for Immigrant Battered Women*, in *LAWYER’S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM* 369, 373 (Jill Lauri Goodman & Dorchen A. Leidholdt eds., 5th ed. 2006), available at <http://tinyurl.com/2dnc38g> (“[At] a 2003 conference for domestic violence service providers organized by the New York State Coalition Against Domestic Violence, half of the counselors in attendance had assisted [IMB-T] brides who had become victims of domestic violence.”); Amnesty Int’l, *Issue Brief: Regulate International Marriage Broker Industry; Protect Immigrant Brides Against Domestic Violence*, AMNESTY INT’L USA, available at <http://tinyurl.com/24k9azr> (last visited Sept. 23, 2010) [hereinafter Amnesty Issue Brief] (noting the high risk of abuse that “mail order brides” face in the United States, including violence and murder, and citing “[a] 2003 survey [that] found that over 50 percent of providers of legal assistance serving battered immigrant women had helped women who met their abusive husbands through [IMB-Ts]”).

136. International Marriage Broker Regulation Act of 2005, Pub. L. No. 109-162, § 831, 199 Stat. 2960, 3066 (2005).

137. Cambodia has implemented temporary suspensions and bans on the recruitment and transfer of Cambodian women to foreign men as prospective brides. In 2008, Cambodia issued a temporary suspension on international marriage processing after the International Organization for Migration reported that marriage brokers were making substantial profits from supplying poor Cambodian brides to South Korean men. In 2010, Cambodia specifically applied the ban to South Korean men. In April of 2010, Cambodia allegedly released its ban. *See Cambodian Bans Women From Marrying South Koreans*, ABC NEWS, Mar. 19, 2010, <http://tinyurl.com/337kztt>; Assoc. Press, *Cambodia Re-Allows South Korean Men to Marry Cambodian Women*, BREITBART, Apr. 27, 2010, <http://tinyurl.com/295auky>.

138. “In 1990, the Philippines outlawed the mail-order bride industry . . . to prevent Filipino women from being sexually and economically exploited by international marriage brokers.” Roxanne Sims, *A Comparison of Laws in the Philippines, the U.S.A., Taiwan, and Belarus to Regulate the Mail-Order Bride Industry*, 42 AKRON L. REV. 607, 616–17 (2009). In the Philippines, Republic Act Number 6955 “made it illegal for an individual or organization to profit by matching Filipino women with foreign nationals for marriage.” *Id.* at 616. This regulation has been difficult to enforce due to questions of Internet jurisdiction and governmental resource capacity. *Id.* at 617–18.

139. *See* Chun, *supra* note 49, at 1174 (noting the industry “relies on biases and hierarchies within the foreign countries to foster the economic disparity that generates the supply of foreign women”); Kate O’Rourke, Note, *To Have and to Hold: A Postmodern Feminist Response to the Mail-Order Bride Industry*, 30 DENV. J. INT’L L. & POL’Y 476, 480 (2002) (“The underlying force driving the entire industry is global economic inequality.”).

Ts operate, the IMB-T groom and husband population, the IMB-T bride population, and the types of domestic violence that are perpetrated against IMB-T brides in the United States.

1. *How IMB-Ts Operate*

An explosive industry, the “mail-order bride” or IMB-T industry has rapidly grown to include over 500 companies¹⁴⁰ that present hundreds of thousands of profiles of eligible foreign women for U.S. men to view, objectify, meet, marry,¹⁴¹ and exploit.¹⁴² In 2007, a simple Google search for “mail-order brides” revealed 1,890,000 website matches.¹⁴³ Framed as “online dating” or “marriage agencies” where men can “choose [their] wife,” these sites highlight available brides from Russia, Eastern Europe, Asia, and Latin America that are objectified and sorted by age, location, height, weight, eye-color, and hair-style.¹⁴⁴ IMB-Ts facilitate communication between prospective “brides” and “grooms” through correspondence, live chat, video chat, phone translation, flowers and gifts, romance tours, and apartment rentals.¹⁴⁵ IMB-Ts also facilitate “romance tours” or visits where U.S. men travel to international destinations to meet one, or even one hundred, foreign women to assess their marriage potential.¹⁴⁶ IMB-Ts facilitate these tours by providing professional interpreters, airfare and accommodations, and in-country travel. IMB-Ts also set up meetings, arrange group socials, or provide addresses to prospective foreign brides.¹⁴⁷ IMB-Ts also offer immigration and visa support.¹⁴⁸ IMB-Ts earn profits from general membership

140. See Del Vecchio, *supra* note 49, at 185.

141. In 1999, Scholes reported that between 100,000 to 150,000 women were profiled online. SCHOLES, *supra* note 132, at 1; INT’L MATCHMAKING CONG. REPORT, *supra* note 132, app. A. Now that the number of IMB-Ts has more than doubled (from an estimated 200 to over 500), the number of online profiles likely far exceeds 300,000, given that some IMB-Ts boast over 23,000 current women members. See *The Anastasia Difference*, ANASTASIADATE.COM, <http://www.anastasiaweb.com/Default.aspx?page=Difference> (last visited Oct. 5, 2010).

142. See *infra* Part II.B.4.

143. Del Vecchio, *supra* note 49, at 185.

144. See *Advanced Search*, SINGLEBRIDES.COM, <http://www.singlebrides.com/search.html> (last visited May 17, 2010); *Meet Single Russian Woman For Marriage*, RUSSIAWOMAN.CA, <http://www.russianwoman.ca> (last visited May 17, 2010); *Russian Brides*, IRUSSIANBRIDES.COM, <http://www.russianbrides.com> (last visited May 17, 2010); *Search*, CHERRYBLOSSOMS, <http://www.blossoms.com> (last visited May 17, 2010); *Search for Your Special Lady*, ANASTASIADATE.COM, <http://www.anastasiadate.com/search.html> (last visited May 17, 2010).

145. See ANASTASIADATE.COM, <http://www.anastasiadate.com>.

146. See, e.g., *Romance Tours to Russia, Ukraine, Colombia, Costa Rica, Colombia & Peru*, LOVEME.COM, <http://www.loveme.com/tour/> (last visited Sept. 24, 2010).

147. *Id.*; see also RUSSIANBRIDESSTOP.COM, <http://www.russianbridesstop.com> (last visited May 17, 2010).

148. See *Visa Support Services: Fiancee Visa, Spousal Visa and Adjustment of Status*,

fees and transaction-related fees. Fees may be charged to send a letter, make a phone call, view a prospective bride's extended profile, travel to the sending country, or file a fiancée visa. The IMB-T groom usually pays these fees; IMB-T brides join IMB-T networks for free.¹⁴⁹ The size of the IMB-T industry directed at the U.S. market is likely upwards of 34 million dollars.¹⁵⁰

To attract IMB-T grooms, IMB-Ts “promote their human merchandise by employing racial and ethnic gender stereotypes that portray the women as willing sex objects and happily submissive domestic servants.”¹⁵¹ Resembling online pornographic sites, IMB-Ts objectify potential brides by posting photographs of young, attractive foreign women dressed in their underwear, bikinis, and other revealing clothing.¹⁵² To recruit IMB-T brides, IMB-Ts exploit racial and national stereotypes of white Western men and the “American dream,”¹⁵³ presenting prospec-

CHERRYBLOSSOMS, <http://blossoms.com/visa.php>.

149. See Erin Elizabeth Chafin, *Regulation or Proscription?: Comparing American and Philippine Proposals to Solve Problems*, 23 PENN ST. INT'L L. REV. 701, 704 (2005) (stating that prospective foreign brides join IMB-Ts free of charge); Epstein, *supra* note 132, at 68 (same); Lindee, *supra* note 132, at n.148 (same); see also 1RUSSIANBRIDES.COM, <http://www.1russianbrides.com> (last visited May 17, 2010); ANASTASIADATE.COM, <http://www.anastasiadate.com> (last visited Sept. 24, 2010); CHERRYBLOSSOMS, <http://www.blossoms.com> (last visited May 17, 2010); RUSSIAWOMAN.CA, <http://www.russianwoman.ca> (last visited May 17, 2010); SINGLEBRIDES.COM, <http://www.singlebrides.com> (last visited Sept. 24, 2010).

150. This calculation uses low-end estimates so as not to oversize the market; as a result, the market size is likely much larger than \$34 million. This figure was calculated based on 1999 statistics from SCHOLE, *supra* note 132, at 2, which found that Cherry Blossoms had approximately 1,000 male clients who paid approximately \$200 per month for general membership fees, totaling approximately \$200,000 in profits per month for general membership. Although there are over 500 IMB-Ts, some of them are likely not as profitable or large as Cherry Blossoms, so profits per month were multiplied by 30 to account for these differences in profitability and size. The resulting total profit from general membership is \$6 million dollars. Additionally, assuming that fees totaling approximately \$2,000 accompany romance tours, permanent moves, immigration support, and other transaction-related costs, the low-end estimate of 14,000 total mail-order brides in the United States produced a total of \$28 million in transactional profits from mail-order engagements and marriages. Therefore, my conservative estimated market size of the IMB-T industry is \$34 million dollars.

151. Leidholdt, *supra* note 135, at 373.

152. See ANASTASIADATE.COM, <http://www.anastasiadate.com> (last visited Sept. 24, 2010); APRETTYWOMAN.COM, <http://aprettywoman.com> (last visited Sept. 20, 2010); BRIDE.RU, <http://bride.ru> (last visited Sept. 20, 2010); DREAM-MARRIAGE.COM, <http://www.dream-marriage.com> (last visited Sept. 20, 2010); ELENASMODELS.COM, <http://elenasmodels.com> (last visited Sept. 20, 2010); LOVE.ME.COM, <http://www.loveme.com> (last visited Sept. 24, 2010); RUSSIANEURO.COM, <http://www.russianeuro.com> (last visited Sept. 20, 2010); SCANNA.COM, <http://www.scanna.com> (last visited Sept. 20, 2010). These are eight out of the top ten mail-order bride sites according to *Reviews of the Best Mail Order Brides Websites*, NO1REVIEWS.COM, <http://mail-order-brides-websites.no1reviews.com> (last visited Sept. 20, 2010) [hereinafter *Best Websites*]. Even sites that do not have explicitly sexual photographs of women arguably benefit from a market that has already objectified and sexualized foreign women.

153. See Del Vecchio, *supra* note 49, at 189 (discussing images of “Hollywood husbands” and idealized notions of the “American Dream”); see also *Bride-Trafficking Unveiled* (Current

tive husbands as “more understanding and egalitarian than men from their own country.”¹⁵⁴ In this way, IMB-Ts create a market that inherently and actively exploits racial, ethnic, gender, and citizenship-based biases and economic disparities between foreign countries to generate a supply of foreign women, a lucrative male demand, and impossible expectations. Moreover, before IMBRA, profit-driven IMB-Ts were willing to match violent men with prospective brides.¹⁵⁵ Post-IMBRA, there has been no evidence that IMB-Ts are respecting their legal obligations, suggesting that IMB-Ts continue to pair brides with violent men.

2. *The Consumers: IMB-T Grooms*

Available data indicate that U.S. IMB-T grooms are typically white, educated, politically or ideologically conservative, economically and professionally successful, and in their late 30s and 40s.¹⁵⁶ Most IMB-Ts market foreign brides to IMB-T grooms as “feminine,” “beautiful,” “extremely devoted,” “eager,” and “family-oriented.”¹⁵⁷ GoodWife.com’s homepage offers a mail-order-bride manifesto that explains why men turn to foreign women and the IMB-T industry. Plastered with images of scantily clad 1950s homemakers in sexually provocative poses while cooking, cleaning, and caring for the home, GoodWife.com explains:

We, as men, are more and more wanting to step back from the types of women we meet now. With many women taking on the

TV television broadcast Apr. 10, 2010), available at <http://tinyurl.com/2c48dhl> (interviewing IMB-T brides who believe that their Western IMB-T husbands will be faithful, generous, and kind and offer them a better life).

154. Leidholdt, *supra* note 135, at 373.

155. In 1999, before the enactment of IMBRA, human rights group Equality Now launched an undercover investigation of IMB-Ts and found that only three out of sixty-six companies refused service to a fictitious customer who said he had plead guilty to domestic violence against his two ex-wives. EQUALITY NOW, THE WILLINGNESS OF ‘MAIL-ORDER BRIDE’ COMPANIES TO PROVIDE SERVICES TO VIOLENT MEN 1 (1999), available at <http://tinyurl.com/2bmdp6u> (last visited Sept. 20, 2010).

156. More specifically, the statistics found that 94 percent of U.S. men seeking mail-order brides were white, 50 percent had two or more years of college education, 64 percent earned more than \$20,000 per year, 42 percent were in professional or managerial positions, and their median age was 37. SCHOLLES, *supra* note 132, at 2–3 (citing a study from 1988 that surveyed 607 U.S. men seeking mail-order brides and received 206 responses). Of the 57 percent of men who had been married at least once, most had divorced after an average of seven years of marriage; 86 percent of men had religious affiliations (48 percent Protestant, 23 percent Catholic, 14 percent other); 75 percent of men wished to have more children. INT’L MATCHMAKING CONG. REPORT, *supra* note 132, at 25.

157. See, e.g., *Best Websites*, *supra* note 152 (“Eastern European and Russian women are also well known for their faithfulness, their femininity, and their beauty”); *Mail Order Bride Guide*, GOODWIFE.COM, <http://goodwife.com> (last visited Sept. 20, 2010); SINGLEBRIDES.COM, *supra* note 144 (“[A] Russian bride consists of simple things, as it may seem — femininity, beauty, her heart open for feelings, extreme devotion to children and, family-orientation.”).

‘me first’ feminist agenda and the man continuing to take a back seat to her desire for power and control many men are turned off by this and look back to having a more traditional woman as our partner.¹⁵⁸

The site continues by citing “The Good Wife’s Guide,” a 1955 article that it attributes to *Housekeeping Monthly*, suggesting that IMB-T grooms are looking for subservient, non-Western women who are not critical of them, continue to maintain their physical appearance after marriage, respect them as the boss, subordinate their careers to domestic concerns, make home-cooked meals for them, and know their place.¹⁵⁹

Essentially, IMB-T grooms “have control in mind rather than a loving, enduring relationship.”¹⁶⁰ In a 1994 study of thirty IMB-T couples, researchers found that 28 of the men were 20 to 50 years older than their IMB-T brides, suggesting that IMB-T grooms are looking for women that they can “mold” and dominate.¹⁶¹ Advocates at Sanctuary for Families¹⁶² have reported cases where IMB-T husbands specifically sponsored IMB-T brides with the expectation that they would engage in the types of sexual acts they were interested in (such as swinging and anal sex).¹⁶³ When their IMB-T brides refused, the men raped their wives and then began to pursue new IMB-T brides.¹⁶⁴ Such violent behavior demonstrates that IMB-T husbands marry their IMB-T wives for the purposes of various types of exploitation — for example, sex exploitation, domestic violence, forced caretaking, domestic servitude, or the abuse, manipulation, management, domination, and control of an IMB-T bride’s immigration status and entire existence¹⁶⁵ — and these forms of exploitation derive from the IMB-T husband’s expectation that his IMB-T wife must be a subservient object.¹⁶⁶ An IMB-T husband’s pur-

158. GOODWIFE.COM, *supra* note 157.

159. *Id.*

160. INT’L MATCHMAKING CONG. REPORT, *supra* note 132, at 25; SCHOLLES, *supra* note 132, at 4 (quoting MILA GLODAVA & RICHARD ONIZUKA, MAIL-ORDER BRIDES: WOMEN FOR SALE (1994)).

161. INT’L MATCHMAKING CONG. REPORT, *supra* note 132, at 25; SCHOLLES, *supra* note 132, at 3 (citing GLODAVA & ONIZUKA, *supra* note 160).

162. Sanctuary for Families is the largest nonprofit in New York State dedicated exclusively to serving domestic violence victims and their children. See SANCTUARYFORFAMILIES.ORG, <http://www.sanctuaryforfamilies.org> (last visited Sept. 20, 2010).

163. Leidholdt, *supra* note 135, at 373–74.

164. *Id.*

165. See *supra* Part I (discussing the exploitative purposes element of the Palermo Protocol and the TVPA’s definition of trafficking and noting that the Palermo Protocol’s definition is more inclusive, enabling the exploitative purposes element to be interpreted to include unconventional, unlisted, or new forms of exploitation).

166. See *supra* notes 157–59 and accompanying text.

suit of a new IMB-T bride signifies his belief that his original purchase was defective.

Moreover, it is widely understood that IMB-T brides come from economically disadvantaged countries. In fact, the homepage of “Reviews of the Best Mail Order Brides Websites” explains that economic hardships and high levels of alcoholism among men in bride-sending countries have compelled IMB-T brides to “look outside of their own country” for love, marriage, security, and the “sense of fulfillment that only a loving husband can provide.”¹⁶⁷ Prefacing this description is an affirmation that descriptions of the mail-order bride industry are “misleading” and “the truth is very different and far less sinister.”¹⁶⁸ By normalizing the exploitation and abuse of power differentials between IMB-T brides and grooms, this presentation implies that the prospective and all-powerful IMB-T groom is saving a helpless and attractive woman from despair through marriage, and, as such, the “saved” or inferior woman is or should be grateful and indebted to the IMB-T groom. In this way, the sexually objectifying and exploitative presentation of foreign brides by IMB-Ts, the “traditional” values sought by IMB-T grooms, and the widely perceived power differentials that exist within IMB-T relationships, whether real or constructed, suggest that IMB-T grooms are looking for exploitative relationships where they can dominate and exploit their foreign wives. The relationships sought by IMB-T grooms are inherently exploitative because they view IMB-T brides as objects of slavery or as a class to be oppressed, controlled, abused, and dominated.

While some supporters of the foreign-bride industry have argued that IMB-T websites do not capture the true intent of IMB-T grooms who may be sincere in looking for a life partner and purportedly want to experience foreign language and culture,¹⁶⁹ the realities of twenty-first century dating and the experiences of IMB-T brides prove otherwise. If IMB-T grooms were truly looking for culture and a life partner, they have many feasible opportunities to do so without purchasing the services of IMB-Ts and exploiting power differentials between IMB-T brides and grooms. Continued language and cultural diversity in the United States suggest that cross-cultural relationships are prevalent and easily found locally, particularly in large, metropolitan areas.¹⁷⁰ The rise

167. *Best Websites*, *supra* note 152.

168. *Id.*

169. *See* ONLINE DATING RIGHTS, *supra* note 134 (“Opponents of a man’s right to meet foreign women online never stop to consider how enjoyable it is to travel/work/live abroad and learn new cultures and languages while seeking a marriage partner.”).

170. *See generally* MICHAEL J. ROSENFELD, THE AGE OF INDEPENDENCE: INTERRACIAL UNIONS, SAME-SEX UNIONS, AND THE CHANGING AMERICAN FAMILY (2007) (discussing increased prevalence of interracial unions).

of U.S.-based online dating websites,¹⁷¹ some of which offer free membership, or even foreign versions of these sites,¹⁷² may help facilitate such dating. Additionally, increased ease of international travel, growing U.S. expatriate communities in foreign countries, and globalization make changes in residence and foreign employment plausible options. Considering the inequalities inherent in IMB-T relationships that are advertised to IMB-T grooms,¹⁷³ it is highly unlikely that men look for non-exploitative relationships through IMB-Ts because there are several other avenues through which men may find relationships that are not based on their domination, control, and power over their partners. Moreover, the severe and prevalent domestic violence perpetrated by IMB-T husbands against IMB-T brides further demonstrates the exploitative intentions of many IMB-T grooms.¹⁷⁴

3. *IMB-T Brides*

Available data indicate that women who meet and marry U.S. men through IMB-Ts are often looking for a “better life” for themselves and for their future children.¹⁷⁵ The fact that most IMB-T brides come from countries that are socioeconomically less advantaged than the United States — namely, Eastern Europe, Russia, and the Philippines¹⁷⁶ — and

171. Abby Ellen, *The Recession. Isn't It Romantic?*, N.Y. TIMES, Feb. 12, 2009, <http://tinyurl.com/2bdn3fn>, at E9, (last visited Sept. 21, 2010) (reporting the rise in popularity for online dating websites). Such dating websites include: BLACKPEOPLEMEET.COM, <http://www.blackpeoplemeet.com> (last visited Sept. 24, 2010); CHEMISTRY.COM, <http://www.chemistry.com> (last visited Sept. 24, 2010); EHARMONY.COM, <http://www.eharmony.com> (last visited Sept. 24, 2010); JDATE.COM, <http://www.jdate.com> (last visited Sept. 24, 2010); MATCH.COM, <http://www.match.com> (last visited Sept. 24, 2010); MATCHMAKER.COM, <http://www.matchmaker.com> (last visited Sept. 24, 2010); PERFECTMATCH.COM, <http://www.perfectmatch.com> (last visited Sept. 24, 2010); PLENTYOFFISH.COM, <http://www.PlentyOfFish.com> (last visited Sept. 24, 2010); SPEEDDATE.COM, <http://www.speeddate.com> (last visited Sept. 24, 2010).

172. Popular online dating websites have sites for persons in the United States, as well as persons searching for matches in numerous other countries. *See, e.g., Match International*, MATCH.COM, <http://www.match.com/international/index.aspx> (last visited Oct. 5, 2010).

173. *See Best Websites*, *supra* note 152 (containing language suggesting IMB-T exploitation of power differentials).

174. *See supra* notes 156–66 and accompanying text (describing IMB-T grooms and their interests and priorities in pursuing IMB-T marriages); *see also* SCHOLES, *supra* note 132, at 4 (describing the high rate of abuse perpetrated against mail-order brides); *Sen. Cantwell Statement*, *supra* note 132 (discussing protections needed for mail-order brides and stating that, in her home state of Washington, there were three very public and serious cases of domestic violence including two murders of women who met their husbands through IMBs); Del Vecchio, *supra* note 49, at 193–95 (describing high risk and incidence of domestic violence); Lindee, *supra* note 132, at 556–57 (discussing an IMB marriage that resulted in murder and the broader context of domestic violence in IMB relationships).

175. SCHOLES, *supra* note 132, at 2; *see also supra* notes 153–54 and accompanying text.

176. *See supra* note 133 and accompanying text.

not from Western Europe, Canada, Australia, or New Zealand, highlights the global disparities that drive the IMB-T industry. IMB-T brides are routinely recruited from impoverished or transitioning countries through newspapers and magazine advertisements.¹⁷⁷ IMB-T brides from the former Soviet Union are often compelled to seek marriages with U.S. men because they face cultural pressure to marry, in addition to political and cultural practices of gender discrimination that limit employment opportunities for women. Moreover, high rates of gender-based violence and alcoholism among men and economic challenges in their home country force former Soviet IMB-T brides to seek refuge abroad.¹⁷⁸ Thus, while some IMB-T brides may be “trying to escape [from the] harsh domestic realities that cultivate high rates of alcoholism and condone domestic violence,”¹⁷⁹ it is important to note that IMB-T brides who immigrate to the United States come from a range of different countries and past experiences. Not all IMB-T brides are recruited from abject poverty, and some may be well educated. IMB-T brides immigrate to the United States because they are repeatedly reassured by IMB-Ts that they have been matched with a “good husband.”¹⁸⁰ Many likely do not expect to face domestic violence or limitations on their freedom; otherwise, they would likely not risk immigration.

4. *Domestic Violence and IMB-T Brides in the United States: Experiences and Law*

Despite the challenges of collecting data on domestic violence and IMB-T brides, available data indicate that such relationships are likely to result in domestic violence and that many — perhaps even most — IMB-T brides in the United States become victims of domestic violence or at least face a high likelihood of experiencing domestic violence.¹⁸¹ Some are even murdered by their IMB-T husbands.¹⁸²

177. SCHOLES, *supra* note 132, at 1; Chun, *supra* note 49, at 1161.

178. INT’L MATCHMAKING CONG. REPORT, *supra* note 132, app. A; SCHOLES, *supra* note 132, at 1; Del Vecchio, *supra* note 49, at 189–90. In fact, although hardship was eliminated as a requirement of asylum through VAWA 2000, these same factors were argued to cause “extreme hardship” upon deportation in the 1999 asylum case of Caroline Jones. I-360 Self-Petition for Caroline Jones and her Minor Children Natalie Martin and Cynthia Martin, 8–9, March 19, 1999 (on file with the Virginia Journal of International Law Association).

179. Del Vecchio, *supra* note 49, at 190.

180. Although the court found that the plaintiff (an IMB-T bride) could not rely on mere expressions of opinion, the facts of the case *Fox v. Encounters International*, 318 F. Supp. 2d 279 (D. Md. 2002), state that the IMB-T made affirmative representations as to the IMB-T groom’s suitability for marriage and that there was no domestic violence in her organization. *Id.* at 286. The IMB-T affirmed that the IMB-T groom would make a good husband; that he would provide a safe and comfortable life; and that he was a caring person. *Id.* at 285. The facts of this case occurred before IMBRA’s enactment, so the case was decided under Virginia law. *Id.* at 282.

181. See *supra* note 135 and accompanying text (listing sources finding a significant majority

High rates of domestic violence against IMB-T brides are not surprising for three reasons. First, IMB-Ts create incongruent expectations between IMB-T grooms and brides.¹⁸³ Under the guise of “traditional values,” IMB-T grooms expect beautiful, docile sex objects who will take care of their homes and children.¹⁸⁴ Meanwhile, IMB-T brides expect opportunity, freedom, and egalitarian life partners.¹⁸⁵ When or if the IMB-T bride refuses sex, rejects the role of homemaker, or attempts to take advantage of the opportunities that she envisioned, the displeased or enraged IMB-T husband may react violently.¹⁸⁶

Second, like many immigrant victims of domestic violence, IMB-T brides are particularly vulnerable to domestic violence through the exploitation of an IMB-T bride’s isolation, citizenship status, economic dependence, and the psychological use of her children.¹⁸⁷ Internationally isolated from their foreign communities, families, and support networks and locally isolated by language and culture,¹⁸⁸ IMB-T wives are at risk of being further isolated by their husbands, who may prohibit them from building new networks or learning English.¹⁸⁹ In resorting to a form of economic abuse, IMB-T husbands might prohibit their wives from obtaining job training or from otherwise seeking the professional and lifestyle opportunities that they had envisioned.¹⁹⁰ If IMB-T wives have children, IMB-T husbands may make threats of abuse against the children or threaten to separate wives from their children through divorce, deportation, or both.¹⁹¹

of IMB-T relationships have resulted in domestic violence).

182. See Janet Calvo, *A Decade of Spouse-Based Immigration Laws: Coverture’s Diminishment, But Not Its Demise*, 24 N. ILL. U. L. REV. 153, 180–81 n.175 (2004) (noting three cases of mail-order brides who were murdered by their husbands: Susana Blackwell, Emelita Reeves, and Anastasia Solovieva King).

183. See *supra* Parts II.B.2, II.B.3.

184. See *supra* Part II.B.2.

185. See *supra* Part II.B.3.

186. See *supra* notes 163–64, 181 and accompanying text (explaining violent behavior reported when an IMB-T bride refused to have sex with her IMB-T husband).

187. *Immigrant Power and Control Wheel*, NATIONAL CENTER ON DOMESTIC AND SEXUAL VIOLENCE, <http://tinyurl.com/2cjh19t> (last visited Oct. 17, 2010) (adapted from the original *Power and Control Wheel, Wheel Gallery*, DOMESTIC ABUSE INTERVENTION PROGRAMS, <http://tinyurl.com/24kqkqh> (last visited Oct. 7, 2010)).

188. Chun, *supra* note 49, at 1183; see Jacqueline Aquino Siapno, *Pinoy Voices: Violent Inequality for Foreign Wives*, JOONGANG DAILY, Apr. 19, 2010, <http://tinyurl.com/2brqb7p> (explaining that the challenges of adapting to a new country, language, culture, public institutions, and new family are underestimated, leading to vulnerability through isolation, both with regard to Southeast Asian women who marry South Korean men and more broadly).

189. *Immigrant Women and Domestic Violence*, FAMILY VIOLENCE PREVENTION FUND, <http://tinyurl.com/2d5fxdt> (last visited Sept. 24, 2010).

190. *Id.*

191. *Id.*

With regard to citizenship status, the ability of IMB-T brides to immigrate and become legal residents of the United States is ordinarily controlled by the IMB-T husband, who has the power to petition for his alien spouse, subject to one exception.¹⁹² A typical immigration process for a foreign bride requires the U.S. citizen to “petition on her behalf at approximately three different stages of the immigration process . . . [in addition to] the numerous evidentiary requirements and supporting affidavits.”¹⁹³ Consequently, immigrant spouses generally cannot petition on behalf of their own immigration, making the cooperation of the U.S. citizen — in this case, the IMB-T husband — vital.¹⁹⁴

In addition, U.S. immigration law imposes a two-year conditional residency period after which, if the couple is still married, the couple can jointly petition to remove the condition for permanent residency.¹⁹⁵ Motivated by concerns about fraudulent marriage, Congress enacted the two-year conditional residency period to protect U.S. citizens — more precisely, U.S. husbands — from sham marriages.¹⁹⁶ The two-year conditional residency period is highly problematic because it allows the IMB-T husband to withdraw his supporting petition, “stripping the immigrant spouse of her legal status,”¹⁹⁷ which gives the IMB-T husband additional power and control over his IMB-T bride. Moreover, the spirit of the conditional residency period acknowledges suspicion regarding IMB-T marriages without acknowledging the purposes of foreign-bride exploitation within the marriage¹⁹⁸ and the power differentials inherently produced by the foreign bride’s immigration and isolation from her support networks.¹⁹⁹ Rather than investigating both parties, the circumstances through which the marriage was established, and the validity of

192. See 8 U.S.C. § 1154(a)(1)(A)(i) (2006) (stating that the citizen claiming a spousal relationship may file the petition for granting immigration status); Dep’t of Homeland Security, U.S. Citizenship & Immigration Services, I-130, Petition for Alien Relative (June 14, 2010), available at <http://tinyurl.com/28j2sjc> (form may only be filled out by the petitioner; the beneficiary is the spouse and cannot file the form); Calvo, *supra* note 182, at 156–58; Del Vecchio, *supra* note 49, at 202–03 (“By requiring the U.S. citizen to petition on behalf of the alien bride/spouse at approximately three different stages in the immigration process, the ongoing cooperation of the U.S. citizen is vital.”). The exception is discussed *infra* notes 201–03 and accompanying text.

193. Del Vecchio, *supra* note 49, at 203.

194. *Id.*

195. 8 U.S.C. § 1186a (2006); Calvo, *supra* note 182, at 157; Del Vecchio, *supra* note 49, at 206–09.

196. Del Vecchio, *supra* note 49, at 206. However, these concerns were deemed baseless by later studies of spousal immigration petitions that revealed estimates of marriage fraud as low as one percent, highlighting the difficulty in adducing marriage fraud in IMB-T marriages. INT’L MATCHMAKING CONG. REPORT, *supra* note 132, at 14.

197. 8 U.S.C. § 1186a(c); Del Vecchio, *supra* note 49, at 204.

198. See *supra* notes 119, 151–54, 161–65 and accompanying text (discussing the purposes of exploitation within IMB-T marriages).

199. See *supra* text accompanying notes 187–88; *Best Websites*, *supra* note 152.

the marriage, the conditional residency period questions only the intentions of the trafficked foreign bride,²⁰⁰ placing the blame or burden of suspicion regarding IMB-T marriages on the trafficked person and protecting the IMB-T husband. In effect, the two-year conditional period creates a consumer warranty that protects IMB-T husbands (the consumer-exploiters) and legally authorizes the power of IMB-T husbands over their IMB-T wives (their merchandise).

The IMB-T husband's power to petition for his IMB-T bride's immigration status is subject to one exception, authorized by the U.S. Violence Against Women Act (VAWA) and known as the "VAWA Self-Petition."²⁰¹ The VAWA Self-Petition enables the spouse of a citizen or legal permanent resident to petition for residency if she can show that the marriage was legal and valid; the marriage was entered into in good faith;²⁰² she lived with the abusive spouse at some time; she is a person of good moral character; and, during the marriage, the alien or a child of the alien has been battered or has been subject to extreme cruelty perpetrated by the alien's spouse or intended spouse.²⁰³

Despite the VAWA Self-Petition provision, the initial grant of authority over the IMB-T wife's legal status to the IMB-T husband enables the husband to exert power and control over his wife by leveraging her U.S. immigration status up to the point at which she is able to show extreme cruelty or battery.²⁰⁴ Professor Janet Calvo argues that spouse-

200. Many IMB-T brides are presumptively labeled as "gold diggers." See David Seminara, *Hello, I Love You, Won't You Tell Me Your Name: Inside the Green Card Marriage Phenomenon*, CTR. FOR IMMIGRATION STUDIES (Nov. 2008), <http://www.cis.org/marriagefraud> (outlining the consequences "[i]f small-time con artists and Third-World gold-diggers can obtain green cards with so little resistance").

201. 8 U.S.C. § 1154(a)(1)(B)(ii)(I) (2006); 8 C.F.R. § 204.2(c)(1) (2009).

202. For spousal immigration status, the marriage between the U.S. citizen or legal resident and the alien must be legally valid where the marriage was performed, not violate public policy, and not be entered into for the sole purpose of obtaining immigration status. See *Lutwak v. United States*, 344 U.S. 604, 611 (1953) ("The common understanding of a marriage, which Congress must have had in mind when it made provision for 'alien spouses' in the War Brides Act, is that the two parties have undertaken to establish a life together and assume certain duties and obligations."); Calvo, *supra* note 182, at 159 ("The burden of proof is on the petitioner to demonstrate that the principal purpose of the marriage was to make a life together, that the marriage was in 'good faith.'").

203. 8 U.S.C. § 1154(a)(1)(B)(ii)(I) (2006); 8 C.F.R. § 204.2(c)(1) (2009); see also Lori L. Cohen, *Representing Immigrant Victims of Domestic Violence*, in *LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM* 309, 322 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 5th ed. 2006); Calvo, *supra* note 182, at 184 ("[T]he Battered Immigrant Women Protection Act of 2000 was signed into law as part of the Victims of Trafficking and Violence Protection Act of 2000, VAWA 2000. This law removed many of the obstacles to self-petitioning for the abused and expanded the categories of those who could be eligible.").

204. 8 U.S.C. § 1154(a)(1)(B)(ii)(I) (2006); 8 C.F.R. § 204.2(c)(1)(G) (2009). The USCIS phrase "was battered by or was the subject of extreme cruelty" includes "being the victim of any act or threatened act of violence," where psychological or sexual abuse or other abusive acts that

based immigration continues to be predominantly female and is based on the underlying premises of coverture and chastisement that, while rejected in the nineteenth and early twentieth centuries, continue to permeate U.S. immigration law.²⁰⁵

Under the doctrine of coverture, the husband had ownership rights over his wife and was legally entitled to control his wife's income, property and residence. Further, the husband had a right to control his wife's behavior. She was subservient to him and owed him obedience. If she did not obey, the related notion of chastisement allowed a husband to discipline his wife, even with physical force. . . . The law sanctioned the power and control of the husband over the wife . . . [establishing] a legal regime that enforced the subordination of one adult human being to another.²⁰⁶

Legislators have attempted to remove the husband's exclusive power to petition for citizenship of his foreign bride.²⁰⁷ Nonetheless, the husband's petition remains as an "enforcement mechanism for an arrangement based on submissiveness on one side and domination on the other."²⁰⁸ Thus, current U.S. immigration law grants IMB-T husbands the power to control legal residency of IMB-T wives even after marriage, therefore enabling additional imbalances of power and the means of domestic violence.²⁰⁹

The third reason why domestic violence in IMB-T marriages is not surprising is because the protections advanced through IMBRA have not been effectively implemented by the U.S. government.²¹⁰ Regarding IMB-Ts' obligations under IMBRA, IMBRA requires IMB-Ts to:

- (1) Conduct searches of federal and state public sex offender registries for information on the U.S. client;
- (2) Provide the foreign woman with a copy of the results of the search and additional criminal and marital background information that the IMB-T has collected from the U.S. client;

are part of an overall pattern of violence shall be considered acts of violence. Calvo, *supra* note 182, at 189.

205. Calvo, *supra* note 182, at 160.

206. *Id.* at 160–61.

207. *See, e.g., id.* at 169–75 (outlining legislative revisions and attempts to remove the power to petition from immigration law).

208. *Id.* at 199.

209. For proposed recommendations to U.S. law, see this Note's Conclusion.

210. U.S. GOV'T ACCOUNTABILITY OFFICE, INTERNATIONAL MARRIAGE BROKER REGULATION ACT OF 2005: AGENCIES HAVE IMPLEMENTED SOME, BUT NOT ALL OF THE ACT'S REQUIREMENTS (2008), available at <http://www.gao.gov/new.items/d08862.pdf> [hereinafter GAO REPORT].

- (3) Advise the foreign woman of the rights and resources available to domestic violence victims in the United States; and
- (4) Obtain her written consent to the release of her contact information to that specific U.S. client.²¹¹

To date, there is no evidence that IMB-Ts are fulfilling their responsibilities under IMBRA,²¹² despite the likelihood that IMBRA is constitutional.²¹³ Moreover, regarding requirements (1) and (2), criminal data that are collected by the IMB-T are neither complete nor wholly official as such data come from public sex offender registries and the U.S. client's attestations.

IMBRA also establishes five obligations of the U.S. government. IMBRA requires the U.S. government to provide two pieces of valuable information to foreign women entering the United States on foreign fiancée or spouse visas: criminal background checks of their U.S. visa petitioners and information on the rights and resources that domestic violence victims have in the United States.²¹⁴ IMBRA also requires the U.S. government to better regulate IMB-T grooms by prohibiting foreign fiancée and spouse visa petitioners from simultaneously seeking visas for multiple persons²¹⁵ and prohibiting U.S. petitioners from submitting more than two lifetime fiancée visa applications.²¹⁶ Lastly,

211. International Marriage Broker Regulation Act of 2005 (IMBRA), Pub. L. No. 109-162, § 831, 199 Stat. 2960, 3066 (2005); *see also* TAHIRIH IMBRA FAQs, *supra* note 131, at 2–3.

212. In fact, in “Bride Trafficking Unveiled,” a recent documentary by Current TV, an interview with an IMB-T revealed that he had no way of knowing if an IMB-T groom had a criminal record. *See supra* note 153. This directly conflicts with IMBRA's requirements that IMB-Ts conduct searches of federal and state public sex offender registries for information on the U.S. client and provide the foreign woman with a copy of the results of the search and additional criminal and marital background information that the IMB-T has collected from the U.S. client. *See supra* note 209 and accompanying text.

213. IMBRA has faced only one constitutional challenge thus far and was upheld by a federal district court. *See European Connections & Tours, Inc. v. Gonzales*, 480 F. Supp. 2d 1355, 1369, 1377, 1380 (N.D. Ga. 2007) (holding that IMBRA did not constitute an unconstitutional regulation of commercial speech; IMBRA did not constitute a content-based restriction on protected speech; IMBRA's definition of “international marriage broker” did not violate the Equal Protection rights of the broker; and that the broker failed to show that irreparable harm would result from requirement that he seek certain background information from his U.S. customers).

214. IMBRA § 831; GAO REPORT, *supra* note 210, at 6.

215. IMBRA § 831; GAO REPORT, *supra* note 210, at 6.

216. IMBRA § 831; GAO REPORT, *supra* note 210, at 6; TAHIRIH IMBRA FAQs, *supra* note 131, at 2–3. The lifetime cap provision was largely inspired by the 1996 case of Jack Reeves. Calvo, *supra* note 182, at 180–81. Jack Reeves was a retired U.S. Army sergeant. He was convicted of murdering his second wife as well as his fourth wife, Emelita Reeves, a mail-order bride from the Philippines. Ten years prior to these convictions, Reeves's third wife, a mail-order bride from Korea, drowned under suspicious circumstances. All of the women were thought to have been murdered after seeking a divorce from Reeves. *See Donna R. Lee, Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139, 153 (1998).

IMBRA requires the U.S. government to establish and enforce federal criminal and civil penalties for IMB-Ts who violate the Act.²¹⁷ Despite IMBRA's obligations on the U.S. government, in 2008, the U.S. Government Accountability Office (GAO) found that *none* of these five requirements has been implemented.²¹⁸

The failures of the U.S. Citizenship and Immigration Services (USCIS), DHS, and Department of State increase the risk that foreign women will not obtain relevant and necessary information about the rights and resources available to domestic violence victims in the United States or about the criminal and noncriminal activity of her prospective U.S. fiancé or spouse.²¹⁹ If IMB-Ts are also not meeting their IMBRA obligations, then foreign women have no source of information about domestic violence in the United States or about their prospective partners' criminal background.²²⁰ Additionally, the failure to check each petitioner to determine if he has previously filed a fiancée petition increases the risk that USCIS will facilitate relationships with serial IMB-T grooms. Finally, the failure to establish a framework for investigating and prosecuting IMB-T violations of IMBRA does not stop or deter violations of IMBRA.

The inability or unwillingness to implement the protections under the IMBRA increases the risk that foreign women do not have the information they need to make "informed choices,"²²¹ the risk that IMB-Ts continue to match foreign women with at-risk U.S. men, and the risk of domestic violence in IMB-T marriages.

III. THE FOREIGN-BRIDE INDUSTRY CONSTITUTES TRAFFICKING

The recruitment, transport, transfer, harboring, and receipt of foreign women through fraudulent promises of employment or "happy marriage" or through the abuse of power, inequality, or vulnerability for the purpose of exploitation in marriage, including sex exploitation, servitude, or domestic violence, constitutes trafficking under international law.²²² While widespread connections between the foreign-bride industry and trafficking have been referenced by scholars, governments, and service-providers, who often note that mail-order brides *can* be victims

217. IMBRA § 831; GAO REPORT, *supra* note 210, at 6.

218. *Id.* at 4–6.

219. *Id.* at 5–6.

220. See International Marriage Broker Regulation Act of 2005, Pub. L. No. 109-162, § 831, 199 Stat. 2960, 3066 (2005); TAHIRIH IMBRA FAQs, *supra* note 131, at 2–3 (outlining requirements under IMBRA).

221. See TAHIRIH IMBRA FAQs, *supra* note 131, at 2 ("IMBRA provides foreign women with information they need to make informed choices for their safety.").

222. See Palermo Protocol, *supra* note 5, art. 3; see also *supra* Figure 1.

of trafficking or that the IMB-T industry *may facilitate* trafficking,²²³ the argument that the foreign-bride industry inherently constitutes trafficking seems to hold a minority position.²²⁴ Indeed, most governments have been hesitant to declare that the foreign-bride industry constitutes human trafficking.²²⁵ Such tolerance of bride trafficking results in the exclusion of foreign-bride traffickers from criminal prosecution and the accelerated growth of bride trafficking as a form of modern-day slavery.

There are several reasons why the international community may be hesitant to classify the foreign-bride industry as trafficking. Part of this hesitancy may stem from a perceived historic acceptance of the foreign-bride industry, which grew in part from the “picture-bride system.”²²⁶ Involving the exchange of photographs for the purpose of marital matchmaking, the picture-bride system was popular among twentieth-century Chinese and Japanese men who immigrated to the United States

223. See *Clark Statement*, *supra* note 49, at 3, 6, 8 (noting that the “mail-order bride trade follows traditional trafficking patterns” and discussing mail-order brides in the framework of trafficking); U.S. DEP’T OF HEALTH AND HUMAN SERVS., STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS (2009) (listing mail-order brides as a form of sex trafficking); TIP REPORT 2009, *supra* note 2, at 31 (describing mail order brides as trafficked); Calvo, *supra* note 182, at 195 (“Some have viewed the business as a form of sexual exploitation that resembles international trafficking.”); Lindee, *supra* note 132, at 562–71 (arguing that the IMB industry constitutes trafficking *per se*); Amnesty Issue Brief, *supra* note 135 (recognizing that women can be trafficked through the international marriage broker industry); *Frequently Asked Questions*, COALITION AGAINST TRAFFICKING IN WOMEN — ASIA PACIFIC, <http://tinyurl.com/25bruzt> (last visited Sept. 22, 2010) (noting that sex trafficking operates in conjunction with practices where women are sexually exploited, including through marriage matching arrangements); *United States Factbook*, COALITION AGAINST TRAFFICKING IN WOMEN, <http://tinyurl.com/5zu87s> (last visited Sept. 22, 2010) (discussing mail order brides under trafficking in the United States); *What Is Human Trafficking?*, POLARIS PROJECT, <http://tinyurl.com/24s5676> (last visited Sept. 22, 2010) (listing “bride trafficking” as one type of sex trafficking).

224. See Kathryn A. Lloyd, *Wives for Sale: The Modern International Mail-Order Bride Industry*, 20 NW. J. INT’L L. & BUS. 341, 344–45 (2000) (explaining that the laws regulating human trafficking have not been interpreted to apply to the mail-order bride industry, largely because of the presence of “some level of consent” to the transaction and “because the transaction contains the legitimizing social and religious force of marriage”); Lindee, *supra* note 132, at 566–67 (citing KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 40 (1979)) (explaining that *per se* trafficking occurs in any “situation where women or girls cannot change the immediate conditions of their existence, where regardless of how they got into those conditions, they cannot get out; and where they are subject to sexual violence and exploitation”); Dorchen Leidholdt, Dir., Coalition Against Trafficking in Women, Sex Trafficking in the United States, Presentation at the International Conference on Gender, Migration, and Development: Seizing Opportunities, Upholding Rights, Manila, Philippines 7 (Sept. 25–26, 2008) (classifying internet brides as “disguised trafficking”); *Frequently Asked Questions*, COALITION AGAINST TRAFFICKING IN WOMEN — ASIA PACIFIC, <http://tinyurl.com/25bruzt> (last visited Sept. 22, 2010) (“The business of bride trade or marriage matching is sex trafficking because it treats women as a commodity to be sold to foreign men.”).

225. See *supra* notes 136–38 and accompanying text (discussing concerns of domestic violence perpetrated against “mail-order brides,” the U.S. response through regulation of IMB-Ts through IMBRA, and bans on IMB-Ts in Cambodia and the Philippines).

226. See Chun, *supra* note 49, at 1157–59 (describing the picture-bride system).

to work gold mines and railroads and wanted to marry women from their countries of origin.²²⁷ The operation and objectives of the picture-bride system, however, were quite different from the operation and objectives of the current foreign-bride industry.²²⁸ Another reason for the international community's hesitancy in criminalizing the foreign-bride industry by classifying it as trafficking is that countries may have incentives to allow the foreign-bride industry to continue because of its profitability, for both bride-sending²²⁹ and bride-receiving countries.²³⁰ In effect, the transfer of "reproductive and productive duties from richer women in industrialized countries to poor immigrant women" results in hidden savings for governments who need childcare and domestic labor and a labor subsidy for low-paid or unpaid female workers or foreign brides who fulfill these needs.

Finally, the strongest argument against classifying the foreign-bride industry as trafficking, at least in the United States, lies in the intersection of privacy and liberty rights: namely, the right to privacy,²³¹ the right to marry,²³² and the right to make fundamental decisions about

227. *Id.*

228. *See id.* (explaining that these arrangements were promoted by cultural beliefs and customs and made to preserve "family unity" and that the dangers and uncertainties of traveling overseas prevented women from traveling to the United States until they were married).

229. *See* Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 71 (1998) (explaining how local governments are often complicit and sometimes directly involved in trafficking and forced prostitution schemes because they receive bribes from traffickers or benefit through stimulating the economy) (citing ASIA WATCH & THE WOMEN'S RIGHTS PROJECT, A MODERN FORM OF SLAVERY: TRAFFICKING OF BURMESE WOMEN AND GIRLS INTO BROTHELS IN THAILAND 75 (1993)).

230. *See* Siapno, *supra* note 188.

231. The "right to be let alone" has long been established in U.S. common law. *See* Hill v. Colorado, 530 U.S. 703, 716 (2000) ("[T]he broader 'right to be let alone' that one of our wisest Justices characterized as 'the most comprehensive of rights and the right most valued . . .'" (quoting *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting))); *see also* Daniel R. Ortiz, *Privacy, Autonomy, and Consent*, 12 HARV. J.L. & PUB. POL'Y 91, 92-97 (1989); Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890).

232. The right to marry is enshrined in both international and U.S. law. *See* International Covenant on Civil and Political Rights art. 23, *opened for signature* Dec. 16, 1966, 5 DEP'T ST. DISPATCH 459, Sept. 8, 1992, 999 U.N.T.S. 302 (entered into force Mar. 23, 1976) ("(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. (2) The right of men and women of marriageable age to marry and to found a family shall be recognized. (3) No marriage shall be entered into without the free and full consent of the intending spouses."); *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978) (noting the fundamental importance of the right to marry); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (holding that freedom to marry is a fundamental right). Marriage in China is governed by *Zhonghua Renmin Gongheguo Hunyin Fa* (中华人民共和国婚姻法) [Marriage Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Sep. 10, 1980, effective Jan. 1, 1981) 1980(10) PEOPLE'S JUDICATURE 7, *amended by* Quanguo Renda Changweihui Guanyu Xiugai Zhonghua Renmin Gongheguo Hunyin Fa de Jueding (全国人大常委会关于修改《中华人民共和国婚姻法》的决定) [Decision of the Standing

one's life, including consent to marriage.²³³ However, in recent years, the foreign-bride industry's growth may be its ultimate downfall, as increased information regarding the industry's operations confirms that the foreign-bride industry constitutes trafficking.

This Part makes four arguments. First, the sale and transfer of North Korean refugee women in China and the recruitment and transfer of foreign women via IMB-Ts in the United States constitute trafficking under the Palermo Protocol. Second, the foreign-bride industry constitutes trafficking under international law, and the TVPA's definition of trafficking is incomplete and ineffective.²³⁴ To believe otherwise is to buy into a constructed spectrum of force and consent discussed in this Part, to believe that force, fraud, or coercion are necessary to establish the means of trafficking, and to trivialize the exploitation that foreign brides experience. Third, in refusing to acknowledge the abuse of power and vulnerabilities as a means of trafficking, U.S. law prioritizes physical force as the keystone to crimes of violence against women, which violates the premises of the Palermo Protocol and is ineffective in addressing the realities of human trafficking. Fourth, marriage protects the bride trafficking industry and exploitation of foreign brides through the veil of marital consent. Such exploitation, which includes servitude, forced labor, sex exploitation, and domestic violence, may not fit neatly within the categories of exploitation enumerated by the TVPA and thus may be further marginalized by the TVPA's definition of trafficking.

This Section will examine the "means" element and "purposes of exploitation" element under the Palermo Protocol's definition of trafficking, focusing on the framework of trafficking established by international law.²³⁵ Each Subsection discusses the cases of North Korean enslaved brides and IMB-T brides, both under the Palermo Protocol and

Committee of the National People's Congress on Amending the Marriage Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 28, 2001, effective Apr. 28, 2001) 2001(6) NEW LAW AND REGS MONTHLY 18 (China), <http://tinyurl.com/2b4kao6>.

233. See International Marriage Broker Regulation Act of 2005 (IMBRA), Pub. L. No. 109-162, § 833(d)(3)(A)(iii), 199 Stat. 2960, 3072 (2005) (requiring IMB-Ts to share the IMB-T groom's criminal history with foreign women in efforts to establish the woman's "informed consent"); *Mail Order Brides Face Exploitation in Canada*, HUMANTRAFFICKING.ORG (Nov. 6, 2006), <http://www.humantrafficking.org/updates/465> (quoting Canadian Party Leader Elizabeth May, who stated that the situation of mail order brides is "akin to human trafficking"); ONLINE DATING RIGHTS, *supra* note 134 (advocating for the dating rights of men with foreign women); TAHIRIH IMBRA FAQs, *supra* note 131 (explaining that IMBRA aims to enable "foreign women to make informed decisions").

234. See *supra* Part I (defining trafficking and discussing the differences in the means element and exploitative purposes element of The Palermo Protocol versus the TVPA).

235. Palermo Protocol, *supra* note 5, art. 3.

under the TVPA, identifying and discussing the significant problems in the TVPA's definition of trafficking.

The third requirement needed to constitute trafficking — “acts” that amount to trafficking — are not the focus of this inquiry because the foreign-bride market easily satisfies the act requirement of both the Palermo Protocol and the TVPA.²³⁶ Under the Palermo Protocol and the TVPA, the acts that initiate trafficking include recruitment, transport, harboring (both Palermo and TVPA), transfer or receipt (Palermo), or provision or obtaining of person (TVPA).²³⁷ When North Korean women are sold or resold to Chinese men, the acts of recruitment, transport, harboring, receipt, and transfer of persons are satisfied under the Palermo Protocol and under the TVPA.²³⁸ When foreign women are recruited, transported, transferred, and received by U.S. men, the acts of recruitment, provision, and obtaining of persons are satisfied under the Palermo Protocol and under the TVPA.²³⁹

A. *The Means of Trafficking and Spectrums of Force and Consent*

1. *Trafficked Brides in China, the United States, and Elsewhere*

The Palermo Protocol defines the “means element” of trafficking as including “the threat or use of force or other forms of coercion, abduction, fraud, deception, or the abuse of power or a position of vulnerability.”²⁴⁰ TVPA’s “means element” is defined by “force, fraud, or coercion.”²⁴¹ This Subsection will discuss the “means element” of trafficking in relation to trafficked brides in China, in the United States, and across the foreign-bride industry in turn.

North Korean refugee women are primarily trafficked through the means of fraudulent promises of economic opportunities, a “new life,” or a “nice husband,” and through the abuse of their vulnerable position as refugees who fear deportation.²⁴² In some cases, traffickers resort to physical force or drugging.²⁴³ Oftentimes, North Korean refugee women will realize that they are being trafficked but will submit to their traf-

236. See Palermo Protocol, *supra* note 5, art. 3; Trafficking Victims Protection Act, 22 U.S.C. § 7102(8) (2006); see also *supra* Part II & Figure 1 (defining trafficking).

237. See Palermo Protocol, *supra* note 5, art. 3; 22 U.S.C. § 7102(8); see also *supra* Part II & Figure 2 (defining trafficking).

238. See Palermo Protocol, *supra* note 5, art. 3; 22 U.S.C. § 7102(8); see also *supra* Part II.

239. See Palermo Protocol, *supra* note 5, art. 3; 22 U.S.C. § 7102(8); see also *supra* Part II.

240. Palermo Protocol, *supra* note 5, art. 3; see also *supra* Figure 1.

241. 22 U.S.C. § 7102(8).

242. See *supra* notes 73–75 and accompanying text (explaining the vulnerabilities of North Korean refugee women).

243. LIVES FOR SALE, *supra* note 73, at 28–29.

fickers because they feel that they have no alternative.²⁴⁴ Accordingly, these means of trafficking satisfy the Palermo Protocol's means elements of force, fraud, deception, and the abuse of power or a position of vulnerability.²⁴⁵

Women from the former Soviet Union, Eastern Europe, Southeast Asia, and Latin America are primarily trafficked as brides by IMB-Ts through fraudulent promises of economic opportunities, egalitarian Western husbands, or a "better life," and through the abuse of economic and political power differentials that exist between the United States and their country of origin, and between their situations and the situations of their prospective husbands.²⁴⁶ Despite U.S. law (that is, IMBRA), it is unlikely that foreign brides are given information about their prospective spouse's criminal record, history of violence or domestic abuse, or serial use of IMB-Ts.²⁴⁷ This omission of pertinent information *may* constitute fraud as foreign brides are reassured that their spouses are suitable, even if those spouses have violent pasts.²⁴⁸ Additionally, it is unlikely that foreign brides are given information about the rights and resources offered to victims of domestic violence in the United States.²⁴⁹ These omissions *may* constitute fraud because foreign brides are not aware of the substantial likelihood that they are entering into a situation of domestic violence that is endemic to the IMB-T industry. However, U.S. courts have refused to recognize the existence of such fraud when IMB-T brides have sought legal remedies against IMB-Ts.²⁵⁰ Moreover, in 2008, U.S. federal prosecutors initiated only 183 investigations, charged 82 individuals, and obtained 77 convictions in 40 human trafficking cases.²⁵¹ The Criminal Section of the United States Department of Justice's Civil Rights Division (DOJ) — the Section charged with the authority to prosecute trafficking crimes²⁵² — has yet

244. *See supra* notes 73–75, 89, and accompanying text (explaining the lack of alternate choices that North Korean women face upon flight to China and upon confronting trafficking).

245. Palermo Protocol, *supra* note 5, art. 3.

246. *See supra* notes 143–45, 154–57, and accompanying text (discussing the power differentials within the IMB-T industry).

247. *See supra* notes 210–18 and accompanying text (discussing the failure to implement or enforce IMBRA).

248. *See id.*

249. *See id.*

250. *See Fox v. Encounters Int'l*, 318 F. Supp. 2d 279, 285 (D. Md. 2002) (holding, in a civil suit between an IMB-T bride and IMB-T, that the IMB-T did not commit actionable fraud when stating to the IMB-T bride that the IMB-T groom was suitable for marriage, would make a good husband, would provide her with a safe and comfortable life, and was a caring person). To date, no other cases challenging IMB-Ts for fraud have been reported.

251. TIP REPORT 2009, *supra* note 2, at 57.

252. *Criminal Section Overview*, UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION (July 25, 2008), <http://tinyurl.com/2213z4r>.

to prosecute an IMB-T for trafficking through fraud (or through other means of trafficking). In fact, it appears that the majority of the DOJ's trafficking prosecutions involve the means element of *force*.²⁵³

Thus, under the TVPA, it is unlikely that bride traffickers will be brought to justice because of the near-impossible burden of proof in establishing the TVPA's "force, fraud, or coercion" means element.²⁵⁴ Under the Palermo Protocol, however, the abuse of economic and political power differentials that exist between sending and receiving countries and between IMB-T grooms and brides satisfies the Palermo Protocol's means element of "the abuse of power or a position of vulnerability."²⁵⁵

At first glance, the foreign-bride markets for North Korean refugee women in Northeast China and for women from comparatively disadvantaged countries to the United States may seem worlds apart. Focusing on the means of trafficking in both markets and setting aside the surrounding circumstances, however, these markets share striking similarities. In both instances, women are trafficked through fraud and deception, satisfying the means element of trafficking under both U.S. and international law.²⁵⁶ Additionally, in both instances, the trafficked women are targeted because their traffickers know that they have "no real and acceptable alternative but to submit" to being trafficked.²⁵⁷

253. See, e.g., *United States v. Mendez*, 362 F. App'x 484, 485–86 (6th Cir. 2010) (addressing sentencing of defendant who forced victims into prostitution through physical, sexual, and emotional abuse, including rape); *United States v. Carreto*, 583 F.3d 152, 154–55 (2d Cir. 2009) (addressing plea offers of defendants who sexually assaulted their victims and used threats of physical harm and restraint to force them into prostitution); *United States v. Lee*, 472 F.3d 638, 640 (9th Cir. 2006) (affirming conviction of a defendant who beat victims and threatened deportation to force their labor); *United States v. Paris*, No. 03:06-CR-64(CFD), 2007 WL 3124724, at *10 (D. Conn. Oct. 24, 2007) (finding a reasonable jury could conclude that Paris was guilty of sex trafficking by fraud, force, or coercion when elements of physical violence, threats, and fraud were present).

Many of these cases are unpublished or resulted in plea agreements. See, e.g., *Criminal Section Selected Case Summaries*, UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION (August 5, 2009), <http://tinyurl.com/2edz0j3>. In *United States v. Mondragon* (2008), defendants used threats to harm victims and their families; in *United States v. Navarrette* (2008), defendants beat and restrained workers, forcing them to work as agricultural laborers; in *United States v. Djournessi* (2006), the defendant used violence, threats, and sexual assault to hold victim against her will as a domestic servant; and in *United States v. Udeozor* (2004), defendants controlled the victim through physical and verbal abuse, including rape. *Id.* For a discussion of the U.S. definition of "force, fraud, and coercion," see *supra* note 36 and accompanying text (discussing the U.S. definition of "force, fraud, and coercion").

254. See *supra* notes 35–42, 250–51, and accompanying text.

255. Palermo Protocol, *supra* note 5, art. 3.

256. Palermo Protocol, *supra* note 5, art. 3; Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2006).

257. Palermo Protocol *Travaux Préparatoires*, *supra* note 38, at 12; CATW, *supra* note 30, at 51–53; see *supra* notes 49–75, 89, 146–47, 156–59, and accompanying text (discussing the lack of choice and the power differentials within the bride trafficking industry).

Likewise, traffickers, consumer husbands, and receiving countries abuse their positions of privilege and power that derive from their citizenship, economic status, political standing, and gender,²⁵⁸ relative to both national and international hierarchies of power. Although the specific conditions of the home countries of trafficked persons and their specific reasons for flight differ — both across and within markets — these power differentials exist across the foreign-bride industry, as women from the former Soviet Union, Eastern Europe, Southeast Asia, and Latin America are trafficked by IMB-Ts to Western Europe, Canada, and Australia,²⁵⁹ as Southeast Asian women are trafficked into marriages with South Korean and Japanese men,²⁶⁰ and as Burmese and Vietnamese women are trafficked into marriages in East Asia.²⁶¹ The Palermo Protocol explicitly recognizes the abuse of power or a position of vulnerability as a means of trafficking, such that the consent of the trafficked person is irrelevant when such means have been established.²⁶² As such, in abusing the power differentials that exist between consumer husbands and foreign brides and between receiving countries and sending countries, the foreign-bride industry constitutes trafficking under international law.

2. *Spectrums of Force and Consent in U.S. Trafficking Law*

Through the TVPA and IMBRA, U.S. law undermines the Palermo Protocol and refuses to recognize the economics of the foreign-bride industry as well as the abuse of power differentials that negate consent and drive the lucrative exploitation of foreign women as bride-slaves.²⁶³

258. Third party traffickers and IMB-Ts may be women. However, gender in this sense is used to describe the consumer-husbands who are male, the trafficked brides who are female, the gender hierarchies and discrimination that may be pervasive within the sending country, and the gendered hierarchies that exist within the world order (that is, between countries) that enable some countries to hold greater political weight, both between and across countries.

259. *Clark Statement*, *supra* note 49, at 3; *Chun*, *supra* note 49, at 1167; *Del Vecchio*, *supra* note 49, at 188.

260. See Jonathan M. Hicap, *Filipina Mail-Order Brides Vulnerable to Abuse*, THE KOREA TIMES, Oct. 11, 2009, <http://tinyurl.com/25urqez> (describing violence against Filipina mail order brides who are increasingly sent to South Korea and Japan); Norimitsu Onishi, *Wed to Strangers, Vietnamese Wives Build Korean Lives*, N.Y. TIMES, Mar. 30, 2008, at A6 (describing a rising trend of Korean men seeking and marrying brides from poorer Asian countries, primarily from Southeast and Central Asia and China). See generally Choe Sang-Hun, *South Koreans Struggle with Race*, N.Y. TIMES, Nov. 1, 2009, <http://tinyurl.com/yj753je> (explaining the implications of an influx of foreign women into South Korea from poorer countries for the purpose of marriage).

261. TIP REPORT 2009, *supra* note 2, at 31; *Burma Factbook*, HUMANTRAFFICKING.ORG, <http://tinyurl.com/289v8lu> (last visited Sept. 18, 2010).

262. Palermo Protocol, *supra* note 5, art. 3; see *supra* notes 21–22 and accompanying text (presenting the Palermo Protocol’s definition of trafficking).

263. See *supra* notes 35–36 and accompanying text (discussing the TVPA’s means element); *supra* notes 214, 233 (discussing the ways that IMBRA aims to establish the “informed consent”

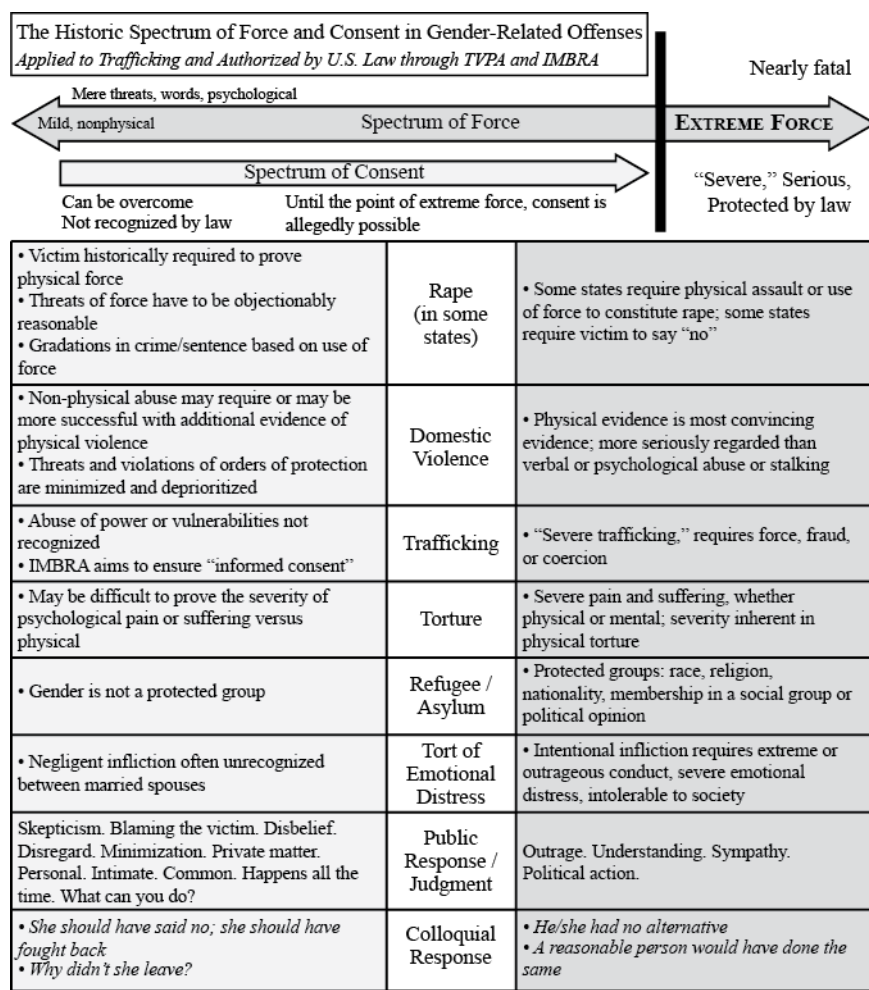
By defining trafficking through the TVPA's means of "force, fraud, and coercion,"²⁶⁴ and by prioritizing and enabling the possibility of "informed consent" in cases of foreign-bride trafficking through IMBRA, U.S. law reverts back to a spectrum of force and consent that arises out of a longstanding history of upholding physical force as the keystone to violence, harm, abuse, and exploitation. U.S. law's spectrum of force and consent constructs a legal fiction of the possibility of consent that minimizes the realities of nonphysical forms of abuse, disproportionately marginalizes harms against women by classifying them as legally incognizable, and therefore protects the human-trafficking industry.

U.S. law has a longstanding history of prioritizing physical force in crimes of violence and harm against women by either requiring the use of force or by minimizing the legally cognizable harms of nonphysical violence. Figure 4 illustrates U.S. law's prioritization of physical force across crimes of violence against women and the spectrum of force and consent that such prioritization constructs.

of IMB-T brides).

264. *See supra* note 36 and accompanying text (presenting the U.S. government's definition of "force, fraud, and coercion").

FIGURE 4: SPECTRUM OF FORCE AND CONSENT



This history — and current practice — of elevating physical force as the keystone to claims of violence against women and gender-based harm, abuse, and exploitation is evident in U.S. rape law, domestic violence law, torture law, refugee law, the tort of intentional infliction of emotional distress, and in the U.S. approach to human-trafficking law. U.S. law’s general principle of minimizing harms that do not involve or are not accompanied by the use of physical force is apparent when protective orders in domestic violence cases offer no real guarantee of protection and their violations receive minimal attention,²⁶⁵ when psychologi-

265. See *Castlerock v. Gonzales*, 545 U.S. 748, 768 (2005) (concluding that respondent did

cal pain and suffering is viewed as less harmful than physical pain and suffering,²⁶⁶ when rape sentences are graded based on the presence and level of accompanying force apart from the penetration itself,²⁶⁷ and when the abuse of power or vulnerabilities as a means of trafficking is rejected regardless of international consensus.²⁶⁸

U.S. law's reverence and prioritization of physical force is exemplified in U.S. rape law. U.S. common law defines rape as requiring both penetration through intercourse *and force* or the threat of force, such that proof of physical resistance by the victim is required and "mere" verbal resistance is not allowed.²⁶⁹ The threat of force is only valid if such threats are objectively reasonable.²⁷⁰ Forcible compulsion remains an element of rape in nearly all U.S. jurisdictions,²⁷¹ despite the fact that

not have a property interest in police enforcement of the restraining order against her husband and there was thus no constitutional entitlement to enforcement).

266. Alice McQuillan et al., *He Was Freed to Kill Judge Released Obsessed Stalker*, N.Y. DAILY NEWS, Feb. 14, 1996, at 5 (reporting Judge Duckman's questioning of the severity of a beating, asking, "[t]here is no actual physical injury, is there, other than some bruising? . . . I am not suggesting that bruising is nice, but there is no disfigurement. There are no broken bones. There are no serious physical injury charges, are there?"). This decision has been highly criticized, but still evidences legal perspectives on force, severity, and validity.

267. See *supra* note 265 and accompanying text; see also Sexual Assault, WIS. STAT. § 940.225 (2009).

268. See Trafficking Victims Protection Act, 22 U.S.C. § 7102(2), 7102(8) (2006); Palermo Protocol, *supra* note 5, art. 3; see also *supra* notes 17–19 and accompanying text (presenting the Palermo Protocol and noting that it includes 117 signatories and 133 parties).

269. Commonwealth v. Berkowitz, 641 A.2d 1161, 1164–65 (Pa. 1994) (finding no rape when the victim did not physically resist, despite her verbal no, because rape is "forcible compulsion") (rape statute later amended by the Pennsylvania state legislature); see also DONALD BRAMAN, CRIMINAL LAW 262–64 (forthcoming 2011) (adapted with permission from KAHAN, KATYAL, & MEARES, CRIMINAL LAW (forthcoming 2011)) (on file with Virginia Journal of International Law); see also Henry F. Fradella & Kegan Brown, *Withdrawal of Consent Post-Penetration: Redefining the Law of Rape*, 41 CRIM. L. BULL. Issue 1, art. 1, 3 (2005) (noting that most U.S. jurisdictions have textually eliminated the requirement of resistance, but since "forcible compulsion remains an element of rape in nearly all U.S. jurisdictions, the removal of any formal resistance requirement may be form over substance, producing an illusory removal of the resistance requirement").

270. State v. Rusk, 424 A.2d 720, 729 (Md. 1981) (sending the question of whether the victim's fear was reasonably grounded to the jury).

271. CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 172 (1989); Fradella & Brown, *supra* note 269, at 3 (citing Commonwealth v. Sherry, 437 N.E. 2d 224, 228 (Mass. 1982) ("The essence of the crime of rape, whether aggravated or unaggravated, is sexual intercourse with another *compelled by force* and against the victim's will or compelled by threat of bodily injury." (emphasis added))); Dan M. Kahan, *Culture, Cognition, and Consent: Who Perceives What, and Why, in Acquaintance-Rape Cases*, 158 U. PA. L. REV. 729, 731 (2010); see also State v. Dye, 695 N.E.2d 763, 766 (Ohio 1998) (interpreting the Ohio rape statute to require that "some amount of force must be proven beyond that force inherent in the crime itself"); Gibbins v. State, 495 S.E.2d 46, 48 (Ga. Ct. App. 1997) (observing that "in the ordinary case the [required] force . . . is not the force inherent in the act of penetration but is the force used to overcome the resistance of the female"); Berkowitz, 641 A.2d at 1165 (finding "a legislative intent that the term 'forcible compulsion' . . . be interpreted as something more than a lack of con-

the act of rape is itself forcible.²⁷² Moreover, many state rape laws grade offenses of “non-consensual sex” depending on the level of force used. Such gradation schemes affect the classification of the crime (as a felony or misdemeanor), the naming of the crime (as sexual assault or rape), and the punishment for the crime (from one year maximum to life) such that “mere” “non-consensual sex” may be classified as a nonfelony, be labeled as a sexual assault rather than rape, and result in a maximum sentence of one year of imprisonment.²⁷³ Nonconsensual sex, albeit criminal, is therefore legitimated only with the presence of a weapon, a serious physical injury, or physical force independent of the rape itself.²⁷⁴ Through sentencing guidelines, nonconsensual sex without physical force is marginalized.²⁷⁵ In this way, U.S. rape law fails to recognize that nonconsensual sex itself constitutes its own brand of violence or force, elevating traditional physical force as a paramount and outrageous harm and minimizing harms that are not accompanied by such force.

U.S. law’s longstanding prioritization of physical force creates a spectrum of force and consent that advances a legal fiction of the possibility of consent, consequently placing responsibility, accountability, and blame for the harm *on the victim*. U.S. law’s spectrum of force and consent for crimes of violence against women is constructed on the principle that consent is possible until severe force is exerted. This belief presupposes that victims are able to overcome anything short of extreme physical force.²⁷⁶

In trafficking cases, U.S. law requires a showing of force, fraud, or coercion and regulates bride trafficking by aiming to ensure the trafficked person’s “informed consent,” rather than offering protection through prohibition or criminalization.²⁷⁷ Figure 5 applies the spectrum of force and consent to the Palermo Protocol and the TVPA’s definitions of trafficking.

sent”).

272. See *State ex rel. M.T.S.*, 609 A.2d 1266, 1276 (N.J. 1992) (finding that a showing of physical force in addition to the act of sexual penetration is not required); MACKINNON, *supra* note 271, at 172; Fradella & Brown, *supra* note 269, at 3 (citing Donald Dripps et al., *Men, Women, and Rape*, 64 *FORDHAM L. REV.* 125, 150 (1994)).

273. See BRAMAN, *supra* note 269, at 266–68 (discussing various state codes).

274. See *id.*

275. See *id.*

276. See ANN JONES, *NEXT TIME SHE’LL BE DEAD: BATTERING AND HOW TO STOP IT* 131 (2000) (explaining a similar expectation in the context of domestic violence survivors).

277. See Trafficking Victims Protection Act, 22 U.S.C. §§ 7101(b)(13), 7102(2) (2006); International Marriage Broker Regulation Act of 2005 (IMBRA), Pub. L. No. 109-162, § 833(d)(3), 199 Stat. 2960, 3072 (2005); TAHIRIH IMBRA FAQs, *supra* note 131.

nerable in anticipation of marriage, in marriage, and upon divorce.²⁸¹ Proponents of the foreign-bride industry may thus advance the “slippery slope argument” — that it is impossible to distinguish between power differentials in foreign marriages and nonforeign marriages.²⁸² As such, U.S. law should continue to allow foreign women to decide whether or not they want to escape their disadvantaged homelands and take the opportunity of marrying a U.S. man, regardless of the likelihood of physical, sexual, and emotional exploitation.

Arguing that it is not possible to distinguish between foreign-bride trafficking and nonbride trafficking marriages, however, is unpersuasive. The distinction is simple: The key is in the *foreign* position of foreign brides, which distinguishes foreign-bride industry marriages from other marriages and distinguishes IMB-T websites from sites like “Match.com.”²⁸³ Power differentials between trafficked foreign brides and their husbands exist on both the individual and international levels; the vulnerabilities that are abused by traffickers of foreign brides are those that come from the woman’s national experience from political, legal, economic, and social structures that are not experienced by their husbands by virtue of his gender and nationality.²⁸⁴ Power differentials created by differences between the IMB-T bride and groom’s nationalities, resources, and past experiences, rights, and opportunities within their respective sending and receiving countries are further exacerbated through the immigration process, both in terms of the foreign bride’s isolation from her support networks,²⁸⁵ and in terms of the husband’s control over her immigration status.²⁸⁶ In fact, IMBRA itself distinguishes IMB-Ts by defining “international marriage brokers” as providing services “between United States citizens [and legal residents] . . . and foreign national clients,” excluding religious, cultural, or

281. See SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* 134–69 (1987). Okin discusses the vulnerabilities produced by marriage, which disadvantages women in the United States through the anticipation of marriage, the distribution of labor in marriage, and U.S. divorce law. It is unlikely, however, that Okin intended for her analysis of vulnerability in marriage to obstruct protections against bride trafficking as her analysis did not include the additional vulnerabilities produced through marriages with foreign women and through the types of exploitation that constitutes human trafficking under both the Palermo Protocol and the TVPA.

282. This is another form of the “guise of marriage,” discussed in relation to exploitation in marriage, *infra* Part III.B.2.

283. See International Marriage Broker Regulation Act of 2005 (IMBRA), Pub. L. No. 109-162, § 833(e)(4)(B), 199 Stat. 2960, 3075 (2005) (defining and distinguishing IMBs).

284. See *supra* Part II.3.B and accompanying text (discussing the conditions, discrimination, and violence that trafficked brides often face in their home countries).

285. See *supra* notes 186–89 and accompanying text (explaining the isolation that IMB-T brides face upon marriage and immigration to the United States).

286. See *supra* notes 192–94 (discussing the control that IMB-T husbands have over the immigration status of their IMB-T brides under U.S. immigration law).

nonprofit matchmaking organizations and online dating services whose principal business is not focused on providing international dating services between U.S. citizens or legal residents and foreign nationals.²⁸⁷ This distinction was upheld as constitutional by a Georgia federal court in *European Connections & Tours v. Gonzales*²⁸⁸ in 2007 because of evidence that for-profit IMB-Ts contribute to the growing problem of domestic violence against particularly vulnerable women, the encouragement of the male's sense of "ownership" over his imported bride, and the industry's disregard for women's safety and exploitation.²⁸⁹

Under these circumstances, the idea that consent exists in the absence of force, fraud, or coercion is a legal fiction derived from unrealistic or archaic views of U.S. policymakers regarding the relationship between force and consent in crimes of violence against women.²⁹⁰ Conversely, the Palermo Protocol recognizes that persons in such vulnerable situations cannot actually consent to being trafficked, and accordingly deems any semblance of consent to be irrelevant.²⁹¹ Forcing women to make a choice between two undesirable alternatives does not provide true choice, nor does U.S. policy begin to address the underlying drivers of human trafficking. In effect, by constructing an impossibly high threshold for legally cognizable force, U.S. trafficking law enables a trafficked person to decide whether he or she would like to enter the modern day slave trade.

Perhaps recognizing this legal fiction, U.S. law has a policy of rendering consent irrelevant in other contexts. U.S. law criminalizes certain relationships and transactions, regardless of consent, that produce a high likelihood of undesirable outcomes or undermine public policies. Two examples include state statutory rape laws and the federal prohibition on the sale of organs, both of which render consent irrelevant to the legal

287. IMBRA § 833(e)(4). Discussing what a not-for-profit international marriage brokerage would look like is an interesting question, but it is beyond the scope of this Note.

288. 480 F. Supp. 2d 1355 (N.D. Ga. 2007).

289. *Id.* at 1378.

290. The possibility of consent has also been recognized as a legal fiction in other contexts. For instance, in the area of Fourth Amendment law, the Supreme Court of the United States has found that a "seizure" is consensual when "a reasonable person would feel free 'to disregard the police and go about his business.'" *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991)). In some cases where a majority of the Supreme Court has found that encounters are consensual — for instance, when police officers board a bus with badges and pistols, block the exits and aisles, and question the passengers — critics and members of the Court have argued that such consent is a legal fiction. In these circumstance, the dissenting opinion in *United States v. Drayton*, 536 U.S. 194 (2002), contended that it would be hard to imagine that a person "would have believed that he stood to lose nothing if he refused to cooperate with the police, or that he had any free choice to ignore the police altogether." *Id.* at 212 (Souter, J., dissenting).

291. Palermo Protocol, *supra* note 5, art. 3(b).

inquiry of criminality for reasons of public policy.²⁹² The fact that consent may be irrelevant in U.S. statutory rape law, even in the absence of force, confirms that U.S. trafficking law could also easily recognize the high likelihood of domestic violence and the inherent exploitative purposes of IMB-T marriages and thus adopt a law presuming the irrelevance or impossibility of consent within IMB-T marriages as a matter of public policy.

The effects of U.S. law's obsession with physical force in analyzing contexts of harm, abuse, and exploitation are deleterious for two reasons. First, the prioritization or requirement of physical force for crimes of violence against women creates a legal fiction of the prospect of consent, minimizes the effects and realities of nonphysical forms of abuse,²⁹³ and marginalizes crimes that disproportionately injure and target women as legally incognizable. By defining some crimes as "severe" or "outrageous," other harms become "lesser" and invisible before the law.²⁹⁴ In 1993, in response to the Supreme Court of Texas's holding that tort claims for the negligent infliction of emotional harm within marriage were not permissible,²⁹⁵ Judge Spector argued in dissent that the movement toward recovery for emotional distress — a claim that has historically been marginalized and has overwhelmingly affected women — ran alongside the struggle for women's rights, and that:

Given this history, the plurality's emphatic rejection of infliction of emotional distress claims based on negligence is especially troubling. Today, when the widespread mistreatment of women is being documented throughout the country — for instance, in the areas of sexual harassment and domestic violence — a majority of this court takes a step backward and abolishes one way of righting this grievous wrong.²⁹⁶

Similarly, in trafficking situations minimizing means other than physical force limits the scope of harms that are offered legal redress.

Second, U.S. law's construction of "severe" trafficking as requiring force, fraud, or coercion is incomplete, inaccurate, and ineffective as it

292. Organ Procurement and Transplantation Network, 42 U.S.C. § 274(e) (1984) (prohibiting organ purchase).

293. See *supra* notes 37–42 and accompanying text (discussing the realities of non-physical violence that The Palermo Protocol's means element aimed to include and address).

294. See Trafficking Victims Protection Act, 22 U.S.C. § 7102(8) (2006) (addressing "severe forms" of human trafficking); *Twyman v. Twyman*, 855 S.W.2d 619, 621 (Tex. 1993) (holding that intentional infliction of emotional harm requires extreme or outrageous conduct, severe emotional distress, or harm that is intolerable to society); CAT, *supra* note 84, art. 1(1) (defining torture as severe pain or suffering); see also *supra* Figure 4 (depicting the spectrum of force and consent and the legitimation of that harms involving physical force as severe or serious).

295. *Twyman*, 855 S.W.2d at 621.

296. *Id.* at 643 (Spector, J., dissenting).

limits the scope of legally cognizable cases, protects the virility of the human-trafficking industry, and fails to focus on trafficking's exploitative purposes. In effect, U.S. law is essentially "making an unusual or extreme form of a common violation illegal, so that what is illegal almost never happens, yet the law appears to stand against the violation."²⁹⁷ The U.S. government may defend the TVPA's focus on severe forms of trafficking by arguing that the Palermo Protocol's expansive definition of trafficking is too difficult to enforce because, under the Protocol, the incidence of trafficking would be too widespread and unwieldy. Thus, the TVPA offers "minimum standards" to combat human trafficking.²⁹⁸ A form of the "floodgates argument," this defense of the TVPA's definition of trafficking is unconvincing because, while there may be resource limitations in prosecuting trafficking and offering services to trafficked persons, there is no limit to how many cases may constitute human trafficking and each victim's entitlement to classify their experience as trafficking does not affect another victim's right. Rather, in rejecting the abuse of power as a means of trafficking, U.S. law "obliterates the terrible magnitude" of widespread exploitation²⁹⁹ and characterizes the vast majority of human trafficking cases as "tolerable." As Professor Catharine MacKinnon explains, atrocities are often regarded as "either too extraordinary to be believable or too ordinary to be atrocious," and if they are commonplace, then maybe "it's not so bad."³⁰⁰ In this way, the TVPA's restrictive and incomplete definition of trafficking limits recognition to a specific class of trafficking cases and fails to offer adequate redress to all victims of human trafficking.

B. *Purpose of Exploitation and the Guise of Marriage*

1. *Trafficked Brides in China, the United States, and Elsewhere*

The Palermo Protocol defines the "purposes of exploitation element" of trafficking as including prostitution, sex exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.³⁰¹ TVPA's "purposes of exploitation element" is defined as commercial sex acts, involuntary servitude, peonage, debt bondage, or

297. CATHARINE A. MACKINNON, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES 3 (2006).

298. See 22 U.S.C. §§ 7102(6), 7106.

299. JONES, *supra* note 276, at 131–32 (discussing domestic violence).

300. MACKINNON, *supra* note 271, at 3.

301. The other two elements of trafficking under the Palermo Protocol and the TVPA are the "acts" and "means" elements of trafficking. See the Palermo Protocol, *supra* note 5, art. 3; 22 U.S.C. § 7102(8).

slavery.³⁰² The “purposes of exploitation element” of trafficking in relation to trafficked brides in China, in the United States, and across the foreign-bride industry will be discussed in turn.

In China, North Korean refugee women are trafficked for the purposes of exploitation that include servitude, forced labor, sex exploitation, and domestic violence.³⁰³ The sex exploitation of North Korean enslaved brides in China includes forced pregnancy, forced hysterectomies, prostitution, and marital rape.³⁰⁴ Enslaving husbands do not welcome North Korean refugee women as partners, nor are they welcomed into their Chinese families. Rather, they are treated as animals and put to work to fulfill the economic and sexual needs of their enslaving husbands and families.³⁰⁵ North Korean bride-slaves are selected because they can be used, controlled, abused, and battered without consequence. In effect, they are selected for the purposes of exploitation, often realized through forms of domestic violence. These exploitative uses of the bodies and labor of trafficked North Korea bride-slaves satisfy the Palermo Protocol’s purposes of exploitation.³⁰⁶

In the United States, women from the former Soviet Union, Eastern Europe, Southeast Asia, and Latin America are trafficked for the purposes of exploitation, including servitude, sex exploitation, and domestic violence.³⁰⁷ IMB-T grooms bear the costs of hiring IMB-Ts because they want docile domestic servants; perpetually willing, attractive sex objects; and women whom they can control and dominate.³⁰⁸ The pervasive desire of IMB-T grooms to control and dominate their purchases is fulfilled through domestic violence, which becomes an additional exploitative purpose of IMB-T marriages. The exploitative purposes evident in servitude and sex exploitation satisfy both the TVPA and Palermo.³⁰⁹ Similarly, the exploitative purpose evident in domestic violence may satisfy the TVPA and likely satisfies the Palermo Protocol.³¹⁰

Apart from the differences surrounding the foreign-bride markets of North Korean women in China and of IMB-Ts in the United States, both

302. 22 U.S.C. § 7102(8).

303. *See supra* Part II.A.3 (describing the experiences of North Korean refugee women in enslaved marriages).

304. *See supra* notes 101, 103–05 and accompanying text (describing the sexual exploitation of North Korean refugee women).

305. *See supra* Part II.A.3 (discussing the treatment of North Korean refugee women by their enslaving husbands and families).

306. Palermo Protocol, *supra* note 5, art. 3.

307. *See discussion supra* Part II.A (discussing the purposes of IMB-T relationships and the interests and aims of IMB-Ts and IMB-T grooms).

308. *See discussion supra* Part II.B.2 (discussing wants of IMB-T grooms).

309. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B) (2006); Palermo Protocol, *supra* note 5, art. 3.

310. Palermo Protocol, *supra* note 5, art. 3.

markets satisfy the purposes of exploitation required by the Palermo Protocol. More broadly, the purposes of exploitation in marrying trafficked foreign brides are evident worldwide.³¹¹ Trafficked foreign brides are targeted because their traffickers and their prospective husbands perceive them to be weak, easily dominated, easily controlled, and easily silenced. Distinct modes of control and domination may manifest themselves in different forms of exploitation — through servitude, forced labor, sex exploitation, forced pregnancy, or domestic violence — but they are ultimately similar in harm, oppression, and inhumanity. The Palermo Protocol explicitly recognizes the exploitative purposes of forced labor, servitude, and sex exploitation experienced by trafficked foreign brides.³¹² Moreover, the Palermo Protocol offers two avenues to recognize additional exploitative purposes: through its inclusion of “practices similar to slavery” and through its nonexclusive listing of exploitative purposes that enables inclusion of nontraditional or newly identified forms of exploitation.³¹³ Accordingly, under the Palermo Protocol, the foreign-bride industry constitutes trafficking under international law.

2. *Exploitation in Marriage*

One of the obstacles in combating bride trafficking is in confronting the veil of marriage and separating the exploitative purposes of trafficking from the widely celebrated and sanctified institution of marriage.³¹⁴ Traditionally, marriage and marital privacy have been used to hide violence and to uphold gender discrimination and inequality. Marital privacy has been used to hide or justify marital rape,³¹⁵ domestic violence,³¹⁶

311. See Chun, *supra* note 49, at 1159–70 (describing the global IMB-T industry); Del Vecchio, *supra* note 49, at 183–91 (same); Hicap, *supra* note 260 (describing violence against Filipina mail order brides who are increasingly sent to South Korea and Japan).

312. Palermo Protocol, *supra* note 5, art. 3.

313. See *supra* notes 20, 43–48, and accompanying text (discussing the Palermo Protocol’s “purposes of exploitation”). The Palermo Protocol establishes a floor for acts that constitute exploitation. Palermo Protocol, *supra* note 5, art. 3 (“Exploitation shall include, at a minimum . . .”).

314. See *supra* notes 231–33 and accompanying text (discussing privacy rights, liberty rights, and the right to marry).

315. See *People v. Brown*, 632 P.2d 1025, 1027 (Colo. 1981) (finding the marital exception to the Colorado rape statute was neither arbitrary nor irrational because of interests in encouraging the preservation of family relationships and the “difficult emotional issues and problems of proof inherent in this sensitive area”); Fradella & Brown, *supra* note 269 (explaining that marital rape was not recognized by common law because wives consented to sex by a function of their marriage); Linda Jackson, *Marital Rape: A Higher Standard is in Order*, 1 WM. & MARY J. WOMEN & L. 183, 183 (explaining that “[t]hrough the late 1970s, husbands enjoyed a virtually absolute right to rape their wives at will and without fear of legal recourse,” which extended from the view of wives as marital property.).

316. See JONES, *supra* note 276, at 20 (explaining that U.S. law allowed men to beat their

and the traditional gender roles assumed as “incident to marriage.”³¹⁷ While marriage continues to garner protection from state intrusion,³¹⁸ gender roles, marriage, and law have evolved to afford increased protections against violence perpetrated within marriage.³¹⁹ Blanket protections of spousal violence no longer exist. Acceptance of violence against women under the auspices of marital privacy and property are now *thought* to be archaic and outdated,³²⁰ although the acceptance of violence against women within marriage may continue in practice.³²¹

Despite increased protections for women within marriage, in certain contexts, it may appear difficult to draw the line between the “traditional gender roles” advanced by IMB-Ts and their proponents³²² and the exploitative purposes of trafficking, particularly when such exploitative purposes take the form of domestic work. At first glance, lines between domestic work or homemaking and domestic servitude may seem unclear and difficult to draw.³²³ The fact that the same labor within mar-

wives and children behind a curtain of marital privacy); Calvo, *supra* note 182, at 154 (“[C]hastisement allowed the punishment of a wife by a husband to force obedience.”).

317. See *Bradwell v. Illinois*, 83 U.S. 130, 131 (1873) (“The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.”); *Graham v. Graham*, 33 F. Supp. 936, 938 (E.D. Mich. 1940) (finding a wife must contribute services and society to her husband and follow him in his choice of domicile, and the husband has a duty to support and live with his wife); *Borelli v. Brusseau*, 16 Cal. Rptr. 2d 649, 652–53 (Cal. Ct. App. Div. 4 1993) (finding wives have personal duty to their husbands created by the contract of marriage that includes caring for an ill spouse); *McGuire v. McGuire*, 59 N.W.2d 336, 341–42 (Neb. 1953) (finding a husband’s dispersal of funds to his wife in marriage when cohabiting is protected as private).

318. See Jill Elaine Hasday, *Protecting Them from Themselves: The Persistence of Mutual Benefits Arguments for Sex and Race Inequality*, 84 N.Y.U. L. REV. 1464, 1465 (2009) (finding at least twenty-four states retain some form of the marital rape exemption: criminalizing fewer offenses if committed within marriage, punishing marital rape more leniently, or imposing additional barriers to prosecution); McQuillian et al., *supra* note 266 (reporting the release of a battering boyfriend who subsequently shot and killed his girlfriend).

319. See *People v. Liberta*, 474 N.E.2d 567, 573 (N.Y. 1984) (finding the marital exemption for rape in the New York statute unconstitutional for failing to distinguish between marital and non-marital rape, thereby adhering to “archaic notions about the consent and property rights incident to marriage”); Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 CALIF. L. REV. 1373, 1375 (2000) (“Virtually every state legislature has revised the marital rape exemption over the last twenty-five years . . . [but] a majority of states still retain some form of the common law regime.”); *What We Do*, SANCTUARY FOR FAMILIES, available at <http://tinyurl.com/2bhr5on> (last visited Sept. 22, 2010) (describing that “Sanctuary reaches over 10,000 domestic violence survivors and their children through direct services alone,” with “education and awareness-building initiatives [that] connect with over 20,000 additional concerned community members each year” working out of “nine office and shelter locations” throughout New York City).

320. See *supra* note 315 and accompanying text.

321. See Hasday, *supra* note 318, at 1375 (discussing the retention of marital rape exemptions in the majority of state common law regimes).

322. See Part II.B.2.

323. The TVPA defines involuntary servitude as “a condition of servitude induced by means

riage can be lawful in some contexts and exploitative and unlawful in others may create moral confusion, an unwillingness to enter into the business of analyzing domestic work, and a hesitancy to critically examine the foreign-bride industry because policing exploitation in marriage may dismantle longstanding meanings of marriage and wifedom in the United States.³²⁴

Evaluating what marriage means or the reasons why individuals marry, however, is beyond the scope of this Note. Rather, this Subsection argues that exploitation in marriage — such as domestic labor³²⁵ — should not be discarded because it is traditionally acceptable, currently lawful, or because it occurs in marriage. After all, exploitation in marriage itself does not constitute trafficking.³²⁶ Moreover, marriages involving *foreign* or immigrant women can and have been distinguished as involving a significantly higher likelihood or purpose of exploitation.³²⁷

Proponents of the foreign-bride industry may argue that some marriages do not involve exploitation, and, even if they do, the foreign brides may be better off in their enslaved marriages than in their home countries.³²⁸ This argument essentially proposes that because of the failures of sending and receiving countries, illicit activity and human exploitation should be condoned. Similar to “allowing the consent” of trafficked persons,³²⁹ tolerating human trafficking as a necessary evil or the better of two undesirable choices places the burden of solving national and global problems that drive trafficking on the individual victim.³³⁰

of (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition that person or another person would suffer *serious* harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.” Trafficking Victims Protection Act, 22 U.S.C. § 7102(5) (2006) (emphasis added). While the requirement of serious harm or physical restraint is extreme, this definition shows that servitude is readily distinguishable from domestic caretaking or homemaking roles. *But see* Borelli v. Brusseau, 16 Cal. Rptr. 2d 649, 652–53 (Cal. Ct. App. Div. 4 1993) (finding that wives are required to care for their husbands); Siapno, *supra* note 188 (“The ‘sexual contract’ for a foreign bride . . . [is] not that of a ‘wife’ as a partner or companion, but a reproductive laborer, houseworker, child-care provider, caregiver for the elderly parents-in-law, cook . . . labor made cheap, probably with neither health insurance nor holidays and only second-class citizenship.”).

324. *See supra* note 317 and accompanying text.

325. Siapno, *supra* note 188.

326. Under the Palermo Protocol and under TVPA, two elements in addition to the “purposes of exploitation” element are required to establish trafficking. *See supra* Part I & Figure 1.

327. *See* International Marriage Broker Regulation Act of 2005 (IMBRA), Pub. L. No. 109-162, § 833(e)(4)(B), 199 Stat. 2960, 3075 (2005) (defining and distinguishing IMBs).

328. LIVES FOR SALE, *supra* note 73, at 19 (explaining that some traffickers may believe that North Korean refugee women are better off in marriages with Chinese men).

329. *See supra* Part III.A.2.

330. *See supra* notes 277–80 and accompanying text (explaining how immense social problems are reduced to personal transactions, placing the burden and responsibility on the victim).

National and international policy makers cannot be so parochial as to believe that there are only two plausible solutions, and need to move away from focusing on the victim to address the underlying drivers of human trafficking. Rather, there are countless alternatives, some of which are discussed in the Conclusion of this Note. Furthermore, the fact that some IMB-T marriages do not result in exploitation pales in comparison to the substantial number and significant likelihood that IMB-T brides will suffer exploitation in their marriages,³³¹ therefore justifying the prohibition and criminalization of the foreign-bride industry. As discussed in Part III.A.2, the fact that some contexts of statutory rape or the sale of organs may arise without exploitation or harm has not limited legislatures from prohibiting such acts in order to protect the greater public.³³² As such, U.S. courts and the international community should not hesitate to address and limit exploitation in marriage as ardently as they address and limit exploitation outside of marriage.

CONCLUSION

The trafficking of foreign brides for the purposes of exploitation in marriage — in Northeast China and through the IMB-T industry — violates international law.³³³ The foreign-bride industry should thus be prohibited and criminalized in order to truly combat modern forms of slavery. National and international law should be careful not to marginalize and minimize bride trafficking under the guise of marriage, through the legal fiction of consent, or by rejecting power differentials as a means of trafficking. Additionally, U.S. law should revise its definition of human trafficking to fulfill its international obligations under the Palermo Protocol and to effectively address the realities and harms of human trafficking.

However, even if the foreign-bride industry is criminalized, the process toward criminalization will likely only occur over a long-term period and the effects of criminalization will likely be similar to those of the criminalization of prostitution, pushing the market underground. Additionally, there is the chance that sending and receiving countries will resist the criminalization of the foreign-bride industry for economic reasons.³³⁴ As such, it would be irresponsible to argue for the prohibition

331. *See supra* Part II.B.4.

332. *See supra* Part III.A.2.

333. Palermo Protocol, *supra* note 5. *See generally* Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Jan. 8, 2001) (adopting the Palermo Protocol).

334. *See supra* notes 231–32 and accompanying text (discussing the economic benefits of the foreign-bride industry for both sending and receiving countries).

and criminalization of the bride-trafficking industry and not offer interim and supplementary measures that are equally important and necessary to combat the trafficking of foreign brides. In conclusion, this Note lists both broad and case-specific interim and supplementary measures to combat the trafficking of foreign brides, arguing that both sending and receiving countries must work to reduce the means of foreign-bride trafficking and exploitation.

To reduce the means of bride trafficking, the following interim and supplementary measures should be considered:

- Receiving countries should create opportunities for immigration that enable foreign women to immigrate on their own terms. These programs could occur at the governmental level or through universities and skills-training institutions that offer opportunities for immigration independent of marriage.
- IMB-Ts and IMB-T grooms should be held criminally and civilly liable for fraudulent claims regarding IMB-T marriages, criminal records, past histories of domestic violence, and repeated use of IMB-Ts.
- China should respect the Refugee Convention and CAT and stop deporting North Korean refugees, eliminating the fear of deportation as it contributes to the means of trafficking. This does not mean that China must grant asylum to North Korean refugee women; rather, several other countries, including South Korea, have and will grant North Koreans safe haven.³³⁵
- The international community should continue to grant asylum to North Korean refugees³³⁶ and should also grant asylum to those in China who assist North Korean refugees. This year, the Second Circuit vacated and remanded a case involving a Chinese national who assisted a North Korean refugee family.³³⁷ The Second Circuit remanded the case to determine in what circumstances the persecution of those who assist North

335. Between 2004 and 2010, approximately 100 North Korean refugees have resettled in the United States; between 1994 and 2010, approximately 17,000 have settled in South Korea; between 1994 and 2008, approximately 2,900 have settled in Europe, and an additional 151 North Korean refugees are estimated to have resettled in other nations. LINKGLOBAL.ORG, <http://www.linkglobal.org/learn/nk101.html> (last visited October 17, 2010); see also Paul Wolfowitz, *How to Help North Korea's Refugees*, WALL ST. J., June 16, 2009, at A15, <http://tinyurl.com/mevol2>; Daniel Schearf, *Increasing Numbers of North Korean Refugees Head to Thailand*, VOICE OF AMERICA ONLINE, Dec. 30, 2009, <http://tinyurl.com/2c99jec>. But see Brian Adams, *Korea Needs to Open Its Doors*, JOONGANG DAILY, August 21, 2007, <http://tinyurl.com/23pb7dg> (arguing that South Korea needs to take on greater responsibility for North Korean refugees and asylum seekers).

336. See *supra* note 335 and accompanying text.

337. *Long v. Holder*, 620 F.3d 162, 164 (2d Cir. 2010).

Korean refugees would constitute persecution on account of a protected group.³³⁸ The U.S. Board of Immigration Appeals, the international community, and other nations should grant asylum to those in China who assist North Korean refugees.

- Sending countries should create awareness about human trafficking and exploitation in trafficked marriages. Sending countries should educate their citizens about the dangers of foreign-bride trafficking and the likelihood of exploitation in such marriages. Such awareness may deter the efficacy of fraudulent promises and false notions perpetuated by the foreign-bride industry and its marriages.
- Sending countries should work to reduce oppression, poverty, gender discrimination, and gender-based violence. Although this proposal is likely the most challenging and least likely to be fulfilled — it is unlikely that the North Korean regime is going to be compelled to halt its oppressive machinery because of the trafficking of North Korean refugees — it is perhaps one of the most important proposals for targeting the means of bride trafficking. Reducing the triggers that drive the supply of women into the foreign-bride industry does not mean that the economies of all countries must be equalized. Rather, this means that, alongside other human rights and millennium development mechanisms, flagrant gender-based violence and gender discrimination, political oppression, and failed economies must be addressed. As a result, foreign women may still idealize life in the United States or other countries with healthier economies and hope to immigrate to such a country. However, the minimization of power differentials between countries that contribute to immigration or flight may be reduced.

To combat the exploitation in marriage that results in cases of bride trafficking, the following interim and supplementary measures should be considered:

- Sending countries should offer information about exploitation upon exit. Upon an individual's emigration from foreign-bride supply countries, sending governments should offer information about the likelihood of exploitation and any resources and rights that they may expect in their receiving countries. This initiative would require communication between sending and receiving countries and would implement an additional avenue for information and protection.

338. *Id.*

- Receiving countries should ensure that immigration policies do not contribute to domestic violence. For example, the United States should make two changes to its immigration law. First, the power of petition in U.S. immigration law should be eliminated, enabling the immigrating spouse to petition for residency and citizenship independently.³³⁹ This would not change the burden of proof required to show a valid marriage.³⁴⁰ Rather, it would ensure that a mechanism of U.S. immigration law is not leveraged as a form of control and violence against foreign women. According to Professor Calvo, if all spouses could self-petition for residency and citizenship status, regardless of their ability to prove abuse, the “legal imprimatur for domination would cease.”³⁴¹ Second, the two-year conditional residency period for foreign spouses should be removed or reduced.³⁴² This conditional period is aimed to protect against fraudulent marriage and to protect U.S. citizens from being used for their U.S. citizenship or residency status. However, this provision ensures that the U.S. citizen is able to maintain prolonged control over his foreign wife and effectively works as a safeguard for exploiting husbands. The conditional period should thus be removed.
- Receiving countries should offer protection and resources to foreign brides. For example, the Chinese government should allow UNHCR access to the Northeast region of China to ensure that North Korean refugees have on-the-ground resources to prevent trafficking, offer information about domestic violence and exploitation in marriage, and offer resources for North Korean refugees who are exploited in marriage. In other contexts, similar to IMBRA’s mandate, receiving countries should offer information about foreign women’s rights and resources if they face exploitation in marriage. Foreign women should also be informed of the high incidence and likelihood of exploitation in IMB-T marriages.
- IMB-Ts and IMB-T grooms should be civilly and criminally liable for exploitation in marriage as such exploitation is fore-

339. *See supra* notes 192–209 and accompanying text (discussing the control that IMB-T husbands have over the immigration status of their IMB-T brides under U.S. immigration law).

340. *See supra* notes 192–95 (discussing the process for petitioning for spousal immigration and citizenship, which involves multiple stages and evidentiary requirements); *see also supra* note 200 and accompanying text (discussing determinations of the validity of a marriage).

341. Calvo, *supra* note 182, at 199.

342. *See supra* notes 195–97 and accompanying text (discussing the two-year conditional residency period).

seeable given the high rates of domestic violence among IMB-T marriage.

- IMB-Ts and IMB-T grooms should be heavily taxed through corporate tax mandates or when IMB-T grooms apply for foreign fiancée and spouse visas.
- IMB-T grooms should be required to set aside a trust for their foreign brides in the event that their marriages result in exploitation or divorce. As a result, IMB-T brides would not have to fear poverty or starvation if they try to leave the marriage.
- If receiving and sending countries do not hold bride traffickers criminally liable, the International Criminal Court should prosecute such trafficking as crimes against humanity under Article 7 of the Rome Statute.³⁴³

To effectively combat human trafficking,³⁴⁴ the international community and its member states must recognize the power dynamics and realities of human trafficking and its modern forms. State inaction through the tolerance of the foreign-bride industry protects the virility of the human-trafficking industry and contributes to its explosive growth. State inaction in regulating the bride-trafficking industry and the continued failure of states and the international community to criminalize bride trafficking will become increasingly indefensible as the practices across the foreign-bride industry continue to be revealed.³⁴⁵ Accordingly, under international law, the international community and sending and receiving countries must take action to criminalize and prohibit the trafficking of foreign brides for the purposes of exploitation.

343. Article 7(1) provides that enslavement constitutes a crime against humanity when it is committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Article 7(2)(c) defines “enslavement” as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such powers in the course of *trafficking in persons*, in particular women and children.” Rome Statute of the International Criminal Court art. 7, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90, (entered into force July 1, 2002) (emphasis added) [hereinafter Rome Statute].

344. *See generally* U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”); Palermo Protocol, *supra* note 5; Rome Statute, *supra* note 343; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006); Universal Declaration of Human Rights art. 4, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”).

345. *See* Rome Statute, *supra* note 343; Int’l Commission on Intervention and State Sovereignty [ICISS], *The Responsibility to Protect*, xiii (Dec. 2001) (outlining the “Responsibility to Protect Doctrine” (R2P), which is the most developed set of principles mandating international action when a state is unwilling or unable to meet its responsibility to protect its own citizens from avoidable catastrophe, such as mass murder, rape, and starvation).

* * *