Domestic Violence in Russia: Is Current Law Meeting the Needs of Victims and the Obligations of Human Rights Instruments?

Christina L Misner-Pollard, Oklahoma City University School of Law

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DOMESTIC VIOLENCE IN RUSSIA: IS CURRENT LAW MEETING THE NEEDS OF VICTIMS AND THE OBLIGATIONS OF HUMAN RIGHTS INSTRUMENTS?

CHRISTINA MISNER-POLLARD

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I. INTRODUCTION

Following the fall of the Union of Soviet Socialist Republics (USSR), the Russian Federation\(^1\) became preoccupied with restoring the rule of law in its post-Soviet society. While part of establishing this rule of law may well have included implementing and enforcing legislation on domestic violence, Russian authorities failed to implement specific laws prohibiting domestic violence. In the transition from communism to democracy, the government may have been distracted from either enacting or enforcing laws against domestic violence that could have allowed victims to flee their batterers safely and remain out of abusive relationships by building independent lives of their own. Almost two decades later, Russia’s laws still treat domestic violence with shocking silence—and this despite the fact that the Russian Federation absorbed the

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\(^1\) The terms “Russian Federation” and “Russia” are used interchangeably in this Article.
obligations of the human rights treaties to which the USSR had been a party.

This Article will provide a human rights-based analysis of the legal tools and other resources that victims need, such as battered women’s shelters, protection orders, police response and legal representation at initial stages of family law and child custody proceedings, in addition to explicit criminal legislation that prohibits spousal abuse. This paper will limit its examination of legal tools to those that are most necessary for a victim when they first leave an abusive relationship, followed by an examination of which of these domestic violence tools are legally necessary in order for Russia to comply with obligations under various human rights treaties to which it is a party.

Some might argue that, given the culture of corruption, gangs, and other legal maladies that the country has faced in the last decade, Russia must grapple with issues larger than ensuring that the needs of all domestic violence victims are addressed. However, human rights instruments do not assign a hierarchy to rights; states parties have an obligation to combat violations of those rights equally. There is no reason why an effort against domestic violence in Russia should conflict in any way with addressing other pressing legal challenges.

To provide sustained protection of women’s human rights and to get victims out of abusive relationships permanently, Russian family law must recognize domestic violence as harmful to the family and detrimental to children. Most often, victims successfully leave their abusive partners not due to laws that criminalize domestic violence, but with the help of social programs that aid them in becoming self-sufficient and independent.

The first section of this Article will introduce the reader to domestic violence in Russia, both in its historical context and its current state. The second section will provide an overview of how international human rights law fits into the domestic violence legal paradigm. The perpetuation of domestic violence is an international human rights violation and, as such, the Russian Federation is legally obligated to eliminate the problem. This Article will analyze each applicable human rights instrument to determine what is required of the Russian Federation in order to properly prevent, investigate and punish domestic violence so as to comply with its human rights obligations.

Part of this overview will discuss the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR) and its Optional Protocol, the International Convention on Economic, Social and Cultural Rights (ICESCR), the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, the Convention for the Rights of the Child (CRC) and the

European Convention on Human Rights and its five protocols (European Convention). This section will also explore the Russian Federation's position on these instruments, in terms of implementation on the domestic level, as well as the instruments' effectiveness in the domestic violence arena.

The third section of this Article will analyze Russia's laws regarding domestic violence—including constitutional, criminal and family law—under the lens of international human rights instruments and principles. This section will also analyze Russia's laws, cultural attitudes and social programs for victims of domestic violence, to analyze whether common cultural biases that exist in Russia may be hindering the state's ability to comply with human rights obligations.

A final discussion will draw conclusions as to whether Russia's legal and social systems of law enforcement, criminal laws, family laws, child custody decisions and social programs comply with its obligations under human rights instruments. This section will recommend steps that the Russian Federation must take in order to comply with international human rights law as it pertains to domestic violence. Proposals will include remedies to provide safety to the Russian domestic violence victim and their children and result their permanent separation from the abusive relationship.


II. DOMESTIC VIOLENCE IN THE RUSSIAN FEDERATION: HISTORICAL BACKGROUND, CURRENT LAWS AND CURRENT REMEDIES FOR VICTIMS

Every day, around 36,000 women in Russia are beaten by their husbands or partners.11

If he beats you, he loves you.12

The first of these is a factual statement, the second a Russian proverb. Most nations' domestic violence laws fall short of fail-safe solutions for battered women, but Russia had a unique opportunity upon the fall of communism to write legislation that safeguarded human rights, as part of its general move towards honoring human rights obligations that had previously been ignored. Almost sixteen years have passed since the fall of the Soviet Union, yet domestic violence remains unaddressed by the legislature and continues as a pervasive problem in Russian culture and society.

The numbers are grim. In 1998, the Russian Ministry of Internal Affairs reported that violence against women occurs in one out of every four families, resulting in an average of 610,000 family abuse cases per year.13 A 1999 survey of 3,900 women revealed

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13. Anna Fastenko & Irini Timofeeva, Russia, in INTERNATIONAL PERSPECTIVES ON FAMILY VIOLENCE AND ABUSE: A COGNITIVE ECOLOGICAL APPROACH 111, 116 (Kathleen Malley-Morrison ed., 2004), noted in B. Kuznetsov, Report of the Petrozavodsk City
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that one out of every seven reported physical abuse by her husband. In 1999, the Russian Federation reported to the CEDAW Committee that 14,000 Russian women are murdered every year as a result of domestic violence. In 2003, a Russian newspaper reported that husbands in one-third of Russian families beat their wives regularly. Forty percent of Russian families include husbands who have "laid hands" on their wives at least one time. The Ministry of Internal Affairs reported that in 2003, 9,000 women were killed in domestic violence incidents, accounting for 32% of all murders recorded. In 2005, Amnesty International claimed that "[e]very hour a woman in the Russian Federation dies at the hand of a relative, her partner or former partner." In January 2006, the United Nations (UN) Commission on Human Rights' Special Rapporteur on Violence Against Women visited the Russian Federation and issued a report. The Rapporteur reported that 80% of violent crimes against women constitute domestic violence.

Even with these numbers, "women's groups claim that domestic violence remains seriously underreported, underrecorded and largely ignored by the authorities." Indeed, the post-Soviet era is marked by an absence of statistics and information regarding violence against women. Furthermore, the fact that there is no specific legislation prohibiting domestic violence "hinders the gather-

Police Department on the Changes to Constitution, Article #6 on Stopping Family Violence (1999).
14. Id. at 116-117.
17. Svetlana Polenina, Problems of Gender Equality, in HUMAN RIGHTS IN RUSSIAN REGIONS 164 (Moscow Helsinki Group 2004), noted in ABA CEELI 2006 Report, supra note 11, at 97.
20. Id. para. 26 at 8.
21. Id. para. 28 at 9.
Accurate and detailed information about the extent of the Russian domestic violence problem is therefore difficult to attain, making those statistics that are available that much more grisly.24

A. The History of Domestic Violence in Russia

Even though some claim that domestic violence is new to Russia and was caused by the Soviet Union's collapse, it is in fact rooted in Russian tradition and persisted under Communist rule.25 Although the Soviet Union maintained an official party line of "gender equality," and the Soviet constitution guaranteed equality between men and women and provided fully-paid services such as maternity leave, daycare, abortion and full rights of divorce to women,26 Soviet reality differed from these formal guarantees. Although the Communist regime provided economic opportunities for women, it also expected them to fulfill traditional gender roles.27 Even under the auspices of equality, Soviet women were expected to fulfill a full-time workload equal to that of their male counterparts while also serving as homemakers and caregivers. Russian women thus faced a "double burden" since success as a Soviet woman required excelling both at home and at work.28

Meanwhile, competing against the official doctrine of "gender equality" was the historical backdrop of domostroi, a set of beliefs based on the conviction that women must devote themselves to domestic duties and that men must provide physical discipline to


24. Some statistical and sociological studies have been conducted. See generally Lisa A. Cubbins & Dana Vannoy, Socioeconomic Resources, Gender Traditionalism, and Wife Abuse in Urban Russian Couples, 67 J. MARRIAGE & FAM. 37 (2005); Venera Zakirova, War Against the Family: Domestic Violence and Human Rights in Russia—A View from the Bashkortostan Republic, 53 CURRENT SOC. 75 (2005); Edward W. Gondolf & Dmitri Shestakov, Research Note, Spousal Homicide in Russia, 3 VIOLENCE AGAINST WOMEN 533 (1997); Edward W. Gondolf & Dmitri Shestakov, Spousal Homicide in Russia Versus the United States: Preliminary Findings and Implications, 12 J. FAM. VIOLENCE 63 (1997).


27. WEILER, supra note 22, at 63.

28. Fastenko & Timofeeva, supra note 13, at 113.
those women who do not.\textsuperscript{29} Patriarchal traditions pervaded Soviet rhetoric and idealism.\textsuperscript{30} Domestic violence existed under the Soviet regime but, like many other social ills of the time, was ignored and denied by the authorities.

**B. The “New” Russia Cannot Escape Tradition: Traditional Attitudes about Domestic Violence**

New legal structures in post-Soviet Russia have concentrated on creating civil rights for Russian citizens and establishing a mechanism to enforce those rights. However, the fact that physical assault in itself is a crime does not mean that “equal rights” have been achieved for victims of domestic violence. While assault is a crime, the majority of Russian police officers officially behave as though a man beating his woman (whether or not she is his wife) is an acceptable form of behavior. In this regard, it would be an understatement to say that gender equality has not been achieved.\textsuperscript{31}

After the fall of the Soviet Union, a number of barriers may have contributed to the subsequent increase in domestic violence. Factors that contribute to increased violence at home include significant upsurges in women’s unemployment, men’s escalated abuse of alcohol and drugs to cope with dire economic conditions and an onslaught of sexual exploitation of women.

Although there is evidence that violence has always been present in Russian culture, it appears that there has been an increase in domestic violence since the breakup of the Soviet Union. This increase may be related to the general escalation of aggression in Russian society during the transition from communism to a more democratic and capitalist society.\textsuperscript{32} Nonetheless, it is difficult to determine whether domestic violence has increased drastically after the fall of the Soviet Union, whether the problem is simply enjoying more acknowledgement and exposure, or whether authori-

\textsuperscript{29} For example, in the mid-17\textsuperscript{th} century, men were not punished for murdering their wives, but wives who killed their husbands were buried up to their neck and left to die. \textit{Id.} at 113. \textit{See also} Amnesty Int’l 2005, \textit{supra} note 18, at 6. For comprehensive background information on “domostroi,” see Larissa Lissyutkina, \textit{Emancipation Without Feminism: The Historical and Socio-cultural Context of the Women’s Movement in Russia, in WOMEN AND POLITICAL CHANGE: PERSPECTIVES FROM EAST-CENTRAL EUROPE} (Sue Bridger ed., 1999) (1995) 173-175.

\textsuperscript{30} Special Rapporteur ECOSOC Report, \textit{supra} note 12, para. 23 at 8.

\textsuperscript{31} \textit{WEILER}, \textit{supra} note 22, at 55.

\textsuperscript{32} Fastenko & Timofeeva, \textit{supra} note 13, at 116.
ties now are simply collecting more proper statistics related to domestic violence.

Several myths exist in Russian society regarding domestic violence, and the issue is not understood and discussed publicly. Russians consider domestic violence a "private" matter, something that should be kept in the home and not discussed in the public sphere. In fact, emergency room physicians who treat injuries resulting from family violence routinely fail to record the injury because of the pervasive belief that violence in the home is a "private affair." Russians typically do not view the police as a resource to turn to when domestic violence occurs.

At least ten misconceptions about domestic violence pervade contemporary Russian society. They are summarized as follows:

- Women provoke the violence, and they deserve it;
- Women can easily avoid abusive situations;
- A man cannot stop his own violent behavior from reoccurring once it begins;
- Violent men are aggressive with everyone, not just intimate partners, regardless of the circumstances;
- Even if he batters their mother, children need their father;

33. Thornton & Voigt, supra note 12, at 97.
34. ABA CEELI 2006 Report, supra note 11, at 102.
35. In the ABA's cited survey, only 26.7% of women and 23.3% of men thought that the police should be called if a husband beats his wife. Id. at 99.
36. Fastenko & Timofeeva, supra note 13, at 113-114.
37. Special Rapporteur ECOSOC Report, supra note 12, para. 27 at 9 ("Women are often blamed for having provoked the violence."). This myth is also widespread among emergency room health professionals who typically refuse to document and pursue domestic violence-related injuries. ABA CEELI 2006 Report, supra note 11, at 102. But see JOHN GOTTMAN & NEIL JACOBSON, WHEN MEN BATTER WOMEN: NEW INSIGHTS INTO ENDING ABUSIVE RELATIONSHIPS 46-49 (1998) (labeling as a myth the notion that women provoke men into beating them).
38. See Janet Elise Johnson, Privatizing Pain: The Problem of Woman Battery in Russia, 13 NWSA J. 153, 156 (2001) (listing ways in which women are blamed for provocation and for not avoiding violence, like wearing the wrong clothing, earning more money than her husband and nagging). But see Gottman & Jacobson, supra note 37, at 53-54 (claiming that women cannot necessarily stop the battering by changing her own behavior).
39. But see Gottman & Jacobson, supra note 37, at 42-43 (explaining that the perception that "batterers can't control their anger" is a myth).
- Arguments between spouses are natural and should not result in any serious consequences;\(^4\)
- Alcohol is a major cause of violence;\(^4\)
- Domestic violence is a new phenomenon, brought on by stress and economic hard times;
- Most women enjoy being beaten because they relish the role of “victim” and obtain sexual pleasure from it; and
- Men who abuse simply have a hard life and they cannot handle the stress they face.\(^4\)

These myths stem from lasting stereotypes of gender roles and may help explain Russian politicians’ reluctance to enact specific laws to address family violence.

The Russian domestic violence victim advocacy movement is handicapped by a lack of reporting of abuse by victims, witnesses and officials. The U.N. reports that Russia keeps inconsistent statistics on domestic violence.\(^4\) “[D]ata from sociological studies show that more than 40% of the victims do not report violent behavior in their families due to complete economic and social dependency on their partners and disbelief in the possibility of prosecution and punishment of perpetrators.”\(^4\) From 1993 to 1999, only 10,000 rapes were reported to police, as compared to about ten times that number in the United States—which only has roughly twice the Russian population. These numbers reflect the widespread Russian belief that reporting these crimes to the police, who are often indifferent and fail to act and protect, will be ineffec-

40. This myth is played out in a common scenario reported in a Russian newspaper: “Under the Criminal Code, the police in Russia can intervene in family quarrels. But as a rule, these interventions all follow the same scenario. An officer arrives and says, ‘Okay, we’ll lock him up. Is that what you want?’ And the wife changes her mind: How can she put the father of her children in jail?” Tatyana Kharlamova, “Syndrome of Humiliation” in a Setting of Love, ROSSIISKAYA GAZETA, May 31, 1996, at 27, translated in CURRENT DIG. POST-SOVIET PRESS 15 (1996).

41. Dianne Post, Domestic Violence in Russia, 9 J. GENDER STUD. 81 (2000) (“‘Why are we talking about beating your wife? Everyone in Russia does it. It’s not a big deal,’ said a Russian law student to an American judge.”).

42. ABA CEELI 2006 Report, supra note 11, at 98 (“[T]he myth that alcohol causes domestic violence, rather than contributes to this behavior, is common in Russia.”). See also WEILER, supra note 22.

43. Fastenko & Timofeeva, supra note 13, at 113-114.

44. Special Rapporteur ECOSOC Report, supra note 12, para. 26 at 8.

45. Fastenko & Timofeeva, supra note 13, at 117.
The fact that between 1994 and 2000 the number of reported crimes of violence against women rose 214% is either a sign of increasing violence, or of improvements in reporting.

C. Domestic Violence Defined: More than Just Physical

A crucial inquiry in determining the depth of violence against women in Russia is how Russians define “domestic violence.” Surveys of Russian victims of domestic violence have been conducted to this end. In a survey of 102 Russian victims, each respondent labeled physical abuse as “severe abuse”; 84% mentioned verbal abuse; and some reported suffering from psychological abuse such as dishonesty, unfaithfulness and disrespect.

1. Power and Control

Domestic violence often results from a perceived lack of control over the victim by the batterer. Common Russian belief is that men are superior to women and therefore have the right to assert such control. Domestic violence involves not only physical assault; its roots are in the dynamics of a relationship in which one person has more power and control over the other. The tactics that the abuser uses to get and maintain that power cover a range of behavior, some of which is not physical. Physical violence is usually one aspect of an array of behaviors that are designed to exert total con-

46. Id. at 116.
47. Special Rapporteur ECOSOC Report, supra note 12, para. 26 at 8.
48. The authors conducted a survey of sixty five women and thirty seven men, ranging in age from eighteen to seventy seven years, mostly from metropolitan areas, with varying degrees of education. Fastenko & Timofeeva, supra note 13, at 112.
49. Special Rapporteur ECOSOC Report, supra note 12, para. 27 at 9.
50. Various scholars and researchers have developed different definitions of “domestic violence.” See Gottman & Jacobson, supra note 37, at 179 (describing the connection between control and physical violence as “[o]nce control is established over a woman through battering, perhaps it can be maintained by continued emotional abuse with intermittent battering used as a terrifying reminder of what is possible in this marriage”); ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 45-46 (2000) (summarizing domestic violence as “a troubled relationship of power and control”); ANN JONES, NEXT TIME, SHE’LL BE DEAD: BATTERING AND HOW TO STOP IT 81-105 (1994) (comprehensively outlining the various definitions used to describe intimate partner violence).
control over the victim.\textsuperscript{52} Success to a batterer is represented by total capitulation by the victim. This capitulation takes place through a continuum of ongoing isolation, humiliation, terrorism, intimidation and deprivation.\textsuperscript{53} One scholar attests to the psychological abuse experienced by female victims of domestic abuse: "[A]fter a domestic quarrel, 50\% of men feel that the psychological climate in the home has improved as a result. But nearly all women say the opposite."\textsuperscript{54}

Globally, domestic batterers engage in several types of behavior to maintain power and control in a relationship. These behaviors include a wide range of conduct: serious physical assault, coercion, threats, harassment, intimidation, emotional, verbal and psychological abuse, isolation, denial, blame, use of the children as "pawns" in a quarrel between spouses, economic abuse and assertion of male privilege.\textsuperscript{55} Sexual abuse is a common tactic of abusers in Russia.\textsuperscript{56} A 2003 Russian newspaper article reported that one out of every five Russian married women is forced to have sex with her husband in order to appease him or to keep him from abusing her. One out of every ten is raped immediately after she has received a beating.\textsuperscript{57}

Most sources point out that family violence is severely underreported in Russia. Thus, statistics on family violence will not pro-

\begin{itemize}
\item \textsuperscript{52} Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 MICH. L REV. 1, 93 (1991) ("Violence is a way of 'doing power' in a relationship; battering is power and control marked by violence and coercion. A battered woman is one who experiences the violence against her as determining or controlling her thoughts, emotions or actions, including her efforts to cope with the violence itself.").
\item \textsuperscript{53} Schneider, supra note 50, at 46.
\item \textsuperscript{54} Polunin, supra note 16, at 3.
\item \textsuperscript{55} Adapted from the Power and Control Wheel, developed by Domestic Abuse Intervention Project, Duluth, Minnesota, produced and distributed by the National Center on Domestic and Sexual Violence, Austin, Texas; JONES, supra note 51, at 90-91. "Male privilege" comprises one of many theories that explain why men become batterers of women. The feminist view of intimate partner violence focuses on the development of male gender roles in the upbringing of boys and the "privilege" stemming from society's prescription that men dominate women. Some men allow such learned patterns to progress to the point that they exercise such "male privilege" through violence and exertion of power and control over women. See generally DONALD D. DUTTON & SUSAN K. GOLANT, THE BATTERER: A PSYCHOLOGICAL PROFILE (1995).
\item \textsuperscript{56} Gottman & Jacobson, supra note 37, at 149-150.
\item \textsuperscript{57} Polunin, supra note 16, at 3. Another survey revealed that 23\% of women were pressured to have sex through intimidation or violence by their partners. ABA CEELI 2006 Report, supra note 11, at 98.
\end{itemize}
vide a complete picture of the true problem. Combating such a deeply-rooted and multi-faceted problem is a Herculean task. A systematic examination of the different types of abuse in Russia is crucial to understanding how to begin to eradicate them.

2. Emotional, Verbal and Psychological Abuse

The draft domestic violence law, considered by the legislative body of the Russian government, the Federal Assembly, for over a decade, would include psychological abuse as a legally actionable form of domestic violence. Russian women surveyed view the humiliation caused by public verbal abuse as more serious than the choice of abusive words used. An in-country survey revealed that “almost 80% of women had encountered at least one incident of psychological violence by their husbands (including humiliation, forbidding them from certain activities, or forms of control or threats).”

3. Economic Abuse

Dire economic conditions, such as those faced by many Russian couples since the fall of the Soviet Union, increase violence in the home. Likewise, many batterers use family finances as an additional tactic of abuse. Women’s economic dependence on men fosters reliance on traditional gender roles and, in turn, may engender the belief that violence is appropriate. Women’s inferior economic position, unemployment, traditional expectations placed on women and their economic dependence upon their husbands, coupled with widespread male unemployment, are all factors that con-

58. Fastenko & Timofeeva, supra note 13, at 116.
60. Fastenko & Timofeeva, supra note 13, at 118.
61. ABA CEELI 2006 Report, supra note 11, at 98.
62. Domestic Violence in the OSCE Region: Briefing of the Commissioner on Security and Cooperation in Europe Before the U.S. Cong. Comm’n of Sec. & Cooperation in Eur., 107th Cong. 22 (2001) (statement of Winnie Bartel, Executive Chair, Commission on Women’s Concerns, World Evangelical Fellowship) [hereinafter OSCE Briefing] (“Right now, we find increased domestic violence when economic conditions are severe and getting worse. You’ll find an increase in domestic violence exactly because the pressure of managing finances and making ends meet, you’ll see a surge of it. There is a very definite correlation.”).
63. Fastenko & Timofeeva, supra note 13, at 113.
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tribute to increased physical violence. Abusive tactics include husbands withholding money from wives as a form of discipline, not allowing wives to have any independent funds and denying wives access to marital accounts.

Russian newspapers also report the parallel between physical violence in the home and what Russian sociologists have labeled “economic violence.” A May 2003 article reported that 54% of Russian women experience economic violence at the hands of their abusive husbands: “Where there is physical violence, there is economic violence as well. Men who beat their wives also control the family budget.” More specifically, one Russian newspaper featured examples of women required to ask their husbands anytime they needed money (30% of women), husbands who refuse to give their wives money as a form of intimidation (10%) and husbands who use money as a threat (if she divorces him, he threatens to “leave her without a kopek”). Some women in abusive relationships are so economically dependent on their husbands that they “frequently see no other escape for themselves besides death.”

4. Alcoholism

Despite popular perception, alcoholism is not a genuine cause of domestic violence. The underlying abusive behavior generally already exists in the batterer and may be exacerbated by alcohol abuse, but alcohol should not be treated as a scapegoat for violent behavior. Since battering is a learned behavior, alcohol should not be blamed as the sole “trigger” for it. Not every alcoholic is an abuser, and not every abuser is an alcoholic. Certainly, alcoholism and domestic violence have a correlation in Russia, but it is not constructive to label one as the cause of the other.

64. Id. at 113.
68. Gottman & Jacobson, supra note 37, at 39-42.
70. Statement of Nancy Murphy, Executive Director of Northwest Family Life and Counseling Center. OSCE Briefing, supra note 62.
71. World Health Organization, Regional Office for Europe, Breaking the Cycle: Public Health Perspectives on Interpersonal Violence in the Russian Federation 6
Despite this, because of its tendency to exacerbate violence, it is worth noting that alcoholism in Russia has increased significantly since 1988. Before the Soviet Union collapsed, alcohol abuse was cited as a main cause of marital discord. As indicated by several researchers, alcoholism remains one of many factors behind much of the violence in Russian society.

D. Russian Law

The Russian Federation has no laws specific to domestic violence despite a long history of consideration of such laws in the State Duma, the lower house of the Federal Assembly of Russia where all legislative bills originate. A draft law entitled “On Preventing Violence in the Family” has been considered for over a decade, without action. Interestingly, Russian journalists made the same complaints in 1996 as they do today:

[T]he adoption of this badly needed law is proceedings at a snail’s pace . . . . Back in the middle of last year, the draft law was prepared for a first reading in the last Duma. And then? Nothing. Now it has again been put “on the waiting list,” this time for consideration by the new Duma, but it keeps being shelved over and over again . . . .

When the draft law was introduced, the Duma was 90% male. One female member of the Duma spoke with a Russian journalist about the dire importance of a specific domestic violence law but her words did not lead to enactment. While it could be deemed a positive step that the legislature was giving any attention to domestic violence, the law itself was so flawed that Human Rights Watch declared its enactment could do more harm than good. The draft law lacked effective criminal sanctions for domestic violence


72. Thornton & Voigt, supra note 12, at 104.

73. WEILER, supra note 22, at 73; ABA CEELI 2006 Report, supra note 11, at 98.


76. Alimamedova, supra note 75, at 8.

77. Adamushkina, supra note 59, at 6.

(which resulted from the failure to recognize domestic violence as a serious issue), relied too heavily on under-funded social services, omitted restraining order processes and required complicated licensing for domestic abuse shelters.\textsuperscript{79}

1. \textit{Constitutional Law}

The Constitution of the Russian Federation (Constitution) was adopted by vote on December 12, 1993.\textsuperscript{80} On the surface, the Constitution protects human rights and prohibits discrimination against women. One Russian constitutional scholar noted, "[i]n view of the past massive violations of human rights in Russia, the drafters of [the] new constitutional provisions placed special emphasis on domestic implementation of human rights standards."\textsuperscript{81} The Constitution guarantees equality of all people before the law, prohibits discrimination based on sex and explicitly guarantees men and women equal rights, liberties and opportunities.\textsuperscript{82} Provisions require the state to protect "the dignity of the person" without qualifications based on gender and forbid anyone to be subject to violence.\textsuperscript{83} Finally, the Constitution states that "[e]veryone shall have the right to freedom and personal inviolability."\textsuperscript{84}

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{79} \textit{Id.} at 18-19.
\item\textsuperscript{81} Gennady M. Danilenko, \textit{The New Russian Constitution and International Law}, 88 \textit{Am. J. Int'l L.} 451, 461 (1994).
\item\textsuperscript{82} "(1) \textit{All people} shall be \textit{equal} before the law and in the court of law; (2) \textit{The state shall guarantee} the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance. Any restrictions of the rights of citizens on social, racial, national, linguistic or religious grounds shall be forbidden; (3) \textit{Man and woman} shall have equal rights and liberties and equal opportunities for their pursuit." [emphasis added]. \textit{Konst. RF} § 1, ch. 2, art. 19, §§ 1-3, \textit{supra} note 80, at 8-9.
\item\textsuperscript{83} "(1) The dignity of the person shall be protected by the state. No circumstance may be used as a pretext for belittling it. (2) No one may be subjected to torture, violence or any other harsh or humiliating treatment or punishment. No one may be subjected to
\end{enumerate}
\end{footnotesize}
2. International Law in the Russian Federation

International law holds primacy over domestic law according to the Constitution, which also prioritizes international treaty norms over Russian domestic laws. In fact, both international treaties and "the generally recognized principles and norms of international law" are nominally incorporated into the Russian legal system.

The Constitution speaks directly to the prominent place international law has in Russian domestic law: "The rights and freedoms of man and citizen according to generally-recognized principles and norms of international law and in accordance with the present Constitution shall be recognized and guaranteed in the Russian Federation." Thus, international law is placed on a superior footing than other Russian laws and statutes, since treaty norms prevail when there is a conflict. In addition, the domestic legal system does not require implementing legislation for a treaty to be considered binding on the domestic level.

3. The Criminal Code

The present Criminal Code of the Russian Federation (Criminal Code) was enacted in January 1997 and amended in July 2002. No laws that prohibit, define or even mention domestic violence exist in the Criminal Code. If domestic violence incidents are prosecuted at all, charges are pursued under Part IV of the Criminal Code which defines "crimes against the person." Ironically,
one of the stated purposes of the Russian Criminal Code involves equality principles, nominally enshrining "the principle of equality of citizens before the law" in order to keep sex and gender from "influencing criminal responsibility." 94

Homicide is a crime, but no specific mention is made of spousal homicide. 95 Physical assault is covered by several articles that focus on causing "harm to health" of another person, including "beating" and "torture." 96 Physical assault of one's spouse, or of one's domestic partner, is not specifically mentioned in these articles. Provisions criminalize threats of homicide or "of causing grave harm to health" without noting with specificity threats of harm to one's spouse or domestic partner. 97 However, rape and other sexual assaults are criminalized, 98 and although spousal rape is not mentioned as a crime, marriage to the "rape victim" is also not mentioned as a defense.

94. BUTLER, supra note 2, at 580.


96. Assault crimes can be found in Section VII of the Criminal Code in the following articles: "Intentional Causing of Grave Harm to Health," art. 111; "Intentional Causing of Average Gravity Harm to Health," art. 112; "Causing of Grave or Average Gravity Harm to Health in State of Temporary Insanity," art. 113; "Causing of Grave or Average Harm to Health When Exceeding Limits of Necessary Defense of When Exceeding Measures Necessary in Order to Detain Persons Who Committed Crime," art. 114; "Intentional Causing of Light Harm to Health," art. 115; "Beating," art. 116; "Torture," art. 117; "Causing of Grave or Average Gravity Harm to Health Through Negligence," art. 118. UGOLOVNIY KODEKS [UK], reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 644-648.

97. "The threat of homicide or of causing of grave harm to health, if there were grounds to fear the effectuation of this threat—shall be punished by limitation of freedom for a term of up to two years, or by arrest for a term of from four up to six months, or by deprivation of freedom for a term of up to two years." UGOLOVNIY KODEKS [UK], art. 119, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 644-648.

98. Chapter 18 of the Criminal Code covers "Crimes Against Sexual Inviolability and Sexual Freedom of the Person" as follows: "Rape," art. 131; "Forcible Actions of Sexual Character," art. 132; "Compelling to Perform Actions of Sexual Character," art. 133; "Sexual Intercourse and Other Actions of Sexual Character with Person Who Has Not Attained Sixteen Years of Age," art. 134; "Depraved Actions," UGOLOVNIY KODEKS [UK], art. 135, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 654-656.
The Criminal Code shows a failure to address domestic violence. Since 1993, scholars and activists have pointed out this lack yet no changes have been made.\textsuperscript{99} Domestic violence remains a very low priority in the government sector and a "blame the victim" attitude permeates the complacency.\textsuperscript{100} Russian legal treatises that explore the Criminal Code in depth often fail to mention domestic violence or gender-based crimes.\textsuperscript{101}

The Duma has failed to adopt any law that addresses domestic violence even though it has considered numerous draft bills placed before it.\textsuperscript{102} Opponents to a specific domestic violence law claim that such provisions would duplicate measures already provided in the Criminal Code.\textsuperscript{103} They argue that domestic violence can be prosecuted under the various provisions regarding physical violence and threats that are listed above. In addition, the Duma had the last word in a 2003 letter to Amnesty International in which the Russian Ministry of Foreign Affairs stated that a specific law on domestic violence would no longer be introduced because the Duma and the "population" "would consider a law on violence in the family as an interference with private family matters."\textsuperscript{104}

4. The Family Code

The Family Code of the Russian Federation (Family Code)\textsuperscript{105} was adopted in 1996.\textsuperscript{106} It saw little change in the transition from

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\item \textsuperscript{99} Suzanne Possehl, \textit{New Crime and Punishment: Russia in Fighting Thugs and Con Artists With New Laws. But is That Enough? A.B.A. J., Nov. 1996, at 72, 74 ("A serious shortcoming is that legislators have overlooked domestic violence, critics say. Compared to the United States, Russia's movement to stop domestic violence is in its fledgling stage of still trying to create awareness of the problem. The absence of special provisions on marital rape, incest and spouse abuse signals to judges and police that they need not take these cases seriously."}).
\item \textsuperscript{100} Fastenko & Timofeeva, \textit{supra} note 13, at 117.
\item \textsuperscript{101} \textit{See generally Butler, \textit{supra} note 2; William Burnham & Gennady M. Danilenko, \textit{Law and Legal System of the Russian Federation} (2d ed. 2000); \textit{Russian Legal Texts, supra} note 80.}
\item \textsuperscript{102} The latest report from January 2006 indicates 50 rejected draft bills. Special Rapporteur ECOSOC Report, \textit{supra} note 11, para. 36 at 11; \textit{see also} Amnesty Int'l 2005, \textit{supra} note 18, at 11.
\item \textsuperscript{103} Special Rapporteur ECOSOC Report, \textit{supra} note 11, para. 36 at 11.
\item \textsuperscript{104} Amnesty Int'l 2005, \textit{supra} note 18, at 11.
\item \textsuperscript{105} \textit{Semeiny Kodeks [SK] [Family Code], reprinted in Russian Legal Texts, supra note 80, at 517-592.}
\item \textsuperscript{106} An exhaustive history of family law in the Soviet Union and in the Russian Federation is beyond the scope of this paper. For historical background and analysis, \textit{see}
\end{itemize}
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Soviet to post-Soviet Russia. Russian family law treatises rarely, if at all, mention domestic violence or its proper place or lack of place in present-day Russian law.

a. Divorce

The rate of divorce in the Russian Federation remains high. From 1993 to 1999, 59% of married couples were divorced.\textsuperscript{107} The Russian Federation, like its Soviet predecessor, continues to be a “no-fault” divorce state and does not require spouses to articulate grounds for divorce in legal documents.\textsuperscript{108} Spouses may file for a divorce and obtain one administratively with relative ease.\textsuperscript{109} However, if the divorce is contested, courts have jurisdiction. Courts also have the discretion to order that the parties attempt reconciliation. If these attempts fail, the court must dissolve the marriage.\textsuperscript{110} Efforts at reconciliation may include mediation between the spouses which is problematic when domestic violence control dynamics exist in the relationship.\textsuperscript{111} The wording of some articles in the Family Code seems to place emphasis on agreement between the parties such as requiring “mutual respect and mutual assistance” in promoting the family’s well-being.\textsuperscript{112} This section makes no mention of the right for a spouse to be free from violence.

Although the grounds for the divorce do not require any specific pleading by the parties, the court must state some reason why the couple cannot continue to live together jointly and concluding that

\textsuperscript{107} Fastenko & Timofeeva, supra note 13, at 115.


\textsuperscript{109} Id. at 425.

\textsuperscript{110} Id. at 426.


\textsuperscript{112} “Spouses shall be obliged to structure their relations in the family on the basis of mutual respect and mutual assistance, to promote the well-being and strengthening of the family, and to be concerned about the prosperity and development of their children.” SEMEIHYIY KODEKS [SK] art. 31(3), supra note 105, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 529.
the “preservation of the family is impossible.” In the Russian legal treatises consulted, spousal abuse was not mentioned as among the typical grounds listed by courts for divorce.

b. No Restraining Orders

The Family Code requires that issues of child custody, child support, property division and spousal maintenance be settled by the court upon dissolution of marriage, preferably by agreement of the spouses. No physical restraining order of any type is mentioned. In fact, remedies for domestic violence are so lacking that “divorce remains the only safe way for a wife to escape the reach of her husband’s fists.” Victims commonly resort to divorce as one of the only remedies available for domestic violence.

c. No Child Custody Provisions Recognize the Negative Effects of Domestic Violence on Children

“Child custody” is not a legal concept in Russia, as the Russian legal system places the responsibility of raising children equally on both parents. This responsibility is mandated by the Constitution, which states, “[c]are for children, their upbringing, shall be equally the right and obligation of parents.” Russian law views parental rights, regardless of marriage, as the “inalienable” fundamental right of the individual. The duty to parent is inseparable from the right to parent. Parents have the “rights and duties” to nurture and educate their children and children have corresponding rights under the Family Code, such as the “right to live and to be

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113. BUTLER, supra note 2, at 426.
114. Id. at 426 (mentioning alcohol abuse, long separations and infertility problems, but not spousal abuse, as grounds for divorce).
115. SEMEINIY KODEKS [SK] art. 24, supra note 105, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 525.
117. ABA CEELI 2006 Report, supra note 11, at 101.
118. Khazova, supra note 106, at 376.
119. KONSTITUTSIJA ROSSISKOI FEDERATSI [KONST. RF] § 1, ch. 2, art. 38, § 2, supra note 81, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 13.
120. Khazova, supra note 106, at 378.
121. Id. at 378.
122. “Parents shall have the right and shall be obliged to nurture their children. Parents shall bear the responsibility for the nurturing and development of their children. They shall be obliged to be concerned about the health and physical, mental, spiritual and moral development of their children. Parents shall have a preferential right to nurture
nurtured” in their family. The parents’ duty to raise children is based on the “best interests of the child” and prohibits causing harm to children. While the “right to live” provision in the Family Code purports to protect children from their parents, the Code remains silent on the effects of domestic violence on children.

Furthermore, the Family Code heavily favors mutual consent and agreement of both parents on all matters regarding parental authority over children. Equality of both parents, regardless of whether the family lives together, is placed in high legal regard. Parents are first required to attempt an agreement regarding child custody and visitation. Mediation, however, is dangerous for domestic violence victims because parties to an abusive relationship often lack

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123. “A child shall have the right to nurturing by his parents, ensuring of its interests, comprehensive development and respect of its human dignity.” SEMEINIY KODEKS [SK] art. 54(2), supra note 105, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 539.

124. “(1) Parental rights may not be effectuated contrary to the interests of children. Ensuring the interests of children must be the subject of basic concern of their parents. When effectuating parental rights, parents shall not have the right to cause harm to the physical and mental health of children and to their moral development. The means of nurturing children must exclude contemptuous, cruel or coarse treatment demeaning human dignity, insult or exploitation of children. Parents effectuating parental rights to the prejudice of the rights and interests of children shall bear responsibility in the procedure established by a law. (2) All questions affecting the nurturing and education of children shall be decided by the parents by the mutual consent thereof, proceeding from the interest of the children and taking into account the opinion of the children. The parents (or one of them) shall have the right in the event of disagreements between them to apply to a trusteeship and guardianship agency or to a court for the settlement of these disagreements. (3) The place of residence of children in the event the parents reside separately shall be established by agreement of the parents. In the absence of agreement, the dispute between the parents shall be settled by a court proceeding from the interests of the children and taking into account the opinion of the children. In so doing, the court shall take into account the attachment of the child to each of the parents, brothers and sisters, age of the child, moral and other personal qualities of the parents, relations existing between each of the parents and the child, the possibility of creating for the child conditions for nurturing and development (nature of activity, work regime of parents, material and family status of the parents, and others.” SEMEINIY KODEKS [SK] art. 65, supra note 105, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 544-545.

125. “Parents shall have the right to conclude an agreement in written form concerning the procedure for the effectuation of parental rights of the parent residing separately from the child. If the parents cannot come to an agreement, the dispute shall be settled by a court with the participation of a trusteeship and guardianship agency at the demand of the parents (or one of them).” SEMEINIY KODEKS [SK] art. 66(2), supra note 106, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 545; Khazova, supra note 106, at 379-380.
equal bargaining power. If agreement fails, parents may go to court, but domestic violence victims could be injured or abused by an abusive spouse simply because they were attempting to comply with the law in trying to reach an agreement.

For the most part, divorces result in the mother raising the children and the father providing financial support. The Family Code requires that one of the questions that must be settled upon dissolution of a marriage is the identity of the parent with whom the minor children will reside. This decision is decided either by parental agreement or by the court. Article 66 of the Family Code sets forth visitation provisions for the other parent. However, the provision does not account for the dangers of domestic violence on children. Article 66 fails to address the danger that arises when the abusive parent has unsafe or unsupervised visitation with the children.

In Russian law, children have the right to maintain a relationship with both parents. In many instances, especially in the context of abusive relationships, the law seems overly concerned about whether the custodial parent may be alienating or withholding access to a child from the other parent. In effect, the Family Code "punishes" a parent for noncompliance with a visitation order without providing for instances in which both the child and the vic-


128. ABA CEELI 2006 Report, *supra* note 11, at 124; Khazova, *supra* note 106, at 386 (stating that 90% of cases result in the children being placed with their mothers); Fastenko & Timofeeva, *supra* note 13, at 115.


130. "A parent residing separately from a child shall have the right to communion with the child, participation in its nurturing, and the deciding of questions of the receipt by the child of education. The parent with whom the child resides must not obstruct the communion of the child with the other parent if such communion does not cause harm the physical and mental health of the child and its moral development." *SEMEINIY KODEKS [SK]* art. 66(1), *supra* note 105, reprinted in *RUSSIAN LEGAL TEXTS*, *supra* note 80, at 545.

131. "A child shall have the right to communion with both parents... The dissolution of a marriage of parents, deeming it to be invalid, or separate residence of parents shall not influence the rights of the child." *SEMEINIY KODEKS [SK]* art. 55(1), *supra* note 105, reprinted in *RUSSIAN LEGAL TEXTS*, *supra* note 80, at 539-540.

tim parent are endangered by the visitation rights of the abusive parent.\textsuperscript{133}

The law mandates that information about children be shared equally between parents. Both parents have equal rights to receive information about the child from the child’s school, doctor or other institutions.\textsuperscript{134} This information can be withheld from a parent only when the child’s life or health is in danger,\textsuperscript{135} but nothing is mentioned about any danger or risk to the other parent’s life when exchanging such information. Visitation and required information exchanges often are used by batterers to obtain information through the children about the victim parent, such as their often confidential whereabouts. The batterer can use this communication method to further abuse his victim by threatening them or trying to convince them to come back to the relationship.\textsuperscript{136}

When parents cannot agree on visitation or on which parent will have the child the majority of the time, the court must resolve the dispute by considering several factors set forth in the Family Code. These factors mainly focus on the child’s relationship to parents and siblings and whether the child’s environment is adequate for their development.\textsuperscript{137} The only factor that could be considered as addressing the exposure of the child to domestic violence is “moral and other personal qualities of the parents.”\textsuperscript{138} However, Russian

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\textsuperscript{133} “In the event of the failure to fulfill the decision of a court, to the guilty parent shall be applied the measures provided for by civil procedure legislation. In the event of a malicious failure by a court to fulfill the decision of a court, the court at the demand of the parent residing separately from the child may render a decision concerning the transfer of the child to it, proceeding from the interests of the child and taking into account the opinion of the child.” \textit{Semeiny Kodeks [SK]} art. 66(3), \textit{supra} note 105, \textit{reprinted in Russian Legal Texts}, \textit{supra} note 80, at 545-546.

\textsuperscript{134} “The parent residing separately from the child shall have the right to receive information about his child from nurturing institutions, treatment institutions, institutions of social defense of the populace and other analogous institutions. The granting of information may be refused only when there is a threat to the life or health of the child on the part of the parent. A refusal to grant information may be contested in a judicial proceeding.” \textit{Semeiny Kodeks [SK]} art. 66(4), \textit{supra} note 105, \textit{reprinted in Russian Legal Texts}, \textit{supra} note 81, at 546.

\textsuperscript{135} Khazova, \textit{supra} note 106, at 379.


\textsuperscript{137} \textit{Semeiny Kodeks [SK]} 65(3), \textit{supra} note 105, \textit{reprinted in Russian Legal Texts}, \textit{supra} note 80, at 545.

\textsuperscript{138} \textit{Semeiny Kodeks [SK]} 65(1), \textit{supra} note 105, \textit{reprinted in Russian Legal Texts}, \textit{supra} note 80, at 544.
family law scholars point out that these personal qualities usually involve broad personality characteristics\textsuperscript{139} rather than a specific recognition in the law that exposure to domestic violence affects children.

The Russian Family Code’s emphasis on parental agreements regarding child custody and visitation does not take into account the dangers inherent in relationships where “bargaining power” between the parents is unequal due to the power and control dynamics of domestic violence. One Russian family law scholar wrote that “[i]t is interesting to note that in an overwhelming majority of cases, divorcing parents resolve the issue of the child’s residence in divorce proceedings, but not the visitation rights of a parent residing separately.”\textsuperscript{140} This tendency could be explained by the near impossibility of abusive husbands and abused wives safely agreeing on the details necessary in setting forth a workable visitation schedule.

\textbf{III. INTERNATIONAL HUMAN RIGHTS LEGAL FRAMEWORK REGARDING DOMESTIC VIOLENCE: HOW HUMAN RIGHTS LAW REACHES THE PRIVATE REALM OF DOMESTIC VIOLENCE}

International human rights law mainly consists of treaties or conventions that have been agreed to or ratified by multiple countries (referred to as “states parties”). Ratification of such instruments creates a legal obligation upon states parties to be proactive, as agreed by the terms of the instruments, by taking steps to guarantee the human rights enumerated in the different treaties. These instruments include: the Universal Declaration of Human Rights (UDHR),\textsuperscript{141} the International Convention on Civil and Political Rights (ICCPR)\textsuperscript{142} and its Optional Protocol,\textsuperscript{143} the International Convention on Economic, Social and Cultural Rights (ICESCR),\textsuperscript{144} the Convention for Elimination of All Forms of Discrimination

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\item[139.] “[P]ersonal characteristics of a father and a mother may turn out to be a decisive factor in the success of a petition—in particular, characteristics affecting a parent’s ability to provide the proper upbringing for a child: kindness, honesty, humaneness, level of education, and physical and mental health.” Khazova, supra note 106, at 385.
\item[140.] Id. at 384.
\item[141.] UDHR, supra note 3.
\item[142.] ICCPR, supra note 4.
\item[143.] ICCPR Optional Protocol, supra note 5.
\item[144.] ICESCR, supra note 6.
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Against Women (CEDAW)\textsuperscript{145} and its Optional Protocol,\textsuperscript{146} the Convention for the Rights of the Child (CRC)\textsuperscript{147} and the Russian Federation's regional human rights instrument, the European Convention on Human Rights and its five protocols (European Convention).\textsuperscript{148} This section will explore how these instruments oblige states parties to combat domestic violence through binding international legal obligations.

A. States Parties' Obligations to Prevent Domestic Violence

Under various international human rights law instruments, states parties generally agree through ratification that they will refrain from violating the individual rights articulated within the respective covenants. These are generally referred to as "negative duties" - states parties promise \textit{not} to engage in action that would violate the treaty.\textsuperscript{149} Often, they do not promise to take particular action to bolster particular human rights, which would constitute an imposition of positive obligations.

States parties often see human rights covenants as imposing limitations rather than active or positive duties. For example, the ICCPR states, "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation."\textsuperscript{150} States parties can read this obligation as a prohibition against arbitrary interference with their citizens, rather than an obligation to take action through lawmaking or other changes in the legal system.

This sort of interpretation ignores the fact that most human rights contain both negative and positive obligations: the promise to refrain from obstructing the exercise of rights in addition to taking measures to prevent violations of those same rights.\textsuperscript{151}

This issue is related to the transition from traditional human rights law, which denounces human rights violations committed by

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\item[\textsuperscript{145} CEDAW, \textit{supra} note 7.]
\item[\textsuperscript{146} CEDAW Optional Protocol, \textit{supra} note 8.]
\item[\textsuperscript{147} CRC, \textit{supra} note 9.]
\item[\textsuperscript{148} European Convention, \textit{supra} note 10.]
\item[\textsuperscript{149} Rebecca J. Cook, \textit{State Responsibility for Violations of Women's Human Rights, 7} HARV. HUM. RTS. J. 125, 159 (1994).]
\item[\textsuperscript{150} ICCPR, \textit{supra} note 4, at art. 17.]
\item[\textsuperscript{151} Cook, \textit{supra} note 149, at 159; Philip Alston & Henry J. Steiner, \textit{International Human Rights in Context: Law, Politics, Morals} 184-85 (2\textsuperscript{nd} ed. Oxford University Press 2000).]
\end{enumerate}
\end{footnotesize}
states, to that addressed more specifically to individuals. Domestic violence occurs "in private" and is by its very nature "domestic" (within the home) rather than public. Due to the "private" nature of domestic violence, states can argue they have no human rights responsibility regarding domestic violence. Human rights enforcers hold accountable those acts committed by states or individuals acting within the official capacity of the state. The acts of private citizens, such as those who engage in domestic violence, are traditionally considered outside the scope of state responsibility.

However, within the last thirty years, a state's failure to prevent, investigate, and punish acts committed by purely private actors has become a human rights issue. A shift in state responsibility has trickled to private actors. Those who commit domestic violence may be included in this group. If the state's failure to address a criminal issue is related to a prohibited form of discrimination, such as that based on gender, the guarantee against discrimination is a definite human right.

Thus, if a state is to be held responsible for punishing private human rights violations, the particular violation must be linked to a systemic failure to end discrimination in that area. States cannot be held liable on the global human rights stage for every violent act of an individual in their country. Similarly, legal responsibility for one husband's acts of domestic violence against his wife cannot be imputed to the state every time the violence happens.

Instead, state responsibility for private violent acts occurs when the state fails to work towards eliminating widespread violence by granting remedies to victims, bringing the perpetrators to justice.

154. Beasley & Thomas, supra note 152, at 1124.
155. Id. at 1124.
156. WEILER, supra note 22, at 58.
157. "Non-prosecution of the crimes of private individuals becomes a human rights issue (assuming no state action or direct complicity) only if the reason for the state's failure to prosecute can be shown to be rooted in discrimination along prohibited lines, such as those set forth in Article 26 of the Covenant on Civil and Political Rights." Beasley & Thomas, supra note 152, at 1125-26.
158. Cook, supra note 149, at 151.
and outlawing the underlying causes of such crimes. If criminal violations such as domestic violence continually occur unchecked by a state’s government and legal system, a state may be considered “complicit” in the commission of the private crime.

The bar to legally demonstrating this form of state complicity is high. As one scholar notes, “[T]here would have to be systematic, discriminatory non-enforcement of the domestic criminal law against murder or assault for domestic violence to constitute a human rights issue, not merely a showing that the victims’ lives ended or their bodies were harmed.”

1. Respect and Ensure Human Rights

The states parties’ obligation to act pursuant to the ICCPR is considered an immediate requirement: states “undertake . . . to respect and to ensure . . . the rights recognized in the present Covenant.” The European Convention contains a similar immediate obligation: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in . . . this Convention.” Normally, the duty to “respect” is considered by international human rights scholars to be “negative,” “hands-off,” and meant to ensure that the state does not “worsen an individual’s situation by depriving that person of the enjoyment of a declared right.” However, the in light of recent developments in human rights law, the duty to respect can extend to nonstate actors.

Practical application of this obligation is best illustrated in a well-known case decided by the Inter-American Court of Human Rights in 1988. In Velasquez Rodriguez, the state of Honduras was held liable for a human rights violations committed by private individuals because the Honduran government failed to prevent kidnappings committed by members of the military who were acting as private individuals. The court held that the state failed to “ensure”
respect for guaranteed human rights of the victims and therefore violated its obligations under international human rights treaties.167

2. Agree to Pursue

When CEDAW was ratified, states parties agreed to be responsible for specific anti-discrimination tasks that are outlined in Articles 5 through 16, through the general wording of responsibility in Article 2.168 Article 2 contains the following promise: "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake . . . ."169 Although accompanied with the urgent message of "without delay," the term "agree to pursue" is interpreted by some scholars as lacking immediacy or absolute liability. "It requires only that states parties exercise due diligence in implementing treaty provisions."170

However, CEDAW goes further than requiring states parties to simply enact laws that prohibit discrimination against women. Protection of women against discrimination must be "effective," and legal protection of women must be equal to that of men.171 CEDAW forbids "practices of discrimination" by public officials,172 a term that could apply to the systematic, complacent approach by Russian police when failing to recognize the problem of domestic violence.

"Due diligence" entails the procedure that governments must take when a crime has been committed: prevention of future crimes, investigation of crimes that have occurred and "prosecution of perpetrators through fair proceedings."173 Compliance with

167. For further discussion of the Velasquez Rodriguez case, see Beasley & Thomas, supra note 153, at 1125; Cook, supra note 149, at 152.
168. Cook, supra note 149, at 158.
169. CEDAW, supra note 7, art. 2.
170. Cook, supra note 149, at 159.
171. "To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination." CEDAW, supra note 7, art. 2(c).
172. "To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation." CEDAW, supra note 7, art. 2(d).
173. United Nations Division for the Advancement of Women in collaboration with United Nations Office on Drugs and Crime, Expert Group Meeting, Good Practices in
human rights law also requires that states compensate victims in the form of reparations, "justice and rehabilitation."\textsuperscript{174} The adoption of specific legislation, allocation of resources to social programs to assure the safe implementation of such law and cooperation with non-governmental organizations are examples of how a government can put "due diligence" into action with regard to violence against women.\textsuperscript{175} In many Articles, CEDAW exerts a proactive obligation on states parties to "take all appropriate measures."\textsuperscript{176}

3. Achieve Progressively

In contrast to international instruments that guarantee civil and political rights, such as ICCPR, those that guarantee economic, social and cultural rights do not contain a blanket obligation for states parties to act immediately. Instead, the obligation to act is less immediate and denotes a gradual movement towards safeguarding the guaranteed rights. The ICESCR requires that states parties "undertake to take steps" "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means."\textsuperscript{177} As long as a state party to the ICESCR can be viewed as taking steps toward the realization of the guaranteed rights, then that country is considered in compliance with its duties under the covenant.

Taken together, these human rights instruments require states parties to make laws to guarantee that individuals may exercise the rights listed therein and prohibit states parties from violating those same guaranteed rights. Recent legal trends take these obligations and prohibitions further and require states parties to combat systematic discrimination against women as well as violations of other rights, even when committed by private individuals.

goodpractices.pdf. [hereinafter \textit{DAW Good Practices Report}]. The United Nations brought together a multidisciplinary group of experts on violence against women to identify the most effective methods a state or non-governmental organization can employ to combat gender violence and to measure the success of such initiatives. \textit{Id.} at 2.

\textsuperscript{174} \textit{Id.} at 4.
\textsuperscript{175} \textit{Id.} at 3.
\textsuperscript{176} For example, CEDAW requires that "[s]tates parties shall take all appropriate measures to eliminate discrimination against women." CEDAW, \textit{supra} note 7, art. 16.
\textsuperscript{177} ICESCR, \textit{supra} note 6, art. 2(1).
B. Specific Rights that Guarantee a Woman’s Freedom from Domestic Violence

International and regional human rights instruments do not contain language that explicitly prohibits domestic violence or that directly requires states parties to eradicate violence in the home. However, the principle that allowing domestic violence to continue is a violation of international human rights law is evolving and growing in international jurisprudence. Rights and freedoms that are guaranteed by various instruments, such as freedom from discrimination, gender equality and the right to life and dignity, can be interpreted to require freedom from family violence. Two General Recommendations issued by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) explicitly link several fundamental rights directly with the elimination of violence against women. General Recommendation No. 12, issued in 1989, ties CEDAW Articles 2, 5, 11, 12 and 16 to the requirement of states parties to protect women against violence, including that occurring within the family. The recommendation advises states parties to report on measures taken to stop violence against women, such as legislation, support services and statistics.

By 1992, the Committee had declared that not enough progress had been made by states parties in reporting under General Rec-

179. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) is the expert treaty body charged with monitoring the implementation of domestic measures by states parties according to the obligations set forth by CEDAW. CEDAW, supra note 7, art. 17-21. See also Division for the Advancement of Women, Committee on the Elimination of Discrimination against Women, available at http://www.un.org/womenwatch/daw/cedaw/committee.htm.
181. CEDAW, supra note 7, arts. 2, 5, 11, 12, and 16. Article 11 requires states parties to eliminate gender discrimination in the employment context, which is beyond the scope of this paper. CEDAW, supra note 7, art. 11.
182. CEDAW General Recommendation 12, supra note 180.
ommendation No. 12. In response, the Committee issued General Recommendation No. 19, which is much more explicit in its condemnation of violence against women and more detailed in its recommendations.\textsuperscript{183}

While general recommendations made by treaty bodies are not legally binding on states parties, they have evolved to an elevated "quasi-judicial" status within international human rights law jurisprudence.\textsuperscript{184} Like its Human Rights Committee counterpart, the CEDAW makes general recommendations to guide states parties regarding reporting requirements and compliance with covenant provisions.\textsuperscript{185}

States generally agree that domestic violence prevents its victims from enjoying guaranteed human rights. In the 1993 Declaration on the Elimination of Violence Against Women, the U.N. General Assembly affirmed that "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms."\textsuperscript{186} The United Nations officially declared that it is "concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women."\textsuperscript{187}

Several individual human rights converge to make domestic violence a violation of such freedoms. They include freedom from discrimination, the rights to life, health, an adequate standard of living and education, rights affecting traditions, cultures and societal attitudes, and children's rights.

1. Discrimination

International human rights literature is replete with references to the relationship between gender discrimination and domestic violence.\textsuperscript{188} In the end analysis, it is perhaps best to conclude that violence against wives is a function of the belief, fostered in most cultures throughout the world, that men are superior and that the

\textsuperscript{183} CEDAW General Recommendation 19, supra note 180.
\textsuperscript{185} General Comments authored by the Human Rights Committee pursuant to the ICCPR have become authority for interpreting and applying the ICCPR. THOMAS BUERGENTHAL ET AL., INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL 56 (2002).
\textsuperscript{186} CEDAW General Recommendation 19, supra note 180.
\textsuperscript{187} Id.
\textsuperscript{188} Stark, supra note 153, at 268.
women they live with are possessions that men can treat as they wish.\textsuperscript{189} Females are vulnerable to discrimination simply by dint of being female and considered inferior by the men who hold power over them. The men who are closest to them are "private actors" who carry out a majority of the discrimination and abuse that individual women suffer.\textsuperscript{190}

A state party’s discrimination based on gender or sex is prohibited almost universally by every international human rights instrument. The UDHR, the ICCPR and the ICESCR, a trio commonly known as the “International Bill of Rights,”\textsuperscript{191} all prohibit such discrimination. The UDHR declares that “everyone” is entitled to its enumerated rights and freedoms “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\textsuperscript{192} Although the UDHR is not a treaty and does not enjoy the same force of law as other human rights covenants, it represents the binding obligations of United Nations members and is generally considered a statement of customary international human rights law.\textsuperscript{193} Both the ICCPR and the ICESCR require states parties to guarantee all of the corresponding instruments’ recognized rights “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\textsuperscript{194} The CRC also prohibits discrimination in its application.\textsuperscript{195} In addition, the European Conven-
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Finally, CEDAW’s focus on eliminating discrimination against women incorporates text that defines the discrimination that it seeks to avoid. CEDAW’s first article defines “discrimination against women” as follows:

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The prohibition against “discrimination against women” applies to domestic violence by virtue of the term’s definition under CEDAW’s Article 1. Discrimination is even prohibited by individuals, as stated in Article 2:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake . . . to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise [emphasis added].

CEDAW General Recommendation No. 19 clarifies the definition of “discrimination” to include violence that is inflicted upon a woman because of her gender. If a state party does not protect women against male violence or does not apply its laws equally to all persons, the required gender equality cannot be reached. Discrimination occurs through the non-enforcement of laws. The practical application of law is the crucial inquiry; if a law is gender-

196. “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” European Convention, supra note 10, art. 14.
197. CEDAW, supra note 7, art. 1.
198. CEDAW, supra note 7, art. 2(e).
199. “Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.” CEDAW General Recommendation 19, supra note 180, para. 7.
neutral yet is applied in a discriminatory way, human rights violations result.

2. Equality.

Equality of men and women also serves as a universal, fundamental right guaranteed under most human rights instruments. The UDHR admonishes in Article 1 that "[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The third articles of both the ICCPR and the ICESCR contain almost identical language requiring states parties to "undertake to ensure the equal right of men and women to the enjoyment of all" civil and political rights or economic, social and cultural rights, set forth in the respective covenants.

General equality of all people is also guaranteed in the areas of laws and marriage so that all individuals are ensured equal access and opportunity. The UDHR addresses equal protection and the ICCPR guarantees equality and freedom from discrimination in the same article as follows:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW Article 15 demands similar equality in Sections 1 and 2: "States Parties shall accord to women equality with men before the law." Section 2 states in part, "States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity." The ab-

200. UDHR, supra note 3, art. 1.
201. ICCPR, supra note 4, art. 3; ICESCR, supra note 6, art. 3.
202. "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." UDHR, supra note 3, art. 7.
203. ICCPR, supra note 4, art. 26. Individuals are also guaranteed equality in the courts ("All persons shall be equal before the courts and tribunals."). ICCPR, supra note 4, art. 14(1).
204. CEDAW, supra note 7, art. 15(1)-(2).
sence of domestic violence laws in Russia and the lack of uniform due process application violate these rights.

Equality in marriage is guaranteed by CEDAW, UDHR, ICCPR and the European Convention. On its face, the Family Code purports to grant all rights equally as required. However, once the dynamics of domestic violence enter the relationship, the practical effect is to eliminate some—if not all—enumerated freedoms.

3. Life

The ICCPR states that every human being has the inherent right to life, that this right is protected by law and that no one will be arbitrarily deprived of their life and the European Convention states that “everyone’s right to life shall be protected by law.” An abused woman does not have the freedom to enjoy this guaran-

205. “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.” CEDAW, supra note 7, art. 16(1).

206. “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” UDHR, supra note 3, art. 16(1).

207. “States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.” ICCPR, supra note 4, art. 23(4).

208. “Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.” European Convention, supra note 10, art. 12.

209. ICCPR, supra note 4, art. 6(1).

210. European Convention, supra note 10, art. 2(1).
teed right to life. According to the Special Rapporteur on Domestic Violence with the Human Rights Commission, the "inherent right to life" is directly related to violence against women.\(^{211}\)

4. Health

CEDAW requires equal access to health care by both men and women. CEDAW Article 12 addresses women's health care and states, "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."\(^{212}\) CEDAW’s General Recommendation No. 19 applied this requirement to family violence and explicitly recognized that "[v]iolence against women puts their health and lives at risk."\(^{213}\)

The ICESCR also places great value on an individual’s right to health. States parties have agreed that every person has the right to "the enjoyment of the highest attainable standard of physical and mental health."\(^{214}\) They also agree that "[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for . . . the creation of conditions which would assure all medical service and medical attention in the event of sickness."\(^{215}\)

Unfortunately, healthcare workers in the Russian Federation generally see domestic violence as a legal issue rather than a health issue.\(^{216}\) Underreporting, mistreatment, ignorance and denial of domestic violence injuries at emergency rooms is a common problem. While workers technically are required to report to the police any injuries which they suspect have resulted from domestic violence, official education on the dynamics and symptoms of domestic violence is nonexistent.\(^{217}\)

\(^{211}\) Stark, \textit{supra} note 153, at 268.
\(^{212}\) CEDAW, \textit{supra} note 7, art. 12(1).
\(^{213}\) \textit{CEDAW General Recommendation 19, supra} note 180, para. 19.
\(^{214}\) ICESCR, \textit{supra} note 6, art. 12(1).
\(^{215}\) ICESCR, \textit{supra} note 6, art. 12(2)(d).
\(^{216}\) ABA CEELI 2006 Report, \textit{supra} note 11, at 101.
\(^{217}\) \textit{Id.} at 102.
5. Adequate Standard of Living

The right to an adequate standard of living pertains to domestic violence because of the harsh conditions that victims face while being abused at home, when they attempt to escape the abuse and after they succeed in ending the abusive relationship. Surviving victims often face homelessness, unemployment, low income, loss of nutrition and other basic needs of living. Yet the ICESCR clearly addresses basic sustenance issues by requiring states parties to provide "adequate food, clothing and housing" to all of their residents by right.218

6. Education

The knowledge of how to safely separate from a batterer is the pivotal key in domestic violence survivors' minds when they decide whether to escape a domestic violence situation. If they are sheltered from the realization of their rights and the resources they need in order to flee and survive, they cannot enjoy the human rights guaranteed to them. Thus, education of the rights and options available to domestic violence victims must be provided to Russian citizens in order to ensure compliance with the human right to education guaranteed by several international human rights covenants. The ICESCR states that everyone has the right to education and explains that such education must be "directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms."219 CEDAW emphasizes that the education of

218. "(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (2) The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need." ICESCR, supra note 6, art. 11.
219. ICESCR, supra note 6, art. 13(1).
men and women must be equal, particularly to eliminate gender stereotypes.\footnote{220}

7. Traditions, Cultures and Societal Attitudes

CEDAW’s provisions require much from states parties in order to destroy archaic traditions in their countries that historically have disadvantaged women. CEDAW Article 2(f) calls for the abolition of customs that constitute discrimination against women:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.\footnote{221}

Furthermore, CEDAW expects governments to reach into the “social and cultural patterns” of its people to eliminate gender-based stereotypes. Article 5 states:

States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.\footnote{222}

In response to Article 5(a), Amnesty International demands the government of the Russian Federation “to challenge those aspects of its culture which reinforce hierarchical stereotypes, and which dissuade women from seeking remedies that will protect them from further violence.”\footnote{223}

As discussed above, the Russian Criminal Code contains laws that outlaw assault in a gender-neutral manner. However, all rele-
vant evidence shows that these laws are applied in a way that discriminates against female victims and results in "impunity for violence against women in the family." In part, the blame for inconsistent and discriminatory enforcement lies with societal attitudes, traditions and customs regarding domestic violence. The Russian Federation even acknowledged this omission in its Criminal Code in its last report to the CEDAW Committee in 1999: "The new Criminal Code of the Russian Federation (CCRF) does not contain any articles providing punishment for habits and prejudices based on notions of the inferiority or superiority of one of the sexes." These are the patterns that CEDAW requires a state party to eradicate.

8. Children’s Rights as Women’s Rights

Certainly, male batterers may physically abuse children as well as the children’s mother. However, many cases exist of batterers who do not beat their children but who abuse their wives—both physically and emotionally—in front of the children. The detrimental effects on children who witness domestic violence against their mothers is well-documented in the United States.

A convention such as the CRC that guarantees children’s rights can also advance women’s human rights in the area of domestic violence based on the detrimental effects of violence on families. First, spousal abuse sacrifices the rights of children involved because of a child’s dependency on its mother, whose rights and physical well-being are damaged by such abuse. Second, violence against mothers directly implicates the rights guaranteed to children under the CRC because it limits the mother’s ability to provide for and protect her children. Thus, children’s and mother’s rights are intricately related and both must be addressed in order to give full substance to women’s rights.

224. Id. at 9. See also Sharon Horne, Domestic Violence in Russia, 54 AM. PSYCHOLOGIST 55, 58 (1999) (listing ways in which gender bias acts to prevent prosecution of domestic violence at many stages of investigative and criminal proceedings).


The Convention on the Rights of the Child promotes the "best interests of the child" as the primary consideration of all rights and obligations articulated in the agreement.\textsuperscript{227} States parties are obligated to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized" in the CRC.\textsuperscript{228} The convention recognizes that both parents have the responsibility to promote the best interests of their children as their main concern.\textsuperscript{229} States parties must also protect children from violence in its many forms.\textsuperscript{230}

Exposure to domestic violence harms children.\textsuperscript{231} Freeing mothers from intimate partner violence bolsters the human rights of their children. If children watch their fathers assault and emotionally abuse their mothers, they suffer trauma themselves and their mental well-being is sacrificed—in contravention of the rights guaranteed under the CRC.\textsuperscript{232}

As part of its obligation as a state party to the Convention on the Rights of the Child, the Russian Federation submitted its Third Periodic Report on November 15, 2004 to the Committee on the

\begin{footnotesize}
\begin{enumerate}
\item CRC, supra note 9, art. 3(1).
\item CRC, supra note 9, art. 4.
\item "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern." CRC, supra note 9, art. 18(1).
\item "(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. CRC, supra note 9, art. 19.
\item See generally Amy Haddix, Comment, Unseen Victims: Acknowledging the Effects of Domestic Violence on Children Through Statutory Termination of Parental Rights, 84 CAL. L. REV. 757 (1996) (contending that parents who engage in domestic violence are unfit parents); Stephen E. Doyne et al., Custody Disputes and Domestic Violence: Making Children's Needs a Priority, in NANCY K.D. LEMON, DOMESTIC VIOLENCE LAW 340 (2001) (explaining why exposure to abuse is emotional abuse of a child); Joan Zorza, Protecting the Children in Custody Disputes When One Parent Abuses the Other, in LEMON at 331 (revealing that over half of men who beat their wives also beat their children).
\item See e.g. Stark, supra note 153, at 275-76.
\end{enumerate}
\end{footnotesize}

A Supreme Court order in 1998 reportedly “clarified” that the “concept of violence against children” includes physical violence, mental violence, sexual offenses and “the use of inadmissible methods of upbringing,” which did not include indirect exposure to domestic violence in its definition. According to Russia’s report, social services for families—including counseling for children—are provided at 3,080 establishments throughout the country.

The Committee expressed concern that while the best-interests-of-the-child standard is articulated in Russian laws and policies, the principle is limited in its practical application due to societal attitudes, lack of adequate resources and lack of training. The Committee also recognized the link between neglect of the child’s best interests and the child’s exposure to family violence, and admonished the Russian Federation for its disregard of the issue. “The Committee is also concerned that abused children who are exposed to violence within the family and in institutions do not always receive sufficient care and assistance and that not enough is being done with regard to prevention (and preventive interventions) and awareness-raising in this area.”

At the end of 2005, the Committee recommended that Russia provide more services to children who are exposed to domestic violence.
violence, such as providing adequate reporting facilities, counseling assistance and a public education campaign about the negative consequences of such exposure.\textsuperscript{240}

By linking domestic violence to the definition of discrimination that is prohibited under CEDAW, the CEDAW Committee sees states parties as responsible for eliminating domestic violence through their laws, enforcement and attitudes. The CEDAW Committee stated in its General Recommendation No. 19 that under general international law and specific human rights covenants, states parties may also be responsible for private acts—if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence—and for providing compensation.\textsuperscript{241} Because Article 2(e) of CEDAW requires states parties “to take all appropriate measures to eliminate discrimination against women by any person,”\textsuperscript{242} if the states parties fail to prevent, investigate and punish adequately the issue of domestic violence, they are violating their CEDAW and other international human rights obligations.

IV. ANALYSIS OF WHETHER THE RUSSIAN FEDERATION’S RESPONSE TO DOMESTIC VIOLENCE COMPLIES WITH INTERNATIONAL HUMAN RIGHTS LAW

The Russian Federation does not adequately address domestic violence in its legal codes. In fact, while the Constitution purports to grant equal rights to women and prohibits discrimination, both the Criminal Code and the Family Code are notably silent on the issue of protecting victims of domestic violence.

In its Fifth Periodic Report of States Parties to the CEDAW Committee, the Russian Federation failed to mention violence against women, let alone domestic violence, in its review of its own progress and difficulties under CEDAW Article 2 regarding the elimination of gender discrimination.\textsuperscript{243} In its list of “persisting obstacles,” the Russian Federation admitted the following:

Cruelty and violence towards women, especially routine violence in the family, remains a serious problem. Every year 14,000 Russian women die at the hands of their hus-

\begin{itemize}
\item \textsuperscript{240} \textit{Id.} para. 47 at 10.
\item \textsuperscript{241} \textit{CEDAW General Recommendation 19, supra} note 180, para. 9.
\item \textsuperscript{242} CEDAW, \textit{supra} note 7, art. 2(e).
\item \textsuperscript{243} Russia’s Fifth CEDAW Report, \textit{supra} note 15, at 13-14.
\end{itemize}
bands or other relatives. Sociological surveys show that 30 per cent of married women are regularly subjected to physical violence. The situation is exacerbated by the lack of statistics and indeed by the attitude of the agencies of law and order to this problem, for they view such violence not as a crime but as a "private matter" between the spouses.244

However, CEDAW Article 5, which mandates the elimination of gender stereotypes in society, triggered no attempts by the Russian government to change the thinking of its citizens regarding violence at home.245

A. Barriers to Full Realization of Women's Human Rights

Under the Russian Domestic Violence Regime

Every sector of Russian government and many of its social programs fall short of compliance with Russia's international human rights obligations. Several factors exist that bar women from fully enjoying their human rights if they are abused by their intimate partners. Barriers include the lack of a specific domestic violence law, the indifference of law enforcement, the absence of protection orders available to victims, prosecutorial ignorance, lenient sentencing, housing shortages, few domestic violence shelters, limitations on options for residency and the inadequate response of the healthcare sector.

1. No Domestic Violence Law

No law specifically addresses domestic violence in the Russian Federation. "The lack of a specific law on domestic violence in Russia is a major obstacle to combating this violence."246 Furthermore, arguments by some Duma members that domestic violence legislation would be duplicative are incorrect because the current law, as applied, does not address the problem. Clearly, a clarification of the legal code emphasizing that domestic violence is a crime that will not be tolerated is necessary. Although prosecutors' groups claim that existing laws are adequate to address domestic violence,247 the Special Rapporteur on Violence Against Women

244. Id. para. 6., at 38.
245. Id. at 16-17.
interviewed women's groups who claimed that general criminal provisions "are often interpreted too narrowly to apply to domestic violence cases, making it difficult to punish perpetrators." 248

When laws do exist that help women escape domestic violence, other institutional mechanisms must be in place in order to ensure victims' safe escape from their batterers and their permanent separation. 249 Most victims remain completely dependent on their abusers for important resources, such as money, shelter and childcare. If these resources remain unavailable to victims who attempt to escape abuse, the victim cannot live independently and is often forced to return to her batterer, creating an even greater risk of violence.

2. Law Enforcement Indifference

"Police don't do anything— one should deal with the situation on one's own" has become a common saying in Russia in the last several years, illustrating the public's general lack of faith in law enforcement. 250 This situation has particularly dire consequences for the plight of domestic violence victims. The World Health Organization conducted a study that found that only 19% of female domestic violence victims in Russia seek police protection. 251 Legal experts who have examined Russia's domestic violence framework agree that police inaction jeopardizes the safety of domestic violence victims and gets in the way of any true remedy that the present law could provide. 252 Several harmful police habits have been documented and reported: victims report being blamed by the police for the violence, being further harassed at the police station while filing a complaint and being beaten again by the perpetrator in retaliation for seeking help. 253

For the most part, police officers in Russia do not recognize that domestic violence is a serious issue. 254 One police officer asserted

249. Adamushkina, supra note 59, at 6 (noting that one Duma member acknowledged this necessity).
250. Fastenko & Timofeeva, supra note 13, at 116.
251. WHO Report, supra note 70, at 3.
252. Special Rapporteur ECOSOC Report, supra note 12, paras. 38-41, at 11-12; WEILER, supra note 22, at 71-73.
254. Mastykina, supra note 23, at 1; Russia: Violence Against Women Rampant, Condoned By Authorities, 29 WOMEN'S INT'L NETWORK NEWS 54 (2003) (describing how
that he knew domestic violence was a major problem but went on to contradict his own concern by saying that "after marriage, many women don’t look after themselves. They let themselves go physically, and their husbands lose interest." This attitude, equating physical abuse with ordinary marital difficulties, is emblematic. Typically, police officers do not pursue cases of domestic violence even if a victim has asked for help on numerous occasions.

Police inaction results in a great reluctance on the part of victims to call police or to file police reports. According to an ABA Report, the Federal Ombudsman stated that only 5-10% of female victims of domestic violence file reports with the police. "Due diligence" in combating domestic violence does not exist in Russia.

Domestic violence is generally a gender issue, and as the United Nations General Assembly stated:

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women, and, to this end should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

A state’s duty to investigate crimes of violence against women starts with its police force. When the police do not respond to domestic violence calls, when they do not file reports once they visit the scene to investigate and when they engage in tactics that involve blaming victims instead of helping them, the state is engaging in a systematic policy of gender discrimination.

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255. WEILER, supra note 22, at 71.
256. Johnson, supra note 38, at 156.
257. ABA CEELI 2006 Report, supra note 11, at 99.
3. *No Protection Order or Restraining Order Framework*

The most dangerous time for a victim of domestic violence is *after* she attempts to escape. When a victim breaks free of the abuser’s control, the abuser feels his power disappearing and often his abuse escalates in response.\(^{259}\) Restraining orders are therefore crucial to ensure the safety of domestic violence victims. Such orders prohibit the abuser from having any contact with the victim, from going near her person, her residence, her place of work or her school. If the abuser violates the order, then he is arrested and is charged with the separate crime of violating the restraining order. These orders supplement criminal laws that outlaw wife beating and allow the victims to petition the court for protection on their own, without relying on the prosecutor. Battered women’s shelters, hotlines and new housing cannot be effective without the restraining order mechanism; otherwise, if the abuser finds out where the victim is located, there is nothing that would stop him from finding her and continuing the abuse.

The Russian Federation’s Criminal, Family and Civil Codes lack domestic violence protection order provisions. If the police do take action and arrest an abuser, there is nothing to stop him from going back home and beating the victim even more after he is released. The Special Rapporteur on Violence Against Women stated that “[w]ith no system of restraining or civil protection orders, local officials lack a legal mechanism to protect the victim from further violence once the perpetrator has been released.”\(^{260}\) ABA representatives noted that “with no temporary legal protection from the batterer, the victim often finds herself in the dangerous situation of living with the accused while waiting for her case to be heard.”\(^{261}\) When comparing the availability of restraining orders in other countries to the reality in Russia, one Russian journalist lamented, “Russian women, unfortunately, have a long way to go before they experience anything like this kind of support from their own government.”\(^{262}\)

\(^{259}\) *Jones*, supra note 51, at 95.
\(^{261}\) ABA CEELI 2006 Report, *supra* note 11, at 100.
\(^{262}\) Mastykina, *supra* note 23, at 1.
4. Lack of Prosecution

Few domestic violence complaints trickle up to the prosecutor’s office for filing as criminal charges against the abuser. Investigations rarely occur within Russian prosecutors’ offices. Few abusers are charged even under the generic assault provisions that are available under the Russian Criminal Code.263 State prosecutors rarely work on domestic violence cases.264

In 1998, when an American Bar Association attorney offered to set up training for prosecutors about domestic violence, the official stated, “Why would we train prosecutors about violence in the home? We don’t deal with those cases.”265 Most domestic violence criminal charges result from “private prosecutions,” a complicated legal procedure by which the victim must drive her case forward without the leadership of a prosecuting attorney. Most such cases take from one month to two years and are heard by poorly-trained “justices of the peace.” The drawn-out process proves too burdensome and dangerous for most victims. One police official who spoke with the American Bar Association estimated that about 70% of women refuse to go forward with private prosecutions.266

Examples of abuse that go uninvestigated and unpunished are startling. One victim suffered burn injuries after her husband poured gasoline on her and set her on fire.267 Neither the police nor the prosecutor filed criminal charges or looked into the case. The victim was too frightened to press criminal charges and claimed that her injuries were caused by a gas leak.268 A victim’s minimization of such injuries is common among domestic violence victims and an astute and responsible official would have recognized that the severity of the injuries did not match her story. Similarly, an observant police officer may suspect that a victim is minimizing the abuse when she claims that the large bruise on her face was her own fault, since she walked into a door.269

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264. Special Rapporteur ECOSOC Report, supra note 12, para. 41, at 12.
265. ABA CEELI 2006 Report, supra note 11, at 100.
266. Post, supra note 41, at 81.
267. ABA CEELI 2006 Report, supra note 11, at 100.
268. Id.
269. Id. at 100.
270. Battered women tend to minimize the history of assault against them and the pain that they have suffered. See Julie Blackman, Potential Uses for Expert Testimony: Ideas
Clearly, the dearth of domestic violence prosecutions in a nation that has acknowledged for years, in its own statistics, to have a widespread domestic abuse problem is a violation of Russia’s international obligation to combat domestic violence.

5. Lenient Sentencing

In the rare instances where a domestic abuser is prosecuted and sentenced, the Russian Criminal Code sentencing structure provides neither adequate punishment for abusive spouses nor sufficient protective measures for the safety of victims. Fines, community service and conditional sentences often result in premature release from custody, neither protecting the victim nor deterring the perpetrator.

The following story was related to the Special Rapporteur on Violence Against Women. It is a rare instance of criminal prosecution of an abusive spouse in Russia, but serves to illustrate the facility with which the Russian Criminal Code allows an abuser to continue their abuse after a first conviction:

Elena, a 38-year-old teacher with a 14-year-old son from her first marriage, was divorced in May 2004 after eight years of marriage. Her ex-husband had become violent towards her and her son during the last year of their marriage. With the support of women’s organizations, Elena’s case was taken up as a criminal case under article 119.271 Her husband was sentenced to one year’s “conditional” imprisonment and released with the understanding that a more severe punishment would be inflicted if the crime was repeated. Elena and her ex-husband continued to share the same flat. On one occasion, he got drunk and beat her with the leg of a chair and tore off her clothes. She managed to escape from the flat and got a medical report from a clinic. Elena was able to file another criminal complaint and her

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271. “The threat of homicide or of causing of grave harm to health, if there were grounds to fear the effectuation of this threat—shall be punishable by limitation of freedom for a term of up to two years, or by arrest for a term of from four up to six months, or by deprivation of freedom for a term of up to two years.” UGOLOVNIY KODEKS [UK], art. 119, reprinted in RUSSIAN LEGAL TEXTS, supra note 80, at 649.
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ex-husband has now been charged with attempted murder.\textsuperscript{272}

Other reports indicate that judges often make moral judgments about the victims of domestic violence, placing responsibility on them by allowing perpetrators a "provocation defense." Judges mitigate perpetrators' punishment for many reasons, ranging from the defendant expressing sympathy for his victim to the idea that a man has a "moral right" to discipline his wife.\textsuperscript{273}

6. Housing

Post-Soviet Russia suffers from a severe shortage of housing for all of its citizens. Some housing remains state-owned, but much public housing has been converted to private housing. The Housing Code, which was revised in March 2005, places legal obstacles in the way of a victim of domestic violence who needs to escape her batterer. The result is that many victims are forced to continue living with their abusers simply because they have nowhere else to go.\textsuperscript{274} Russian newspapers have reported the link between remaining in the same living space with an abuser and increased violence, stating that an abusive situation is "especially aggravated" if the woman obtains a divorce but is forced to continue to share an apartment with her batterer.\textsuperscript{275}

Housing barriers in Russia are numerous. First, state-subsidized housing is in such high demand that it is "virtually impossible" for an escaping victim to rent a place of her own.\textsuperscript{276} Second, the Housing Code states that any change in housing, including eviction of one housemate, requires either the agreement of all residents or a court order. There are no exceptions for violent or dangerous housemates, or even unbearable living conditions.\textsuperscript{277} Third, private

\textsuperscript{272} Special Rapporteur ECOSOC Report, supra note 12, para. 43, at 12.
\textsuperscript{273} Johnson, supra note 38, at 158.
\textsuperscript{274} Katrina Leifeld, The Russian Shelter Movement, 31 OFF OUR BACKS 22, 23 (2001); OSCE Briefing, supra note 62, at 44 (noting the concerns of ethnic communities with a statement of the NCSJ, Advocates on Behalf of Jews in Russia, Ukraine, the Baltic States and Eurasia, entitled "Addressing Domestic Violence Through Ethnic and Religious Communities in Russia").
\textsuperscript{275} Polunin, supra note 16, at 3.
\textsuperscript{276} Special Rapporteur ECOSOC Report, supra note 12, para. 32, at 10.
\textsuperscript{277} The Special Rapporteur found that the new housing code provisions were disadvantageous to women in general, and specifically for those trying to escape abuse. Id. para. 32, at 10.
housing is set up in a way that usually disadvantages battered women. If two people co-own or co-rent a residence equally, eviction requires a court order and one of them cannot be forced out by the other. If one person owns or leases the residence and the housemate does not, the owner/lessee may evict the other. Usually, men hold such leases and it is women who are evicted.278

7. Battered Women’s Shelters

If a victim of domestic violence lacks a safe destination when she tries to escape abuse, she remains incapable of separating permanently from her batterer. Battered women’s shelters are an important means of combating domestic violence and empowering victims to use the legal mechanisms that are available to them. The importance of shelters is recognized internationally, even in Russia.279

The Special Rapporteur on Violence Against Women reported in 2006 that only five shelters existed throughout the entire Russian Federation.280 Efforts to increase shelters must compete with the notion, as expressed by a prosecutor, that “if shelters were created for battered women, they would quickly turn into brothels.”281 Women’s crisis centers are on the rise (in 2008, there were 120) but they do not provide actual shelter for women who need to flee their abusers quickly.282 The lack of shelters in Russia results in part from the shortage of available real estate. Any movement to build or organize them suffers from a lack of funds, lack of government support and the fact that no organization at the national level exists for organizing battered women’s shelters.283

8. The “Propiska”

Under Soviet rule, all individuals were restricted to one legal residence, and each was required to register that residence with a document called a propiska. This document controlled one’s right to travel, get married, change residence, access services or get a job. The practice acted as a restriction on individuals’ freedom of

278. Id. para. 33, at 10.
279. Id. para. 48, at 13.
280. Id. para. 48, at 13.
281. Post, supra note 41, at 81.
movement and has since been abolished by the Russian Constitutional Court.\footnote{See generally Noah Rubins, The Demise and Resurrection of The Propiska: Freedom of Movement in the Russian Federation, 39 HARV. INT’L L.J. 545 (1998) (arguing that freedom of movement is an international human rights issue and is guaranteed by most human rights covenants). “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” ICCPR, supra note 4, art. 12(1).}

However, the practice seems to be ongoing on the local level in a manner that is dangerous for domestic violence survivors. The Special Rapporteur learned that the propiska is a “major obstacle” for women who want to leave their abusive partners, yet officials dodge the issue by insisting that the practice has been banned even while it continues to be enforced locally. Victims report that if they leave their home in order to escape a violent partner, the extra-constitutional continuation of the propiska program places them at risk of being refused a new residence permit, which would eliminate their freedom of movement and any safety inherent in establishing a residence apart from an abusive partner.\footnote{Special Rapporteur ECOSOC Report, supra note 12, para. 35, at 10-11.}

9. Inadequate Response of Health Care

A woman who is injured by her husband or intimate partner may call the police for help. If she does not call the police due to her fear of reprisal or apathy, she may refuse to seek medical treatment for the same reason. In fact, the World Health Organization reports that only 5% of female domestic violence victims seek medical help for their injuries.\footnote{WHO Report, supra note 70, at 3.} Thus, a battered woman’s right to adequate healthcare is disproportionately affected. If she calls the police, the police could even refuse to render proper assistance for obtaining necessary medical care.\footnote{See Special Rapporteur ECOSOC Report, supra note 12, para. 38, at 11.} As with the other tools needed to rescue battered women, healthcare is denied not as a matter of law but by a network of local practices and attitudes that prevents women from seeking or obtaining the aid they need.

B. Progress That Has Been Made

Despite the reluctant behavior of the Russian government to address the problem of domestic violence, several communities in
Russian society have begun to address this issue. Grassroots efforts by non-government organizations—in the form of hotlines, crisis centers, education and legal aid—have begun to attempt to tackle the Herculean task of protecting Russian spouses from domestic abuse.

1. Community- and Grassroots-Based Responses

Funds have become available in recent years for non-governmental organizations (NGOs) in Russia that help women and children. The Russian women's crisis center network is one successful example of such a grassroots effort. Since 1993, the number of crisis centers for women has grown significantly, with an estimated thirty to forty centers focused on violence against women. One crisis center, the National Center for the Prevention of Violence in Russia (ANNA), focuses strictly on domestic violence. Victim support groups are also growing in number. In 1999, the Russian Federation reported to the CEDAW committee that the government had created a network of agencies for services for women, including to aid victims of violence, and the agencies had increased in number from 107 to 2,079 from 1994 to 1998. Activists engage religious communities and target certain regions for education and organization in order to raise awareness of domestic violence and the scarcity of resources used in addressing the problem.

Projects also focus on legal assistance for victims, which is important given the unavailability of legal representation for domestic

289. Janet Elise Johnson, Sisterhood Versus the "Moral" Russian State: The Post-Communist Politics of Rape, in POST-SOVIET WOMEN ENCOUNTERING TRANSITION, supra note 288, at 222. See also Thornton & Voigt, supra note 12, at 105-08 (listing several organizational efforts at addressing domestic violence in Russia); WOMEN'S INT'L NETWORK NEWS, supra note 254, at 54 (profiling a Moscow crisis center called Syostri [Sisters]).
290. Johnson, supra note 38 at 223. ANNA is also profiled in Fitzgerald, supra note 12, at A7; Mastykina, supra note 23, at 1; Johnson, supra note 38, at 161-62.
291. Fastenko & Timofeeva, supra note 13, at 126-27.
293. See generally OSCE Briefing, supra note 62, at 44-45.
violence when criminal prosecutors fail to file public charges against batterers. Lawyers who may be willing to volunteer their services generally do not step in to fill the gaps created by the dearth of prosecution, because they lack resources or training. For those victims who cannot find a lawyer to work for them pro bono, the financial cost of representation generally bars a victim from access to legal representation.\textsuperscript{294} The principal aim of projects promoting legal services for Russian domestic violence victims is to teach local lawyers how to address the specific legal needs of domestic violence victims, including the application of family law to the issue.\textsuperscript{295}

\textbf{2. Hotlines}

The number of Russian women’s organizations that provide domestic violence hotlines has grown in the last decade.\textsuperscript{296} “In recent years, there has been an increase in the number of crisis centres and telephone hotlines funded by local authorities and managed by non-governmental organizations, offering psychological, legal, medical and other services for women and girls who have experienced violence.”\textsuperscript{297} Not only do these hotlines assist victims in utilizing available resources, but they also compile necessary data on the problem of domestic violence. Crisis centers formed an association in 1999 called the “Association of Crisis Centres of Russia.” The ABA reported that women comprise 86\% of the callers to violence hotlines and 64.3\% of those calls specifically cite domestic violence as the reason for the call.\textsuperscript{298}

Hotlines meet an immediate need of domestic violence victims to obtain information and resources on how they can escape their abuser. The strong growth of hotlines—and slower growth of shelters—can be attributed to the fact that hotlines are less expensive to create and maintain and do not require the elusive ingredient of

\begin{itemize}
\item \textsuperscript{294} Johnson, \textit{supra} note 38, at 159.
\item \textsuperscript{295} Johnson, \textit{supra} note 289, at 222 (describing the efforts of the 1994 Interregional Association of Women Lawyers in representing domestic violence victims in Russia); Thornton \& Voigt, \textit{supra} note 12, at 106 (introducing the legal assistance efforts of the Russian Lawyers Advocacy Project in Russia); see also Letter from Nata Duvvury, International Center for Research of Women, Ending Violence Discussion, Dec. 1998, available at http://www.edc.org/GLG/end-violence/hypermail/endviolence-dec98/0051.html.
\item \textsuperscript{296} Hotlines are primarily run by NGOs. Johnson, \textit{supra} note 289, at 223. See also Rob Waters, \textit{A Hotline Movement Grows in Russia}, Ms., Nov. 1995, at 19.
\item \textsuperscript{297} Special Rapporteur ECOSOC Report, \textit{supra} note 12, para. 48, at 13-14.
\item \textsuperscript{298} ABA CEELI 2006 Report, \textit{supra} note 11, at 97.
\end{itemize}
physical space.  Given the shortage of both money and housing in Russia, the growth spurt of hotlines—as opposed to shelters—is not surprising.

3. Education

Information about helpful resources for victims of abuse is starting to become widely disseminated. Non-profit groups now advertise on television and on public posters about services, shelters and hotlines. The U.S. Family Violence Prevention Fund reports that ANNA launched a public service campaign to debunk the myth that “if he beats you, he loves you.” Other NGOs have taken the initiative with healthcare professionals, by providing education on how to deal with domestic violence victims in the emergency room.

V. RECOMMENDATIONS FOR COMPLIANCE AND FUTURE ACTION

From a lack of domestic violence laws, to housing codes that keep victims in abusive living situations, to law enforcement indifference, there are numerous reasons to conclude that Russia is not complying with its legal obligations under CEDAW and other human rights instruments. The thorough report conducted by the American Bar Association’s Central European and Eurasian Law Initiative concluded that Russia falls short of its CEDAW obligations in the field of domestic violence because Russian legislation does not provide sufficient remedies in cases of abuse. The state has not provided training to educate judicial or law enforcement officers about their obligations to respond to domestic violence under the law. The international community, the Russian public and individual domestic violence survivors must make efforts to hold the Russian government accountable to its human rights obligations.

299. See Leifeld, supra note 274, at 22.
300. Fastenko & Timofeeva, supra note 13, at 127; Thornton & Voigt, supra note 12, at 106.
302. ABA CEELI 2006 Report, supra note 11, at 102.
303. Id. at 87.
A. Code Revisions

Comprehensive revision and enforcement of the Criminal, Civil and Family Codes of the Russian Federation are necessary to protect domestic violence victims and to ensure Russia's compliance with international human rights law. Although public awareness campaigns are a positive initiative, women's organizations and academics studying the issue feel that it is not a lack of awareness that is the issue but rather an insensitive state policy, permeated with gender stereotyping, perpetuation of outdated notions of masculinity and femininity, and the lack of legislation to protect women and shelters to house victims of violence.³⁰⁴

Domestic violence must be criminalized, but the social programs discussed in this Article also must be made available to victims in immediate and safe ways.³⁰⁵ Normally, a victim does not leave an abusive relationship solely because of criminal laws that are in place. Instead, she most often will leave on account of social mechanisms that help keep her and her children safe, keep her batterer away and aid her in becoming self-sufficient. To provide sustained protection of women's human rights and to remove victims permanently from abusive relationships, Russia's family law must explicitly acknowledge that domestic violence is harmful to the concept of the family and detrimental—even when witnessed indirectly—to the rights of children.

The Russian Duma includes the Committee on Women, Family and Youth. This specialized committee should have the funds and mandate to take action to assist battered women in escaping their perpetrators. Programs designed to aid domestic violence victims must be put in place in order to facilitate utilization and safe compliance with the law.³⁰⁶ The draft law presented to the Russian Duma over a decade ago, "On Preventing Domestic Violence," must finally be adopted.

In its shift away from communism and encouragement of deregulation of social programs, Russia has swung too far on the pendulum. Because the state has decreased its control over many

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³⁰⁴ Id. para. 48 at 13.
³⁰⁵ Fitzgerald, supra note 12, at A7 ("Women's rights advocates and Russian lawmakers have discussed more than 40 versions of legislation to put domestic violence laws on the books. None would have criminalized domestic abuse. Instead, they would have made social services more available to victims.").
³⁰⁶ Adamushkina, supra note 59, at 6.
spheres of society, victims are left with few sources of aid. The government must become an active advocate for its most vulnerable citizens. It must delve into areas that need improvement and stop ignoring human rights obligations. Russia should focus on the state’s role in protecting individuals from human rights violations through prosecution of perpetrators and safe remedies for victims.

B. Further Advances in Education and Training

Investment in education can help restore human rights and dignity to victims of domestic violence. Knowledge about domestic violence, including its causes and dynamics, is greatly lacking in Russia. Russian government officials must be trained in addressing the problem of domestic violence. The public actors who contribute to the denial of human rights of victims of domestic violence respond primarily from ignorance, from a lack of understanding and from traditional indoctrination in the myths surrounding Russian family violence. Judges, police officers, prosecutors, doctors, attorneys, legislators and counselors all contribute to the problem.

Training is considered paramount in international law for combating violence against women. States agree, through declaration, that “without delay” measures should be taken to “ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence


308. Robin Phillips, the Director of the Women’s Human Rights Program for the Minnesota Advocates for Human Rights, explained how the Soviet Union, prior to transition, did not view its role to “provide redress” for individual human rights violations. The criminal justice system’s changes reveal many obstacles to justice for women, including every phase of legal procedure, and this compounds the abuse that women face. *OSCE Briefing*, supra note 62.

309. Maria Gaidash, Deputy to the State Duma in 1995, discussed the draft domestic violence law and the appearance of shelters throughout Russia, and commented, “[b]ut that, of course, is not enough for the law to become fully effective. There needs to be crisis centers and hospices for adult victims of domestic violence, and a network for professional retraining of medical personnel, social workers, lawyers and policemen involved in the program.” Adamushkina, *supra* note 59, at 6.

310. Reports confirm that such training is lacking. ABA CEELI 2006 Report, *supra* note 11, at 101.
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against women receive training to sensitize them to the needs of women.\textsuperscript{311}

Given the prevalence of negative cultural attitudes towards domestic violence, such education should encompass the Russian citizenry as a whole. The Declaration for the Elimination of Violence Against Women calls upon states to:

\begin{quote}
Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based in the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.\textsuperscript{312}
\end{quote}

Once education becomes specialized in the area of domestic violence, officials will be more likely to respond to domestic violence with better discipline, more sensitivity and basic competence. Some work has been done to train law enforcement officers, but such efforts remain relatively new.\textsuperscript{313} As of today, the Russian government has no plan to establish resources such as specialized domestic violence units within the police force or within the court system.\textsuperscript{314}

C. Community Response

Experts insist that a coordinated community response can effectively combat domestic violence.\textsuperscript{315}

\begin{quote}
There is no excuse for domestic violence. In addition to being a psychological issue, a legal issue, a social or religious issue, domestic violence is a human rights issue. If there is no excuse for domestic violence, if safety in the home is to
\end{quote}

\textsuperscript{311} Declaration on the Elimination of Violence Against Women, supra note 258, at art. 4(i).

\textsuperscript{312} Id. art. 4(j).

\textsuperscript{313} Robin Phillips, the Director of the Women’s Human Rights Program for the Minnesota Advocates for Human Rights, spoke about on the topic of training Russian police officers about domestic violence, emphasizing the importance of mutual respect when training police on such concepts. She stated, “When we conduct police training, we need to know what the police do. You cannot train about an effective response if you do not talk to the police and learn what they do when they respond.” OSCE Briefing, supra note 62, at 23.

\textsuperscript{314} ABA CEELI 2006 Report, supra note 11, at 99.

\textsuperscript{315} Statement of Nancy Murphy, Executive Director, Northwest Family Life and Counseling Center. OSCE Briefing, supra note 62, at 16.
be our basic human right, then we must come together to close the gaps that exist to permit such a crime. We must provide places of safety for women and children where they feel supported and honored. Places where they can regain their dignity and worth, self-worth. They need places where they can heal from the degradation of their experience. We must insist that the problem is resident within the one who does the abusing. The one who exercises power and control over another in intimate relationships. We must call abusers to account for their actions and persist in the work of facing them with the consequences of their behavior.  

The greatest success in addressing the domestic violence problem in Russia thus far is the work of private NGOs over the past fifteen years. In the interest of continuing to find a workable solution, NGOs should be encouraged to continue efforts, and governments and other funders should continue to support them.  

Many other experts and scholars have made suggestions on how to combat domestic violence on a global scale. The Russian government has been admonished repeatedly about its lack of effective attention to domestic violence, yet no concrete legislation has resulted. The community must not abandon its requests to the government to enact such laws, even though inaction continues to be the norm. Efforts of groups and individuals will continue to make the most effective difference in the lives of Russian domestic violence victims. For this reason, NGOs must gather more funding and individuals must be encouraged to use the international remedies available to them. Russia will benefit from a wealth of resources to combat domestic violence throughout the world.

316. Id.
317. But see Hemment, supra note 288, at 313 (debating whether Western-sponsored NGOs can be effective in furthering gender issues in Russia).
318. See, e.g., WHO Report, supra note 70, at 9-10 (emphasizing the importance of a public health approach to eliminating intimate violence); Amnesty Int'l, 14-Pointe Programme for the Prevention of Domestic Violence, AI Index ACT 77/012/2006, Aug. 31, 2006; Fitzgerald, supra note 12, at A7 (mentioning the European Commission's wish for one battered women's shelter for every 10,000 people); DAW Good Practices Report, supra note 173.
319. Post, supra note 41, at 82.
D. The CEDAW Optional Protocol.

International human rights covenants require that states parties guarantee to their citizens "effective remedies" for violations of their rights under the covenant.\footnote{320} In 2000, the Optional Protocol to CEDAW entered into force, ushering in a period in which individuals who are victims of gender discrimination may seek redress on an international level. The Russian Federation ratified the CEDAW Optional Protocol, which means that it "recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications submitted."\footnote{321} If the Russian government continues to refuse to provide proper remedies at various levels in its legal and social structure, then an individual victim will be able to file a communication with the CEDAW Committee for consideration of possible CEDAW violations by Russia.\footnote{322} All complainants under the CEDAW Optional Protocol procedure must show the CEDAW Committee that prior to filing a communication, they have exhausted "all available domestic remedies," "unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief."\footnote{323} Given all the issues addressed in this article, satisfying this standard in Russia should not be difficult—although the time-delay involved imposes an additional risk on domestic violence victims.

CEDAW Committee jurisprudence pursuant to the Optional Protocol is still very new and only a few cases have been decided at this time.\footnote{324} Yet the Committee’s first decision on the merits ad-
addresses domestic violence and clearly states a precedent requiring the state to take immediate action to combat it. In *Ms. A.T. v. Hungary*, the complainant was a woman who was beaten and threatened by her husband. She brought her case to the Committee through the CEDAW Optional Protocol because Hungary lacks proper domestic violence laws and practices to protect her. The CEDAW Committee cited CEDAW General Recommendation No. 19 as a "backdrop" to state that prohibited discrimination includes gender-based violence and that states may be "responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence." The CEDAW Committee found that Hungary violated CEDAW Articles 2(a), (b), and (e), and 5(a), in conjunction with Article 16 and stated that these guarantees "extend to the prevention of and protection from violence against women." In fact, the CEDAW Committee pointed out deficiencies in Hungary that are strikingly similar to those in Russia:

[The Committee] is particularly concerned that no specific legislation has been enacted to combat domestic violence and sexual harassment and that no protection or exclusion orders or shelters exist for the immediate protection of women victims of domestic violence.

[The author] has been unsuccessful, either through civil or criminal proceedings, to temporarily or permanently bar [the husband] from the apartment where she and her children have continued to reside.

Finally, the CEDAW Committee, pursuant to Article 7(3) of the Optional Protocol, recommended to Hungary that it immediately

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327. *Id.* at para. 9.2, citing CEDAW General Recommendation 19, supra note 180.
328. *Id.* at para. 9.6.
329. *Id.* at para. 9.3.
330. *Id.* at para. 9.3.
331. *Id.* at para. 9.4.
protect the author and her family; enact specific laws prohibiting violence against women, including provisions for shelters, legal aid and restraining orders; and "assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women."332 This is clearly a favorable precedent in light of the Russian Federation's many shortcomings in refusing to address this issue.

The Russian government has refused to act on the issue of domestic violence and almost every human rights group and women's advocacy group has admonished Russia on its refusal to comply with international human rights norms in this area. It is time for an individual to file a CEDAW case to litigate the issue of whether Russia's present domestic violence "remedies" are likely "to bring effective relief" and whether the lack of systematic acknowledgement of the problem has resulted in CEDAW and other human rights violations. Advocates must sustain the positive momentum resulting from the Hungary decision, which reveals a CEDAW Committee that is responsive to human rights-based domestic violence claims and ready to act through its Optional Protocol capacity. As scholar Bal Sokhi-Bulley asserts, the CEDAW Committee in Hungary "tackles the issue of domestic violence with appropriate rigor."333 Noted human rights Professors Steiner and Alston pointed out in their text that "[r]ights are not static. They evolve. They broaden or contract over time."334 It is time to broaden the human rights of Russian domestic violence victims and grant them a voice on both the domestic and international levels.

VI. CONCLUSION

Upon the fall of the Soviet Union, the Russian Federation had the opportunity to build a government committed to effectively guaranteeing human rights as defined on a global scale. The Russian Federation still has an opportunity to provide an example to other nations of what a new democracy can do to advance international human rights law and to protect its vulnerable population through effective legal mechanisms that are accessible to all.

332. Id. at para. 9.6.  
334. ALSTON & STEINER, supra note 151, at 181.
The demand for stronger domestic violence laws comes straight from the practical needs of the typical domestic violence victim. Victims seeking escape from their abusers do not read law review articles or human rights conventions. They normally do not lobby their governments for better laws. They deal in a grim day-to-day reality. They ponder questions such as, “Do I stay in this marriage and risk being killed, or do I gather my children and leave, risking an even greater danger of being killed?”

There is no greater risk to the domestic violence victim than leaving, because that is the point at which the victim claims control over her life, completely usurping the meticulously built power structure that the abuser has constructed over a number of years. Once the batterer’s control begins to slip, the balance of power teeters. To regain control over the victim, the abuser finds it necessary to step up whatever method works best in controlling his particular victim (e.g., threats, physical abuse, isolation, etc.). When victims leave, batterers tend to escalate the method of physical violence in an effort to regain control, thus creating escalated danger for the victim.335

Criminalization of domestic violence is not enough to free a victim from a prolonged period of violence. In the United States, a husband or abusive partner may be arrested for domestic violence but could leave jail on bail mere hours later, with only a restraining order to prevent him from going home to inflict further abuse. This is where emergency civil remedies also must be in place to uphold the woman’s right to live free of her former partner. Otherwise, compliance with the duty by the state fails at the point of reintroduction of the abuser into the home, resulting in violation of the victim’s human rights. Two disadvantages work against a victim living in a negligent legal system such as Russia’s: no legal mechanism exists to help the victim get out of the relationship nor to help her stay out of the abusive relationship. Until the Russian government meets both challenges, it will remain out of compli-

ance with CEDAW and other human rights covenants to which it is bound.