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United against Gender Violence: Europeans Struggle to Provide Protection for Migrants

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UNITED AGAINST GENDER VIOLENCE: EUROPEANS STRUGGLE TO PROVIDE PROTECTION FOR MIGRANTS

MIMI E. TSANKOV* AND NADJA T. HELM**

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I. INTRODUCTION

Domestic violence is a worldwide phenomenon, and since the mid-1990's, there has been a coordinated international effort to reduce its pervasiveness.¹ In Europe, statistics suggest that up to one quarter of women will experience domestic violence and up to 10 percent of women will suffer an incident in any given year.² Within the domestic violence victim population, there is a subgroup of victims that is uniquely vulnerable.³ It is comprised of victims that lack legal immigration status. With language and cultural barriers, as well as a lack of knowledge about domestic legal systems, some of these victims may fear that in seeking law enforcement protection they could be removed from their host country.⁴

European Union Member ("EU-M") States are bound by a host of regional and international human rights obligations to strengthen laws and construct networks of resources to combat this problem.⁵ This article provides background

1. COUNCIL OF EUR., COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE: EXPLANATORY REPORT ¶¶ 1, 5-6, 8 [hereinafter ISTANBUL CONVENTION EXPLANATORY REPORT], available at http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/Exp_memo_Conv_VAW_en.pdf.

The Committee on the Elimination of Discrimination [A]gainst Women . . . of the United Nations Convention on the Elimination of All Forms of Discrimination [a]gainst Women . . . in its general recommendation on violence against women No. 19 (1992) helped to ensure the recognition of gender-based violence against women as a form of discrimination against women. The United Nations General Assembly, in 1993, adopted a Declaration on the Elimination of Violence against Women that laid the foundation for international action on violence against women. In 1995, the Beijing Declaration and Platform for Action identified the eradication of violence against women as a strategic objective among other gender equality requirements. In 2006, the UN Secretary-General published his [i]n depth study on all forms of violence against women, in which he identified the manifestations and international legal frameworks relating to violence against women, and also compiled details of 'promising practices' which have shown some success in addressing this issue.

Id. ¶ 5.

2. EUROPEAN COMM'N, DOMESTIC VIOLENCE AGAINST WOMEN REPORT 5 (Special Eurobarometer No. 344, 2010), available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_344_en.pdf.

3. ISTANBUL CONVENTION EXPLANATORY REPORT, *supra* note 1, ¶ 87 ("For the purpose of this Convention, persons made vulnerable by particular circumstances include: pregnant women and women with young children, persons with disabilities, including those with mental or cognitive impairments, persons living in rural or remote areas, substance abusers, prostitutes, persons of national or ethnic minority background, migrants—including undocumented migrants and refugees, gay men, lesbian women, bi-sexual and transgender persons as well as HIV-positive persons, homeless persons, children and the elderly.").

4. *Id.* ¶¶ 87, 306.

5. See Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence art. 61, Apr. 7, 2011, C.E.T.S. No. 210 [hereinafter Istanbul Convention]. See also ISTANBUL CONVENTION EXPLANATORY REPORT, *supra* note 1, ¶¶ 319-22.

Paragraph 2 [of Article 61] confirms that the obligation to respect the *non-refoulement* principle applies equally to victims of violence against women who are in need of protection complementing in this way the first paragraph. More specifically, paragraph 2 reiterates the

information on the sources of regional and international law mandating these protections.⁶ It defines the legal obligations inherent in European Union Membership,⁷ the European Convention on Human Rights (“ECHR”),⁸ the United Nations Convention on the Elimination of Discrimination against Women (“CEDAW”),⁹ and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”),¹⁰ focusing primarily on the CEDAW’s specific obligations related to migrant domestic violence victims.

The general consensus has been that although many EU-M States have devised complex internal legal frameworks to support migrant domestic violence victims, success has been elusive in some instances.¹¹ Thus, this article provides country-specific data to better understand the environments in which these deficits are believed to occur.¹² To be sure, providing adequate legal relief to migrant domestic violence victims is a challenging proposition.¹³ Contextual factors can serve to either diminish or heighten the extent to which individual EU-M States are able to meet this human rights obligation.¹⁴ The purpose of this article is to present a snapshot of the European Union’s journey towards compliance that may enable human rights observers to gauge where individual EU-M States find themselves on this particular metric in comparison to other states given a variety of contextual

obligation for Parties to take the necessary legal or other measures to ensure that victims of violence against women and in need of protection, shall not be returned under any circumstances if there were a real risk, as a result, of arbitrary deprivation of life or torture or inhuman or degrading treatment or punishment. It is important to ensure that these obligations are complied with irrespective of the status or residence of the women concerned. This means that this protection against return applies to all victims of violence against women that have not yet had their asylum claim determined as refugees under the 1951 Convention [relating to the Status of Refugees] regardless of their country of origin or residence status, and who would face gender-based violence amounting to the ill-treatment described above if expelled/deported. Even if their claim for asylum is refused, states should ensure that these persons will not be expelled/deported to a country where there is a real risk to that they will be subject to torture or inhuman or degrading treatment or punishment. This paragraph is not to be read, however, as contradicting the relevant provisions of the 1951 Convention, and in particular does not preclude the application of Article 33, paragraph 2, of that Convention.

Id. ¶ 322.

6. *See infra* Part II.

7. *Conditions for Membership*, EUR. COMMISSION, http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm (last visited Jan. 22, 2014).

8. Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 221 [hereinafter ECHR]. *See infra* Part II.A.

9. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. *See infra* Part II.B.

10. Istanbul Convention, *supra* note 5. *See infra* Part II.F.

11. *See infra* Part V.

12. *See infra* Part V.

13. *See* ISTANBUL CONVENTION EXPLANATORY REPORT, *supra* note 1, ¶¶ 53, 87, 298-300, 302.

14. *See infra* Parts III, IV.

factors. The article concludes that while each of the EU-M States has made significant strides in supporting domestic violence victims generally, some deficiencies and concerns remain as relates to migrant victims.¹⁵

II. INTERNATIONAL AND REGIONAL SOURCES OF LAW

A. *The European Convention of Human Rights*

The foundational legal instrument that provides protection for migrant domestic violence victims in EU-M States is the ECHR.¹⁶ Through the development of that treaty and the articulation of its inherent obligations, the European Union, as a regional body, has voiced support for establishing a variety of explicit and implied protections for migrant domestic violence victims.¹⁷ For example, parties to the ECHR are explicitly bound to uphold Article 3, which guarantees freedom from torture and inhuman treatment.¹⁸ However, parties have the less explicit and more general obligation to perform functions in a manner that is deemed compatible with the states' obligations under the provisions of the ECHR.¹⁹ Thus, many humanitarian and human rights-related requests of EU-M States necessarily implicate standards articulated in the ECHR articles.

B. *The United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW")*

A key U.N. human rights objective is the global elimination of discrimination against women.²⁰ Over the years, this worldwide body has given meaning to this specific objective through the creation of the CEDAW, a legal instrument that codifies obligations ranging from development of greater equality in state laws as they impact men and women, to targeting "culture and tradition as influential forces shaping gender roles and family relations."²¹ Pursuant to Articles 3 and 5, the CEDAW enshrines the right of women to enjoy their human rights free of discrimination, and enables the attainment of that right through the modification of social and cultural patterns.²²

15. See *infra* Part VI.

16. See ECHR, *supra* note 8, art. 14.

17. E.g., *id.* p.mbl.

18. *Id.* art. 3.

19. See ISTANBUL CONVENTION EXPLANATORY REPORT, *supra* note 1, ¶ 87.

20. FAREDA BANDA, UNITED NATIONS OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS—WOMEN'S RIGHTS AND GENDER UNIT, PROJECT ON A MECHANISM TO ADDRESS LAWS THAT DISCRIMINATE AGAINST WOMEN 18 (2008), available at http://www.ohchr.org/Documents/Publications/laws_that_discriminate_against_women.pdf.

21. *Convention on the Elimination of All Forms of Discrimination against Women: Overview of the Convention*, UN WOMEN, <http://www.un.org/womenwatch/daw/cedaw> (last visited Apr. 21, 2014).

22. CEDAW, *supra* note 9, art. 3 ("States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."). *Id.* art. 5(a) ("To modify the social and cultural patterns of conduct of men and women, with a view to

Article 2 of the CEDAW explicitly condemns discrimination against women in all its forms, and parties to the treaty are required to undertake measures to end all forms of discrimination against women.²³ The CEDAW mandates that the pace of policy change be pursued diligently, “by all appropriate means and without delay.”²⁴ This treaty envisions the development and/or modification of state constitutions and laws that further this goal and mandates the establishment of legal protections when necessary to ensure the rights of women.²⁵ The CEDAW requires that state parties submit reports on the legislative, judicial, administrative, and other measures that they have adopted with respect to their obligations under the treaty.²⁶ Article 22 permits “specialized agencies” (“CEDAW Specialized Agencies”) to submit reports (“Shadow Reports”) discussing states’ implementation efforts.²⁷ In order to assess progress made in meeting the CEDAW objectives, Article 17 envisioned the establishment of a treaty body in the form of a committee (“CEDAW Committee”), which would articulate interpretative guidance and recommendations, monitor state progress, and release substantive reports.²⁸ CEDAW Specialized Agencies submit Shadow Reports to the CEDAW Committee to supplemental state provided information about compliance with CEDAW obligations.²⁹ These are independent reports that examine particular aspects of the state human rights reporting.³⁰

Under the CEDAW, states are responsible for their own acts, as well as for private acts if the state fails to act with due diligence to prevent violations of rights.³¹ The CEDAW has further clarified that it is the state’s responsibility to “respect, protect and fulfil women’s right to non-discrimination and to the

achieving the elimination of prejudices and customary [sic] 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.”)

23. *Id.* art. 2.

24. Special Rapporteur on Violence Against Women, *Rep. of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, Human Rights Council, ¶ 24, U.N. Doc. A/HRC/23/49 (May 14, 2013) (by Rashida Manjoo) [hereinafter Manjoo Report]. The CEDAW Committee has described the due diligence standard in its consideration of complaints that allege a failure on the part of states to investigate and prosecute acts of violence against women. *Id.* ¶¶ 11-13.

25. CEDAW, *supra* note 9, arts. 2-3.

26. *Id.* art. 18.

27. *Id.* art. 22.

28. *Id.* arts. 17, 21.

29. *Id.* art. 22 (“The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.”).

30. *See id.*

31. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence against Women, ¶ 9, U.N. Doc. A/47/38 (1992), *reprinted in* United Nations, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 246, U.N. Doc. HRI/GEN/1/Rev.7 (May 12, 2004) [hereinafter CEDAW Committee, General Recommendation No. 19].

enjoyment of equality.”³² Furthermore, states are responsible for investigating and punishing acts of violence and for providing compensation for violations of the CEDAW.³³ Through acquiescence or indifference, inaction provides a “form of encouragement and/or de facto permission,” and CEDAW “has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as . . . domestic violence.”³⁴

C. *Violence Against Women in the Human Rights Context*

In 1994, the U.N. Commission on Human Rights adopted a resolution appointing a Special Rapporteur on the issue of violence against women (“SRVAW”) in order to better understand its causes and consequences.³⁵ That human rights body has called for, among others, the elimination of all forms of gender-based violence in the family.³⁶ It defines gender-based violence as any act “that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”³⁷ Incorporating this general U.N. definition, in part, the CEDAW definition of gender-based violence focuses specially on women who are victims of “physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”³⁸

The U.N. has further elaborated the various forms of violence, dividing them into three categories: (a) family violence; (b) community violence; and (c) violence perpetrated or condoned by the state.³⁹ Migrant domestic violence victims have fallen within all three categories because migrant women can suffer family violence in the form of domestic violence and honor violence; community violence in the form of female genital mutilation and trafficking; and violence perpetrated or condoned by the state in the form of violence during armed conflict and violence motivated by xenophobia.⁴⁰ In 2002, the U.N. High Commissioner for

32. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 9, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010).

33. *Id.* ¶¶ 19, 32.

34. Manjoo Report, *supra* note 24, ¶ 27.

35. Comm’n on Human Rights Res. 1994/45, Rep. of Comm’n on Human Rights, 15th Sess., Jan. 31-Mar. 11, 1994, U.N. ESCOR, 1994 Sess., Supp. No. 4, E/1994/24, at 143 (Mar. 4, 1994).

36. Comm’n on Human Rights Res. 2003/45, Rep. of Comm’n on Human Rights, 59th Sess., Mar. 17-Apr. 24, 2003, U.N. ESCOR, 2003 Sess., Supp. No. 3, E/2003/23, at 174-75 (Apr. 23, 2003).

37. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993) (referencing Article 1 of the Declaration).

38. CEDAW Committee, General Recommendation No. 19, *supra* note 31, ¶ 6.

39. Special Rapporteur on Violence Against Women, *15 Years of the U.N. Special Rapporteur on Violence Against Women, its Causes and Consequences (1994-2009)—A Critical Review*, Human Rights Council, ¶¶ 12, 21, U.N. Doc. A/HRC/11/6/Add.5 (May 27, 2009) (by Yakin Ertürk) [hereinafter Ertürk Report].

40. *See id.* ¶ 65.

Refugees (“UNHCR”) issued guidelines on gender-related protection claims.⁴¹ The UNHCR Gender-Related Guidelines acknowledge a particular social group is comprised of individuals that share a common characteristic that is “*innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.*”⁴² Further, the guidelines posit that “sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently than men.”⁴³

This article addresses so-called “honor violence” periodically. So-called honor violence exists solely in the realm of the family and is thus properly considered in a domestic violence analysis.⁴⁴ Honor violence comes from the belief that family members, particularly male family members, have a duty to control the female family members’ sexuality and reputation in order to preserve the family’s honor. “According to this belief, if women transgress, or are seen to transgress, societal gender norms, blemishing their family’s ‘honour’, they should be disciplined, have their movements and life choices constrained, or be harmed or killed.”⁴⁵ Any family member may perpetrate honor crimes. Honor killing has been described “as the killing of a female, typically by a male perpetrator, because of perceived or actual misconduct of the victim who has dishonored or shamed her family and clan by actually or allegedly committing an indiscretion.”⁴⁶

The act of killing another to restore honor falls under a category of offenses collectively known as “honor crimes.” Honor crimes are not limited to murder, but may include other vicious crimes against woman, such as punitive rape or deliberate disfigurement by acid or dismemberment. Victims of honor crimes are almost exclusively female.⁴⁷

41. United Nations High Comm’r for Refugees, Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/02/01 (May 7, 2002) [hereinafter UNHCR Gender-Related Guidelines], *available at* <http://www.unhcr.org/3d58ddef4.html>.

42. *Id.* ¶ 29.

43. *Id.* ¶ 30.

44. UNITED NATIONS DIV. FOR THE ADVANCEMENT OF WOMEN & UNITED NATIONS ECON. COMM’N FOR AFR., GOOD PRACTICES IN LEGISLATION ON “HARMFUL PRACTICES” AGAINST WOMEN 17-18 (2009) [hereinafter GOOD PRACTICES IN LEGISLATION ON “HARMFUL PRACTICES”], *available at* http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Final%20report%20EGMGPLVAW.pdf. The U.N. uses the term “so-called ‘honour’ violence . . . to emphasize that this violence, while excused in the name of ‘honour’, is not honourable and should be condemned as a human rights violation.” *Id.* at 10.

45. *Id.* at 18.

46. Lindsey N. Devers & Sarah Bacon, *Interpreting Honor Crimes: The Institutional Disregard Towards Female Victims of Family Violence in the Middle East*, 3 INT’L J. CRIMINOLOGY & SOC. THEORY 359, 360 (2010).

47. Susanne J. Prochazka, Note, *There is No Honor in Honor Killings: Why Women at Risk for Defying Sociosexual Norms Must be Considered a “Particular Social Group” Under Asylum Law*, 34 T. JEFFERSON L. REV. 445, 474-75 (2012) (citations omitted).

Honor violence is often used as a defense or partial defense to crimes committed against women, which has prompted the United Nations to advocate for legislation ensuring that these crimes are punished as severely as other crimes.⁴⁸

Female genital mutilation (“FGM”) is not discussed in this article, as it is not traditionally considered domestic violence.⁴⁹ The World Health Organization defines FGM as “all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.”⁵⁰ FGM is not properly considered within a domestic violence analysis, because, while the victim’s family is often involved, it is usually a community-based practice. While domestic violence is confined to the family, FGM most often involves entire communities. As highlighted by the World Health Organization, “local structures of power and authority such as [community] leaders, religious leaders, circumcisers, elders, and even some medical personnel” can contribute to upholding the practice.⁵¹ FGM “is a social norm, buttressed by underlying gender structures and power relations and deeply rooted in tradition. The decision to stop FGM/C must come from within a community; it must be made by women, men and community leaders who together can affect and sustain this profound social change.”⁵² Accordingly, FGM is better discussed within a broader communal or societal context, rather than the narrow, family-based context of domestic violence.

In furtherance of its mandate, the SRVAW issues annual reports to the U.N. Human Rights Council (previously the U.N. Commission on Human Rights) and the U.N. General Assembly.⁵³ It has affirmed the duty of states to not only refrain from engaging in violence against women, but to “exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women.”⁵⁴ Moreover, it has affirmed the responsibility of states “to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State, by private persons or by armed

48. GOOD PRACTICES IN LEGISLATION ON “HARMFUL PRACTICES,” *supra* note 44, at 4-5, 17-18. “Experience has shown that without a specific offence for so-called ‘honour’ crimes, judges will often employ defences such as provocation in order to reduce the sentence of those who have committed such crimes, or perpetrators will not be charged at all.” *Id.* at 18.

49. See John Gordon Simister, *Domestic Violence and Female Genital Mutilation in Kenya: Effects of Ethnicity and Education*, 25 J. FAM. VIOLENCE 247, 247 (2010).

50. WORLD HEALTH ORG. [WHO] ET AL., ELIMINATING FEMALE GENITAL MUTILATION: AN INTERAGENCY STATEMENT 4 (2008), available at http://whqlibdoc.who.int/publications/2008/9789241596442_eng.pdf?ua=1.

51. *Id.* at 6.

52. UNFPA & UNICEF, UNFPA-UNICEF JOINT PROGRAMME ON FEMALE GENITAL MUTILATION/CUTTING: ACCELERATING CHANGE: ANNUAL REPORT 2012, at 18 (2012), available at http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/UNICEF-UNFPA%20Joint%20Programme%20AR_final_v14.pdf (emphasis added).

53. G.A. Res. 65/187, ¶ 25, U.N. Doc. A/RES/65/187 (Dec. 21, 2010); Human Rights Council Res. 16/7, Rep. of the Human Rights Council, 16th Sess., Jan. 25-Mar. 25, 2011, ¶ 5, U.N. Doc. A/HRC/16/2 (Mar. 24, 2011); Comm’n on Human Rights Res. 2003/45, *supra* note 36, ¶ 33.

54. G.A. Res. 65/187, *supra* note 53, ¶ 9.

groups or warring factions, and to provide access to just and effective remedies and specialized, including medical, assistance to victims.”⁵⁵

D. CEDAW, Domestic Violence, and Migrants

While the basic CEDAW treaty does not reference domestic violence as a means of discrimination per se, the CEDAW Committee has issued interpretative guidance recommendations that address this issue.⁵⁶ General Recommendation No. 12 highlights the obligation of parties to the CEDAW to protect women from “*violence of any kind occurring within the family, at the workplace or in any other area of social life*” under Articles 2, 5, 11, 12, and 16 of the Convention.⁵⁷ Moreover, General Recommendation No. 19 incorporates gender-based violence as a specific form of discrimination.⁵⁸

The CEDAW Committee has further clarified that the protection against gender-based violence extends to migrants in General Recommendation No. 26.⁵⁹ That recommendation sets forth, in pertinent part, that:

- a) “States parties should ensure that linguistically and culturally appropriate gender-sensitive services for women migrant workers are available, including language and skills training programmes, emergency shelters, . . . [and] police services.”⁶⁰
- b) State services should be “designed especially for isolated women migrant workers, such as domestic workers and others secluded in the home, in addition to victims of domestic violence.”⁶¹
- c) “Victims of abuse must be provided with relevant emergency and social services, regardless of their immigration status.”⁶²
- d) “[T]he situation of undocumented women needs specific attention. Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights. Undocumented women migrant workers must have access to legal remedies and justice in cases of risk to life

55. Comm’n on Human Rights Res. 2003/45, *supra* note 36, ¶ 5.

56. CEDAW Committee, General Recommendation No. 19, *supra* note 31, ¶ 1.

57. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 12: Violence against Women, U.N. Doc. A/44/38 (1989), *reprinted in* United Nations, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 240, U.N. Doc. HRI/GEN/1/Rev.7 (May 12, 2004) [hereinafter CEDAW Committee, General Recommendation No. 12] (emphasis added).

58. CEDAW Committee, General Recommendation No. 19, *supra* note 31, ¶ 1.

59. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 26 on Women and Migrant Workers, U.N. Doc. CEDAW/C/2009/WP.1/R (Dec. 5, 2008) [hereinafter CEDAW Committee, General Recommendation No. 26], *available at* http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.

60. *Id.* ¶ 26(i).

61. *Id.*

62. *Id.*

and of cruel and degrading treatment . . . if they are abused physically or sexually by employers or others.”⁶³

- e) “If they are arrested or detained, the States parties must ensure that undocumented women migrant workers receive humane treatment and have access to due process of the law, including through free legal aid. In that regard, States parties should repeal or amend laws and practices that prevent undocumented women migrant workers from using the courts and other systems of redress. If deportation cannot be avoided, States parties need to treat each case individually, with due consideration to the gender-related circumstances and risks of human rights violations in the country of origin (articles 2 (c), (e) and (f)).”⁶⁴

E. *The U.N. Model Framework*

The CEDAW Committee participated in drafting the *U.N. Handbook for Legislation on Violence Against Women* (“*U.N. Handbook*”), which provides guidance about the types of provisions that should be included in any domestic violence legal framework.⁶⁵ These components range from suggesting how violence may be defined and proposing means of prevention and protection, to proposing model structures for investigation, prosecution, and sentencing of perpetrators of domestic violence. A review of the *U.N. Handbook* recommends the following practices that affect migrant domestic violence victims directly:

- a) Equal protection without regard to migration status;⁶⁶
- b) Specialized services for particular groups of women, including migrant victims;⁶⁷
- c) Employing gender-sensitive language acknowledging the historical imbalance in power between men and women with respect to violence;⁶⁸
- d) Providing relief for female survivors of violence such that they are not deported or “subjected to other punitive actions related to their immigration status when they report such violence to police or other authorities”;⁶⁹
- e) Permitting “immigrants who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator.”⁷⁰

63. *Id.* ¶ 26(l).

64. *Id.*

65. U.N. DEP’T OF ECON. & SOC. AFFAIRS, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN, at iv, U.N. Doc. ST/ESA/329, U.N. Sales No. E.10.IV.2 (2009) [hereinafter HANDBOOK].

66. *Id.* § 3.1.3.

67. *Id.* § 3.6.1.

68. *Id.* § 3.1.4.

69. *Id.* § 3.7.1.

70. *Id.*

Many states have adopted criminal and civil laws relating to gender equality where violence against women is one aspect of the violence equation, or specific laws on violence described as family, domestic, sexual, or intimate partner laws.⁷¹ The *U.N. Handbook* stresses the importance of developing laws that deal specifically with migrant victims. Specifically, it calls for states to acknowledge that “violence against women may constitute persecution and that complainants/survivors of such violence should constitute ‘a particular social group’ for the purposes of asylum law.”⁷²

The U.N. surveys of CEDAW parties in Europe reflect that, in general, many of the countries have taken positive steps to sensitize the public about domestic violence and to develop legal protections and institutional mechanisms that support domestic violence victims.⁷³ These efforts include the creation of civil society organizations to protect victims of family violence through safe houses and other support mechanisms, the development of criminal provisions on domestic violence, protection orders in cases of domestic violence, the delineation of domestic violence as a ground for divorce, the promulgation of specific provisions on marital rape, efforts to improve the social status of the victim, efforts to ensure employment for victims, and the implementation of procedural protections for domestic violence victims.⁷⁴

Occasionally, individuals or groups within a country will consider that a state party has failed to abide by their obligations under the CEDAW.⁷⁵ In 1999, the General Assembly adopted the so-called “Optional Protocol” whereby the CEDAW Committee may receive and consider complaints from individuals or groups about violations of CEDAW obligations in states that have ratified the Protocol.⁷⁶ Upon review of a complaint, the CEDAW Committee can issue recommendations to the state party.⁷⁷ All but three of the EU-M States examined in this article are party to the Optional Protocol.⁷⁸

71. See Ertürk Report, *supra* note 39, ¶ 34.

72. HANDBOOK, *supra* note 65, § 3.14, at 56.

73. Ertürk Report, *supra* note 39, ¶ 34. See also *infra* Part V.

74. See *id.* ¶ 129.

75. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women art. 2, Oct. 6, 1999, 2131 U.N.T.S. 83 [hereinafter Optional Protocol to CEDAW].

76. G.A. Res. 54/4, U.N. Doc. A/RES/54/4 (Oct. 6, 1999).

77. Optional Protocol to CEDAW, *supra* note 75, art. 5.

78. United Nations, Multilateral Treaties Deposited with the Secretary-General, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (Oct. 6, 1999), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en (last visited Apr. 22, 2014). Estonia, Latvia, and Malta have not signed nor ratified the Optional Protocol. *Id.*

F. Council of Europe and the Istanbul Convention

Regional European bodies have also been focused on eliminating violence against women.⁷⁹ In 2002, the leading human rights body in Europe, the Council of Europe, adopted Recommendation No. 5 mandating that its member states, among other obligations, “introduce, develop and/or improve where necessary, national policies against violence.”⁸⁰ It mandated that member states “ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request.”⁸¹ That body has put in place an intricate system of regional legal responsibilities that EU-M States owe to each other, which include compliance with the European Council directives seeking to harmonize protections and deter asylum applications in multiple EU-M States.⁸² The Council of Europe has ordered that member states “consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country.”⁸³

The Council of Europe has monitored implementation of its directives through studies that examine the prevalence of domestic violence in member states and the apparent wide variability of protections offered from country to country.⁸⁴ In 2011, the Council of Europe concluded that more needed to be done to harmonize these divergent systems in its member states in a number of areas, including the treatment of migrant domestic violence victims.⁸⁵ This body concluded that:

[1] Migrant women, including undocumented migrant women, and women asylum-seekers form two subcategories of women that are particularly vulnerable to gender-based violence. [2] Despite their difference in legal status, reasons for leaving their home country and living conditions, both groups are, on the one hand, at increased risk of

79. Council of Eur., Comm. of Ministers, Recommendation Rec(2002)5 of the Comm. of Ministers to Member States on the Protection of Women Against Violence [hereinafter Rec(2002)5].

80. *Id.* app. ¶ 3.

81. *Id.* app. ¶ 24.

82. Council Regulation 343/2003, Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-country National, 2003 O.J. (L 50) 1. *See generally* UNITED NATIONS HIGH COMM’N FOR REFUGEES, COMPARATIVE ANALYSIS OF GENDER-RELATED PERSECUTION IN NATIONAL ASYLUM LEGISLATION AND PRACTICE IN EUROPE (2004), available at <http://www.unhcr.org/40c071354.html>.

83. Rec(2002)5, *supra* note 79, app. ¶ 59; *see also* Ursula Fraser, *The Asylum Procedure, in SANCTUARY IN IRELAND, PERSPECTIVES ON ASYLUM LAW AND POLICY* 81, 88-90 (Ursula Fraser & Colin Harvey eds., 2003) (discussing the Council of Europe’s efforts to harmonize criteria for application of international human rights laws and standards, as well as asylum procedures, and the criteria for granting of refugee status).

84. ISTANBUL CONVENTION EXPLANATORY REPORT, *supra* note 1, ¶ 2.

85. *See id.* ¶¶ 14, 298.

experiencing violence against women and, on the other hand, face similar difficulties and structural barriers in overcoming violence.

. . . [3] [Among other suggestions, the Council of Europe] introduces the possibility of granting migrant women who are victims of gender-based violence an independent residence status. [4] Furthermore, it establishes the obligation to recognize gender-based violence against women as a form of persecution and contains the obligation to ensure that a gender-sensitive interpretation be given when establishing refugee status. . . . [5] Finally, it contains provisions pertaining to the respect of the *non-refoulement* principle with regard to victims of violence against women.⁸⁶

Articulating this need for consistent legal standards, the Council of Europe adopted, during an April 2011 meeting in Istanbul, Turkey, the Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”).⁸⁷ As of the date of publication, eight EU-M States had ratified this treaty: Austria, Denmark, France, Italy, Malta, Portugal, Spain, and Sweden.⁸⁸ The Istanbul Convention discusses minimum standards related to migration and asylum at Chapter VII and requires that states develop legislative and other measures required to meet these standards.⁸⁹

First, Article 59 requires that victims whose residence status depends on that of the spouse or partner as recognized by internal law have the right, upon dissolution of the marriage or the relationship, to an autonomous residence permit irrespective of the duration of the marriage or relationship.⁹⁰ Second, domestic violence victims should be able to have their expulsion proceedings suspended if their migration status is dependent upon their spouse and apply for an autonomous residence permit.⁹¹

Third, residence permits shall be renewable when “necessary,” considering the migrant’s personal situation and/or where their stay is deemed necessary to further an investigation or criminal proceedings.⁹² Fourth, victims of forced marriage should be permitted to regain any lost status.⁹³ Fifth, gender-based violence against women is to be considered both persecution for purposes of an asylum application and a type of serious harm, such that a domestic violence victim is eligible for subsidiary protection.⁹⁴

86. *Id.* ¶¶ 298-99.

87. Istanbul Convention, *supra* note 5, art. 62.

88. Council of Europe Treaty Office, *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Apr. 7, 2011), <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=&DF=&CL=ENG> (last visited June 4, 2014) [Istanbul Convention Treaty Status].

89. Istanbul Convention, *supra* note 5, arts. 59-61.

90. *Id.* art. 59(1).

91. *Id.* art. 59(2).

92. *Id.* art. 59(3).

93. *Id.* art. 59(4).

94. *Id.* art. 60(1).

Sixth, that adjudicators apply gender-sensitive interpretations in evaluating asylum applications.⁹⁵ Seventh, that gender-sensitive procedures be employed with respect to reception, support, refugee determination, and consideration of international protection.⁹⁶ Eighth, that states offer non-refoulement protection when legally appropriate.⁹⁷ Finally, that domestic violence victims not be returned to their home country where their life would be at risk, or they might be subject to torture or inhuman or degrading treatment or punishment.⁹⁸

III. CONCEPTUAL METHODOLOGY AND ANALYTICAL DIMENSIONS

This study offers data regarding each EU-M State to indicate how it is meeting its treaty obligations as relates to migrant domestic violence victims. Additionally, the data provides a basis for comparison of the EU-M States legal frameworks since it describes their specific domestic environments in terms of several key indicators.

Human rights leaders and scholars have long valued comprehensive assessments of treaty obligation compliance.⁹⁹ In fact, the U.N.'s mandate often requires the collection of evidence to monitor compliance.¹⁰⁰ However, in the context of human rights treaty compliance monitoring, the means by which one assesses the data has been subject to decades of debate.¹⁰¹ Since the 1970's, human rights scholars have developed a host of conceptual and methodological tools to compare the extent to which states meet their human rights obligations.¹⁰² Some of these tools aggregate data, develop a composite index, and argue that doing so presents a useful comparison.¹⁰³

A majority of U.N. officials, as well as leading human rights scholars and advocates, have eschewed this effort in the human rights context as both too simplistic given the lack of reliable state-to-state data gathering abilities and

95. *Id.* art. 60(2).

96. *Id.* art. 60(3).

97. *Id.* art. 61(1).

98. *Id.* art. 61(2).

99. See Office of the High Comm'r for Human Rights, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, ¶ 4, U.N. Doc. HRI/MC/2006/2 (Mar. 22, 2006) [hereinafter Concept Paper].

100. See *id.* ¶ 36.

101. See *id.* ¶ 4.

102. *E.g.*, OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, TRAINING MANUAL ON HUMAN RIGHTS MONITORING, U.N. Doc. HR/P/PT/7, U.N. Sales No. E.01.XIV.2 (Professional Training Ser. No. 7, 2001); David L. Cingranelli & David L. Richards, *The Cingranelli and Richards (CIRI) Human Rights Data Project*, 32 HUM. RTS. Q. 401 (2010); *Datasets*, HUM. RTS. DATA ANALYSIS GROUP, http://hrdag.org/resources/software_projects.shtml (last visited Feb. 12, 2014). See also JENNIFER PRESTHOLDT, FAMILIAR TOOLS, EMERGING ISSUES: ADAPTING TRADITIONAL HUMAN RIGHTS MONITORING TO EMERGING ISSUES (Rachel Tschida ed., 2004), available at http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Familiar_Tools_Emerging_Issues.pdf.

103. See, *e.g.*, Cingranelli & Richards, *supra* note 102, at 403.

fundamentally dangerous from a political standpoint.¹⁰⁴ Compounding this difficulty is the fact that measurement of CEDAW compliance is even more problematic since parties are required “to act with due diligence to prevent violations of rights or to investigate and punish acts of violence”¹⁰⁵ and formal agreements as to appropriate indicators or benchmarks for assessing due diligence have not been developed.¹⁰⁶

Understanding those limitations, this article, nevertheless, embarks cautiously into such a survey. It proposes four qualitative dimensions through which one can methodologically explore human rights compliance and establish a baseline for support being provided to this population. To the extent that data is not available, the survey identifies how such data would be useful to a better understanding of the dimensions of this issue. The data is focused on four qualitative dimensions: (a) gender equality/inequality; (b) human development; (c) treaty obligations; and (d) domestic legal infrastructure.

A. Gender Equality/Inequality Dimension

In recent years, a number of international organizations have developed gender equality/inequality indices.¹⁰⁷ The United Nations measures gender inequality across states as defined by the loss of achievement due to reproductive health, empowerment, and labor market participation, referred to as the Gender Inequality Index (“GII”).¹⁰⁸ However, the United Nations does not have adequate datasets to track gender violence.¹⁰⁹ In June 2013, the European Institute for Gender Equality (“EIGE”) released an index that includes gender violence as a factor.¹¹⁰ However, the EIGE provides no data on gender violence, citing a lack of data at the European Union level.¹¹¹ Thus, since this study is focused on compliance with CEDAW, a U.N. treaty, and since these authors are not aware of

104. See *The Conference—Measuring Impact in Human Rights: How Far Have We Come, and How Far to Go?*, in MEASUREMENT AND HUMAN RIGHTS: TRACKING PROGRESS, ASSESSING IMPACT 25, 37-39 (Carr Ctr. for Human Rights Policy ed., 2005) [hereinafter CARR REPORT], available at <http://www.hks.harvard.edu/cchp/mhr/publications/documents/Measurement%20and%20Human%20Rights%20Tracking%20Progress,%20Assessing%20Impact%20Report%202005.pdf>.

105. CEDAW Committee, General Recommendation No. 19, *supra* note 31, ¶ 9.

106. Michael Ignatieff & Kate Desormeau, *Measurement and Human Rights: Introduction*, in CARR REPORT, *supra* note 104, at 1, 4; Kristen Timothy & Marsha Freeman, *The CEDAW Convention and the Beijing Platform for Action: Reinforcing the Promise of the Rights Framework*, INT'L WOMEN'S RTS. ACTION WATCH (Feb. 2000), <http://www1.umn.edu/humanrts/iwraw/Freeman-Timothy.html> (last visited Apr. 23, 2014).

107. For a list of organizations that have developed gender inequality/equality indexes, see LAURA DE BONFILS ET AL., EUR. INST. FOR GEND. EQUAL., GENDER EQUALITY INDEX REPORT 11 tbl.1.1 (2013) [hereinafter EIGE REPORT], available at <http://eige.europa.eu/sites/default/files/Gender-Equality-Index-Report.pdf>.

108. UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2013, THE RISE OF THE SOUTH: HUMAN PROGRESS IN A DIVERSE WORLD 31 (2013) [HUMAN DEVELOPMENT REPORT 2013], available at http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf.

109. See Ignatieff & Desormeau, *supra* note 106, at 1-2.

110. EIGE REPORT, *supra* note 107, at 31.

111. See *id.* at 107.

another equality/inequality index that provides a measure incorporating violence as a dimension, this survey employs the GII measure as a contextual tool. Furthermore, the state survey is organized in descending order, beginning with the EU-M State that has the score reflecting the lowest rate of gender inequality measured thus arguably a reflection of gender inequity.

B. *Human Development Dimension*

The United Nations measures human development by combining indicators of life expectancy, educational attainment, and income levels into a raw score called the Human Development Index (“HDI”).¹¹² This index can provide a frame of reference for constructive comparisons between states.¹¹³ However, leaders in the human rights community and multidisciplinary scholars have struggled about how to understand and possibly measure the correlation between human development and human rights obligation fulfillment.¹¹⁴ Leading figures in the human rights community have recommended against using data sets to make these comparisons, arguing that meaningful results would not be possible because data gathering possibilities vary from country to country.¹¹⁵ In addition, they have argued that the development of country rankings would be politically untenable and would ultimately oversimplify human rights challenges.¹¹⁶

In a multi-disciplinary study employing economic principles to study human rights obligation fulfillment, the findings suggest that the human development index varies across countries of similar income levels, which further suggests that human development factors such as life expectancy and education, for example, are not directly correlated to state resource capacity.¹¹⁷ The study also reveals that human development is an unreliable predictor of human rights obligation fulfillment, since some states fall short of accomplishing what they arguably could achieve given their resource capacities.¹¹⁸ In fact, there is a wide variance in human development achievement among countries with similar income levels.¹¹⁹

Finally, given that human development achievement can differ among countries with similar income levels, this survey provides data on one indicator of resource allocation. It examines the extent to which domestic-violence-shelter

112. *Id.* at 1.

113. *Human Development Index (HDI)*, UNITED NATIONS DEV. PROGRAMME, <http://hdr.undp.org/en/statistics/hdi> (last visited Feb. 6, 2014).

114. See Sakiko Fukuda-Parr et al., *An Index of Economic and Social Rights Fulfillment: Concept and Methodology*, 8 J. HUM. RTS. 195, 197 (2009).

115. *Id.* at 200 (“[I]t is quite difficult to credibly aggregate and to compare state conduct across countries. Assessing conduct would require far more than merely examining official policies or levels of resource expenditures in specific sectors, since paper commitments can mask corruption and other political-economic failures that often prevent policies from being implemented effectively.”).

116. *Id.* at 218 n.6.

117. See *id.* at 216-17; see also *Human Development Index (HDI)*, *supra* note 113.

118. See Sakiko Fukuda-Parr et al., *supra* note 114, at 216.

119. *Id.* at 216-17.

demand was met in a given year.¹²⁰ Admittedly an inadequate representation of total resource allocation, it, nevertheless, provides a barometer of sorts for the purposes of this study.

C. *Treaty Obligations Dimension*

In this article, the Treaty Obligation Dimension is a function of four qualitative criteria: (i) recency of EU membership; (ii) human rights treaty obligations; (iii) recency of treaty ascension; and (iv) U.N. CEDAW reporting compliance.

1. **Recency of EU Membership**

EU Membership is conferred only when a candidate country can demonstrate, among other criteria, that its institutions respect the rule of law, respect human rights, and protect minorities.¹²¹ However, the European Commission has admitted that the accession process has become more rigorous and comprehensive over time, specifically with respect to meeting rule of law reforms.¹²² The EU recognizes that although some states are EU members, they need to do more to improve the position of women and ensure gender equality and to provide greater protections to minority groups.¹²³ Thus, this article assumes that countries that were admitted to the EU more recently may have institutions that are not as capable in respecting the rule of law, respecting human rights, and protecting minorities. As such, the article provides EU membership ascension dates as a frame of reference.

2. **Human Rights Treaty Obligations**

Each EU-M State has a variety of human rights treaty obligations and is thus obligated to create legal environments that support the specific principles embodied in each treaty and to refrain from certain acts that violate the principles

120. See, e.g., Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: Germany, Comm. on the Elimination of Discrimination Against Women, 43d Sess., Jan. 19-Feb. 6, 2009, ¶ 43, U.N. Doc. CEDAW/C/DEU/CO/6 (Feb. 12, 2009); see also BARBARA STELMASZEK & HILARY FISHER, WOMEN AGAINST VIOLENCE EUR., COUNTRY REPORT 2012: REALITY CHECK ON DATA COLLECTION AND EUROPEAN SERVICES FOR WOMEN AND CHILDREN SURVIVORS OF VIOLENCE, A RIGHT FOR PROTECTION AND SUPPORT? 116 (2013) [hereinafter WAVE REPORT], available at <http://www.wave-network.org/sites/default/files/WAVE%20COUNTRY%20REPORT%202012.pdf> (displaying a survey Germany prepared with details on the number of women's shelters in Germany).

121. *Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2013-2014*, at 1, COM (2013) 700 final (Oct. 16, 2013) [hereinafter *Enlargement Strategy*], available at http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf; see also Presidency Conclusions, European Council in Copenhagen, at 13 (June 21-22, 1993), available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf.

122. *Enlargement Strategy*, supra note 121, at 2.

123. *Id.* at 9.

of each treaty.¹²⁴ Thus, this article identifies the actual legal obligations that each EU-M State bears.

3. Recency of Treaty Ascension

Treaty ascension reflects a recognition that an individual state must meet its treaty obligations. EU-M States are required to enact legal frameworks to support their international obligations with “due diligence.”¹²⁵ Specifically, CEDAW obligations require that states act with due diligence.¹²⁶

While treaties confer legal obligations, some EU-M States are deficient in creating the legal frameworks that meet these obligations along a timeline that conforms to treaty expectations.¹²⁷ Alternatively, some states create broad guarantees in their legal frameworks but fail to implement them in practice.¹²⁸ Thus, this article provides treaty ascension dates under the assumption that states that have ascended to a treaty earlier could reasonably be expected to have made greater progress toward meeting their treaty obligations.

4. U.N. CEDAW Reporting Compliance

The CEDAW requires regular reporting on how a state is meeting its treaty obligations.¹²⁹ These reports are required to be submitted at regular intervals.¹³⁰ Some EU-M States comply with these requirements, while others do not.¹³¹ Reporting data is provided as an indication of both substantive compliance with CEDAW requirements, as well as the willingness and capacity of the EU-M State to report.¹³² The survey provides reporting data for contextual purposes.

D. Domestic Legal Infrastructure

Each EU-M State is required to develop a domestic legal infrastructure that meets its treaty obligations.¹³³ The CEDAW Committee provides recommendations as to what protections each state should provide. These include:

124. See Thomas Hammarberg, Comm’r for Human Rights of the Council of Eur., Progress in Meeting Human Rights Obligations is Too Slow, Speech at the Eur. Movement UK Conference “Are Member States and the EU Meeting Their Human Rights Obligations” (Dec. 12, 2011) [hereinafter London Speech], available at <https://wcd.coe.int/ViewDoc.jsp?id=1884007>.

125. Istanbul Convention, *supra* note 5, art. 5. See also Lee Hasselbacher, Note & Comment, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection*, 8 NW. J. INT’L HUM. RTS. 190, 200 (2010) (tracing the emergence of a “due diligence” standard to assess a state’s response to domestic violence).

126. CEDAW Committee, General Recommendation No. 19, *supra* note 31, ¶ 9. See also Hasselbacher, *supra* note 125, at 193.

127. London Speech, *supra* note 124.

128. Ertürk Report, *supra* note 39, ¶ 62.

129. CEDAW, *supra* note 9, art. 18.

130. *Id.*

131. Concept Paper, *supra* note 99, ¶ 24.

132. *Id.* ¶ 10.

133. CEDAW, *supra* note 9, art. 2.

(1) equal protection under the law without regard to migration status;¹³⁴ (2) specialized services for migrant victims;¹³⁵ (3) the use of gender-sensitive language;¹³⁶ (4) migration relief for domestic violence victims who report such victimization;¹³⁷ and (5) asylum for victims of domestic violence.¹³⁸

Under the Istanbul Convention, EU-M States should further aspire as follows: (1) provide an autonomous residence permit irrespective of the duration of the marriage or relationship, that is renewable depending upon the specific circumstances in the case, and/or whether the victim's presence is deemed necessary to further an investigation or criminal proceedings;¹³⁹ (2) provide victims of forced marriage the ability to regain any lost status;¹⁴⁰ and (3) provide subsidiary protection to migrant victims of domestic violence.¹⁴¹

This survey provides data about the features of each EU-M State's domestic legal infrastructure in each of the key points identified here.

IV. COMPLIANCE, IMPLEMENTATION, AND ACCOUNTABILITY

State obligations to protect migrant domestic violence victims are defined through their individual treaty responsibilities. Under current European international law, there are three separate layers of protection for migrant domestic violence victims: asylum, non-refoulement, and subsidiary protection. Asylum protection stems from a number of international treaties, including Article 1 of the 1951 Convention Relating to the Status of Refugees ("1951 Refugee Convention").¹⁴² Non-refoulement protection is derived from Article 33(1) of the 1951 Refugee Convention.¹⁴³ Subsidiary protection is defined under the Qualification Directive 2004/83 to provide protection to those facing "a real risk of suffering serious harm,"¹⁴⁴ which is defined as "torture or inhuman or degrading treatment or punishment of an applicant in the country of origin."¹⁴⁵ It is notable that the protections against torture as outlined in Article 3 of the ECHR are very wide in scope, encompassing everything from torture to degrading treatment.¹⁴⁶

134. HANDBOOK, *supra* note 65, at 14-15.

135. CEDAW Committee, General Recommendation No. 26, *supra* note 59, ¶ 26(i).

136. HANDBOOK, *supra* note 65, at 15; CEDAW Committee, General Recommendation No. 26, *supra* note 59, ¶ 26(i).

137. HANDBOOK, *supra* note 65, at 34.

138. *Id.* at 56.

139. Istanbul Convention, *supra* note 5, arts. 59(1), 59(3).

140. *Id.* art. 59(4).

141. *Id.* art. 60.

142. Convention relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 137.

143. *Id.* art. 33(1).

144. Council Directive 2004/83, arts. 2(e), 15, 2004 O.J. (L 304) 12, 14 (EC).

145. *Id.* art. 15(b). For a discussion of the evolution of the concepts of non-refoulement and subsidiary protection, see Francesco Messineo, *Non-Refoulement Obligations in Public International Law: Towards a New Protection Status?*, in THE ASHGATE RESEARCH COMPANION TO MIGRATION LAW, THEORY AND POLICY 129-155 (Satvinder S. Juss ed., 2013).

146. ECHR, *supra* note 8, art. 3.

In this section, the article defines the specific treaty obligations governing the protection of migrant domestic violence victims in EU-M States. It discusses the various systems of protection that have been developed within each country, including legislation addressing violence against women. Using the comparative methodology outlined above, the article presents data as it is reported by the EU-M States, the SRVAW, Specialized Agencies, independent NGO studies, and actual case reviews. The article maps similarities and differences in the various legal regimes, and provides contextual data to better account for variations.¹⁴⁷

As the individual EU-M State surveys reveal, reform efforts vary from country to country.¹⁴⁸ A complex host of factors likely contribute to these variations.¹⁴⁹ However, a definitive accounting of the precise causes for each of these variations is beyond the scope of this study. In fact, the SRVAW has expressed concern over the inherent limitations on conducting a sufficient interrogation of the information presented by reporting states given the breadth of the mandate and resource limitations in evaluating the efficacy of compliance with existing standards.¹⁵⁰ In spite of the increasing prevalence of domestic violence increasing, the SRVAW reports that this has not “led to the adoption of necessary solutions that are coherent and sustainable, and which would lead to elimination of all forms of violence against all women.”¹⁵¹ Moreover, the SRVAW states: “[I]mpunity for both perpetrators and State officials who fail to protect and prevent violence against women continues to be the norm.”¹⁵²

In furtherance of her mandate, the SRVAW recently requested information regarding protections for migrant domestic violence victims, in order to prepare the yearly report to the General Assembly.¹⁵³ Only fourteen of the EU-M States responded to the request for information, representing over just 50 percent of them.¹⁵⁴ Moreover, of the responses received, the SRVAW determined that they were not comprehensive in addressing the questions posed.¹⁵⁵ The SRVAW concluded, based on the information provided, that all states, including EU-M States, are deficient in meeting their obligations under the CEDAW.¹⁵⁶

147. See generally David Kennedy, *The Methods and Politics of Comparative Law*, in *THE COMMON CORE OF EUROPEAN PRIVATE LAW* 131-207 (M. Bussani & U. Mattei eds., 2003) (discussing comparative legal methodologies).

148. See *infra* Part V.

149. See *supra* Part III.

150. Manjoo Report, *supra* note 24, ¶ 43.

151. *Id.*

152. *Id.*

153. See *id.* ¶ 41.

154. *Id.* ¶ 44, n.25 (reflecting that Austria, Bulgaria, Croatia, Czech Republic, Estonia, Germany, Greece, Hungary, Latvia, Lithuania, Romania, Slovenia, Spain, and the United Kingdom responded to the SRVAW questionnaire).

155. See *id.* ¶ 44.

156. See *id.* (“Less than 10 per cent of States articulate their responsibility to act with due diligence as emanating from legally binding international human rights law, despite the widespread ratification of treaties such as the Convention on the Elimination of All Forms of Discrimination against Women.”).

Given these inherent challenges, the article's more modest goal is to summarize (1) the states' international obligations, (2) the legal frameworks providing support to this population, (3) the information that has been reported related to protections for this vulnerable population, and (4) the criticisms that have been lodged. Because states have the prerogative of choosing the timetable under which they implement protections, as well as what they choose to report, a definitive comparison across EU-M States remains elusive.

A. *European Convention of Human Rights Compliance and Accountability*

All EU-M States are parties to the ECHR.¹⁵⁷ Article 3 indicates that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹⁵⁸ Thus, parties must ensure that they provide, in pertinent part, freedom from torture and inhuman treatment, a standard that can be applied to migrant domestic violence victims that fall within their territory. Pursuant to Article 14, states must not engage in discrimination.¹⁵⁹ ECHR violations are enforced through the European Court of Human Rights (“ECtHR”).¹⁶⁰ Specific ECtHR cases involving this particular population are discussed within the country reports below.

B. *CEDAW Compliance and Accountability*

The CEDAW Committee has articulated that parties provide the following protections to migrants within their borders:

- a) Equal protection under the law without regard to migration status;¹⁶¹
- b) Relief that is sensitive to the historical gender-component in domestic violence;¹⁶²
- c) Relief from deportation or other punitive immigration action for female survivors of domestic violence “when a worker files a complaint of exploitation or abuse [to the authorities]”;¹⁶³
- d) The right to confidentially apply for legal immigration status independently of the abuser;¹⁶⁴ and,
- e) The right to asylum for individuals that qualify for refugee status.¹⁶⁵

CEDAW compliance is evaluated through the state reporting system.¹⁶⁶ As parties, all EU-M States¹⁶⁷ are obliged to submit detailed reports to the CEDAW

157. *European Convention on Human Rights: Accession of the European Union*, COUNCIL OF EUR., <http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention> (last visited May 29, 2014).

158. ECHR, *supra* note 8, art. 3.

159. *Id.* art. 14.

160. *Id.* art. 19.

161. CEDAW Committee, General Recommendation No. 26, *supra* note 59, ¶ 7.

162. *Id.* ¶ 23(a).

163. *Id.* ¶ 26(c)(ii).

164. *Id.* ¶ 26(f).

165. *See id.* ¶ 26(l).

166. CEDAW, *supra* note 9, art. 18.

Committee documenting their efforts to eliminate discrimination against women. General compliance with the CEDAW can be accessed through a review of these reports.¹⁶⁸ In addition, with respect to countries that are parties to the CEDAW Optional Protocol, individual complaints of state deficiencies in meeting CEDAW obligations are reviewable.¹⁶⁹

Finally, the SRVAW receives individual complaints regarding violence against women and communicates with host countries to seek clarification regarding their decision-making and/or appeals processes.¹⁷⁰ The SRVAW can also try to secure protection for a victim.¹⁷¹

C. Council of Europe Compliance and Accountability

All EU-M States are members of the Council of Europe.¹⁷² In April 2004, the Council of Europe issued Qualification Directive 2004/83/EC on “minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”¹⁷³ (“Qualification Directive 2004/83”). That document applies to all EU-M States, except Denmark,¹⁷⁴ and attempts to standardize the criteria for international and subsidiary protection for refugees.¹⁷⁵ In addition to setting forth minimum standards for refugees and subsidiary protection meant to harmonize the rules across countries, Qualification Directive 2004/83 seeks to limit the movement of asylum applicants between member states, where they are motivated purely by differences in state legal frameworks.¹⁷⁶

Qualification Directive 2004/83 articulates the need for a common policy across the European Union.¹⁷⁷ While this Qualification Directive does not set forth

167. The European Commission reports the 28 European Union Member States and their year of initial membership: Austria (1995); Belgium (1952); Bulgaria (2007); Croatia (2013); Cyprus (2004); Czech Republic (2004); Denmark (1973); Estonia (2004); Finland (1995); France (1952); Germany (1952); Greece (1981); Hungary (2004); Ireland (1973); Italy (1952); Latvia (2004); Lithuania (2004); Luxembourg (1952); Malta (2004); the Netherlands (1952); Poland (2004); Portugal (1986); Romania (2007); Slovakia (2004); Slovenia (2004); Spain (1986); Sweden (1995); and the United Kingdom (1973). *Countries*, EUR. UNION, http://europa.eu/about-eu/countries/index_en.htm (last visited Feb. 10, 2014).

168. CEDAW, *supra* note 9, art. 18.

169. Optional Protocol to CEDAW, *supra* note 75, art. 7.

170. Ertürk Report, *supra* note 39, ¶ 24.

171. *Id.*

172. See COUNCIL OF EUR., <http://hub.coe.int> (last visited Jan. 22, 2014) (follow “47 Countries” hyperlink) (demonstrating that all of the EU-M States are also members of the Council of Europe).

173. Council Directive 2004/83, *supra* note 144; see also UNITED NATIONS HIGH COMM’R FOR REFUGEES, ASYLUM IN THE EUROPEAN UNION: A STUDY OF THE IMPLEMENTATION OF THE QUALIFICATION DIRECTIVE (2007) [hereinafter ASYLUM IN THE EUROPEAN UNION], available at <http://www.unhcr.org/47302b6c2.html>.

174. Council Directive 2004/83, *supra* note 144, ¶ 40.

175. *Id.* ¶¶ 1, 6, 24.

176. *Id.* ¶ 7.

177. *Id.* ¶ 1 pmb1. (“A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union’s objective of progressively establishing an area of freedom,

mandates with regard to humanitarian relief,¹⁷⁸ it does provide specific and detailed standards for international and subsidiary protections.¹⁷⁹ Paragraph 21 of the preamble establishes the necessity of introducing a common understanding “of the persecution ground ‘membership of a particular social group.’”¹⁸⁰ It mandates that acts of gender-related violence are to be considered persecutory.¹⁸¹ Paragraph 27 states that family members of a refugee “will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.”¹⁸² Actors of persecution are deemed to include state governments, parties controlling a state or territory, and non-state actors in the absence of protection by states or controlling parties.¹⁸³ “Protection is generally provided when [states, or parties controlling those states] take reasonable steps to prevent the persecution or suffering of serious harm . . . by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm.”¹⁸⁴

With regard to subsidiary protection, Qualification Directive 2004/83 sets forth standards for protection.¹⁸⁵ It defines serious harm, in pertinent part, as “(a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin.”¹⁸⁶ It mandates that “Member States shall grant subsidiary protection status to a third country national” who qualifies pursuant to the standards set forth in Qualification Directive 2004/83.¹⁸⁷ Paragraph 29 states that the “family members of beneficiaries of subsidiary protection status . . . [should] be fair in comparison to those enjoyed by beneficiaries of subsidiary protection status.”¹⁸⁸

Qualification Directive 2004/83 addresses the concept of non-refoulement, mandating that international obligations be followed in this regard.¹⁸⁹ Principles of non-refoulement are set forth in several treaties, including the 1951 Refugee Convention¹⁹⁰ and the 1967 Protocol Relating to the Status of Refugees (“1967 Refugee Protocol”).¹⁹¹ Article 33 of the 1951 Refugee Convention mandates that,

security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.”).

178. *Id.* ¶ 9 pmbl.

179. *Id.* chs. II, V.

180. *Id.* ¶ 21 pmbl.

181. *Id.* art. 9(2)(f).

182. *Id.* ¶ 27 pmbl.

183. *Id.* art. 6.

184. *Id.* art. 7.

185. *Id.* ch. V.

186. *Id.* art. 15.

187. *Id.* art. 18.

188. *Id.* ¶ 29 pmbl.

189. *Id.* art. 21.

190. Convention relating to the Status of Refugees, *supra* note 142, art. 33.

191. Protocol relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. “The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the

“[n]o Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹⁹²

Article 23 of Qualification Directive 2004/83 addresses family unity principles and mandates that family unity “be maintained” for refugees and beneficiaries of subsidiary protection permitting family members to apply for residence permits and state benefits to ensure an adequate standard of living.¹⁹³

D. Implementation and Compliance Concerns

Over the past twenty years, the SRVAW has issued a variety of reports on the extent of worldwide progress in eliminating violence against women.¹⁹⁴ In spite of the progress made in strengthening protections for domestic violence victims, the SRVAW has called for more to be done.¹⁹⁵ The SRVAW points out that all of the EU-M States are faced with increasing numbers of migrants, but only some of these states provide gender-specific immigration benefits, such as asylum for victims of gender-based and domestic violence.¹⁹⁶

Having consistently acknowledged the higher risk of violence faced by migrant domestic violence victims, as well as the barriers to justice due to their illegal status, the SRVAW notes the urgent need to support this vulnerable population.¹⁹⁷ Pointing to the Netherlands, by way of example, the SRVAW recognizes that the state has adopted legislation that permits women to migrate in their individual capacities on humanitarian grounds, where domestic violence is presumably a humanitarian basis.¹⁹⁸ The SRVAW also charges that the real nature of the protection has been aimed at social and cultural integration, which has had the result of further marginalizing this population, and that few of these

Convention to refugees as hereinafter defined.” *Id.* art. 1(1) (reaffirming the obligations from the 1951 Convention including the provisions on non-refoulement).

192. Convention relating to the Status of Refugees, *supra* note 142, art. 33(1).

193. Council Directive 2004/83, *supra* note 144, art. 23.

194. *See, e.g.*, Manjoo Report, *supra* note 24; Ertürk Report, *supra* note 39; Special Rapporteur on Violence Against Women, *Integration of the Human Rights of Women and the Gender Perspective*, Comm’n on Human Rights, ¶ 1514, U.N. Doc. E/CN.4/2003/75/Add.1 (Feb. 27, 2003) (by Radhika Coomaraswamy) [hereinafter Coomaraswamy Report] (these three represent the types of reports that the SRVAW produces). *See also Annual Reports*, UNITED NATIONS HUM. RTS., <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx> (last visited Jan. 22, 2014) (listing the annual reports released by the SRVAW).

195. Manjoo Report, *supra* note 24, ¶¶ 69-70. The SRVAW states that the impact of restrictive immigration policies is especially burdensome on women whose immigration residency may be dependent upon that of their husbands. Ertürk Report, *supra* note 39, ¶ 41.

196. Coomaraswamy Report, *supra* note 194, ¶ 1514.

197. Ertürk Report, *supra* note 39, ¶ 65.

198. Special Rapporteur on Violence Against Women, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council,” Mission to the Netherlands*, Human Rights Council, ¶¶ 56-58, U.N. Doc. A/HRC/4/34/Add.4 (Feb. 7, 2007) (by Yakin Ertürk) [hereinafter Netherlands Report].

humanitarian-based visas have actually been issued.¹⁹⁹ There has been a call for the Netherlands government to release data on the number of humanitarian-based visas that have, in fact, been issued to migrant victims of domestic violence.²⁰⁰

Another factor that influences a migrant domestic violence victim's decision to seek assistance is the host country's family reunification policy. When a domestic violence victim's migration status is tied to the principal residence permit holder, the victim may be subject to increased vulnerability to exploitation of her human rights.²⁰¹ CEDAW Specialized Agencies in the European Union have criticized family unification policies in many of the EU-M countries.²⁰² Moreover, the Istanbul Convention provides that migrant domestic violence victims whose residence status is dependent on that of their spouse or partner are able to apply for autonomous legal status "irrespective of the duration of the marriage or the relationship."²⁰³ In 2009, the Council of Europe issued an official recommendation calling upon EU-M States to adopt a variety of protections for migrant domestic violence victims, including "the granting of individual legal status to migrant women who have joined their spouse through family reunion, if possible within one year of the date of arrival."²⁰⁴

To the extent that existing policies tie migration status to another family member, dependencies are created. In the case of domestic violence, when there is migration-related dependence between family members, this can impact the extent to which a domestic violence victim will seek support.²⁰⁵ Before a migrant domestic violence victim has achieved a long-term residence status, her residency security is tied to the family sponsor.²⁰⁶ Therefore, decisions about whether to seek support from the state government may be influenced according to the power the victim has over her right to remain in the country given her family ties to the abuser.²⁰⁷

In sum, while many states have acknowledged that domestic violence against women is the most prevalent human rights violation facing countries,

199. Ertürk Report, *supra* note 39, ¶ 93 (citing Netherlands Report, *supra* note 198, ¶¶ 16-17).

200. See Netherlands Report, *supra* note 198, ¶¶ 58-65 (stating that the Netherlands government has not provided all asylum and residence permit data).

201. See CEDAW Committee, General Recommendation No. 26, *supra* note 59, ¶¶ 8, 26(f).

202. See INT'L COMM'N OF JURISTS, GREEN PAPER ON THE RIGHT TO FAMILY REUNIFICATION OF THIRD-COUNTRY NATIONALS LIVING IN THE EUROPEAN UNION (DIRECTIVE 2003/86/EC): RESPONSE BY THE INTERNATIONAL COMMISSION OF JURISTS 6 (2012), available at http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/internationalorganisationsocialpartnersngos/international_commission_of_jurists_-_icj.pdf.

203. Istanbul Convention, *supra* note 5, art. 59(1).

204. EUR. PARL. ASS., *Migrant Women: at Particular Risk from Domestic Violence*, Res. 1697, art. 4.1.1 (Nov. 20, 2009), available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=17797&Language=EN>.

205. *Id.* art. 1.

206. Netherlands Report, *supra* note 198, ¶¶ 56-58.

207. See *id.*

this acknowledgement has not led to the adoption of necessary solutions that are coherent and sustainable, and which would lead to elimination of all forms of violence against all women. In fact, the view from civil society is that the prevalence rates are increasing and also manifesting in new forms in many parts of the world. Also, that impunity for both perpetrators and State officials who fail to protect and prevent violence against women continues to be the norm.²⁰⁸

In the example above, where the Netherlands is progressive, by comparison, in the creation of special protections, the SRVAW points out that most of the countries are lagging in the development of specific immigration protections for migrants.²⁰⁹

These limitations have prompted the United Nations to express serious concern that in some countries: (1) the policies are gender-neutral and fail to adequately protect the rights of female migrants;²¹⁰ (2) the legal frameworks place migrant females at high risk of refoulement;²¹¹ (3) female migrant victims have uneven access to humanitarian relief in the form of asylum;²¹² and (4) there is generally lack of awareness about the availability of social services and legal remedies that ensure protection against migrant domestic violence victimization.²¹³ This article will conclude by evaluating the steps the various countries are taking to address these limitations and enhance the rights of migrant female domestic violence victims.²¹⁴

For years, CEDAW Specialized Agency organizations have been advancing gender-related relief in the immigration context. The European Council on Refugees and Exiles (“ECRE”), a pan-European alliance of 82 non-governmental organizations advancing the rights of refugees, asylum seekers, and displaced persons, has been advocating since as early as 1997 that:

Gender-specific violence should not be evaluated differently from other forms of violence that are held to amount to persecution, and the appearance of sexual violence in a claim should never lead the decision-maker to conclude that the alleged harm is an instance of purely personal harm. In particular, where rape has occurred this should be regarded as other forms of serious harm and thus repeated occurrence should not need to be demonstrated in order to prove a well-founded fear of persecution. The fact that violence against women is universal is

208. Manjoo Report, *supra* note 24, ¶ 43.

209. *Id.* ¶¶ 69-77.

210. CEDAW Committee, General Recommendation No. 26, *supra* note 59, ¶ 23(a).

211. *See id.* ¶ 26(f).

212. *See id.* ¶¶ 24(j), 26(a).

213. *Id.* ¶¶ 26(c)(iii), 26(g), 26(i).

214. *See infra* Part V.

irrelevant when determining whether gender-specific violence amounts to persecution in a particular case.²¹⁵

In response, there have been concerted worldwide and regional programs aimed at harmonizing efforts as relates to asylum and gender-based claims specifically. In 2000, the Council of Europe Parliamentary Assembly passed a recommendation that member states eliminate all gender-related discrimination among refugees.²¹⁶ Nevertheless, as of 2008, the Council of Europe was reporting that “[c]urrent legal measures need to be improved in almost all Council of Europe member states and new measures need to be introduced to combat violence and sustain progress.”²¹⁷ Eurostat statistics reflect that there remains a wide discrepancy in protection rates for the similar groups of asylum-seekers across EU-M States, a claim acknowledged by the Council of Europe.²¹⁸ Moreover, the extent to which states have acted with due diligence in implementing these protections is subject to debate.²¹⁹

E. Asylum Claims Generally

In 2012, there were 335,365 requests for asylum made to EU-M States.²²⁰ This represents approximately 44 percent of the total number of requests for

215. EUROPEAN COUNCIL ON REFUGEES & EXILES, POSITION ON ASYLUM SEEKING AND REFUGEE WOMEN, ¶ 8 (1997), available at <http://www.ecre.org/component/downloads/downloads/156.html>.

216. EUR. PARL. ASS., *Violence Against Women in Europe*, Res. 1450 (Apr. 3, 2000), available at <http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FAdoptedText%2Fta00%2FEREC1450.htm>.

217. COUNCIL OF EUR., FINAL ACTIVITY REPORT: TASK FORCE TO COMBAT VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE 82 (2008), available at http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/Final_Activity_Report.pdf.

218. See ADVISORY COMM. ON EQUAL OPPORTUNITIES FOR WOMEN AND MEN, OPINION ON THE GENDER DIMENSION OF INTEGRATION OF MIGRANTS 3 (2011), available at http://ec.europa.eu/justice/gender-equality/files/opinions_advisory_committee/opinion_integration_migrants_en.pdf; *Respect for the Rights and Dignity of Migrants*, COUNCIL OF EUR., <http://hub.coe.int/what-we-do/society/migration> (last visited May 29, 2013) (“The issues connected with migratory movements and migrants require a comprehensive approach involving all the Council of Europe’s bodies: Parliamentary Assembly, Congress of Local and Regional Authorities of Europe and Conference of International Non-Governmental Organisations, as well as the representatives of governments, who meet to prepare and co-ordinate their work.”).

219. See Hasselbacher, *supra* note 125, at 191 (highlighting that the ECtHR has found that states have not met the “due diligence” standard). Article 29 of the Istanbul Convention requires that states ensure that civil law remedies permit victims to seek justice and compensation against state authorities, if they have failed in their duty to diligently take preventive and protective measures. Istanbul Convention, *supra* note 5, art. 29.

220. EUROPEAN ASYLUM SUPPORT OFFICE, ANNUAL REPORT ON THE SITUATION OF ASYLUM IN THE EUROPEAN UNION 2012, at 13 (2013) (asylum requests increased 11 percent from 2011), available at <http://www.europarl.europa.eu/document/activities/cont/201310/20131028ATT73533/20131028ATT73533EN.pdf>.

asylum worldwide.²²¹ By way of comparison, the United States received approximately 11 percent of the total worldwide requests.²²² Germany, France, and Sweden received the greatest percentage of total requests, at approximately 23, 18, and 13 percent, respectively.²²³ Belgium and the United Kingdom received significant requests as well, at approximately 8 percent each.²²⁴ The remaining EU-M States received, collectively, approximately 28 percent of the applications—representing almost 96,000 requests.²²⁵ Austria, Italy, the Netherlands, and Poland all received between 10,000 and 18,000 requests.²²⁶

Asylum flows vary across years and across states, with shifting geopolitical conflicts influencing the flows. In 2012, the majority of the asylum requests across the EU were from Afghani, Russian, and Syrian refugees.²²⁷ By way of comparison, in 2010, most asylum-seekers in the EU were from Afghanistan, Russia, Serbia, Iraq, and Somalia.²²⁸ With the advent of the civil war in Syria beginning in March 2011, for example, neighboring Bulgaria has witnessed a three-fold increase in the number of refugee requests it received in 2013.²²⁹

Presumably some percentage of these individuals seeking asylum are fleeing persecution based on their gender. Asylum claims, including gender-based asylum claims, are evaluated under individual state systems that enshrine international principles articulated in the 1951 Refugee Convention and the 1967 Refugee Protocol.²³⁰ The states' definitions of the term refugee are all modeled on the 1951 Refugee Convention, which defines a refugee as one, who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."²³¹

221. UNITED NATIONS HIGH COMM'R FOR REFUGEES, 2012 STATISTICAL YEARBOOK: TOP POPULATION OUTFLOWS BY ORIGINS, REFUGEES VS. ASYLUM-SEEKERS 7 (2013) (highlighting that there were 752,700 initial applications filed worldwide during 2012).

222. UNITED NATIONS HIGH COMM'R FOR REFUGEES, ASYLUM TRENDS 2012: LEVELS AND TRENDS IN INDUSTRIALIZED COUNTRIES 3 (2013), available at <http://www.tagesschau.de/ausland/unhcr108.pdf> (stating that the United States received an estimated 83,400 applications).

223. EUROPEAN ASYLUM SUPPORT OFFICE, *supra* note 220, at 13.

224. *Id.*

225. *See id.*

226. *Id.* at 18 fig.3.

227. *See id.* at 29 fig.13.

228. *Communication from the Commission to the European Parliament and the Council, Annual Report on Immigration and Asylum (2010)*, at 5, COM (2011) 291 final (May 24, 2011) [hereinafter *2010 Annual Report on Immigration and Asylum*], available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0291:FIN:EN:PDF>.

229. *See* UNITED NATIONS HIGH COMM'R FOR REFUGEES, BULGARIA AS A COUNTRY OF ASYLUM: UNHCR OBSERVATIONS ON THE CURRENT SITUATION OF ASYLUM IN BULGARIA 4 (2014).

230. Convention relating to the Status of Refugees, *supra* note 142; Protocol relating to the Status of Refugees, *supra* note 191.

231. Convention relating to the Status of Refugees, *supra* note 142, art. 1(A)(2).

One aspect of this definition that is significant in the context of gender-based violence is the meaning of "particular social group." It is within this part of the definition that claims to asylum based on domestic violence are typically considered.²³²

Some individuals claim that they have been persecuted by their family or community on account of their gender and that, due to social and cultural conditions, they are unable to seek support from their state governments.²³³ Under international principles, harm related to domestic violence is held to be gender-specific, and when states fail to provide adequate support, in some instances, a claim to asylum based on membership in a particular social group may prevail.²³⁴

V. EUROPEAN UNION MEMBER STATE PROTECTION SURVEY

The degree to which a state meets its treaty obligations in practice is sometimes a matter of dispute between worldwide and regional human rights bodies, CEDAW Specialized Agencies, individual state governments, and individuals who seek to avail themselves of human rights protections.²³⁵ Some states have developed robust systems of protection that include a range of legal protections and safety structures, including asylum, non-refoulement, subsidiary protections, humanitarian relief, family unity provisions, migration-related protections for victims that are not tied to an abusive spouse, shelters, hotlines, legal assistance, interpretation assistance, work permits, and injunctive relief in the form of protection orders.²³⁶ Other states are in various stages of the process of developing these structures.²³⁷ Below, we will provide a general overview of the legal protection and related frameworks currently in place to protect migrant domestic violence victims, recognizing that many states are in mid-stream in developing these structures.

A. *The Netherlands*

The Netherlands ratified the ECHR in August 1954.²³⁸ It ratified the CEDAW in July 1991,²³⁹ as well as the CEDAW Optional Protocol in May

232. Guy S. Goodwin-Gill, *Judicial Reasoning and 'Social Group' After Islam and Shah*, 11 J. INT'L REFUGEE L. 537, 537 (1999); Sue Kirvan, *Women and Asylum: A Particular Social Group*, 7 FEMINIST LEGAL STUD. 333, 335 (1999) (these two articles reviewed *Islam v. Secretary of State for the Home Department; R v. Immigration Appeal Tribunal and Another ex parte Shah*, [1999] 2 W.L.R. 1015 (H.L.) (appeals taken together)).

233. See *infra* Part IV.

234. See *supra* Part II.

235. See *supra* Part II.

236. See *infra* Part V.

237. See *infra* Part V.

238. Council of Eur. Treaty Office, *Convention for the Protection of Human Rights and Fundamental Freedoms* (Nov. 4, 1950), <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=&CL=ENG> (last visited Jan. 22, 2014) [hereinafter ECHR Treaty Status].

239. United Nations, Multilateral Treaties Deposited with the Secretary-General, *Convention on the Elimination of All Forms of Discrimination against Women* (Dec. 18, 1979),

2002.²⁴⁰ The Netherlands signed the Istanbul Convention in November 2012, but has not yet ratified it.²⁴¹ It has submitted five party reports to the CEDAW Committee, with a sixth report expected in February 2014.²⁴²

Since 2002, the Netherlands has been implementing a country-wide policy on combating domestic violence, with a 2010 evaluation showing significant progress on this front.²⁴³ Working with local and professional partners, the government is developing an approach for violence, with a specific focus on women and girls of non-Dutch heritage.²⁴⁴ The Dutch CEDAW Network, however, highlighted the problem of formulating policies to combat and prevent domestic violence that exclude women of minority backgrounds from the process because “[t]his results in solutions that are offered to them, but not developed with them.”²⁴⁵

Asylum is available for immigrants who claim to be victims of domestic violence, when they can prove that their own government is unable or unwilling to provide them with protection.²⁴⁶ Furthermore, “[t]he Aliens Act Implementation Guidelines specifically mention domestic violence as a ground of asylum for immigrants from certain countries where there is a link between domestic violence and honour-related violence, discrimination against women or the absence of

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Feb. 18, 2014) [hereinafter CEDAW Treaty Status].

240. United Nations, Multilateral Treaties Deposited with the Secretary-General, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (Oct. 6, 1999), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en (last visited Feb. 18, 2014) [hereinafter CEDAW Optional Protocol Treaty Status].

241. Istanbul Convention Treaty Status, *supra* note 88.

242. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fifth Periodic Reports of States Parties: The Netherlands, Comm. on the Elimination of Discrimination Against Women, 45th Sess., Jan. 18-Feb. 5, 2010, at 2, 8 n.1, U.N. Doc. CEDAW/C/NLD/5 (Nov. 24, 2008) [hereinafter Netherland’s Fifth Periodic Report] (the initial report was submitted in 1992 (U.N. Doc. CEDAW/C/NET/1), the second in 1998 (U.N. Doc. CEDAW/C/NET/2), the third in 2000 (U.N. Doc. CEDAW/C/NET/3), and the fourth in 2005 (U.N. Doc. CEDAW/C/NET/4)). *See also Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “The Netherlands” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

243. Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: The Netherlands, Comm. on the Elimination of Discrimination Against Women, 45th Sess., Jan. 18-Feb. 5, 2010, ¶ 5, U.N. Doc. CEDAW/C/NLD/CO/5 (Feb. 5, 2010).

244. Netherland’s Fifth Periodic Report, *supra* note 242, at 25-26.

245. LEONTINE BIJLEVELD & LINDA MANS, NETWORK VN-VROUWENVERDRAG (DUTCH CEDAW NETWORK), WOMEN’S RIGHTS SOME PROGRESS, MANY GAPS: SHADOW REPORT BY DUTCH NGOS; AN EXAMINATION OF THE FIFTH REPORT BY THE GOVERNMENT OF THE NETHERLANDS ON THE IMPLEMENTATION OF THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 2005-2008, at 19 (2009) [hereinafter Dutch CEDAW Network], available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/DutchNetwork_Netherlands45.pdf.

246. Responses to the List of Issues and Questions with Regard to the Consideration of the Fifth Periodic Report: The Netherlands, Comm. on the Elimination of Discrimination Against Women, 45th Sess., Jan. 18-Feb. 5, 2010, at 15, U.N. Doc. CEDAW/C/NLD/Q/5/Add.1 (Oct. 19, 2009) [hereinafter Netherlands: Response to List of Issues].

protection by the local authorities.”²⁴⁷ As noted above, however, the Dutch CEDAW Network reported that the government has failed to provide statistics on the number of women granted refugee status on grounds of domestic violence.²⁴⁸

In 2007, the Regulation on provisions for certain categories of foreign nationals became available to victims of domestic violence without a residence permit.²⁴⁹ This change means, essentially, that victims of domestic violence “may be eligible for financial support and health insurance, on the condition that they submit an application for a residence permit (which gives them lawful residence) and reside in a women’s shelter.”²⁵⁰ The Netherlands affords essentially the same rights to beneficiaries of subsidiary protection as it does to beneficiaries of refugee status, including family reunification benefits.²⁵¹

The CEDAW Committee expressed concern about the Netherlands’ asylum policy and how it might exclude victims of domestic violence.²⁵² Specifically, the Committee Against Torture and the SRVAW note the need for “adopting gender-sensitive asylum procedures and recognizing gender-related persecution as a ground for asylum.”²⁵³ The Committee noted that the so-called “accelerated [asylum] procedure” could lead to refoulement of women who cannot relate traumatic incidents of sexual or domestic violence.²⁵⁴ In response to this concern, the government stated that the accelerated forty-eight hour procedure was going to be replaced by an eight-day procedure, providing more time for them to seek legal assistance.²⁵⁵ The government also assured the CEDAW Committee that the Dutch asylum process is gender-sensitive, and that asylum status may be granted to victims of domestic violence if their country of origin is unable or unwilling to protect them.²⁵⁶

While the government repeatedly highlighted humanitarian-based resident status for victims of domestic violence, honor-related violence, and trafficking,²⁵⁷ the CEDAW Committee noted, however, that “the humanitarian grounds mechanism had rarely been used: fewer than 10 residence permits had been

247. *Id.*

248. BIJLEVELD & MANS, *supra* note 245, at 59.

249. Netherlands’ Fifth Periodic Report, *supra* note 242, at 24.

250. *Id.*

251. EUROPEAN COUNCIL ON REFUGEES & EXILES, THE IMPACT OF THE EU QUALIFICATION DIRECTIVE ON INTERNATIONAL PROTECTION 33 (2008) [hereinafter THE IMPACT OF THE EU QUALIFICATION DIRECTIVE], available at http://cmr.jur.ru.nl/cmr/docs/ECRE_QD_study_full.pdf.

252. Comm. on the Elimination of Discrimination Against Women, 45th Sess., 916th mtg. ¶ 53, U.N. Doc. CEDAW/C/SR.916 (Jan. 27, 2010) [hereinafter 916th mtg. Summary Record].

253. List of Issues and Questions with Regard to the Consideration of Periodic Reports: The Netherlands, Comm. on the Elimination of Discrimination Against Women, 45th Sess., Jan. 18-Feb. 5, 2010, ¶ 22, U.N. Doc. CEDAW/C/NLD/Q/5 (Mar. 13, 2009).

254. *Id.*

255. Netherlands: Response to List of Issues, *supra* note 246, at 25.

256. *Id.* at 15, 25.

257. *Id.* at 15 (“Victims who are resident illegally can apply for legal residence either by invoking specific arrangements for victims or on humanitarian grounds, and those resident legally can apply for continued residence, if necessary also on humanitarian grounds.”).

granted.”²⁵⁸ The SRVAW noted that the humanitarian residence permit only applies to victims who were granted temporary residence due to their cooperation with the police.²⁵⁹ The Committee thus considered the recommendation that the government provide protection to trafficking victims regardless of their level of cooperation in legal proceedings as “partially implemented.”²⁶⁰

Throughout the asylum procedure, the asylum-seeker may have legal representation by a lawyer, which is provided by the Legal Aid Board.²⁶¹ The asylum-seeker is to be heard in a language that it may reasonably be assumed she is able to understand.²⁶² This means that in all cases, an interpreter has to be present during the interviews.

The Netherlands’s 2012 HDI worldwide ranking is fourth.²⁶³ Its 2012 GII worldwide ranking is first.²⁶⁴ While the state did not have in place a national women’s hotline as of 2012,²⁶⁵ its vast shelter system served nearly 100 percent of the reported need.²⁶⁶

B. Sweden

Sweden ratified the ECHR in February 1952.²⁶⁷ It ratified the CEDAW in July 1980,²⁶⁸ and the CEDAW Optional Protocol in April 2003.²⁶⁹ It ratified the Istanbul Convention in July 2014.²⁷⁰ Sweden issued its initial report pursuant to its obligations under CEDAW in October 1982,²⁷¹ and submitted five periodic reports thereafter, with the latest in September 2006.²⁷² Its next report is due September 3, 2014.²⁷³

258. 916th mtg. Summary Record, *supra* note 252, ¶ 60. The low number is especially significant when compared to residence permits and permanent residence permits issued to “cooperating” victims of violence and trafficking. *Id.* (“In 2008 and 2009, residence permits had been issued to 230 and 200 cooperating victims respectively, with permanent residence permits granted to 100 and 40 victims respectively.”).

259. Letter from Barbara Bailey, Rapporteur on Follow-up, Comm. on the Elimination of Discrimination Against Women, to the Netherlands, at 3-4 (Nov. 26, 2012), *available at* http://www.vrouwenverdrag.nl/_documenten/vv/doc/2012/CEDAWfollow-up_Netherlands.pdf.

260. *Id.* (emphasis removed).

261. *Id.* at 2.

262. *Id.* at 3 (NGOs assist individuals from different cultures).

263. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

264. *Id.* at 156 tbl.4.

265. WAVE REPORT, *supra* note 120, at 13.

266. *Id.* at 14-15.

267. ECHR Treaty Status, *supra* note 238.

268. CEDAW Treaty Status, *supra* note 239.

269. CEDAW Optional Protocol Treaty Status, *supra* note 240.

270. Istanbul Convention Treaty Status, *supra* note 88.

271. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Initial Reports of State Parties: Sweden, Comm. on the Elimination of Discrimination Against Women, 2d Sess., Aug. 1-12, 1983, at 1, U.N. Doc. CEDAW/C/S/Add.8 (Dec. 15, 1982).

272. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Sixth and Seventh Periodic Report of States Parties: Sweden, Comm. on the Elimination of Discrimination Against Women, at 1,

Swedish law governing migrants is set forth in the Aliens Act.²⁷⁴ According to Chapter 4, Section 1, of the Aliens Act, the term “refugee” includes a gender-related particular social group.²⁷⁵ Protection is available irrespective of whether the persecution is at the hands of the authorities of the country, or against whom the authorities cannot be expected to offer protection.²⁷⁶ In 2005, the Aliens Act was amended to permit asylum on the basis of gender-based persecution.²⁷⁷ The State Migration Board has issued review guidelines on refugee women.²⁷⁸ Sweden also provides subsidiary relief when there are substantial grounds for assuming that the alien would run a risk of “suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment.”²⁷⁹ Swedish law also permits the granting of residence permits to persons who face “exceptionally distressing circumstances” as stated in Chapter 5, Section 6 of the Aliens Act.²⁸⁰

If a residence permit cannot be awarded on other grounds, a permit may be granted to an alien if, based upon an overall assessment of the alien’s situation, there are found to be such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden.²⁸¹ Sweden affords “essentially the same rights to beneficiaries of subsidiary protection” as it does to beneficiaries of refugee status, including family reunification benefits.²⁸²

In recent years, Sweden has experienced a series of highly publicized honor killings.²⁸³ As a consequence, in February 2002, the Swedish Minister for Integration adopted a strategy on how to protect girls living in vulnerable situations.²⁸⁴ Since then, the ECtHR has issued decisions granting threatened honor killing victims relief under ECHR Article 3, prohibiting return of individuals to their home country where they risk torture as defined therein.²⁸⁵ One such case involved an Afghani women, and the ECtHR determined that “women are at

U.N. Doc. CEDAW/C/SWE/7 (Sept. 14, 2006) (the second report was submitted in 1987 (U.N. Doc. CEDAW/C/13/Add.6), the third in 1990 (U.N. Doc. CEDAW/C/18/Add.1), the fourth in 1996 (U.N. Doc. CEDAW/C/SWE/4), and the fifth in 2000 (U.N. Doc. CEDAW/C/SWE/5)).

273. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Sweden” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

274. 1 ch. 1 § Utlänningslag (Svensk författningssamling [SFS] 2005:716) (Swed.) (Aliens Act).

275. 4 ch. 1 § Utlänningslag (SFS 2005:716) (Swed.) (Aliens Act).

276. *Id.*

277. *Id.*

278. See SWEDISH MIGRATION BD., GENDER-BASED PERSECUTION: GUIDELINES FOR INVESTIGATION AND EVALUATION OF THE NEEDS OF WOMEN FOR PROTECTION (2001).

279. 4 ch. 2 § Utlänningslag (SFS 2005:716) (Swed.) (Aliens Act).

280. 5 ch. 6 § Utlänningslag (SFS 2005:716) (Swed.) (Aliens Act).

281. *Id.*

282. THE IMPACT OF THE EU QUALIFICATION DIRECTIVE, *supra* note 251, at 33.

283. Coomaraswamy Report, *supra* note 194, ¶ 1797.

284. *Id.* ¶¶ 1797, 1802.

285. *N. v. Sweden*, App. No. 23505/09, ¶ 62 (Eur. Ct. H.R., July 10, 2010), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99992>.

particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system.”²⁸⁶ Individuals who are granted refugee status or are deemed to be “in need of protection” based on an overall assessment of the victim’s situation, are entitled to a residence permit in Sweden.²⁸⁷ The CEDAW Committee has commended Sweden for its gender-related protection.²⁸⁸ Sweden created guides on various aspects of gender-related persecution that are binding on decision-makers at the Migration Board and the migration courts.²⁸⁹

Sweden’s 2012 HDI worldwide ranking is seventh.²⁹⁰ Its 2012 GII worldwide ranking is second.²⁹¹ Sweden has in place a national women’s hotline that is staffed twenty-four hours a day, offers free long distance calling, and provides translation services.²⁹² As of 2012, Sweden had in place 184 shelters, addressing about 66 percent of the reported need.²⁹³

C. Denmark

Denmark ratified the ECHR in April 1953,²⁹⁴ the CEDAW in April 1983,²⁹⁵ and the CEDAW Optional Protocol in May 2000.²⁹⁶ It signed the Istanbul Convention in October 2013, and ratified it in April 2014.²⁹⁷ Denmark reported on its obligations under the CEDAW through an initial report in 1984,²⁹⁸ and seven periodic reports thereafter, with the most recent report submitted in 2008.²⁹⁹

286. *Id.* ¶ 55.

287. 5 ch. 2 § Utlänningslag (Svensk författningssamling [SFS] 2005:716) (Swed.) (Aliens Act) (finding, based on Chapter 12, Section 18, of the Aliens Act, where new circumstances have emerged that mean there are reasonable grounds for believing, inter alia, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced).

288. Rep. of the Comm. on the Elimination of Discrimination Against Women, 24th & 25th Sess., Jan. 15-Feb. 2, 2001, July 2-20, 2001, at 78, U.N. Doc. A/56/38; GAOR, 56th Sess., Supp. No. 38 (2001).

289. See SWEDISH MIGRATION BD., *supra* note 278, at 1.

290. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

291. *Id.* at 156 tbl.4.

292. WAVE REPORT, *supra* note 120, at 13.

293. *Id.* at 14-15.

294. ECHR Treaty Status, *supra* note 238.

295. CEDAW Treaty Status, *supra* note 239.

296. CEDAW Optional Protocol Treaty Status, *supra* note 240.

297. Istanbul Convention Treaty Status, *supra* note 88.

298. Rep. of the Comm. on the Elimination of Discrimination Against Women, 5th Sess., Mar. 10-21, 1986, at 6-10, U.N. Doc. A/41/45; GAOR, 41st Sess., Supp. No. 45 (1986).

299. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Eighth Periodic Reports of States Parties Due in 2013: Denmark, Comm. on the Elimination of Discrimination Against Women, 60th Session, Feb. 9-27, 2015, at 1, U.N. Doc. CEDAW/C/DNK/8 (Sept. 11, 2013) [hereinafter Denmark’s Eighth Periodic Report] (the second report was submitted in 1988 (U.N. Doc. CEDAW/C/13/Add.14), the third in 1993 (U.N. Doc. CEDAW/C/DEN/3), the fourth in 1997 (U.N. Doc. CEDAW/C/DEN/4), the fifth in 2000 (U.N. Doc. CEDAW/C/DEN/5), the sixth in 2004 (U.N. Doc. CEDAW/C/DEN/6), and the seventh in 2008 (U.N. Doc. CEDAW/C/DEN/7)). See

The country implemented comprehensive immigration and asylum rules in mid-2002, including increasing the required number of years of residence from three to seven before a permanent residence permit may be obtained.³⁰⁰ Humanitarian residence permits may also be issued when significant humanitarian considerations warrant it, “for example if the said person suffers from a serious physical or psychological illness. [A] [r]esidence permit can also be granted, if exceptional reasons make it appropriate.”³⁰¹

Denmark reports that asylum applications alleging gender-related abuse or violence are considered in the same manner as all other applications for protection, and that these assessments are made on a case by case basis after examining the individual circumstances in the case at hand.³⁰² In spite of these protections, the SRVAW has expressed concern “about the situation of migrant, refugee, and minority women in Denmark, [specifically as it relates to] gender-based discrimination and violence that they experience.”³⁰³

Denmark’s 2012 HDI worldwide ranking is fifteenth.³⁰⁴ Its 2012 GII worldwide ranking is third.³⁰⁵ It is one of only a few countries that has in place a national program to provide safety to domestic violence victims, including permitting all women access to shelters and “psychological, social and judicial services, health treatment and labour market support.”³⁰⁶ There is a nationally organized women’s hotline that provides services twenty-four hours a day, with language interpretation.³⁰⁷ Women in shelters who are caring for children are provided with additional support including rehabilitation, schooling, and housing.³⁰⁸ The judicial system provides support in connection with protection order enforcement.³⁰⁹

There is some indication, however, that demand exceeds resource supply. By 2005, 32 percent of women staying in the shelters were migrant domestic violence victims.³¹⁰ As a consequence, between 2005 and 2008, Denmark focused on a

also Human Rights Bodies, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Denmark” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

300. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Reports of States Parties: Denmark, Comm. on the Elimination of Discrimination Against Women, 36th Sess., Aug. 7-25, 2006, at 58, U.N. Doc. CEDAW/C/DNK/6 (Oct. 4, 2004).

301. Denmark’s Eighth Periodic Report, *supra* note 299, at 12.

302. *Id.* at 12-13.

303. Coomaraswamy, *supra* note 194, ¶ 1597.

304. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

305. *Id.* at 156 tbl.4.

306. Denmark’s Eighth Periodic Report, *supra* note 299, at 28.

307. WAVE REPORT, *supra* note 120, at 13, 91.

308. *See id.* at 91.

309. *See id.* at 90.

310. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seventh Periodic Report of States

national action plan to combat domestic violence against women and children.³¹¹ Following the institution of the national action plan, the number of migrant domestic violence victims in shelters in 2006 had declined to 27 percent.³¹² By 2012, the number of shelters had climbed to forty-five,³¹³ meeting 78 percent of the need.³¹⁴

D. Finland

Finland ratified the ECHR in May 1990.³¹⁵ It ratified the CEDAW in September 1986,³¹⁶ and the CEDAW Optional Protocol in December 2000.³¹⁷ It signed the Istanbul Convention in May 2011, but has not yet ratified it.³¹⁸ Finland reported on its obligations under the CEDAW through an initial report in February 1988,³¹⁹ and five periodic reports thereafter, with the latest report in May 2012.³²⁰

Finland's history of developing systems to protect not only domestic violence victims, but migrants who suffer from this abuse, began in 1995.³²¹ Prior to that time, Finland reported that not only was violence against women considered a "taboo" subject,³²² but that "the legislation in force contain[ed] rules that [were] *de facto* discriminatory against women."³²³ However, as of 1995, Finland reported

Parties: Denmark, Comm. on the Elimination of Discrimination Against Women, 44th Sess., July 20-Aug. 7, 2009, at 73, U.N. Doc. CEDAW/C/Den/7 (July 21, 2008).

311. *Id.* at 71-72.

312. *Id.* at 73.

313. See WAVE REPORT, *supra* note 120, at 91.

314. *Id.* at 14-15.

315. ECHR Treaty Status, *supra* note 238.

316. CEDAW Treaty Status, *supra* note 239.

317. CEDAW Optional Protocol Treaty Status, *supra* note 240.

318. Istanbul Convention Treaty Status, *supra* note 88.

319. Rep. of the Comm. on the Elimination of Discrimination Against Women, 8th Sess., Feb. 20-Mar. 3, 1989, ¶¶ 213-65, U.N. Doc. A/44/38; GAOR, 44th Sess., Supp. No. 38 (1990).

320. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Seventh Periodic Reports of States Parties: Finland, Comm. on the Elimination of Discrimination Against Women, 57th Sess., Feb. 10-28, 2014, at 3, U.N. Doc. CEDAW/C/FIN/7 (Feb. 18, 2013) (the second report was submitted in 1993 (U.N. Doc. CEDAW/C/FIN/2), the third in 1997 (U.N. Doc. CEDAW/C/FIN/3), the fourth in 1999 (U.N. Doc. CEDAW/C/FIN/4), the fifth in 2004 (U.N. Doc. CEDAW/C/FIN/5), and the sixth in 2007 (U.N. Doc. CEDAW/C/FIN/6)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Finland" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

321. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Third Periodic Report of States Parties: Finland, Comm. on the Elimination of Discrimination Against Women, 24th Sess., Jan. 15-Feb. 2, 2001, at 7, U.N. Doc. CEDAW/C/FIN/3 (Feb. 11, 1997) [hereinafter Finland's Third Periodic Report].

322. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Second Periodic Reports of States Parties: Finland, Comm. on the Elimination of Discrimination Against Women, 14th Sess., Jan. 17-Feb. 4, 1994, at 13, U.N. Doc. CEDAW/C/FIN/2 (Apr. 8, 1993).

323. *Id.* at 16.

that assault, battery, and rape were criminalized in the Penal Code even when they occurred within the confines of a domestic relationship.³²⁴

By 2001, Finland reported that it had amplified its domestic legislation to include restraining order protections,³²⁵ was providing free legal assistance to victims,³²⁶ and had developed an integrated asylum system to better meet the needs of the growing immigrant population through the enactment of the 1999 Act on the Integration of Immigrants and Reception of Asylum Seekers.³²⁷ Seven years later, Finland reported that despite its efforts, violence against women had remained constant.³²⁸ As a result, the Ministry of Social Affairs and Health enhanced its victim support services, and was working to reduce violence in intimate relationships.³²⁹ While some gender-based immigration relief was available in the context of “honor crimes” and female genital mutilation,³³⁰ the Finnish jurisprudence still did not recognize immigration relief based on domestic violence. In July 2010, the Finnish NGO’s Parallel Report to CEDAW Committee called for Finland to recognize gender-based asylum in the context of domestic violence.³³¹ As of 2013, Finland was not reporting that it had granted asylum in this context.³³²

The European Network of Migrant Women and the European Women’s Lobby have argued that the Finnish system does not offer access to autonomous residence permits in the case of domestic violence, which “puts many migrant women experiencing domestic violence in a precarious situation. The migrant women in question are inclined to endure domestic abuse longer, as they are threatened with the possibility of becoming undocumented, homeless and without means of support.”³³³

324. Finland’s Third Periodic Report, *supra* note 321, at 12-13.

325. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fourth Periodic Report of States Parties: Finland, Comm. on the Elimination of Discrimination Against Women, 24th Sess., Jan. 15-Feb. 2, 2001, at 10, U.N. Doc. CEDAW/C/Fin/4 (Feb. 11, 2000).

326. *Id.* at 10-11.

327. *Id.* at 13-14.

328. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of States Parties: Finland, Comm. on the Elimination of Discrimination Against Women, 41st Sess., June 30-July 18, 2008, ¶ 59, U.N. Doc. CEDAW/C/Fin/6 (Nov. 8, 2007).

329. *Id.* ¶ 78.

330. *Id.* ¶ 86.

331. FINNISH NGOS, PARALLEL REPORT TO U.N.’S COMMITTEE MONITORING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 15-16 (2010), available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/FIN/INT_CEDAW_NGS_FIN_11942_E.pdf.

332. See List of Issues and Questions in Relation to the Seventh Periodic Report of Finland, Comm. on the Elimination of Discrimination Against Women, 57th Sess., Feb. 10-28, 2014, ¶¶ 6, 8, U.N. Doc. CEDAW/C/FIN/Q/7 (Aug. 2, 2013).

333. Thomas Huddleston, *Finland Studies Neighbours’ Policies to Limit Family Reunions*, MIGRANT INTEGRATION POL’Y INDEX (Oct. 28, 2011, 3:00 PM), <http://www.mipex.eu/blog/finland-studies-neighbours-policies-to-limit-family-reunions>.

If asylum is not warranted, the Finnish Immigration Service considers whether there are any other grounds for granting residence in Finland related to family ties, work, residence considerations, or other humanitarian grounds.³³⁴ Finland's 2012 HDI worldwide ranking is twenty-first.³³⁵ Its 2012 GII worldwide ranking is sixth.³³⁶ Finland provides some services to victims in the form of a national women's hotline that offers translation services.³³⁷ However, as of 2012, Finland had only two shelters, and was therefore able to meet only about 3 percent of the reported need.³³⁸

E. Germany

The Federal Republic of Germany ratified the ECHR in December 1952.³³⁹ It ratified the CEDAW in July 1985.³⁴⁰ It ratified the CEDAW Optional Protocol on January 15, 2002.³⁴¹ It signed the Istanbul Convention in May 2011, but has not ratified it.³⁴²

The government submitted its initial CEDAW report in September 1988.³⁴³ In October 2007, Germany issued its sixth periodic report to the Committee,³⁴⁴ with a follow-up report issued in September 2011.³⁴⁵ It is important to note, however, that the follow-up report from September 2011 did not contain any information relating to domestic violence in the migrant community.³⁴⁶ The most

334. *Residence Permit on Other Grounds*, MAAHANMUUTTOVIRASTO: THE FINNISH IMMIGRATION SERVICE, http://www.migri.fi/asylum_in_finland/applying_for_asylum/decision/residence_permit_on_other_grounds (last visited Apr. 28, 2014).

335. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

336. *Id.* at 156 tbl.4.

337. WAVE REPORT, *supra* note 120, at 13, 100.

338. *Id.* at 14-15.

339. ECHR Treaty Status, *supra* note 238.

340. CEDAW Treaty Status, *supra* note 239.

341. CEDAW Optional Protocol Treaty Status, *supra* note 240.

342. Istanbul Convention Treaty Status, *supra* note 88.

343. Rep. of the Comm. on the Elimination of Discrimination Against Women, 9th Sess., Jan. 22-Feb. 2 1990, ¶¶ 51-92, U.N. Doc. A/45/38; GAOR, 45th Sess., Supp. No. 38 (1990).

344. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of States Parties: Germany, Comm. on the Elimination of Discrimination Against Women, 43d Sess., Jan. 19-Feb. 6, 2009, at 6, U.N. Doc. CEDAW/C/DEU/6 (Oct. 22, 2007) [hereinafter Germany's Sixth Periodic Report] (the combined second and third report was submitted in 1996 (U.N. Doc. CEDAW/C/DEU/2-3), the fourth in 1998 (U.N. Doc. CEDAW/C/DEU/4), and the fifth in 2003 (U.N. Doc. CEDAW/C/DEU/5)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Germany" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

345. Response to Follow-up Recommendations Contained in the Concluding Observations of the Comm. Pursuant to the Examination of the Sixth Periodic Report of the State Party on 2 February 2009: Germany, Comm. on the Elimination of Discrimination Against Women, 50th Sess., Oct. 3-21, 2011, U.N. Doc. CEDAW/C/DEU/CO/6/Add.1 (Sept. 9, 2011) [hereinafter CEDAW, Germany's Follow-Up Report].

346. See *id.*

recent information provided by Germany on domestic violence in general, and within the migrant community in particular, is from 2007.³⁴⁷

In December 1999, the German government passed a plan of action for combating violence against women.³⁴⁸ As part of the plan, the government conducted a study of 10,000 women in Germany between ages sixteen and eighty-five, about their experiences with violence.³⁴⁹ Findings in the study were published in 2004, reflecting that German women had a “median to high level of experience with violence” in an international context.³⁵⁰ The government then interviewed an additional 250 Turkish women and 250 women from countries in the former Soviet Union and Eastern Europe, representing the two largest immigrant populations in Germany.³⁵¹ Significantly, the migrant women suffered a higher rate of violence, with more incidents connected to injury than other women in Germany.³⁵² Refugee women experienced violence with even higher frequency.³⁵³

Specifically addressing domestic violence, the Government noted:

With regard to violence among couples, the high incidence experienced by Turkish women is most noticeable; it far exceeded the average for the female population in Germany. . . . It also became obvious that female Turkish migrants were not only more often affected by physical violence, but also by more serious forms and manifestations of physical violence.³⁵⁴

The Committee expressed great concerns about the heightened figures among immigrant groups.³⁵⁵ It urged the government to make immigrants, refugees, and asylum-seekers aware of their rights, and the social services and legal remedies available to them.³⁵⁶ The Committee asked the German government whether it has researched the reasons for the high level of violence in these particular communities, and if so, whether the government has undertaken any measures to combat domestic violence within the migrant community.³⁵⁷ The government failed to respond to the Committee’s specific inquiry regarding efforts to

347. Germany’s Sixth Periodic Report, *supra* note 344, at 9, 11, 20, 27-28, 56, 62, 65-66, 68, 77-79.

348. *Id.* at 19.

349. *Id.* at 19-20.

350. *Id.* at 20.

351. *Id.*

352. *Id.* at 20, 78.

353. *Id.* at 78.

354. *Id.* at 20.

355. Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: Germany, Comm. on the Elimination of Discrimination Against Women, 43d Sess., Jan. 19-Feb. 6, 2009, ¶ 41, U.N. Doc. CEDAW/C/DEU/CO/6 (Feb. 12, 2009).

356. *Id.* ¶ 60.

357. List of Issues and Questions with Regard to the Consideration of the Periodic Reports: Germany, Comm. on the Elimination of Discrimination Against Women, 43d Sess., Jan. 19-Feb. 6, 2009, ¶ 17, U.N. Doc. CEDAW/C/DEU/Q/6 (Aug. 12, 2008).

understand or combat the high levels of violence within migrant communities.³⁵⁸ Rather, it noted that “a secondary analysis of the representative study . . . is available,” which focused on “the relationship between health, violence and migration.”³⁵⁹

The Committee was pleased with “Germany’s efforts to compile disaggregated data on asylum-seeking and refugee women and girls[,] its adoption of the Second Action Plan to Combat Violence against Women[,] . . . [and] the German Residence Act [provision] making it possible for women threatened by gender-related discrimination to be granted refugee status.”³⁶⁰

Germany’s 2012 HDI worldwide ranking is fifth.³⁶¹ Its 2012 GII worldwide ranking is sixth.³⁶² Female victims of violence are accepted into shelters “regardless of their residence status.”³⁶³ The woman’s status is determined later, and the Asylum-Seekers’ Benefits Act will cover her stay at the shelter if the shelter “had been chosen for security reasons.”³⁶⁴ Under the Asylum-Seekers’ Benefits Act, asylum-seekers, refugees, and other “tolerated” foreign nationals receive basic benefits, including food, accommodation, heating, clothing, healthcare, and toiletries.³⁶⁵ There have been, however, some limits on admission or long-term residence for some migrant women because of the “difficulty in determining which authorities are responsible for the reimbursement of the costs for their housing and care.”³⁶⁶ The law also restricts asylum-seekers’ area of residence to distribute them among the communities and not overburden specific local administrations.³⁶⁷ These asylum-seekers, however, can receive “permission to leave the assigned residence area if they would otherwise suffer undue hardship, as in the case of women threatened with violence.”³⁶⁸

358. Responses to the List of Issues and Questions with Regard to the Consideration of the Sixth Periodic Report: Germany, Comm. on the Elimination of Discrimination Against Women, 43d Sess., Jan. 19-Feb. 6, 2009, ¶ 17, U.N. Doc. CEDAW/C/DEU/Q/6/Add.1 (Nov. 25, 2008) [hereinafter Germany’s Response to List of Issues and Questions].

359. *Id.*

360. Comm. on the Elimination of Discrimination Against Women, 43d Sess., 880th mtg. ¶ 22, U.N. Doc. CEDAW/C/SR.880 (Feb. 2, 2009) [hereinafter 880th mtg. Summary Record].

361. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

362. *Id.* at 156 tbl.4.

363. 880th mtg. Summary Record, *supra* note 360, ¶ 44. *See also* Germany’s Response to List of Issues and Questions, *supra* note 358, ¶ 23 (“[W]omen’s shelters grant admission to the shelter without making it contingent upon a clarification of residence permit status . . . instead the clarification of individual claims is undertaken . . . only after admission to the women’s shelter.”).

364. 880th mtg. Summary Record, *supra* note 360, ¶ 44.

365. Asylbewerberleistungsgesetz [AsylbLG] [Asylum Seekers Benefits Act], June 30, 1993, BGBl. I at 2022 (Ger.), as amended by Gesetz [g], Nov. 22, 2011, BGBl. I at 2258, art. 3 (Ger.).

366. Germany’s Response to List of Issues and Questions, *supra* note 358, ¶ 23.

367. 880th mtg. Summary Record, *supra* note 360, ¶ 43.

368. *Id.*

Germany offers other forms of protection to migrant domestic violence victims. In the form of “Prohibition of Deportation”³⁶⁹ the state offers subsidiary protection pursuant to Article 15 of the Qualification Directive.³⁷⁰ The state also offers protection to individuals that can establish that they would be subject to “substantial concrete danger [to] life and limb or liberty.”³⁷¹

In a 2010 case, a German administrative court considered the case of a single woman from Nigeria.³⁷² Her case involved severe domestic violence, as well as FGM and forced marriage.³⁷³ She had applied for asylum and protection from deportation due to a threat of FGM and forced marriage under Section 60(7) sentence (1) of the Residence Act.³⁷⁴ The asylum claim was denied under German law on the grounds that her claims under FGM and forced marriage were not sufficient to be considered political persecution.³⁷⁵ The court did not base its decision on her social group in any context.³⁷⁶ The applicant was found eligible for protection from deportation under Section 60(7) sentence (1) of the Residence Act.³⁷⁷ The German court reasoned that there was “a high likelihood that she would be in extreme danger, due to her personal circumstances” and “the risk of falling victim to violent attacks and threats by her father, who is willing to return the applicant by use of force to the man to whom she is committed to by marriage. Furthermore, the applicant is at risk of falling victim to circumcision.”³⁷⁸

Similarly, in a 2008 case, the administrative courts considered the case of an Iraqi woman who feared that she would be the victim of an “honor” killing by members of her clan.³⁷⁹ During the proceedings, the asylum-seeker stated that she was subject to violence and threats by her family members living in Kirkuk.³⁸⁰ The court affirmed the denial of the asylum application for failure to establish a nexus to a protected ground, and provided no relief to this individual.³⁸¹

369. Aufenthaltsgesetz [AufenthG] [Residence Act], July 30, 2004, BGBl. I at 1950, as amended BGBl. I at 1970 (amended by the Act on Implementation of Residence and Asylum-Related Directives of the European Union of 19 August 2007) (Ger.).

370. Council Directive 2004/83, *supra* note 144, art. 15.

371. AufenthG [Residence Act] (Ger.).

372. Verwaltungsgericht Münster [VG] [Administrative Court Münster] Mar. 15, 2010, 11 K 413/09.A, 2010 (Ger.), *available at* <http://openjur.de/u/456682.html>.

373. *Germany—Administrative Court Münster, 11 K 413/09.A, 15 March 2010*, EUR. DATABASE ASYLUM L., <http://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-muenster-11-k-41309a-15-march-2010#content> (last visited May 30, 2014).

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. Verwaltungsgericht München [VG] [Administrative Court München] Dec. 10, 2008, M 8 K 07.51028 (Ger.).

380. *Germany—Administrative Court München, 10 December 2008, M 8 K 07.51028*, EUR. DATABASE ASYLUM L., <http://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-m%C3%BCnchen-10-december-2008-m-8-k-0751028> (last visited May 30, 2014).

381. *Id.*

On the other hand, a similar case decided in 2009, had a different outcome.³⁸² Case 3 A 2966/09 involved an Algerian asylum-seeker who had applied for relief claiming severe ill-treatment by her uncles with whom she lived, and who were attempting to force her into an arranged marriage.³⁸³ She had defied them under threat of death.³⁸⁴ The German appellate court found that “[t]he risk of persecution by her uncles also constitutes relevant persecution by non-state actors since the state, parties or organisations which control the state or a substantial part of the state’s territory, are not able to protect her from persecution.”³⁸⁵

F. Slovenia

Slovenia ratified the ECHR in June 1994.³⁸⁶ It ratified the CEDAW in July 1992,³⁸⁷ and the CEDAW Optional Protocol in September 2004.³⁸⁸ It signed the Istanbul Convention in September 2011, but has not yet ratified it.³⁸⁹ Slovenia issued its first CEDAW report in November 1993,³⁹⁰ and three periodic reports thereafter, the latest being in May 2007.³⁹¹ It was obliged to issue a report on May 1, 2013, but has not yet done so.³⁹²

Slovenia’s asylum law is found in two pieces of legislation³⁹³: the 2000 Asylum Act³⁹⁴ and the 2007 Aliens Act.³⁹⁵ Article 48 of Slovenia’s Constitution

382. Verwaltungsgericht Oldenburg [VG] [Administrative Court Oldenburg] Apr. 13, 2011, 3 A 2966/09 (Ger.), available at <http://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-oldenburg-13-april-2011-3-296609>.

383. *Germany—Administrative Court of Oldenburg München, 13 April 2011, 3 A 2966*, EUR. DATABASE ASYLUM L., <http://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-oldenburg-13-april-2011-3-296609> (last visited May 31, 2014).

384. *Id.*

385. *Id.*

386. ECHR Treaty Status, *supra* note 238.

387. CEDAW Treaty Status, *supra* note 239.

388. CEDAW Optional Protocol Treaty Status, *supra* note 240.

389. Istanbul Convention Treaty Status, *supra* note 88.

390. See Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Initial Reports of States Parties: Slovenia, Comm. on the Elimination of Discrimination Against Women, 16th Sess., Jan. 13-Jan. 31, 1997, U.N. Doc. CEDAW/C/SVN/1 (Sept. 26, 1995).

391. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fourth Periodic Report of States Parties: Slovenia, Comm. on the Elimination of Discrimination Against Women, 42d Sess., Oct. 20-Nov. 7, 2008, at 1, U.N. Doc. CEDAW/C/SVN/4 (May 8, 2007) (the second report was submitted in 1999 (U.N. Doc. CEDAW/C/SVN/2) and the third in 2002 (U.N. Doc. CEDAW/C/SVN/3)).

392. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Slovenia” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

393. UNHCR REPRESENTATION IN SLOVN., BACKGROUND NOTE ON THE PROTECTION OF ASYLUM SEEKERS AND REFUGEES IN SLOVENIA I (2004), available at <http://www.refworld.org/pdfid/4326f9534.pdf> [hereinafter UNHCR, BACKGROUND NOTE ON SLOVENIA].

394. Law on Asylum (LoA), 2003, Official Gazette of RS, No. 61/1999, available at <http://www.legislationline.org/topics/country/3/topic/10>.

guarantees “the right to asylum shall be recognised to foreign nationals and stateless persons who are subject to persecution for their commitment to human rights and fundamental freedoms.”³⁹⁶ Slovenia only gained its independence in 1991.³⁹⁷ As such, the UNHCR has provided greater oversight and assistance in the form of commenting on its legislation.³⁹⁸ The UNHCR has thus had a direct impact on the lives of refugees and asylum-seekers within Slovenia.³⁹⁹

While Slovenia affords essentially the same rights to beneficiaries of subsidiary protection as it does to beneficiaries of refugee status, including family reunification benefits,⁴⁰⁰ the safety infrastructure is evolving.⁴⁰¹ Slovenia’s 2012 HDI worldwide ranking is twenty-first.⁴⁰² Its 2012 GII worldwide ranking is eighth.⁴⁰³ It has in place a national women’s hotline, but it is not staffed twenty-four hours a day, nor are translation services provided.⁴⁰⁴ As of 2012, Slovenia had in place eighteen shelters, addressing almost 100 percent of the reported need.⁴⁰⁵

G. France

France ratified the ECHR in May 1974.⁴⁰⁶ It ratified the CEDAW in December 1983⁴⁰⁷ and the CEDAW Optional Protocol in June 2000.⁴⁰⁸ It signed the Istanbul Convention in May 2011, and ratified it July 2014.⁴⁰⁹ France reported on its obligations under CEDAW through an initial report in February 1986,⁴¹⁰ and four periodic reports thereafter, with the latest report in April 2006.⁴¹¹ France was

395. Aliens Act, Sept. 7, 2007, Official Gazette of RS, No. 79/2006, *available at* <http://www.legislationline.org/topics/country/3/topic/10>.

396. CONSTITUTION OF THE REPUBLIC OF SLOVENIA, June 25, 1991, *available at* <http://www.legislationline.org/documents/section/constitutions/country/3>.

397. *Id.*

398. See UNHCR, BACKGROUND NOTE ON SLOVENIA, *supra* note 393.

399. *Slovenia*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr-centraleurope.org/en/where-we-work/operations-in-central-europe/slovenia.html> (last visited Jan. 22, 2014).

400. THE IMPACT OF THE EU QUALIFICATION DIRECTIVE, *supra* note 251, at 231.

401. WAVE REPORT, *supra* note 120, at 244-49.

402. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

403. *Id.* at 156 tbl.4.

404. WAVE REPORT, *supra* note 120, at 13, 248.

405. *Id.* at 14-15.

406. ECHR Treaty Status, *supra* note 238.

407. CEDAW Treaty Status, *supra* note 239.

408. CEDAW Optional Protocol Treaty Status, *supra* note 240.

409. Istanbul Convention Treaty Status, *supra* note 88.

410. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Initial Reports of States Parties: France, Comm. on the Elimination of Discrimination Against Women, 6th Sess., Mar. 30-Apr. 10, 1987, at 1, U.N. Doc. CEDAW/C/5/Add.33 (May 7, 1986).

411. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of States Parties: France, Comm. on the Elimination of Discrimination Against Women, 40th Sess., Jan. 14-Feb. 1, 2008, at 1, U.N. Doc. CEDAW/C/FRA/6 (Apr. 6, 2006) (the second report was submitted in 1990 (U.N. Doc.

obliged to submit another periodic report on January 13, 2013, which was submitted in February 2014.⁴¹²

The right of asylum in France has been subject to many changes in recent years.⁴¹³ Since July 25, 1952, it has been amended several times.⁴¹⁴ Significant amendments were introduced by the Asylum Act adopted on December 10, 2003, which entered into force on January 1, 2004.⁴¹⁵ France recognizes relief based on membership in a “particular social group.”⁴¹⁶ In a recent study of nine EU-M States, and the protection that they provide in migrant gender-based protection claims, France was identified as a country that despite its assertions to the contrary neither employed the UNHCR Gender-Based Guidelines in its asylum adjudications, nor developed gender-based guidelines of its own.⁴¹⁷ France’s 2012 HDI worldwide ranking is twentieth.⁴¹⁸ Its 2012 GII worldwide ranking is ninth.⁴¹⁹

In general, domestic violence claims in France often lead to a grant of subsidiary protection, especially in the context of “forced marriage or opposition to social mores.”⁴²⁰ Subsidiary protection is available for a single year, to those “who can prove that they would be exposed in their country of origin to serious threats of capital punishment, torture or inhuman treatment or punishment, or a serious threat to life as a result of indiscriminate violence due to internal or international armed conflict.”⁴²¹ The protection must be renewed annually to determine whether the conditions that necessitated protection continue to exist.⁴²² France affords

CEDAW/C/FRA/2), the third and fourth in 1999 (U.N. Doc. CEDAW/C/FRA/3-4), and the fifth in 2002 (U.N. Doc. CEDAW/C/FRA/5).

412. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “France” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

413. *EDAL Country Overview—France*, EUR. DATABASE OF ASYLUM L. (Jan. 1, 2012), <http://www.asylumlawdatabase.eu/en/content/edal-country-overview-france>.

414. See Loi 2003-1176 du 10 décembre 2003 modifiant la loi 52-89 du 25 juillet 1952 relative au droit d’asile [Law 2003-1176 of December 10th, 2003 amending the law 52-893 of July 25th, 1952 relating to the right of asylum], *Journal Officiel de la République Française [J.O.]* [Official Gazette of France], Dec. 11, 2003, p. 21080.

415. *Id.*

416. Maryellen Fullerton, *A Comparative Look at Refugee Status Based on Persecution Due to the Membership of a Particular Social Group*, 26 CORNELL INT’L L.J. 505, 510 (1993) (“In France, national legislation defines refugees using the precise terms of the [1951 Refugee] Convention definition.”).

417. HANA CHEIKH ALI ET AL., *GENDER-RELATED ASYLUM CLAIMS IN EUROPE: A COMPARATIVE ANALYSIS OF LAW, POLICIES AND PRACTICE FOCUSING ON WOMEN IN NINE EU MEMBER STATES* 32 (2012).

418. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

419. *Id.* at 156 tbl.4.

420. CHEIKH ALI ET AL., *supra* note 417, at 46.

421. HUMAN RIGHTS RESEARCH & EDUC. CTR., UNIV. OF OTTAWA, *FRANCE’S ASYLUM SYSTEM* 2 (2014), available at <http://www.cdp-hrc.uottawa.ca/projects/refugee-forum/projects/systems/documents/FranceAsylumSystem.pdf>.

422. *Id.*

essentially the same rights to beneficiaries of subsidiary protection as it does to beneficiaries of refugee status, including family reunification benefits.⁴²³

H. Italy

Italy ratified the ECHR in October 1955.⁴²⁴ It ratified the CEDAW in June 1985,⁴²⁵ as well as the CEDAW Optional Protocol in September 2000.⁴²⁶ It ratified the Istanbul Convention in September 2013.⁴²⁷ It reported on its obligations under CEDAW through an initial report in October 1989,⁴²⁸ and submitted four periodic reports thereafter, with its most recent in December 2009.⁴²⁹ It is obliged to issue its next report on July 1, 2015.⁴³⁰

First, Italy offers refugee status for victims of acts of persecution as understood by Article 1 of the 1951 Refugee Convention.⁴³¹ The nature of the harm must be sufficiently serious to constitute a severe violation of basic human rights, “in particular rights from which derogation cannot be made under the [ECHR].”⁴³² Acts of persecution can include “acts of physical or mental violence, including sexual violence,” as well as “acts directed specifically against one gender.”⁴³³ Italian jurisprudence recognizes claims based on particular social group as “defined by an innate and unchanging characteristic or by the perception of the surrounding society or sexual orientation,” including gender.⁴³⁴ Italy does not require an asylum applicant to seek home-country protection before fleeing persecution from non-state actors.⁴³⁵

Under Italian legislation, subsidiary protection is available to a foreign citizen who does not qualify as a refugee but who demonstrates a real risk of suffering

423. *Id.*

424. ECHR Treaty Status, *supra* note 238.

425. CEDAW Treaty Status, *supra* note 239.

426. CEDAW Optional Protocol Treaty Status, *supra* note 240.

427. Istanbul Convention Treaty Status, *supra* note 88.

428. Rep. of the Comm. on the Elimination of Discrimination Against Women, 10th Sess., Jan. 10-Feb. 1, 1991, ¶¶ 43-83, U.N. Doc. A/46/38; GAOR, 46th Sess., Supp. No. 38 (1992).

429. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of States Parties: Italy, Comm. on the Elimination of Discrimination Against Women, 49th Sess., July 11-29, 2011, at 1, U.N. Doc. CEDAW/C/ITA/6 (May 19, 2010) (the second report was submitted in 1994 (U.N. Doc. CEDAW/C/ITA/2), the third in 1997 (U.N. Doc. CEDAW/C/ITA/3), and the fourth and fifth in 2003 (U.N. Doc. CEDAW/C/ITA/4-5)).

430. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Italy” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

431. Hakan G. Sicakkan, *The Rights of Refugees*, in HANDBOOK OF HUMAN RIGHTS 359, 361 (Thomas Cushman ed., 2012). See also *EDAL Country Overview—Italy*, EUR. DATABASE OF ASYLUM L. (Nov. 19, 2013), <http://www.asylumlawdatabase.eu/en/content/edal-country-overview-italy#Refugee%20status%20> [hereinafter *EDAL Country Overview—Italy*].

432. *EDAL Country Overview—Italy*, *supra* note 431.

433. *Id.*

434. CHEIKH ALI ET AL., *supra* note 417, at 61.

435. *Id.* at 53.

serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.⁴³⁶ Serious harm is defined as ranging from being subject to the death penalty to degrading treatment in the country of origin.⁴³⁷ Italy also recognizes humanitarian relief when there are serious humanitarian concerns relating to the asylum applicant that make it necessary for them to stay in the country.⁴³⁸

Italy's 2012 HDI worldwide ranking is twenty-fifth.⁴³⁹ Its 2012 GII worldwide ranking is eleventh.⁴⁴⁰ Asylum-seekers may request state-funded legal aid.⁴⁴¹ France also administers a national women's hotline that is available twenty-four hours a day, offers free long distance service, and provides translation services.⁴⁴² However, as of 2012, shelters were scarce with only 25 percent of the need met.⁴⁴³

I. Belgium

Belgium ratified the ECHR in June 1955.⁴⁴⁴ It ratified the CEDAW in July 1985⁴⁴⁵ and the CEDAW Optional Protocol in June 2004.⁴⁴⁶ Belgium signed the Istanbul Convention on September 11, 2012, but has not yet ratified it.⁴⁴⁷ It reported on its obligations under the CEDAW through an initial report in July 1987,⁴⁴⁸ and four periodic reports thereafter, with the most recent report in October 2012.⁴⁴⁹

436. Decreto Legislativo 25 luglio 1998, n. 286, in G.U. 18 agosto 1998, n. 191 (It). *See also* CHEIKH ALI ET AL., *supra* note 417, at 46, 78.

437. *EDAL Country Overview—Italy*, EUR. DATABASE ASYLUM L. (Nov. 19, 2013), <http://www.asylumlawdatabase.eu/en/content/edal-country-overview-italy>.

438. Decreto Legislativo 25 luglio 1998, n. 286, in G.U. 18 agosto 1998, n. 191 (It). *See also* CHEIKH ALI ET AL., *supra* note 417, at 78.

439. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

440. *Id.* at 156 tbl.4.

441. EUROPEAN COMM'N & EUR. MIGRATION NETWORK, AD-HOC QUERY ON EARLY LEGAL ADVICE FOR ASYLUM SEEKERS 8-9 (2012), *available at* [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/419_emn_ad-hoc_query_early_legal_advice_for_asylum_seekers_24aug2012_\(wider_dissemination\).pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/419_emn_ad-hoc_query_early_legal_advice_for_asylum_seekers_24aug2012_(wider_dissemination).pdf).

442. WAVE REPORT, *supra* note 120, at 13, 148.

443. *Id.* at 14-15.

444. ECHR Treaty Status, *supra* note 238.

445. CEDAW Treaty Status, *supra* note 239.

446. CEDAW Optional Protocol Treaty Status, *supra* note 240.

447. Istanbul Convention Treaty Status, *supra* note 88.

448. Rep. of the Comm. on the Elimination of Discrimination Against Women, 8th Sess., Feb. 20-Mar. 3, 1989, ¶¶ 266-312, U.N. Doc. A/44/38; GAOR, 44th Sess., Supp. No. 38 (1990).

449. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seventh Periodic Report of States Parties due in 2012: Belgium, Comm. on the Elimination of Discrimination Against Women, 59th Sess., Oct. 20-Nov. 7, 2014, at 1, U.N. Doc. CEDAW/C/BEL/7 (Feb. 19, 2013) (the second report was submitted in 1993 (U.N. Doc. CEDAW/C/BEL/2), the third and fourth in 1998 (U.N. Doc. CEDAW/C/BEL/3-4), and the 5th and 6th in 2007 (U.N. Doc. CEDAW/C/BEL/6)). *See also Human Rights Bodies, OFF. HIGH COMMISSIONER HUM. RTS.,*

The evolution of Belgian human rights jurisprudence on asylum for migrant domestic violence victims is reflected in a case involving a Russian national of Tatar origin who was a victim of sustained domestic violence in Russia.⁴⁵⁰ In this case, the applicant had been subject to repeated domestic violence at the hands of her spouse while in Russia, and was unable to either relocate or seek assistance from authorities.⁴⁵¹ When the Belgian trial court examined the case in 2007, in spite of the evidence of severe physical abuse, and police inaction, the Belgian Office of the Commissioner General for Refugees and Stateless Persons rejected the applicant's claim on the grounds that the violence had been private in nature and that there was a lack of evidence that the authorities would not provide protection.⁴⁵²

In 2008, however, on appellate review before the Belgian Council for Alien Law Litigation, it was determined that domestic violence was considered persecution under the both the 1951 Refugee Convention and Belgian law since it involved "acts of physical or mental violence" and "acts of a gender specific nature."⁴⁵³ Additionally, the appellate body invoked the protections afforded under Article 3 of the ECHR to find that the applicant was eligible for relief, and determined that gender-related persecution claims could be supported as a membership in a particular social group claim, when the harm was deemed "serious."⁴⁵⁴ As the jurisprudence in this area has further developed, Belgian courts have made clear that there is no requirement that an applicant seek state protection in the home country prior to making the claim in Belgium.⁴⁵⁵ The CEDAW Committee has acknowledged the new and "simplified procedure for the consideration of asylum requests provided for specific treatment of cases involving sexual violence, gender-based persecution and violence against children."⁴⁵⁶ As a

http://tinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Belgium" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

450. Conseil du Contentieux des Etrangers [Council for Alien Law Litigation] July 9, 2008, 149 E-RGDC 351 (2008), No. 13.874 (Belg.), available at http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Belgium_008%20decision.pdf. For a case summary in English, see *Belgium—Council for Alien Law Litigation, 9 July 2008, Nr. 13.874*, EUR. DATABASE ASYLUM L., <http://www.asylumlawdatabase.eu/en/case-law/belgium-council-alien-law-litigation-9-july-2008-nr-13874> (last visited Apr. 30, 2014) [hereinafter *Belgium—Council for Alien Law Litigation, 9 July 2008, Nr. 13.874*].

451. Council for Alien Law Litigation (Belg.), ¶ 1.1.

452. *Id.*

453. *Id.* ¶ 6.1.5. See also *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* [Alien Act] of Dec. 15, 1980, MONITEUR BELGE [M.B.] [Official Gazette of Belgium], Dec. 31, 1980, 14584, art. 48/3 §2 (Belg.).

454. Council for Alien Law Litigation (Belg.), ¶¶ 6.1.5, 6.1.6 (highlighting that the Standing Committee of Appeal of Refugees has found that domestic violence is persecution under the ECHR); see also Coomaraswamy Report, *supra* note 194, ¶ 1573.

455. See *Belgium—Council for Alien Law Litigation, 9 July 2008, Nr. 13.874, supra* note 450.

456. Comm. on the Elimination of Discrimination Against Women, 42d Sess., 852d mtg. ¶ 5, U.N. Doc. CEDAW/C/SR.852 (Oct. 21, 2008).

practical matter, authorities distribute copies of the UNHCR Gender-Based Guidelines to adjudicating officials.⁴⁵⁷

Belgium provides subsidiary protection status to foreign nationals who are not able to establish eligibility for refugee status, but who the state finds “would face a real risk of suffering serious harm” in their home country, and who are therefore unable to seek protection from the home country.⁴⁵⁸ Subsidiary protection status affords the migrant a residence permit that can be either temporary or permanent, and offers work permit authorization and family reunification benefits.⁴⁵⁹

The Belgian legal structure permits non-refoulement relief to migrant domestic violence victims such that they will not be removed forcibly but rather permitted to remain legally, but devoid of many rights.⁴⁶⁰ In the alternative, Belgium may decide that for humanitarian reasons, it will provide a residence permit.⁴⁶¹

Belgium’s 2012 HDI worldwide ranking is seventeenth.⁴⁶² Its 2012 GII worldwide ranking is twelfth.⁴⁶³ It offers a variety of safety protections to domestic violence victims. In 2012, Belgium met 43 percent of the reported shelter demand.⁴⁶⁴ That year, it reported having ten women’s centers for migrant domestic violence victims.⁴⁶⁵ However, as of 2012, Belgium did not maintain a national women’s helpline.⁴⁶⁶

J. Austria

Austria ratified the ECHR in September 1958.⁴⁶⁷ It signed the CEDAW in July 1980, and later ratified it in March 1982.⁴⁶⁸ It ratified the CEDAW Optional Protocol in September 2000,⁴⁶⁹ as well as the Istanbul Convention in November 2013.⁴⁷⁰ Austria reported on its obligations under the CEDAW through an initial report in October 1983,⁴⁷¹ and five periodic reports thereafter, with the most recent report issued in May 2011.⁴⁷²

457. CHEIKH ALI ET AL., *supra* note 417, at 32.

458. Alien Act (Belg.), art. 48/4.

459. *Id.* arts. 61/18, 61/23, 61/29.

460. *Id.* art. 74/17.

461. *Id.* art. 74/12.

462. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

463. *Id.* at 156 tbl.4.

464. WAVE REPORT, *supra* note 120, at 14-15.

465. *Id.*

466. *Id.* at 13.

467. ECHR Treaty Status, *supra* note 238.

468. CEDAW Treaty Status, *supra* note 239.

469. CEDAW Optional Protocol Treaty Status, *supra* note 240.

470. Istanbul Convention Treaty Status, *supra* note 88.

471. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Initial Reports of States Parties: Austria, Comm. on the Elimination of Discrimination Against Women, 4th Sess., Jan. 21-Feb. 1, 1985, at 1, U.N. Doc. CEDAW/C/5/Add.17 (submitted Oct. 21, 1983).

472. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Seventh and Eighth

Asylum protection in Austria is governed by Article 3 of the Federal Law Concerning the Granting of Asylum, and tracks the refugee definition articulated in the 1951 Refugee Convention.⁴⁷³ However, with regard to relief under asylum law, particular social group claims based on domestic violence and gender do not yet appear to have been recognized under current legal jurisprudence, although it has been reported that such claims may be possible.⁴⁷⁴ State reporting under the CEDAW reflects that Austria believes that the law enables migrant female domestic violence victims to receive work permits so that they can gain more independence and earn a living;⁴⁷⁵ and permits the review of asylum claims in an environment sensitized to the “special needs of women refugees.”⁴⁷⁶

The Aliens' Police Act governs deferral of deportation protections if a deportation would violate non-refoulement obligations.⁴⁷⁷ Subsidiary protections are governed by Article 8 of the Federal Law Concerning the Granting of Asylum, which supports a limited right of residence valid for one year that can be extended upon application.⁴⁷⁸ Humanitarian relief is available pursuant to the Residence Act of 2005.⁴⁷⁹ Austria reports that it has in place a system for granting migrant women who have come to the country through family reunification an independent residence permit to protect them from domestic violence.⁴⁸⁰ Under current law, if

Periodic Reports of States Parties: Austria, Comm. on the Elimination of Discrimination Against Women, 54th Sess., Feb. 11-Mar. 1, 2013, at 1, U.N. Doc. CEDAW/C/AUT/7-8 (June 9, 2011) (the second report was submitted in 1989 (U.N. Doc. CEDAW/C/13/Add.27), the third and fourth in 1997 (U.N. Doc. CEDAW/C/AUT/3-4), the fifth in 1999 (U.N. Doc. CEDAW/C/AUT/5), and the sixth in 2004 (U.N. Doc. CEDAW/C/AUT/6)). *See also Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Austria” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

473. Bundesgesetz über die Gewährung von Asyl [Asylgesetz 2005] [Federal Act Concerning the Granting of Asylum] BUNDESGESETZBLATT I [BGBl I] No. 100/2005, as amended by BGBl I No. 75/2007, BGBl I No. 2/2008 and BGBl I No. 4/2008, § 3 (Austria).

474. *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe Following His Visit to Austria from 4 to 6 June 2012*, CommDH (2012) 28 ¶ 41 (Sept. 11, 2012) [hereinafter *Report by Nils Muižnieks*] (“Austrian legislation provides for the possibility of granting migrant women who have come to the country because of family reunification a separate residence permit to protect them from violence. The residence in Austria of victims of domestic violence or forced marriages has also been eased through the possibility of waiving the burden of proof regarding residence criteria, and granting a residence permit irrespective of them not yet being legally resident in Austria. Measures have been taken to address harmful practices, such as forced marriage and female genital mutilation.”).

475. Coomaraswamy Report, *supra* note 194, ¶ 1559.

476. *Id.* ¶ 1565.

477. Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreiseteil 2005 [Fremdenpolizeigesetz 2005] [Aliens' Police Act] BUNDESGESETZBLATT I [BGBl I] No. 100/2005, as amended by BGBl I No. 157/2005, § 50 (Austria).

478. Asylgesetz 2005, § 8 (Austria).

479. Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich [Niederlassungs- und Aufenthaltsgesetz] [Settlement and Residence Act] BUNDESGESETZBLATT I [BGBl I] No. 100/2005, as amended by BGBl I No. 157/2005, §§ 72-74 (Austria).

480. *See* ALEXANDRA KÖNIG & ALBERT KRALER, EUR. COMM'N, FAMILY REUNIFICATION REQUIREMENTS: A BARRIER OR FACILITATOR TO INTEGRATION?, AUSTRIA COUNTRY REPORT

the family member of a person with subsidiary status is outside Austria, that person is granted entry only following the first extension of the limited right of residence of the family member who enjoys subsidiary protection.⁴⁸¹ Thus, the legal status of the family member depends on the legal status of the sponsor.⁴⁸² Austria reports that the legal system includes a procedure to reduce the burden of proof regarding criteria for migrant applicants who are victims of domestic violence.⁴⁸³

Austria's 2012 HDI worldwide ranking is eighteenth.⁴⁸⁴ Its 2012 GII worldwide ranking is fourteenth.⁴⁸⁵ Austria reports that it strives to provide effective and timely safety protections to victims of domestic violence.⁴⁸⁶ It maintains a national helpline with multi-lingual support.⁴⁸⁷ There were thirty women's shelters in place in 2012, meeting approximately 90 percent of the reported need.⁴⁸⁸ Stakeholders have called for improved public safety measures such as the enforcement of injunctive relief⁴⁸⁹ and the creation of geographically dispersed shelters.⁴⁹⁰

In February 2013, the CEDAW Committee requested that Austria provide further information about measures being taken to address "violence against women in migrant communities," and "the negative impact of increasing xenophobia in the media on women from migrant communities, particularly Muslim women."⁴⁹¹ With regard to residence permits issued to victims of violence, the CEDAW Committee "expressed concern that they were issued for one year only," and that they were "subject to strict criteria," requesting information about the process for extension.⁴⁹²

K. Spain

Spain ratified the ECHR in October 1979.⁴⁹³ It ratified the CEDAW in January 1984,⁴⁹⁴ as well as the Optional Protocol in June 2001.⁴⁹⁵ It signed the

SUMMARY 2 (2013), available at http://familyreunification.eu/wp-content/uploads/2013/02/Summary_Austria_29-01-2013_final-3_.pdf. See also Report by Nils Muiznieks, *supra* note 474, ¶ 37 (highlighting that Austria still has progress to make).

481. Asylgesetz 2005, § 35(2) (Austria).

482. KÖNIG & KRALER, *supra* note 480, at 2.

483. *Id.* at 3.

484. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

485. *Id.* at 156 tbl.4.

486. ALBIN DEARING, FED. MINISTRY OF THE INTERIOR, AUSTRIA, THE AUSTRIAN ACT ON THE PROTECTION AGAINST DOMESTIC VIOLENCE: THE CORE ELEMENT OF THE COMPREHENSIVE REFORM REGARDING THE RESPONSE TO DOMESTIC VIOLENCE WITH SPECIAL EMPHASIS ON THE ROLE OF THE LAW ENFORCEMENT POLICE 21 (2002), available at http://www.weisser-ring.at/GeSCHG2002_eng.pdf.

487. WAVE REPORT, *supra* note 120, at 13, 47.

488. *Id.* at 14-15.

489. See *id.* at 47.

490. See *id.* at 48.

491. Comm. on the Elimination of Discrimination Against Women, 54th Sess., 1103d mtg. ¶ 30, U.N. Doc. CEDAW/C/SR.1103 (Feb. 13, 2013).

492. *Id.*

493. ECHR Treaty Status, *supra* note 238.

Istanbul Convention in May 2011, and ratified it in April 2014.⁴⁹⁶ Spain issued its first CEDAW report in August 1985,⁴⁹⁷ and six periodic reports thereafter, with the latest in September 2013.⁴⁹⁸

During the most recent reporting period, Spain's policies "focused almost exclusively on combating violence against women committed by men who are or have been their spouse or partner."⁴⁹⁹ With a view to enabling victims to pursue both civil and criminal law avenues of redress and settling all related legal matters such as divorce, custody, and property questions, the Spanish Integrated Protection Measures against Gender Violence Act set up specific "gender violence" courts.⁵⁰⁰ These courts, a special branch of the criminal courts with investigating judges, are granted the power to rule on criminal cases involving violence against women as well as any related civil law cases.⁵⁰¹ Consequently, both are dealt with in the first instance by the same bench. This relieves women going to court and costly bureaucratic hurdles.

Similar to many other EU-M States, foreign women suffer more abuse than Spanish women of the same age in Spain.⁵⁰² Specifically, "7 [percent] of foreign women declared that they had been victims of abuse during the last year, double the figure for Spanish women (3.5 [percent]). In the case of 'technical abuse', these differences again appear (17.3 [percent] versus 9.3 [percent])."⁵⁰³ Royal Decree 2393/2004 attempts to address these figures by allowing victims who have protection orders to request temporary residence.⁵⁰⁴ Between the third quarter of

494. CEDAW Treaty Status, *supra* note 239.

495. CEDAW Optional Protocol Treaty Status, *supra* note 240.

496. Istanbul Convention Treaty Status, *supra* note 88.

497. See Rep. of the Comm. on the Elimination of Discrimination Against Women, 6th Sess., Mar. 30-Apr. 10, 1987, ¶¶ 238-304, U.N. Doc. A/42/38; GAOR, 42d Sess., Supp. No. 38 (1987).

498. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Combined Seventh and Eighth Periodic Reports of States Parties to be Presented in 2013: Spain, Comm. on the Elimination of Discrimination Against Women, 61st Sess., June 29-July 17, 2015, at 1, U.N. Doc. CEDAW/C/ESP/7-8 (Dec. 17, 2013) (the second report was submitted in 1989 (U.N. Doc. CEDAW/C/13/Add.19), the third in 1996 (U.N. Doc. CEDAW/C/ESP/3), the fourth in 1998 (U.N. Doc. CEDAW/C/ESP/4), the fifth in 2003 (U.N. Doc. CEDAW/C/ESP/5), and the sixth in 2008 (U.N. Doc. CEDAW/C/ESP/6)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Spain" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

499. Consideration of Reports Submitted by States Parties Under Art. 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of State Parties: Spain, Comm. on the Elimination of Discrimination Against Women, 44th Sess., July 20-Aug. 7, 2009, ¶ 355, U.N. Doc. CEDAW/C/ESP/6 (Apr. 23, 2008) [hereinafter Spain's Sixth Periodic Report].

500. Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence art. 44 (B.O.E. 2004, 313) (Spain). See also Spain's Sixth Periodic Report, *supra* note 499, ¶¶ 369-73.

501. Integrated Protection Measures against Gender Violence Act, art. 44(1)-(3) (Spain).

502. Spain's Sixth Periodic Report, *supra* note 499, ¶ 359.

503. *Id.* Technical abuse is where a woman responds to survey questions in a way that suggests she is a victim of abuse, regardless of whether she considers herself to be a victim. *Id.* ¶ 358.

504. *Id.* ¶ 368.

2005 and the second quarter of 2008, between 29.4 percent and 36.9 percent of foreign women were granted protection orders.⁵⁰⁵ These women have the ability to apply for a residence permit on account of exceptional circumstances.⁵⁰⁶ The CEDAW Committee noted that, while this statistic indicates victims' greater access to justice, it also indicates that there has not been a reduction in gender-based violence.⁵⁰⁷

The general rights of asylum seekers and migrants are guaranteed by the Spanish Constitution, and are further guaranteed through supplemental legislation.⁵⁰⁸ The Spanish Asylum Law provides for subsidiary protection and expands gender-based refugee relief.⁵⁰⁹ Asylum-seekers, like all arriving migrants, have a right to free legal assistance.⁵¹⁰ "The Spanish Asylum Act stipulates that legal aid is mandatory when claims for asylum are made at the border."⁵¹¹ Spanish law also guarantees the right to an interpreter.⁵¹²

Spain's asylum legislation includes, as part of their particular social group definition, "people that flee from their country of origin, due to the prevailing circumstances in those countries, because of a well-founded fear of persecution or for reasons of gender and/or age."⁵¹³ The interpretation of this article has developed to include sexual assault victims as a particular social group.⁵¹⁴ The legislation further declares that either state actors or non-state actors under certain circumstances, may carry out such persecution.⁵¹⁵ As a practical matter, authorities cite to the UNHCR Gender-Based Guidelines in adjudicating cases.⁵¹⁶ Spain's highest appellate body affirmed this through case 1528/2007, involving an Algerian applicant who claimed relief based on domestic violence.⁵¹⁷ The claim involved gender-based persecution in the form of physical and mental abuse

505. Responses to the List of Issues and Questions with Regard to the Consideration of the Sixth Periodic Report: Spain, Comm. on the Elimination of Discrimination Against Women, 44th Sess., Jul. 20-Aug. 7, 2009, at 17, U.N. Doc. CEDAW/C/ESP/Q/6/Add.1 (Mar. 23, 2009).

506. *Id.*

507. Comm. on the Elimination of Discrimination Against Women, 44th Sess., 888th mtg. ¶ 39, U.N. Doc. CEDAW/C/SR.888 (A) (July 22, 2009).

508. CONSTITUCIÓN ESPAÑOLA, B.O.E. n. 311, Dec. 29, 1978 (Spain) (asylum is included in Part I, Ch. 1, Sec. 13). Organic Law 2/2009 of 11 December, amending the Organic Law 4/2000 of January on the Rights and Freedoms of Foreigners in Spain and their Social Integration (B.O.E. 2009, 299); Law 12/2009 of 30 October, Regulating the Right of Asylum and Subsidiary Protection (B.O.E. 2009, 263) (Spain) [hereinafter Spanish Asylum Law].

509. Spanish Asylum Law, *supra* note 508, arts. 7(1)(e), 36.

510. *Id.* arts. 16(2), 18(1)(b).

511. *EDAL Country Overview—Spain*, EUR. DATABASE OF ASYLUM L. n.1 (Jan. 1, 2012), <http://www.asylumlawdatabase.eu/en/content/edal-country-overview-spain>.

512. Spanish Asylum Law, *supra* note 508, art. 18(1)(b).

513. *Id.* art. 7(1) (translated by authors).

514. *Id.* art. 46(1).

515. *Id.* art. 13.

516. CHEIKH ALI ET AL., *supra* note 417, at 33.

517. S.A.N, Jan. 13, 2009 (vLex, No. 1528/2007) (Spain).

inflicted on the asylum-seeker, and her children, by her husband.⁵¹⁸ When the claim was initially examined, refugee status was denied, but a residence permit was granted on humanitarian grounds.⁵¹⁹ The National High Court issued its ruling in January 2009, concluding that, “[s]exually violent acts, domestic and family violence, that cause deep physical and mental harm constitute grounds upon which persecution can be claimed.”⁵²⁰ The decision affirmed that when non-state actors commit serious acts of discrimination and other offences, which “are deliberately tolerated by State authorities” who fail to provide effective protection, asylum can be granted.⁵²¹

The Special Rapporteur on the rights of non-citizens has expressed concern about the situation of foreign women workers in domestic service, asylum-seekers, and women who may otherwise be living clandestinely in Spain.⁵²² These women may lack adequate protection from violence and abuse. Spain’s 2012 HDI worldwide ranking is twenty-third.⁵²³ Its 2012 GII worldwide ranking is fifteenth.⁵²⁴ Spain does, however, have a national women’s hotline, that is staffed twenty-four hours a day, offers free long distance calling, and provides translation services.⁵²⁵ As of 2012, Spain had in place 148 shelters, addressing about 98 percent of the reported need.⁵²⁶

L. Portugal

Portugal ratified the ECHR on November 1978.⁵²⁷ It ratified the CEDAW on July 30, 1980,⁵²⁸ as well as the Optional Protocol to the Convention on April 26, 2002.⁵²⁹ It ratified the Istanbul Convention in February 2013.⁵³⁰ Portugal issued its first report under its CEDAW obligations in July 1983,⁵³¹ and submitted seven periodic reports thereafter.⁵³² In its most recent submission, Portugal reports that

518. *Spain—High National Court, 13 January 2009, 1528/2007*, EUR. DATABASE OF ASYLUM L., <http://www.asylumlawdatabase.eu/en/case-law/spain-high-national-court-13-january-2009-15282007> (last visited May 20, 2014) (translated summary of case).

519. *Id.*

520. *Id.*

521. *Id.*

522. Comm’n on Human Rights, Subcomm’n on the Promotion and Protection of Human Rights, Prevention of Discrimination and Protection of Indigenous Peoples and Minorities, 53d Sess., ¶ 72, U.N. Doc. E/CN.4/Sub.2/2001/20 (June 6, 2001).

523. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

524. *Id.* at 156 tbl.4.

525. WAVE REPORT, *supra* note 120, at 13, 253.

526. *Id.* at 14.

527. ECHR Treaty Status, *supra* note 238.

528. CEDAW Treaty Status, *supra* note 239.

529. CEDAW Optional Protocol Treaty Status, *supra* note 240.

530. Istanbul Convention Treaty Status, *supra* note 88.

531. Rep. of the Comm. on the Elimination of Discrimination Against Women, 5th Sess., Mar. 10-21, 1986, ¶¶ 111-48, U.N. Doc. A/41/45; GAOR, 41st Sess., Supp. No. 45 (1986).

532. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seventh Periodic Report of States Parties: Portugal, Comm. on the Elimination of Discrimination Against Women, 42d Sess., Oct. 20-

pursuant to Law 29/2012, an exception now exists “for granting an autonomous residence permit to family members of a holder of a residence permit before the expiration of the normal time limit [] if the individual is ‘indicted by prosecutors for committing the crime of domestic violence.’”⁵³³ Previously, the law required that the individual be convicted of a crime of domestic violence.⁵³⁴

Portugal’s 2012 HDI worldwide ranking is forty-third.⁵³⁵ Its 2012 GII worldwide ranking is sixteenth.⁵³⁶ As of 2012, Portugal did not have in place a national women’s hotline,⁵³⁷ and, it had thirty-seven shelters that met 59 percent of the reported need.⁵³⁸

M. Ireland

Ireland ratified the ECHR in February 1953.⁵³⁹ It ratified the CEDAW in December 1985,⁵⁴⁰ as well as the Optional Protocol in September 2000.⁵⁴¹ It has neither signed nor ratified the Istanbul Convention.⁵⁴² Ireland reported on its obligations under the CEDAW through an initial report in February 1987,⁵⁴³ and submitted two reports thereafter with the latest in June 2003.⁵⁴⁴ Ireland was obliged to submit a periodic report on January 22, 2007, but has not yet done so.⁵⁴⁵

Nov. 7, 2008, at 1, U.N. Doc. CEDAW/C/PRT/7 (Jan. 29, 2008) (the second report was submitted in 1989 (U.N. Doc. CEDAW/C/13/Add.22), the third in 1990 (U.N. Doc. CEDAW/C/18/Add.3), the fourth in 1999 (U.N. Doc. CEDAW/C/PRT/4), the fifth in 2001 (U.N. Doc. CEDAW/C/PRT/5), and the sixth in 2006 (U.N. Doc. CEDAW/C/PRT/6)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Portugal” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

533. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Eighth and Ninth Periodic Reports of States Parties Due in 2013: Portugal, Comm. on the Elimination of Discrimination Against Women, ¶ 55, U.N. Doc. CEDAW/C/PRT/8-9 (Dec. 17, 2013).

534. *Id.*

535. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

536. *Id.* at 156 tbl.4.

537. WAVE REPORT, *supra* note 120, at 13.

538. *Id.* at 14-15.

539. ECHR Treaty Status, *supra* note 238.

540. CEDAW Treaty Status, *supra* note 239.

541. CEDAW Optional Protocol Treaty Status, *supra* note 240.

542. Istanbul Convention Treaty Status, *supra* note 88.

543. Rep. on the Comm. on the Elimination of Discrimination Against Women, 8th Sess., Feb. 20-Mar. 3, 1989, ¶¶ 63-131, U.N. Doc. A/44/38; GAOR, 44th Sess., Supp. No. 38 (1990).

544. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Fourth and Fifth Periodic Reports of States Parties: Ireland, Comm. on the Elimination of Discrimination Against Women, 33d Sess., July 5-22, 2005, at 1, U.N. Doc. CEDAW/C/IRL/4-5 (June 10, 2003) (the second and third report was submitted in 1997 (U.N. Doc. CEDAW/C/IRL/2-3)).

545. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Ireland” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

Ireland confers refugee status on successful asylum seekers.⁵⁴⁶ If an asylum-seeker is unsuccessful, following any appeals, she may pursue voluntary departure, subsidiary protection, or humanitarian leave to remain.⁵⁴⁷ Subsidiary protection is provided when an individual can demonstrate by “substantial grounds” that she would face a real risk of suffering serious harm.⁵⁴⁸ This protection comports with principles of non-refoulement. Furthermore, the individual must be “unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.”⁵⁴⁹ Serious harm is defined as ranging from being subject to the death penalty to degrading treatment in the country of origin.⁵⁵⁰ Those granted subsidiary protection receive temporary residence permits, employment access, health care, and sponsored housing.⁵⁵¹

In 2012, Ireland considered the case of a Nigerian woman who had applied for asylum and subsequently for subsidiary protection.⁵⁵² She demonstrated credibly that she suffered “serious ill-treatment, rape, and . . . torture at the hands of her husband and his associates,” and continued to suffer the ill-effects of such treatment.⁵⁵³ She was refused asylum because internal host-country protection was found to be available to her.⁵⁵⁴ She applied for subsidiary protection in the alternative, and was found not to have suffered serious harm on the grounds that non-state actors can only meet this definition when the state is deemed to be unable or unwilling to offer protection.⁵⁵⁵

Ireland provides access to employment and education benefits to recipients of refugee and subsidiary protection at the same level as Irish citizens.⁵⁵⁶ Its 2012 HDI worldwide ranking is seventh.⁵⁵⁷ Its 2012 GII worldwide ranking is nineteenth.⁵⁵⁸ While Ireland offers a national women’s hotline, it does not provide

546. Refugee Act 1996, § 2 (Act. No. 17/1996) (Ir.), available at <http://www.inis.gov.ie/en/INIS/RefugeeAmended.pdf/Files/RefugeeAmended.pdf>. The definition is taken directly from the 1951 Refugee Convention. See Convention relating to the Status of Refugees, *supra* note 142, art. 1 (defining the term refugee).

547. European Union (Subsidiary Protections) Regulations 2013 (S.I. No. 426/2013) (Ir.), available at <http://www.inis.gov.ie/en/INIS/SI%20426%20of%202013.pdf/Files/SI%20426%20of%202013.pdf>.

548. *Id.*

549. *Id.* at 3.

550. *Id.* at 3-4.

551. U.S. DEP’T OF STATE, IRELAND 2013 HUMAN RIGHTS REPORT 8 (2014), available at <http://www.state.gov/documents/organization/220501.pdf>.

552. J.T.M. v. Minister for Justice and Equality [2012] I.E.H.C. 99, ¶¶ 2, 5 (H. Ct.) (Ir.), available at <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/73115215189e255680257a0f004e31c4?OpenDocument>.

553. *Id.* ¶¶ 2-3.

554. See *id.* ¶ 5.

555. See *id.* ¶ 1.

556. European Union (Subsidiary Protections) Regulations 2013, at 22 (S.I. No. 426/2013) (Ir.).

557. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

558. *Id.* at 156 tbl.4.

service at all times.⁵⁵⁹ During 2012, it met only about 31 percent of its shelter demand.⁵⁶⁰

N. Czech Republic

The Czech Republic ratified the ECHR in March 1992,⁵⁶¹ the CEDAW in February 1993,⁵⁶² and the Optional Protocol in February 2001.⁵⁶³ It has neither signed nor ratified the Istanbul Convention.⁵⁶⁴ It reported on its obligations under the CEDAW through an initial report in October 1995,⁵⁶⁵ and three periodic reports thereafter, with the final report submitted in April 2009.⁵⁶⁶

The Czech Charter of Fundamental Rights and Basic Freedoms set forth that the state “shall grant asylum to aliens who are being persecuted for the assertion of their political rights and freedoms. Asylum may be denied to a person who has acted contrary to fundamental human rights and freedoms.”⁵⁶⁷ Asylum applications are governed by the Residence of Foreign Aliens in the Territory of the Czech Republic.⁵⁶⁸ The Asylum Act, in Section 12, envisions particular social group claims.⁵⁶⁹

The Czech Republic can grant humanitarian asylum in accordance with Section 14 of the Asylum Act when circumstances permit.⁵⁷⁰ In addition, the Act

559. WAVE REPORT, *supra* note 120, at 13.

560. *Id.* at 14-15.

561. ECHR Treaty Status, *supra* note 238.

562. CEDAW Treaty Status, *supra* note 239.

563. CEDAW Optional Protocol Treaty Status, *supra* note 240.

564. Istanbul Convention Treaty Status, *supra* note 88.

565. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial Report of States Parties: Czech Republic, Comm. on the Elimination of Discrimination Against Women, 18th Sess., Jan. 19-Feb. 6, 1998, at 1, U.N. Doc. CEDAW/C/CZE/1 (Oct. 15, 1996).

566. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Fourth and Fifth Periodic Report of States Parties: Czech Republic, Comm. on the Elimination of Discrimination Against Women, 47th Sess., Oct. 4-22, 2010, at 1, U.N. Doc. CEDAW/C/CZE/5 (May 22, 2009) (the second report was submitted in 2000 (U.N. Doc. CEDAW/C/CZE/2) and the third in 2004 (U.N. Doc. CEDAW/C/CZE/3)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Czech Republic” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

567. Ústavní zákon § 3, č. 1/1993 Sb., Ústava České Republiky [Constitution of the Czech Republic], Listiny Základních Práv a Svobod, art. 43 [Charter of Fundamental Rights and Freedoms], Dec. 16, 1992, *available at* http://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/prilohy/Listina_English_version.pdf (English translation).

568. Zákon č. 326/1999 Sb. (Czech) (translated as Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic), *available at* <http://www.mvcr.cz/soubor/action-the-residence-of-foreign-nationals-pdf.aspx>.

569. Zákon č. 325/1999, § 12, Sb. (Czech) (translated as Act No. 325/1999 Coll., of 1999 on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act)), *available at* <http://www.refworld.org/docid/4a7a97bfc33.html>.

570. *Id.* § 14.

permits a grant of subsidiary protection in accordance with Sections 14(a) and (b) to an applicant, and her qualifying family members, who has established that there is an actual risk of serious harm upon return to the state of origin.⁵⁷¹ Serious harm is defined in the act as follows: “a) imposition or enforcement of capital punishment, b) torture or inhuman or degrading treatment or punishment of an applicant for international protection, [or] c) serious threat to life or human dignity by reason of malicious violence in situations of international or internal armed conflict.”⁵⁷² Subsidiary protection is issued for a specific duration, and is renewable, as long as the actual risk of serious harm still persists.⁵⁷³ In the Czech Republic, refugees are afforded essentially the same rights as beneficiaries of subsidiary protection, including family reunification benefits.⁵⁷⁴

In 2011, the Supreme Administrative Court of the Czech Republic⁵⁷⁵ considered a case involving an Uzbeki national from Kyrgystan that had been forced into a polygamous marriage, and feared that if she tried to change her religion, which was her will, that she would be subject to domestic violence.⁵⁷⁶ The trial court denied her claim to relief, and the appellate reviewing body dismissed the appeal.⁵⁷⁷ On further appeal, the Czech Republic Supreme Administrative Court held that forced marriage or being forced to remain in a marriage could be considered “persecution in concurrence with other violations of human rights (for example domestic violence) and according to the situation in the country of origin.”⁵⁷⁸ The court focused its inquiry on whether the home country authorities could or should offer protection in assessing eligibility.⁵⁷⁹

The Czech Republic’s 2012 HDI worldwide ranking is twenty-eighth.⁵⁸⁰ Its 2012 GII worldwide ranking is twentieth.⁵⁸¹ As of 2012, there were twenty-six women’s centers in the Czech Republic, most of which provided “counseling, information and advice, intervention safety support, legal advice and court accompaniment, among other services and activities.”⁵⁸²

571. *Id.* §§ 14a-b.

572. *Id.* § 14a(2).

573. *Id.* § 53a(1).

574. THE IMPACT OF THE EU QUALIFICATION DIRECTIVE, *supra* note 251, at 31.

575. Rozsudek Nejvyššího správního soudu ze dne 25.01.2011 (NSS) [Decision of the Supreme Administrative Court of Jan. 25, 2011], čj. 6 Azs 36/2010-274 (Czech).

576. *Czech Republic—Supreme Administrative Court, 25 January 2011, R.S. v Ministry of Interior, 6 Azs 36/2010-274*, EUR. DATABASE OF ASYLUM L., <http://www.asylumlawdatabase.eu/en/case-law/czech-republic-supreme-administrative-court-25-january-2011-rs-v-ministry-interior-6-azs> (last visited May, 21, 2014) (case summary in English).

577. *See id.*

578. *Id.*

579. *Id.*

580. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

581. *Id.* at 156 tbl.4.

582. WAVE REPORT, *supra* note 120, at 85.

O. Cyprus

Cyprus ratified the ECHR in October 1962.⁵⁸³ It ratified the CEDAW in 1985⁵⁸⁴ and the Optional Protocol in April 2002.⁵⁸⁵ It has not signed the Istanbul Convention.⁵⁸⁶ Cyprus has submitted three state reports to the CEDAW committee, beginning with the first report issued in February 1994,⁵⁸⁷ the second report on March 2004,⁵⁸⁸ and the third report in May 2011.⁵⁸⁹

As of 2006, Cyprus reported to the CEDAW Committee that it did not yet have in place a system of protections for migrant domestic violence victims.⁵⁹⁰ Going forward, Cyprus indicated that it planned to implement a comprehensive action plan on gender mainstreaming including providing support for the special needs of vulnerable groups, such as migrants.⁵⁹¹ The CEDAW Committee acknowledged that Cyprus was working on the issue,⁵⁹² but noted that it could improve its data collection methods to document the frequency of domestic violence abuses, the level of reporting, the extent to which prosecutions and convictions followed incidents of domestic violence, and whether police training was being implemented.⁵⁹³ The CEDAW Committee “further requested information on the number of female immigrants entering Cyprus, either illegally or as asylum-seekers, and . . . whether national law contained gender-specific asylum provisions.”⁵⁹⁴ Cyprus reported “that national law contained gender-

583. ECHR Treaty Status, *supra* note 238.

584. CEDAW Treaty Status, *supra* note 239.

585. CEDAW Optional Protocol Treaty Status, *supra* note 240.

586. Istanbul Convention Treaty Status, *supra* note 88.

587. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Initial and Second Periodic Reports of States Parties: Cyprus, Comm. on the Elimination of Discrimination Against Women, 15th Sess., Jan. 15-Feb. 2, 1996, at 1, U.N. Doc. CEDAW/C/CYP/1-2 (May 4, 1995).

588. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Third, Fourth, and Fifth Periodic Reports of States Parties: Cyprus, Comm. on the Elimination of Discrimination Against Women, 35th Sess., May 15-June 2, 2006, at 1, U.N. Doc. CEDAW/C/CYP/3-5 (Aug. 6, 2004).

589. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Sixth and Seventh Periodic Reports of States Parties: Cyprus, Comm. on the Elimination of Discrimination Against Women, 54th Sess., Feb. 11-Mar. 1, 2013, at 1, U.N. Doc. CEDAW/C/CYP/6-7 (Sept. 21, 2011) [hereinafter Cyprus’ Sixth and Seventh Periodic Report]. See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Cyprus” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

590. See Comm. on the Elimination of Discrimination Against Women, 35th Sess., 733d mtg. ¶ 7, U.N. Doc. CEDAW/C/SR.733 (May 25, 2006).

591. *Id.*

592. *Id.* ¶ 12.

593. *Id.* ¶ 27.

594. Comm. on the Elimination of Discrimination Against Women, 35th Sess., 734th mtg. ¶ 26, U.N. Doc. CEDAW/C/SR.734 (May 25, 2006).

specific asylum provisions and that women could be granted asylum in their own right.”⁵⁹⁵

Cyprus modified its refugee law in 2007 and 2009,⁵⁹⁶ and in 2011, it reported to the CEDAW Committee that in its present form, its refugee law expressly prohibited discrimination and provided refugee protection to persons persecuted because they belong to a particular social group, in other words, women.⁵⁹⁷ Cyprus provides subsidiary protection, if the applicant does not qualify as a refugee, as long as substantial grounds have been shown for believing that, the migrant victim would suffer serious harm if sent back to their country of origin.⁵⁹⁸ Cyprus further reports that it affords asylum-seekers who are single women, or who have been subject to degrading treatment or punishment to have priority access to shelter, medical care, and psychological, social, and other types of support.⁵⁹⁹

Cyprus' 2012 HDI worldwide ranking is thirty-first.⁶⁰⁰ Its 2012 GII worldwide ranking is twenty-second.⁶⁰¹ While Cyprus has in place a national women's helpline, it does not provide twenty-four hour assistance.⁶⁰² In 2012, Cyprus reported that it had one shelter in the country, which was able to meet approximately 15 percent of the demand for shelter services.⁶⁰³ Recipients of asylum and subsidiary relief have access to employment in restricted areas.⁶⁰⁴ Cyprus also provides residency on humanitarian grounds.⁶⁰⁵ Cyprus provides family unification protections to recipients of asylum and subsidiary relief.⁶⁰⁶

In a 2013 NGO Shadow Report issued to the CEDAW Committee regarding Cyprus' 2011 report to the CEDAW Committee, a group of organizations charged that Cyprus had provided no research or data on the issue of gender-based violence within migrant communities.⁶⁰⁷ Moreover, despite the protections articulated by Cyprus, the United States has reported that Cyprus has a poor record with respect

595. *Id.* ¶ 27.

596. *See* Refugee Law (Law No. 112(I)/2007) (Cyprus); Refugee Law (Law No. 112(I)/2009) (Cyprus).

597. Cyprus' Sixth and Seventh Periodic Report, *supra* note 589, ¶ 142.

598. *Id.* ¶ 144.

599. *Id.* ¶¶ 118, 146.

600. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

601. *Id.* at 156 tbl.4.

602. WAVE REPORT, *supra* note 120, at 13.

603. *Id.* at 14-15.

604. Refugee Law of 2000 § 9 (Law No. 6(I)/2000) (Cyprus).

605. *Id.* § 19a.

606. *Id.* § 20i.

607. ASS'N FOR THE PREVENTION & HANDLING OF VIOLENCE IN THE FAMILY ET AL., CONVENTION FOR THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 54TH SESSION—CYPRUS: SHADOW REPORT 10 (2013), *available* at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CYP/INT_CEDAW_NGO_CYP_13225_E.pdf.

to its treatment of migrants.⁶⁰⁸ The U.S. Department of State reports that, with few exceptions, “‘authorities’ generally treated asylum seekers as illegal immigrants and either deported or denied them entry. Since no ‘law’ or mechanism . . . protects the right of asylum seekers, no identification or protection is available.”⁶⁰⁹ Amnesty International has condemned Cyprus’ practice of detaining all illegal migrants seeking asylum.⁶¹⁰ Cypriot law criminalizes irregular entry or stay in Cyprus, but no longer imposes a punishment of imprisonment.⁶¹¹

In February 2013, the CEDAW Committee asked for information on current provisions governing the right of asylum, particularly with regard to female asylum-seekers, citing a charge from Amnesty International that “female asylum seekers were [not] treated . . . in accordance with international standards.”⁶¹² CEDAW Committee member, Ms. Neubauer, acknowledged the progress that Cyprus had made during the previous twenty-seven years, but found the “party’s efforts with regard to its obligations under the Convention . . . had been insufficient.”⁶¹³ The CEDAW Committee expressed concern

about the lack of information on the implementation of the National Action Plan on Prevention and Handling of Family Violence (2010-2013), the insufficient gender perspective and lack of inclusion of migrant women and ethnic minorities in [Cyprus’ programs] and policies regarding domestic violence, as well as the limited assistance provided by the only shelter run by a non-governmental organization in the [country].⁶¹⁴

The CEDAW Committee has requested that future reports provide enhanced “data collection systems to include all forms of violence against women, protection measures, prosecutions and sentences imposed on perpetrators, [as well as] surveys to assess the prevalence of violence experienced by women, including migrant women and women belonging to ethnic minorities.”⁶¹⁵

608. U.S. DEP’T OF STATE, CYPRUS 2013 HUMAN RIGHTS REPORT 39-41 (2014), *available at* <http://www.state.gov/documents/organization/220477.pdf>.

609. *Id.* at 39.

610. AMNESTY INT’L, PUNISHMENT WITHOUT A CRIME: DETENTION OF MIGRANTS AND ASYLUM-SEEKERS IN CYPRUS 25 (2012), *available at* <http://www.amnesty.org/fr/library/asset/EUR17/001/2012/en/36f06387-9ce6-43df-9734-a4550fa413d6/eur170012012en.pdf>.

611. Until November 2011, these offences were punishable by imprisonment or a fine or both. Aliens and Immigration Law Chapter 105 of the Law § 19(2) (Cap. 105/1959) (Cyprus). The current law that reversed this is codified in Law No. 153(I)/2011. *M.A. v. Cyprus*, App. No. 41872/10, ¶ 65 (Eur. Ct. H.R., Oct. 23, 2013), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122889>.

612. Comm. on the Elimination of Discrimination Against Women, 54th Sess., 1107th mtg. ¶ 47, U.N. Doc. CEDAW/C/SR.1107 (Feb. 15, 2013).

613. *Id.* ¶ 48.

614. Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Cyprus, Adopted by the Committee, Comm. on the Elimination of Discrimination Against Women, 54th Sess., Feb. 11-Mar. 1, 2013, ¶ 17 UN Doc. CEDAW/C/CYP/CO/6-7 (Mar. 25, 2013).

615. *Id.* ¶ 18.

P. Poland

Poland ratified the ECHR in January 1993.⁶¹⁶ It ratified the CEDAW in July 1980,⁶¹⁷ and the CEDAW Optional Protocol in December 2003.⁶¹⁸ It signed the Istanbul Convention in December 2012, but has not yet ratified it.⁶¹⁹ Poland issued its first report to the CEDAW Committee in October 1985⁶²⁰ and five reports thereafter, with the latest in November 2012.⁶²¹

Polish law provides for the granting of asylum or refugee status pursuant to the Aliens Act of June 13, 2003,⁶²² and the Act of July 14, 2006 on the Entry into, Residence in and Exit from the Republic of Poland of Nationals of the European Union Member States and Their Family Members.⁶²³ Poland complies with its ECHR responsibilities by offering refugee status to successful asylum-seekers,⁶²⁴ and subsidiary protection to meet its ECHR non-refoulement obligations.⁶²⁵ Additionally, Poland offers a tolerated stay permit where a return to the country of origin “would constitute a threat to his/her life, freedom and personal safety, when in the country of origin he/she could be subjected to torture, inhuman or degrading treatment or punishment.”⁶²⁶

Access to employment, education, social welfare, healthcare, and integration programs are provided to both refugee and subsidiary beneficiaries under the same

616. ECHR Treaty Status, *supra* note 238.

617. CEDAW Treaty Status, *supra* note 239.

618. CEDAW Optional Protocol Treaty Status, *supra* note 240.

619. Istanbul Convention Treaty Status, *supra* note 88.

620. Comm. on the Elimination of Discrimination Against Women, Rep. on its 6th Sess., Mar. 30-Apr. 10, 1987, at 6-10, U.N. Doc. A/42/38; GAOR, 42d Sess., Supp. No. 38 (1987).

621. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Combined Seventh and Eighth Periodic Reports of States Parties Due in 2010: Poland, Comm. on the Elimination of Discrimination Against Women, 59th Sess., Oct. 20-Nov. 7, 2014, at 1, U.N. Doc. CEDAW/C/POL/7-8 (Mar. 11, 2013) (the second report was submitted in 1988 (U.N. Doc. CEDAW/C/13/Add.16), the third in 1990 (U.N. Doc. CEDAW/C/18/Add.2), the fourth and fifth in 2004 (U.N. Doc. CEDAW/C/POL/4-5), and the sixth also in 2004 (U.N. Doc. CEDAW/C/POL/6)). *See also Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Poland” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

622. Act on Aliens of 13 June 2003, 128 JOURNAL OF LAWS, item 1175 (Pol.), *available at* http://www.udsc.gov.pl/files/old_file/44e9bdd07d1b8_1-44043372d9359_cudzoziemcy.pdf.

623. Act of 14 July 2006 on the Entry into, Residence in and Exit from the Republic of Poland of Nationals of the European Union Member States and Their Family Members, 144 JOURNAL OF LAWS item 1043 (Pol.), *available at* http://www.udsc.gov.pl/files/old_file/44e9bdd07d1b8_3-UdSRiC_74_2006_pl_en_en%5B1%5D.doc.

624. U.S. DEP'T OF STATE, POLAND 2013 HUMAN RIGHTS REPORT 12 (2014), *available at* <http://www.state.gov/documents/organization/220529.pdf>.

625. U.S. DEP'T OF STATE, POLAND 2012 HUMAN RIGHTS REPORT 13-14 (2013) [hereinafter POLAND 2012 HUMAN RIGHTS REPORT], *available at* <http://photos.state.gov/libraries/poland/788/pdfs/204536.pdf>.

626. HELSINKI FOUND. FOR HUMAN RIGHTS, DUBLIN II: NATIONAL ASYLUM PROCEDURE IN POLAND I (2010).

conditions.⁶²⁷ Poland's 2012 HDI worldwide ranking is thirty-ninth.⁶²⁸ Its 2012 GII worldwide ranking is twenty-fourth.⁶²⁹ As of 2012, Poland did not have a national women's helpline,⁶³⁰ and it had in place a single shelter that was unable to meet even 1 percent of the reported need.⁶³¹

Q. Luxembourg

Luxembourg is a founding member of the EU,⁶³² and ratified the ECHR in 1989.⁶³³ It ratified the CEDAW in January 1989⁶³⁴ and the Optional Protocol to the Convention in July 2003.⁶³⁵ It signed the Istanbul Convention in May 2011, but has not yet ratified it.⁶³⁶ It issued its first report pursuant to the CEDAW in November 1996,⁶³⁷ and has issued four periodic reports thereafter, with the latest in May 2006.⁶³⁸

Luxembourg law provides for equal protection based on gender in the application of its criminal code,⁶³⁹ but in the domestic violence context it does so in a gender-neutral format.⁶⁴⁰ Its CEDAW state reporting does not reference migration status as a pre-condition for invoking such rights.⁶⁴¹ As of January

627. See POLAND 2012 HUMAN RIGHTS REPORT, *supra* note 625, at 13-14 (while basic services were provided, there are improvements that could be made).

628. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

629. *Id.* at 156 tbl.4.

630. WAVE REPORT, *supra* note 120, at 13.

631. *Id.* at 14-15.

632. Bernard Cook, *Grand Duchy of Luxembourg*, in II EUROPE SINCE 1945: AN ENCYCLOPEDIA 800, 801 (Bernard A. Cook ed., 2001)

633. ECHR Treaty Status, *supra* note 238.

634. CEDAW Treaty Status, *supra* note 239.

635. CEDAW Optional Protocol Treaty Status, *supra* note 240.

636. Istanbul Convention Treaty Status, *supra* note 88.

637. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial Reports of States Parties: Luxembourg, Comm. on the Elimination of Discrimination Against Women, 17th Sess., July 7-25, 1997, at 1, U.N. Doc. CEDAW/C/LUX/1 (Dec. 18, 1996).

638. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fifth Periodic Reports of States Parties: Luxembourg, Comm. on the Elimination of Discrimination Against Women, 40th Sess., Jan. 14-Feb. 1, 2008, at 1, U.N. Doc. CEDAW/C/LUX/5 (May 8, 2006) [hereinafter Luxembourg's Fifth Periodic Report] (the second report was submitted in 1997 (U.N. Doc. CEDAW/C/LUX/2), the third in 1998 (U.N. Doc. CEDAW/C/LUX/3), and the fourth in 2002 (U.N. Doc. CEDAW/C/LUX/4)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Luxembourg" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

639. See Rep. of the Comm. on the Elimination of Discrimination Against Women, 28th and 29th Sess., Jan. 13-31, June 30-July 18, 2003, at 48, U.N. Doc. A/58/38; GAOR, 58th Sess., Supp. No. 38 (2003).

640. See *id.* See also CEDAW Committee, General Recommendation No. 19, *supra* note 31 ("The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.")

641. See Luxembourg's Fifth Periodic Report, *supra* note 638.

2000, the CEDAW Committee was concerned that Luxembourg had not yet issued national legislation addressing domestic violence.⁶⁴² However, in September 2003, Luxembourg enacted legislation on domestic violence that authorized “the removal of a perpetrator of domestic violence from the family home.”⁶⁴³ Luxembourg offers assistance to domestic violence victims, which includes providing information about bringing charges against the perpetrator or requesting a protection order.⁶⁴⁴ However, as of 2008, “[n]o population-based survey on violence against women [had] been conducted.”⁶⁴⁵

Luxembourg’s 2012 HDI worldwide ranking is twenty-sixth.⁶⁴⁶ Its 2012 GII worldwide ranking is also twenty-sixth.⁶⁴⁷ Luxembourg has in place a national women’s hotline,⁶⁴⁸ and as of 2012, it had nine shelters that were able to meet all the reported need.⁶⁴⁹

R. Lithuania

Lithuania ratified the ECHR in June 1995.⁶⁵⁰ It ratified the CEDAW in January 1994,⁶⁵¹ and the Optional Protocol to the Convention in August 2004.⁶⁵² It signed the Istanbul Convention in June 2013, but has not ratified it.⁶⁵³ Lithuania issued its first report pursuant to the CEDAW in June 1998,⁶⁵⁴ and has issued three periodic reports thereafter, with the latest in June 2011.⁶⁵⁵

642. Comm. on the Elimination of Discrimination Against Women, 22d Sess., 447th mtg. ¶ 39, U.N. Doc. CEDAW/C/SR.447 (Jan. 19, 2000).

643. Luxembourg’s Fifth Periodic Report, *supra* note 638, ¶ 19.

644. *Id.* ¶ 53.

645. Responses to the List of Issues and Questions with Regard to the Consideration of the Fifth Periodic Report: Luxembourg, Comm. on the Elimination of Discrimination Against Women, 14th Sess., Jan. 14-Feb. 1, 2008, at 14, U.N. Doc. CEDAW/C/LUX/Q/5/Add.1 (Oct. 15, 2007).

646. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

647. *Id.* at 156 tbl.4.

648. WAVE REPORT, *supra* note 120, at 13.

649. *Id.* at 14-15.

650. ECHR Treaty Status, *supra* note 238.

651. CEDAW Treaty Status, *supra* note 239.

652. CEDAW Optional Protocol Treaty Status, *supra* note 240.

653. Istanbul Convention Treaty Status, *supra* note 88.

654. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial Reports of States Parties: Lithuania, Comm. on the Elimination of Discrimination Against Women, 23d Sess., June 12-30, 2000, at 1, U.N. Doc. CEDAW/C/LTU/1 (Aug. 27, 1998).

655. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fifth Periodic Reports of States Parties: Lithuania, Comm. on the Elimination of Discrimination Against Women, 58th Sess., at 1, U.N. Doc. CEDAW/C/LTU/5 (Dec. 21, 2011) (the second report was submitted in 1998 (U.N. Doc. CEDAW/C/LTU/2) and the third in 2004 (U.N. Doc. CEDAW/C/LTU/3) with an addendum (U.N. Doc. CEDAW/C/LTU/4)). See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Lithuania” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

In May 2011, Lithuania adopted the Law on Protection Against Domestic Violence, which defines all forms of domestic violence more clearly and makes it easier to prosecute perpetrators as well as provide support to victims and institute preventative measures.⁶⁵⁶ The U.S. Department of State reports that Lithuania continues to fail to “permit asylum seekers coming from ‘safe’ countries of transit to enter the country.”⁶⁵⁷ The Lithuanian government returns these “asylum seekers to the country of transit without reviewing the substantive merits of their applications.”⁶⁵⁸ The Lithuanian Migration Department reported that it “did not have a list of safe countries” but, rather, defined them as countries where “the person’s life or liberty would not be threatened on account of membership in one of the categories specified in the 1951 [R]efugee [C]onvention and associated instruments and from which the individual would not be sent to another country in contravention of his or her rights under these agreements.”⁶⁵⁹

Lithuania also offers protection in the form of “‘temporary protection’ to groups of persons in . . . mass influx,” but individuals are not permitted this type of relief.⁶⁶⁰ Lithuania offers “‘subsidiary protection’ to individuals who do not qualify as refugees but who cannot return to their countries of origin because of fear of torture or because . . . systematic violations of human rights in that country would endanger their basic rights or fundamental freedoms.”⁶⁶¹ Lithuania’s 2012 HDI worldwide ranking is forty-first.⁶⁶² Its 2012 GII worldwide ranking is twenty-eighth.⁶⁶³ While Lithuania has in place a national women’s hotline,⁶⁶⁴ as of 2012, it had no shelters to serve victims of violence.⁶⁶⁵

S. Greece

Greece ratified the ECHR in November 1974,⁶⁶⁶ the CEDAW in June 1983,⁶⁶⁷ and the Optional Protocol in January 2002.⁶⁶⁸ It signed the Istanbul Convention in May 2011, but has not ratified it.⁶⁶⁹ It reported on its obligations under the

656. Law on Protection Against Domestic Violence (No. XI-1425) (May 26, 2011) (Lith.), available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410975. See also REPLY OF LITHUANIA ON VIOLENCE AGAINST WOMEN AND DISABILITY 2 (2011), available at <http://www2.ohchr.org/english/issues/women/docs/VAWHRC20/Governments/Lithuania.doc>.

657. U.S. DEP’T OF STATE, LITHUANIA 2013 HUMAN RIGHTS REPORT 10 (2014), available at <http://www.state.gov/documents/organization/220511.pdf>.

658. *Id.*

659. *Id.*

660. *Id.*

661. *Id.*

662. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

663. *Id.* at 156 tbl.4.

664. WAVE REPORT, *supra* note 120, at 13.

665. *Id.* at 14-15.

666. ECHR Treaty Status, *supra* note 238.

667. CEDAW Treaty Status, *supra* note 239.

668. CEDAW Optional Protocol Treaty Status, *supra* note 240.

669. Istanbul Convention Treaty Status, *supra* note 88.

CEDAW through an initial report in April 1985,⁶⁷⁰ and four periodic reports thereafter, with the most recent report in December 2010.⁶⁷¹

Greek law provides for two types of protections: refugee status and subsidiary protection.⁶⁷² Until June 7, 2013, Greece offered humanitarian-based relief, as well.⁶⁷³ Applications that were filed before that date were eligible for humanitarian-based consideration, where a grantee may remain in Greece “for up to two years, with the option to apply for renewal.”⁶⁷⁴ In 2011, a new legal framework reforming the asylum system was adopted in 2011.⁶⁷⁵ Under that system, any person not meeting the criteria for refugee status, may be granted subsidiary protection if she substantiates that, if returned to the country of origin, she runs the risk of being subjected to serious harm, as defined in Article 15 of Presidential Decree 96.⁶⁷⁶ Under the current system, when an asylum claim is rejected, but authorities believe that humanitarian relief should be forthcoming, the case is referred to the Ministry of Internal Affairs and is examined according to immigration procedures under the provisions of Law 3386/2005, on Entry, Residence and Social Integration of Third-Country Nationals in the Hellenic Territory.⁶⁷⁷ Greece has in place a procedure for prioritizing case reviews of matters involving persons belonging to vulnerable groups.⁶⁷⁸

Greece’s 2012 HDI worldwide ranking is twenty-ninth.⁶⁷⁹ Its 2012 GII worldwide ranking is twenty-third.⁶⁸⁰ Greece offers a twenty-four hour national

670. Rep. of the Comm. on the Elimination of Discrimination Against Women, Rep. on its 6th Sess., Mar. 30-Apr. 10 1987, ¶¶ 65-129, U.N. Doc. A/42/38; GAOR, 42d Sess., Supp. No. 38 (1987).

671. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seventh Periodic Reports of States Parties: Greece, Comm. on the Elimination of Discrimination Against Women, 54th Sess., Feb. 11-Mar. 1, 2013, at 1, U.N. Doc. CEDAW/C/GRC/7 (Mar. 14, 2011) (the second and third report was submitted in 1996 (U.N. Doc. CEDAW/C/GRC/2-3), the fourth and fifth in 2001 (U.N. Doc. CEDAW/C/GRC/4-5), and the sixth in 2005 (U.N. Doc. CEDAW/C/GRC/6)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Greece” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

672. *EDAL Country Overview—Greece*, EUR. DATABASE OF ASYLUM L. (Nov. 19, 2013), <http://www.asylumlawdatabase.eu/en/content/edal-country-overview-greece>.

673. *Id.*

674. *Id.*

675. *Id.*

676. Diatagma (2013:113) *Demiourgia Mias Eniaias Diadikiasias gia te Choregise tou Prosfyga e tes Epikourikes Dikaioucho Prostasia Stous Allodapous e Anithagenis Atoma, Symfona me to Symvoullio Odegia 2005/85/EK* [Establishment of a Single Procedure for Granting the Status of Refugee or of Subsidiary Protection Beneficiary to Aliens or to Stateless Individuals in Conformity with Council Directive 2005/85/EC “on minimum standards on procedures in Member States for granting and withdrawing refugee status” (L326/13.12.2005) and Other Provisions], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2013, art. 35(1)(b) (Greece).

677. *Id.* art. 33.

678. *Id.* art. 35(1)(g).

679. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

680. *Id.* at 156 tbl.4.

women's hotline.⁶⁸¹ However, shelter services are vastly under supported with only about 9 percent of the need met in 2012.⁶⁸² Greece offers no right to free legal representation, but will provide it to eligible low-income individuals.⁶⁸³ The SRVAW has recommended that all law enforcement personnel be given appropriate gender-sensitive training in order to effectively respond to cases of rape and other forms of sexual violence against women, including violence occurring within the family.⁶⁸⁴ Moreover, she suggests that the law be revised in such a manner that victims of rape and other forms of sexual violence cannot be put under pressure to stop the prosecution of the case.⁶⁸⁵

T. Estonia

Estonia ratified the ECHR in April 1996.⁶⁸⁶ It ratified the CEDAW in October 1991,⁶⁸⁷ but has not signed the Optional Protocol.⁶⁸⁸ It has neither signed nor ratified the Istanbul Convention.⁶⁸⁹ Estonia reported on its obligations under the CEDAW through an initial report in June 2001,⁶⁹⁰ and a second periodic report in October 2005.⁶⁹¹ Its latest reported was due on November 20, 2012, but has not yet been submitted.⁶⁹²

Estonia has developed a number of systems to address domestic violence, including the creation of governmental organizations and training of police officials and medical workers in the victim support services.⁶⁹³ In 2002, the

681. WAVE REPORT, *supra* note 120, at 13.

682. *Id.* at 14-15.

683. Nomos (2004:3226) *Paroche Nomikes Voetheias se Polites Chamelou Eisodematos kai alles Diatakseis* [Legal Aid to Citizens of Low Income and Other Provisions], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2004, A:24 (Greece).

684. See Special Rapporteur on Violence Against Women, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission: Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedom*, Comm'n on Human Rights, ¶ 122, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (by Radhika Coomaraswamy).

685. *Id.* ¶ 123.

686. ECHR Treaty Status, *supra* note 238.

687. CEDAW Ratification Treat Status, *supra* note 239.

688. CEDAW Optional Protocol Treaty Status, *supra* note 240.

689. Istanbul Convention Treaty Status, *supra* note 88.

690. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Initial, Second and Third Periodic Reports of States Parties: Estonia, Comm. on the Elimination of Discrimination Against Women, 26th Sess., Jan. 14-Feb. 1, 2002, at 1, U.N. Doc. CEDAW/C/EST/1-3 (Aug. 21, 2001).

691. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fourth Periodic Report of States Parties: Estonia, Comm. on the Elimination of Discrimination Against Women, 39th Sess., July 23-Aug. 10, 2007, at 1, U.N. Doc. CEDAW/C/EST/4 (Oct. 6, 2005).

692. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Estonia" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

693. Rep. of the Comm. on the Elimination of Discrimination Against Women, Rep. on its 26th Sess., Jan. 14-Feb. 1, 2002, ¶ 97, U.N. Doc. A/57/38; GAOR, 57th Sess., Supp. No. 38 (2002).

CEDAW Committee urged Estonia to meet its obligations under international law and to place a high priority on establishing comprehensive measures to address domestic violence.⁶⁹⁴ In response, Estonia created such a system that provides asylum protection to refugees.⁶⁹⁵ Authorities have reported that they have granted interviews to all individual asylum seekers.⁶⁹⁶ The UNHCR, however, has expressed concern about the low numbers of registered asylum seekers at the border, which indicates that individuals might be turned away at the border without being afforded an opportunity to claim asylum or other fear-based relief.⁶⁹⁷

Estonia's 2012 HDI worldwide ranking is thirty-third.⁶⁹⁸ Its 2012 GII worldwide ranking is twenty-ninth.⁶⁹⁹ While Estonia has in place some resources to provide safety to women, the demand for shelters is almost twice what is available.⁷⁰⁰ Estonia has in place a national women's hotline that provides language services, but it does not provide twenty-four hour service or free long distance calls.⁷⁰¹ In 2012, the ten nationwide shelters were able to serve 51 percent of the need.⁷⁰² Some limited free legal aid is available.⁷⁰³ However, reforms in the criminal justice system to hold perpetrators accountable are criticized as providing weak enforcement.⁷⁰⁴

U. Slovakia

Slovakia ratified the ECHR in March 1992.⁷⁰⁵ It ratified the CEDAW in May 1993,⁷⁰⁶ and signed the CEDAW Optional Protocol in November 2000.⁷⁰⁷ It signed the Istanbul Convention in May 2011, but has not yet ratified it.⁷⁰⁸ Slovakia

694. *Id.* ¶ 98.

695. See Act on Granting International Protection to Aliens, RT I 2006, 2, 3 (2005) (Est.).

696. EUROPEAN MIGRATION NETWORK, THE PRACTICES IN ESTONIA CONCERNING THE GRANTING OF NON-EU HARMONISED PROTECTION STATUSES 12 (2009), available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/non-eu-harmonised-protection-status/07_estonia_national_report_non_eu_harmonised_protection_statuses_final_version_28sept09_en.pdf.

697. See *Estonia: 2014 UNHCR Regional Operations Profile: Northern, Western, Central and Southern Europe*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48dcd6&submit=GO> (last visited June 1, 2014).

698. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

699. *Id.* at 156 tbl.4.

700. WAVE REPORT, *supra* note 120, at 14-15.

701. *Id.* at 13, 96.

702. *Id.* at 14-15.

703. *Id.* at 95.

704. *Id.*

705. ECHR Treaty Status, *supra* note 238.

706. CEDAW Treaty Status, *supra* note 239.

707. CEDAW Optional Protocol Treaty Status, *supra* note 240.

708. Istanbul Convention Treaty Status, *supra* note 88.

issued its first report in April 1996⁷⁰⁹ and a second periodic report in May 2007.⁷¹⁰ It is due to issue its next report June 27, 2014.⁷¹¹

In 2007, the European Court of Human Rights considered *Kontrová v. Slovakia*, a case involving egregious domestic violence in the form of psychological and physical abuse by a male Slovak against his female spouse within Slovakia.⁷¹² The abusive conduct included the murder of the couple's two children.⁷¹³ The court held unanimously that there had been violations of the ECHR involving Article 2, the right to life, and Article 13, the right to an effective remedy.⁷¹⁴ The ECtHR notes that "[t]he situation in the applicant's family was known to the local police department [given among other things] . . . the criminal complaint of 2 November 2002 and the emergency phone calls of the night of 26 to 27 December 2002."⁷¹⁵ The ECtHR agreed with the domestic courts, finding that the tragedy was a direct consequence of the police officers' failure to act to help the victims.⁷¹⁶ While this case does not involve domestic violence in the migrant context, it may be illustrative of the current state of limited protections for victims in Slovakia.

Slovakia's 2012 HDI worldwide ranking is thirty-fifth.⁷¹⁷ Its 2012 GII worldwide ranking is thirty-second.⁷¹⁸ While Slovakia has in place a national women's hotline, it is not staffed twenty-four hours a day, and there is no information available on translation services.⁷¹⁹ As of 2012, Slovakia had in place two shelters, addressing about 5 percent of the reported need.⁷²⁰

V. Croatia

Croatia ratified the ECHR on November 1997,⁷²¹ the CEDAW in September 1992,⁷²² and the CEDAW Optional Protocol in March 2001.⁷²³ It signed the

709. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial Report Periodic Report of States Parties: Slovakia, Comm. on the Elimination of Discrimination Against Women, 19th Sess., June 22-July 10, 1998, at 1, U.N. Doc. CEDAW/C/SVK/1 (July 20, 1996).

710. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Second, Third and Fourth Periodic Reports of States Parties: Slovakia, Comm. on the Elimination of Discrimination Against Women, 41st Sess., June 30-July 18, 2008, at 1, U.N. Doc. CEDAW/C/SVK/4 (May 11, 2007).

711. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Slovakia" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

712. *Kontrová v. Slovakia*, App. No. 7510/04, ¶¶ 7-8 (Eur. Ct. H.R. Sept. 24, 2007), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80696>.

713. *Id.* ¶ 14.

714. *Id.* at 16.

715. *Id.* ¶ 52.

716. *Id.* ¶¶ 54-55.

717. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

718. *Id.* at 156 tbl.4.

719. WAVE REPORT, *supra* note 120, at 13.

720. *Id.* at 14-15, 240.

721. ECHR Treaty Status, *supra* note 238.

Istanbul Convention in January 2013, but has not yet ratified it.⁷²⁴ It reported on its obligations under the CEDAW through an initial report in January 1995,⁷²⁵ and two periodic reports thereafter, with the latest in September 2013.⁷²⁶ Croatia's legislation provides for asylum and subsidiary protections.⁷²⁷ The domestic legal structure provides for a system of safety measures such as shelters, legal assistance, interpretation assistance, work permits, and support in connection with injunctive relief.⁷²⁸ However, as of 2012, Croatia did not offer a national women's helpline,⁷²⁹ but its nineteen shelters provided shelter for 77 percent of the needed population.⁷³⁰ Croatia's 2012 HDI worldwide ranking is forty-seventh.⁷³¹ Its 2012 GII worldwide ranking is thirty-third.⁷³²

At the time that Croatia ratified the CEDAW (September 1992), the country was in the midst of a civil war, during which widespread human rights abuses against women were recorded in a variety of contexts.⁷³³ While its first report to the CEDAW Committee in 1994 recounted the widespread nature of the human rights abuses during the previous years,⁷³⁴ by 2003, its second report reflected marked changes in the protections available to female victims of violence in general.⁷³⁵ Croatia adopted a Law on Gender Equality in 2008,⁷³⁶ as well as a Law on Protection from Domestic Violence in 2003.⁷³⁷

722. CEDAW Treaty Status, *supra* note 239.

723. CEDAW Optional Protocol Treaty Status, *supra* note 240.

724. Istanbul Convention Treaty Status, *supra* note 88.

725. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial Reports of States Parties: Croatia, Comm. on the Elimination of Discrimination Against Women, 18th Sess., Jan. 19-Feb. 6, 1998, at 1, U.N. Doc. CEDAW/C/CRO/1 (Feb. 15, 1995). Prior to its initial report, Croatia issued a "[r]eport on an exceptional basis." Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Reports of States Parties: Croatia, Report on an Exception Basis, Comm. on the Elimination of Discrimination Against Women, 14th Sess., Jan. 16-Feb. 3 1995, at 1, U.N. Doc. CEDAW/C/CRO/SP.1 (Dec. 6, 1994) [hereinafter Croatia's Report on Exceptional Basis].

726. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Fourth and Fifth Periodic Reports of States Parties Due in 2009: Croatia, Comm. on the Elimination of Discrimination Against Women, 61st Sess., at 1, U.N. Doc. CEDAW/C/HRV/4-5 (Dec. 13, 2013) [Croatia's Fourth and Fifth Periodic Report] (the second and third report was submitted in 2003 (U.N. Doc. CEDAW/C/CRO/2-3)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Croatia" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

727. Asylum Act, art. 1 (O.G. No. 79/07 and 88/10) (Croat.), available at http://www.mup.hr/UserDocsImages/engleska%20verzija/2013/asylum_act.pdf.

728. See WAVE REPORT, *supra* note 120, at 75-77.

729. *Id.* at 11.

730. *Id.* at 14-15.

731. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

732. *Id.* at 156 tbl.4.

733. Croatia's Report on Exceptional Basis, *supra* note 725, at 5-7.

734. *Id.*

735. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Second and Third Periodic Reports of States Parties: Croatia, Comm. on the Elimination of Discrimination Against Women, 32d

During the period from 2008 through 2010, Croatia implemented an official national strategy,⁷³⁸ which helped it harmonize its legislation with its responsibilities under international law. Croatia's efforts have been aimed at creating a social and legal structure to provide support to domestic violence victims.⁷³⁹ While the governing law envisions particular social group claims to protection,⁷⁴⁰ the authors are not aware of a published case to date in which a gender-related claim to asylum in Croatia has been accepted. There is no right to free legal aid or interpreters in connection with the initial filing of an asylum application,⁷⁴¹ but some victims may receive some assistance in appeals.⁷⁴² Under the law, agents of persecution may be state bodies, parties, or non-state actors where the state is unable or unwilling to provide protection from persecution or serious harm.⁷⁴³

In 2012, Croatia created an Administrative Court with responsibility for appeals of asylum claims.⁷⁴⁴ During 2013, the UNHCR anticipated working with Croatia to support the growth in asylum-seekers and improve the quality of the asylum system.⁷⁴⁵ It planned to work with Croatia to improve programs for vulnerable groups.⁷⁴⁶ Overall, only sixty-four individuals have been granted either asylum or subsidiary protection since 2004 in Croatia, despite the vast growth in the number of asylum claims made beginning in 2012.⁷⁴⁷ Subsidiary protection is available when, in pertinent part, there is a "real risk of suffering serious harm" such as the "death penalty or execution, torture, inhuman or degrading treatment or punishment."⁷⁴⁸ The protections include the right of non-refoulement where a

Sess., Jan. 10-28, 2005, at 6-16, U.N. Doc. CEDAW/C/CRO/2-3 (Oct. 27, 2003) [hereinafter Croatia's Second and Third Periodic Report] (highlighting the numerous laws that have been passed in regards to discrimination against women).

736. Croatia's Fourth and Fifth Periodic Report, *supra* note 726, at 4.

737. Croatia's Second and Third Periodic Report, *supra* note 735, at 14.

738. WAVE REPORT, *supra* note 120, at 74.

739. Croatia's Second and Third Periodic Report, *supra* note 735, at 4-5.

740. *Id.* at 18-21.

741. HUMAN RIGHTS WATCH, WORLD REPORT 2013: EVENTS OF 2012, at 421 (2013) [hereinafter HRW, WORLD REPORT 2013], available at http://www.hrw.org/sites/default/files/wr2013_web.pdf.

742. *Id.*

743. See Asylum Act, art. 5(2) (O.G. No. 79/07 and 88/10) (Croat.), available at http://www.mup.hr/UserDocsImages/engleska%20verzija/2013/asylum_act.pdf.

744. EUR. COMM'N AGAINST RACISM & INTOLERANCE, ECRI REPORT ON CROATIA: FOURTH MONITORING CYCLE 7 (2012), available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Croatia/HRV-CbC-IV-2012-045-ENG.pdf>.

745. 2014 UNHCR Regional Operations Profile: South-Eastern Europe, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d7d6> (last visited Jan. 22, 2014).

746. *Id.*

747. HRW, WORLD REPORT 2013, *supra* note 741, at 421.

748. Asylum Act, arts. 2, 7 (O.G. No. 79/07 and 88/10) (Croat.), available at http://www.mup.hr/UserDocsImages/engleska%20verzija/2013/asylum_act.pdf.

victim “could be exposed to torture, inhuman or degrading treatment or punishment.”⁷⁴⁹

W. United Kingdom of Great Britain and Northern Ireland

The United Kingdom ratified the ECHR in March 1951.⁷⁵⁰ It ratified the CEDAW in April 1986⁷⁵¹ and ratified the Optional Protocol in December 2004.⁷⁵² It signed the Istanbul Convention in June 2012, but has not yet ratified it.⁷⁵³ The United Kingdom issued its initial report under the CEDAW in June 1987,⁷⁵⁴ and six reports thereafter, with the latest in June 2011.⁷⁵⁵

The United Kingdom offers several types of protection to victims of domestic violence. First, a domestic violence victim who is the spouse or partner of a British citizen or person settled in the United Kingdom is able to apply for an indefinite leave to remain, a permanent status.⁷⁵⁶ For those who are victims pursuant to non-British, or non-U.K.-settled perpetrators, the United Kingdom offers asylum protection through a particular social group-based claim,⁷⁵⁷ as well as humanitarian protection when there are “substantial grounds . . . for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country.”⁷⁵⁸ Some have argued that in practice, domestic violence is often interpreted as a form of serious harm leading to the grant of subsidiary protection, rather than asylum.⁷⁵⁹ Without a comprehensive

749. *Id.* art. 3.

750. ECHR Treaty Status, *supra* note 238.

751. CEDAW Treaty Status, *supra* note 239.

752. CEDAW Optional Protocol Treaty Status, *supra* note 240.

753. Istanbul Convention Treaty Status, *supra* note 88.

754. Comm. on the Elimination of Discrimination Against Women, Rep. on its 9th Sess., Jan. 22-Feb. 2, 1990, ¶¶ 167-213, U.N. Doc. A/45/38; GAOR, 45th Sess., Supp. No. 38 (1990).

755. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Seventh Periodic Reports of States Parties: United Kingdom of Great Britain and Northern Ireland, Comm. on the Elimination of Discrimination Against Women, 55th Sess., July 8-26, 2013, at 1, U.N. Doc. CEDAW/C/GBR/7 (Aug. 11, 2011) (the second report was submitted in 1991 (U.N. Doc. CEDAW/C/UK/2), the third in 1995 (U.N. Doc. CEDAW/C/UK/3), the fourth in 1999 (U.N. Doc. CEDAW/C/UK/4), the fifth in 2003 (U.N. Doc. CEDAW/C/UK/5), and the sixth in 2007 (U.N. Doc. CEDAW/C/UK/6)). See also *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “United Kingdom of Great Britain and Northern Ireland” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

756. Immigration Rules, 2014, pt. 8, ¶¶ 289A-D (U.K.), available at <https://www.gov.uk/government/collections/immigration-rules> (follow “Immigration Rules part 8: family members” hyperlink).

757. *Id.* pt. 11, ¶ 334(v).

758. *Id.* ¶ 339C(iii).

759. Siobhán Mullally, *Gender Asylum Law: Providing Transformative Remedies*, in CONTEMPORARY ISSUES IN REFUGEE LAW 196, 202-04 (Satvinder Singh Juss & Colin Harvey eds., 2013).

accounting of government adjudications, this is difficult to verify. Moreover, as a practical matter, some authorities rely on and cite to the UNHCR Gender-Based Guidelines in adjudicating cases, while others assert that they are of little assistance.⁷⁶⁰

The SRVAW expressed concern “about the absence of a national strategy on the prevention and elimination of violence against women.”⁷⁶¹ In particular the SRVAW was concerned about “[d]ifferent regimes . . . being established in Wales, Scotland, and Northern Ireland with responsibility for women’s equality issues, including legislative and administrative provisions and mechanisms.”⁷⁶²

The United Kingdom’s 2012 HDI worldwide ranking is twenty-sixth.⁷⁶³ Its 2012 GII worldwide ranking is thirty-fourth.⁷⁶⁴ The United Kingdom has in place a national women’s hotline that is staffed twenty-four hours a day, offers free long distance calling, and provides translation services.⁷⁶⁵ As of 2012, the United Kingdom had in place 1,105 shelters, addressing about 87 percent of the reported need.⁷⁶⁶

X. Latvia

Latvia ratified the ECHR in June 1997.⁷⁶⁷ It ratified the CEDAW in April 1992.⁷⁶⁸ It has not signed nor ratified the Optional Protocol.⁷⁶⁹ Additionally, it has neither signed nor ratified the Istanbul Convention.⁷⁷⁰ Latvia issued its first report to the CEDAW Committee in June 2003.⁷⁷¹ While it was obliged to issue a periodic report on May 14, 2005, it has not yet done so.⁷⁷²

Latvia provides asylum relief and a subsequent permanent residence permit,⁷⁷³ as well as subsidiary relief in the form of an annually renewable temporary residence permit, which embodies the principles of non-refoulement to

760. CHEIKH ALI ET AL., *supra* note 417, at 33-34.

761. Coomaraswamy Report, *supra* note 194, ¶ 1849.

762. *Id.*

763. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

764. *Id.* at 156 tbl.4.

765. WAVE REPORT, *supra* note 120, at 13, 284.

766. *Id.* at 14-15.

767. ECHR Treaty Status, *supra* note 238.

768. CEDAW Treaty Status, *supra* note 239.

769. CEDAW Optional Protocol Treaty Status, *supra* note 240.

770. Istanbul Convention Treaty Status, *supra* note 88.

771. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Initial, Second and Third Periodic Report of States Parties: Latvia, Comm. on the Elimination of Discrimination Against Women, 31st Sess., July 6-23, 2004, at 1, U.N. Doc. CEDAW/C/LVA/1-3 (June 16, 2003) [hereinafter Latvia’s Initial, Second and Third Periodic Report].

772. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Latvia” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

773. Asylum Law § 27 (Jan. 20, 2005) (Lat.), available at <http://www.legislationline.org/documents/id/3815>.

migrants seeking the state's protection.⁷⁷⁴ Subsidiary relief is offered when, in pertinent part, an individual "is under threat of the death penalty, corporal punishment, torture, inhuman or degrading treatment, or degrading punishment in the country of his or her citizenship."⁷⁷⁵ In some circumstances, Latvia provides humanitarian relief.⁷⁷⁶ The protection offers employment eligibility⁷⁷⁷ and family unity protections.

Latvia's 2012 HDI worldwide ranking is forty-fourth.⁷⁷⁸ Its 2012 GII worldwide ranking is thirty-sixth.⁷⁷⁹ Latvia provides free legal assistance for asylum appeals only.⁷⁸⁰ However, it does provide translation for all interviews.⁷⁸¹ Family unity protection is afforded to successful asylum-seekers.⁷⁸² As of 2012, Latvia had neither a national women's hotline, nor any shelters.⁷⁸³ The Latvian National Human Rights office reported in 2003, that although the law provides for criminal liability for physical violence, "law enforcement institutions do not pay sufficient attention to manifestations of physical violence in families if bodily injury sustained by the woman cannot be regarded as serious or at least moderate."⁷⁸⁴ "Moreover, the laws did not recognize psychological violence" for purposes of criminal liability.⁷⁸⁵

Y. Bulgaria

Bulgaria ratified the ECHR in September 1992.⁷⁸⁶ It ratified the CEDAW in February 1982⁷⁸⁷ and the Optional Protocol in September 2006.⁷⁸⁸ It has neither signed nor ratified the Istanbul Convention.⁷⁸⁹ It reported on its obligations under the CEDAW through an initial report in June 1983,⁷⁹⁰ and two periodic reports

774. *Id.* § 2.

775. *Id.* § 35(1)(1).

776. *Id.* § 35(1)(2). See also LATVIAN CENTRE FOR HUMAN RIGHTS & UNITED NATIONS HIGH COMM'R FOR REFUGEES, SEEKING ASYLUM IN LATVIA: GUIDE FOR ASYLUM-SEEKERS 10, available at http://www.rs.gov.lv/doc_upl/SeekingAsylum-inLatvia.pdf.

777. Asylum Law, §§ 37, 40 (Lat.).

778. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

779. *Id.* at 156 tbl.4.

780. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, COUNTRY FACTSHEET: LATVIA 5 (2010), available at http://fra.europa.eu/sites/default/files/fra_uploads/1035-asylum_factsheet_Latvia_en.pdf.

781. Asylum Law, § 9 (Lat.).

782. *Id.*

783. WAVE REPORT, *supra* note 120, at 13-15.

784. Latvia's Initial, Second and Third Periodic Report, *supra* note 771, ¶ 33.

785. Comm. on the Elimination of Discrimination Against Women, 31st Sess., 657th mtg. ¶ 11, U.N. Doc. CEDAW/C/SR.657 (July 14, 2004).

786. ECHR Treaty Status, *supra* note 238.

787. CEDAW Treaty Status, *supra* note 239.

788. CEDAW Optional Protocol Treaty Status, *supra* note 240.

789. Istanbul Convention Treaty Status, *supra* note 88.

790. Rep. of the Comm. on the Elimination of Discrimination Against Women, Rep. on its 4th Sess., Jan. 21-Feb. 1, 1985, ¶¶ 74-126, U.N. Doc. A/40/45; GAOR, 40th Sess., Supp. No. 45 (1985).

thereafter, with the latest report in September 2010.⁷⁹¹ It is obliged to issue its next report on July 30, 2016.⁷⁹²

Bulgarian asylum law is governed by the Law for Asylum and Refugees, and its subsequent amendments.⁷⁹³ It enacted protections for victims of domestic violence with the passage of the Protection from Domestic Violence Act (“DVA”).⁷⁹⁴ These protections include the right to seek police protection; to obtain a protection order; to prosecute criminal protection order violations in criminal court; to obtain legal aid in the form of services of a lawyer free of charge during proceedings; to have an interpreter during proceedings; to submit applications for custody or for divorce to the courts; and to undertake all other relevant actions relating to family issues and protection from domestic violence.⁷⁹⁵ The statutory framework that flowed from the passage of the DVA contains no reference to migration status as a pre-condition for invoking rights thereunder.⁷⁹⁶ Shelter services were provided to less than 8 percent of the reported demand, in 2012.⁷⁹⁷ Bulgaria’s 2012 HDI worldwide ranking is fifty-seventh.⁷⁹⁸ Its 2012 GII worldwide ranking is thirty-eighth.⁷⁹⁹

Article 2 of the DVA recognizes an expansive definition of domestic violence, which include physical, sexual, mental, emotional, psychological, and economic forms of violence, in the context of heterosexual relationships.⁸⁰⁰ However, domestic violence in Bulgaria is still regarded as a private matter with actions being brought by victims against their aggressors in a private prosecution.⁸⁰¹ Domestic violence is prosecuted as a criminal matter only in

791. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Fourth, Fifth, Sixth and Seventh Periodic Reports of States Parties: Bulgaria, Comm. on the Elimination of Discrimination Against Women, 52d Sess., July 9-27, 2012, at 1, U.N. Doc. CEDAW/C/BGR/4-7 (Jan. 7, 2011) (the second and third report was submitted in 1994 (U.N. Doc. CEDAW/C/BGR/2-3)).

792. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Bulgaria” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

793. Law for the Asylum and the Refugees, Prom. SG. 54/31 May 2002, amend. SG. 31/8 Apr. 2005, amend. SG. 30/11 Apr. 2006, amend. SG. 52/29 Jun 2007, amend. SG. 109/20 Dec. 2007, amend. SG. 82/16 Oct. 2009, amend. SG. 39/20 May 2011, amend. SG. 15/15 Feb. 2013 (Bulg.), available at [http://www.aref.government.bg/ebf/docs/Law%20for%20the%20Asylum%20and%20the%20Refugees EN.pdf](http://www.aref.government.bg/ebf/docs/Law%20for%20the%20Asylum%20and%20the%20Refugees%20EN.pdf).

794. Protection Against Domestic Violence Act, Prom. SG. 27/29 Mar. 2005, amend. SG. 82/10 Oct. 2006, amend. SG. 102/22 Dec. 2009, art. 1 (Bulg.), available at <http://www.stopvaw.org/uploads/lpfdv.pdf>.

795. See *id.* arts. 6(7)(2), 20, 21.

796. See *id.*

797. WAVE REPORT, *supra* note 120, at 14-15.

798. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

799. *Id.* at 156 tbl.4.

800. Protection Against Domestic Violence Act, arts. 2-3 (Bulg.).

801. ADVOCATES FOR HUMAN RIGHTS, BULGARIA: CHALLENGES WITH ADDRESSING DOMESTIC VIOLENCE IN COMPLIANCE WITH INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 102ND

exceptional circumstances and where substantial injury is involved, and the victim is unable to bring a private prosecution by him or herself.⁸⁰²

Migrant domestic violence victims do not have the right to seek financial compensation from their abusers under the Crime Victim Assistance and Financial Compensation Act as this right flows only to foreign nationals legally residing in the territory of Bulgaria.⁸⁰³ A recent study of thirty cases reviewed by the State Agency for Refugees reflects that this adjudicatory body does not recognize gender-based relief or gender-based asylum claims.⁸⁰⁴ Of the cases reviewed in this study, most of the asylum applications filed by women contained claims to membership in a gender-based social group and to domestic violence persecution.⁸⁰⁵ Relief was not forthcoming in any of these cases.

In November 2010, the CEDAW Committee considered a claim in which a migrant claimed she had been subjected to domestic violence and that the procedures in place in Bulgaria failed to provide support as required under the CEDAW.⁸⁰⁶ Brought by two domestic violence victims, Gambian national Isatou Jallow and her Bulgarian minor daughter, they claimed that Bulgaria had breached its responsibilities under the CEDAW.⁸⁰⁷ Over the next two years, the CEDAW Committee reviewed the claim, and issued its finding in July 2012.⁸⁰⁸ The CEDAW Committee found that in September 2008, Ms. Jallow and her minor daughter arrived in Bulgaria and began living with Ms. Jallow's husband, who was also the father of her minor daughter.⁸⁰⁹ Specifically, he repeatedly abused both Ms. Jallow and her daughter, sexually, physically, and emotionally, and used Ms. Jallow's migrant status as a tool to further abuse her in that, "[h]e constantly told her that her stay in Bulgaria depended on him and threatened that, if she resisted, he could have her imprisoned, confined to a mental institution or deported to the Gambia, without her daughter."⁸¹⁰ She sought assistance from local authorities in November 2008, who recommended that she "stay away from her husband" and initiated an investigation into the claimed domestic violence.⁸¹¹ During a

SESSION OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE ¶ 10 (2011), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngo/AHR_Bulgaria_HRC102.doc.

802. CODE CRIMINAL [C. CRIM.] art. 161 ("[For bodily injury . . . inflicted on a relative . . . [such as] a spouse . . . the penal prosecution shall be instituted on the basis of complaint by the victim.").

803. Crime Victim Assistance and Financial Compensation Act, SG. 105/22 Dec. 2006, art. 27(1) (Bulg.), available at http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_cv_bul_en.pdf.

804. Memorandum from Maria Nikolova, Bulgarian Human Rights Advocate (November 26, 2013) (on file with the authors).

805. *Id.*

806. Comm. on the Elimination of Discrimination Against Women, *Isatou Jallow v. Bulgaria*, Comm. No. 32/2011, ¶ 1, U.N. Doc. CEDAW/C/52/D/32/2011 (2011), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=CEDAW/C/52/D/32/2011.

807. *Id.*

808. *Id.*

809. *Id.* ¶ 2.1.

810. *Id.* ¶ 2.2.

811. *Id.* ¶¶ 2.3-2.4.

protracted period in which she lived alternately in a women's shelter, and in the family apartment, the Bulgarian judicial system considered the case, and ultimately dropped it without interviewing Ms. Jallow.⁸¹² In July 2009, she received a Bulgarian residence permit.⁸¹³ With the escalating domestic violence, however, she contemplated pursuing a divorce.⁸¹⁴

Soon thereafter, Ms. Jallow's husband sought assistance from the state authorities claiming that, in fact, it was him and his daughter that had been subject to psychological and physical violence as well as death threats at the hands of Ms. Jallow.⁸¹⁵ The Bulgarian authorities issued a restraining order against Ms. Jallow, and placed the child under the care and custody of her husband.⁸¹⁶ Soon thereafter, he instituted divorce proceedings against Ms. Jallow, and sought custody of their daughter.⁸¹⁷

Ms. Jallow brought a claim under the CEDAW Optional Protocol claiming that Bulgarian state officials had violated a number of the CEDAW provisions ranging from discriminatory treatment of women to a complete failure to both recognize and protect against domestic gender-based violence and to sanction the perpetrator.⁸¹⁸ She argued that due to language barriers she had extremely limited access to the institutions that are charged with addressing gender-based violence.⁸¹⁹ Furthermore, she asserted that the authorities separated her from her daughter and failed to provide her with information during the separation, in spite of a history of sexual abuse by the father of the daughter.⁸²⁰ As a legal remedy, she sought:

- a) Fair compensation;
- b) Child support and legal assistance;
- c) Reparations for the physical and mental harm caused to her and her daughter; and,
- d) Effective measures to provide for her future security.⁸²¹

From a systemic viewpoint, she requested that Bulgaria institute legal measures to provide for effective protection for women victims of gender-based violence, including training of judges and free translation and legal services.⁸²²

The CEDAW Committee agreed that Ms. Jallow and her daughter had suffered damage given Ms. Jallow's vulnerable situation and that the Bulgarian government did not provide adequate protection as required under the CEDAW.⁸²³

812. *Id.* ¶¶ 2.4-2.5.

813. *Id.* ¶ 2.6.

814. *Id.*

815. *Id.* ¶ 2.7.

816. *Id.* ¶ 2.8.

817. *Id.* ¶ 2.12.

818. *Id.* ¶ 3.1.

819. *Id.* ¶ 3.4.

820. *Id.* ¶¶ 3.4, 3.6.

821. *Id.* ¶ 3.7.

822. *Id.* ¶ 3.8.

823. *Id.* ¶ 8.2.

The CEDAW Committee ordered that Bulgaria take measures, including legislative and policy steps

to ensure that women victims of domestic violence, in particular migrant women, have effective access to services related to protection against domestic violence and to justice, including interpretation or translation of documents, and that the manner in which domestic courts apply the law is consistent with the State party's obligations under the Convention.⁸²⁴

The CEDAW Committee's most recent state report was issued in 2012, and fails to discuss relief specific for migrant domestic violence victims.⁸²⁵

Z. Malta

Malta ratified the ECHR in January 1967.⁸²⁶ It ratified the CEDAW in March 1991,⁸²⁷ but has not signed the CEDAW Optional Protocol.⁸²⁸ It signed the Istanbul Convention in May 2012, and ratified it in July 2014.⁸²⁹ Malta issued its first report to the CEDAW Committee in August 2002⁸³⁰ and a second periodic report in May 2009.⁸³¹ It is not scheduled to issue another report until October 31, 2014.⁸³²

Malta provides relief in the form of asylum for, among others, members of a particular social group.⁸³³ To be considered a particular social group, there must be both an immutable characteristic and the group must be perceived as being different from the rest of society.⁸³⁴ “[T]here is no requirement *per se* to seek state protection in the country of origin before fleeing persecution from non-State actors.”⁸³⁵ The government consistently provided non-refoulement protections

824. *Id.* ¶ 8.8.

825. Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: Bulgaria, Comm. on the Elimination of Discrimination Against Women, 52d Sess., July 9-27, 2012, U.N. Doc. CEDAW/C/BGR/CO/4-7 (Aug. 7, 2012).

826. ECHR Treaty Status, *supra* note 238.

827. CEDAW Treaty Status, *supra* note 239.

828. CEDAW Optional Protocol Treaty Status, *supra* note 240.

829. Istanbul Convention Treaty Status, *supra* note 88.

830. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Initial, Second and Third Periodic Report of States Parties: Malta, Comm. on the Elimination of Discrimination Against Women, 31st Sess., July 6-23, 2004, at 1, U.N. Doc. CEDAW/C/MLT/1-3 (Dec. 18, 2002).

831. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fourth Periodic Report of States Parties: Malta, Comm. on the Elimination of Discrimination Against Women, 47th Sess., Oct. 4-22, 2010, at 1, U.N. Doc. CEDAW/C/MLT/4 (June 4, 2009).

832. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select “Malta” from drop-box, select “CEDAW” hyperlink) (last visited May 28, 2014).

833. U.S. DEP'T OF STATE, MALTA 2013 HUMAN RIGHTS REPORT 9 (2014) [hereinafter MALTA 2013 HUMAN RIGHTS REPORT], available at <http://www.state.gov/documents/organization/220518.pdf>.

834. CHEIKH ALI ET AL., *supra* note 417, at 50.

835. *Id.* at 43.

where migrants who did not qualify as refugees could be granted subsidiary protection, which permits them to remain in the country on a year-to-year, renewable basis.⁸³⁶

Beneficiaries of subsidiary protection, and their dependents, were entitled to remain in the country, and received a variety of benefits including accommodations, integration programs, public education and training, and essential medical care.⁸³⁷ Malta also provides for temporary protection to individuals who have a real risk of serious harm if they were to return to their home countries.⁸³⁸

Malta's 2012 HDI worldwide ranking is thirty-second.⁸³⁹ Its 2012 GII worldwide ranking is thirty-ninth.⁸⁴⁰ While Malta does not have in place a national women's hotline,⁸⁴¹ as of 2012, it had in place three shelters, addressing all of the reported need.⁸⁴²

AA. Hungary

Hungary ratified the ECHR in November 1992,⁸⁴³ the CEDAW in December 1980,⁸⁴⁴ and signed the Optional Protocol in December 2000.⁸⁴⁵ It signed the Istanbul Convention in March 2014, but has not ratified it.⁸⁴⁶ Hungary reported on its obligations under the CEDAW through an initial report in September 1982,⁸⁴⁷ and submitted five periodic reports culminating with its most recent in June 2011.⁸⁴⁸ It was obliged to submit a periodic report on March 30, 2013, but that report has not yet been submitted.⁸⁴⁹

Hungary recognizes three types of protection: (1) refugee protection; (2) subsidiary protection; and (3) "tolerated stay" protection encompassing the concept

836. MALTA 2013 HUMAN RIGHTS REPORT, *supra* note 833, at 9.

837. *Id.* at 8-9.

838. *See id.* at 7-8.

839. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

840. *Id.* at 156 tbl.4.

841. WAVE REPORT, *supra* note 120, at 13.

842. *Id.* at 14-15, 181.

843. ECHR Treaty Status, *supra* note 238.

844. CEDAW Treaty Status, *supra* note 239.

845. CEDAW Optional Protocol Treaty Status, *supra* note 240.

846. Istanbul Convention Treaty Status, *supra* note 88.

847. Rep. of the Comm. on the Elimination of Discrimination Against Women, 12th Sess., Jan. 18-Feb. 5, 1993, ¶¶ 144-98, U.N. Doc. A/48/38; GAOR, 48th Sess., Supp. No. 38 (1993).

848. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Seventh and Eighth Periodic Reports of States Parties: Hungary, Comm. on the Elimination of Discrimination Against Women, 54th Sess., Feb. 11-Mar. 1, 2013, at 1, U.N. Doc. CEDAW/C/HUN/7-8 (Sept. 22, 2011) (the second report was submitted in 1986 (U.N. Doc. CEDAW/C/13/Add.1), the third in 1991 (U.N. Doc. CEDAW/C/HUN/3), the fourth and fifth in 2000 (U.N. Doc. CEDAW/C/HUN/4-5), and the sixth in 2006 (U.N. Doc. CEDAW/C/HUN/6)).

849. *See Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Hungary" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

of non-refoulement.⁸⁵⁰ Refugee protection is indefinite.⁸⁵¹ Subsidiary protection is offered to “[a] person who is at a real risk of suffering” the death penalty, torture, inhuman or degrading treatment or punishment, or serious threat to her life or person because of indiscriminate violence in an armed conflict.⁸⁵² Tolerated stay status can be granted to individuals who have a “well-founded fear of persecution, torture, inhuman or degrading treatment or [the] death penalty, but who cannot benefit from refugee status or subsidiary protection.”⁸⁵³ Tolerated stay status is valid for one year, but can be withdrawn at any time or renewed upon expiration.⁸⁵⁴

Hungary’s 2012 HDI worldwide ranking is thirty-seventh.⁸⁵⁵ Its 2012 GII worldwide ranking is forty-second.⁸⁵⁶ In 2012, Hungary provided no shelter services, and was unable to provide support to the more than 1,000 individuals that needed assistance.⁸⁵⁷ All asylum seekers are eligible for free legal aid.⁸⁵⁸ Hungary affords essentially the same rights to beneficiaries of subsidiary protection as it does to beneficiaries of refugee status, including family reunification benefits.⁸⁵⁹

Hungary recognizes in law and practice that gender-related claims may warrant specific considerations.⁸⁶⁰ Despite these protections, the SRVAW has expressed concern about the “prevalence of violence against women and girls, including domestic violence,” and the lack of work that has been “done to raise awareness of the subject in the public opinion, in the media and in education.”⁸⁶¹ “The Special Rapporteur 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.”⁸⁶²

850. See UNITED NATIONS HIGH COMM’R FOR REFUGEES, HUNGARY AS A COUNTRY OF ASYLUM: OBSERVATIONS ON THE SITUATION OF ASYLUM-SEEKERS AND REFUGEES IN HUNGARY ¶ 7 (2012), available at <http://www.refworld.org/pdfid/4f9167db2.pdf>.

851. *The Refugee Situation in Hungary*, HUNGARIAN RED CROSS, <http://www.voroskereszt.hu/menekuelteugy/english/1144-the-refugee-situation-in-hungary.html> (last visited May 29, 2014).

852. *EDAL Country Overview—Hungary*, EUR. DATABASE OF ASYLUM L. (Feb. 14, 2014), <http://www.asylumlawdatabase.eu/en/content/edal-country-overview-hungary>.

853. *Id.*

854. *Id.*

855. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

856. *Id.* at 156 tbl.4.

857. WAVE REPORT, *supra* note 120, at 13, 131.

858. 2003. évi LXXX. törvény a Jogi Segítségnyújtásról (Act LXXX of 2003 on Legal Aid) (Hung.), available at http://ec.europa.eu/ewsi/UDRW/images/items/docl_15650_294267511.pdf. See also *EDAL Country Overview—Hungary*, *supra* note 852.

859. THE IMPACT OF THE EU QUALIFICATION DIRECTIVE, *supra* note 251, at 31.

860. See CHEIKH ALI ET AL., *supra* note 417, at 42.

861. Coomaraswamy Report, *supra* note 194, ¶ 2005.

862. *Id.* ¶ 2006.

BB. Romania

Romania ratified the ECHR in June 1994.⁸⁶³ It ratified the CEDAW in January 1982,⁸⁶⁴ and ratified the Optional Protocol to the CEDAW in August 2003.⁸⁶⁵ It has neither signed nor ratified the Istanbul Convention.⁸⁶⁶ Romania issued its first report in January 1987⁸⁶⁷ and three periodic reports thereafter with the latest in December 2003.⁸⁶⁸ It was obliged to issue a report on February 1, 2011, but that report has not yet been submitted.⁸⁶⁹

Romania offers asylum or refugee status pursuant to comprehensive asylum legislation passed in 2006.⁸⁷⁰ Romania complies with its ECHR responsibilities by offering refugee status to successful asylum-seekers, pursuant to Article 14 of the Law of Asylum in Romania.⁸⁷¹ Romania offers subsidiary protection to meet its ECHR non-refoulement obligations, pursuant to Article 6.⁸⁷² Relief under either asylum or subsidiary protection affords essentially the same rights including family reunification benefits.⁸⁷³

Romania's 2012 HDI worldwide ranking is fifty-sixth.⁸⁷⁴ Its 2012 GII worldwide ranking is fifty-fifth.⁸⁷⁵ As of 2012, Romania did not have a national women's hotline.⁸⁷⁶ As of 2012, Romania had in place thirty-five shelters, addressing about 37 percent of the reported need.⁸⁷⁷

VI. CONCLUSIONS

Despite years of international focus on eradicating domestic violence, the problem has not abated. Migrant domestic violence victims that lack legal immigration status are extremely vulnerable in this climate. Recognizing that

863. ECHR Treaty Status, *supra* note 238.

864. CEDAW Treaty Status, *supra* note 239.

865. CEDAW Optional Protocol Treaty Status, *supra* note 240.

866. Istanbul Convention Treaty Status, *supra* note 88.

867. Rep. of the Comm. on the Elimination of Discrimination Against Women, 12th Sess., Jan. 18-Feb. 5, 1993, ¶¶ 144-98, U.N. Doc. A/48/38; GAOR, 48th Sess., Supp. No. 38 (1993).

868. Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of States Parties: Romania, Comm. on the Elimination of Discrimination Against Women, 35th Sess., May 15-June 2, 2006, at 1, U.N. Doc. CEDAW/C/ROM/6 (Dec. 15, 2003) (the second and third report was submitted in 1992 (U.N. Doc. CEDAW/C/ROM/2-3) and the fourth and fifth in 1998 (U.N. Doc. CEDAW/C/ROM/4-5)).

869. See *Human Rights Bodies*, OFF. HIGH COMMISSIONER HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (select "Romania" from drop-box, select "CEDAW" hyperlink) (last visited May 28, 2014).

870. Law No. 122/2006 on Asylum in Romania, OFFICIAL GAZETTE No. 428/18.05.2006.

871. *Id.* art. 14.

872. *Id.* art. 6.

873. *Id.* arts. 20, 24, 27.

874. HUMAN DEVELOPMENT REPORT 2013, *supra* note 108, at 151 tbl.3.

875. *Id.* at 156 tbl.4.

876. WAVE REPORT, *supra* note 120, at 13.

877. *Id.* at 14-15.

vulnerability, one state, the United Kingdom, developed a sophisticated protection system that includes offering permanent legal immigration status when the perpetrator of the domestic violence is the victim's spouse or partner, and is also a British citizen or U.K.-settled resident.⁸⁷⁸ This type of relief, however, is an anomaly. The majority of domestic violence victims who have no legal immigration status suffer at the hands of perpetrators, and in most cases, pursue asylum, subsidiary protection, or humanitarian relief. In practice, the application of asylum law has met with incongruities across states, especially in the context of particular social group gender-based claims.

Many states have in place protections that are ECHR and CEDAW compliant. Moreover, many states are enacting systems that comply with Council of Europe mandates. Nevertheless, the U.N. system that monitors and evaluates compliance of state implementation efforts is somewhat ineffective.⁸⁷⁹ In May 2013, the United Nations stated that some states do not provide requested information, and when information is provided it is, occasionally, lacking in quality.⁸⁸⁰ Additionally, while most states have in place legal frameworks that strive for compliance, a strong argument can be made that implementation and enforcement efforts are lacking.

The SRVAW points to the lack of a legally binding instrument to monitor state responsibility to act with due diligence in responding to, preventing, and eliminating all forms of violence against women.⁸⁸¹ Realizing the implications that such disparities have in an interconnected system, the regional human rights bodies have sought to develop model systems that would create effective protections for this population, and which not only harmonize relief across this legally and geographically interconnected set of states, but mandate compliance. Based on the above survey, it seems that many states have been successful in strengthening their laws and constructing networks of resources to combat this problem as it relates to domestic violence generally. However, treaty obligations under the CEDAW require that states go further if they are to achieve the mandate, which includes eliminating violence against women, including protection for migrant domestic violence victims.

The development of the Istanbul Convention seems a positive corollary step toward harmonizing somewhat discordant systems, specifically as it relates to gender-based asylum claims. Article 60 obligates parties to implement gender-based asylum protection to further eradicate violence against women and domestic violence.⁸⁸² Article 61 reiterates non-refoulement principles for this purpose, as well.⁸⁸³ However, to date, only eight EU-M States have ratified the Convention,⁸⁸⁴

878. See *supra* note 756 and accompanying text.

879. See Manjoo Report, *supra* note 24, ¶¶ 42, 69-70.

880. *Id.* ¶ 42.

881. *Id.*

882. Istanbul Convention, *supra* note 5, art. 60.

883. *Id.* art. 61.

884. Istanbul Convention Treaty Status, *supra* note 88.

and like the CEDAW, the Istanbul Convention monitors compliance through a reporting and review mechanism that is premised on the due diligence of states in meeting their international obligations.⁸⁸⁵

There is strong evidence to suggest that worldwide and regional human rights bodies are becoming more adept at developing specific standards that address some of the problems migrant domestic violence victims encounter. States have responded, and the changes are evident. However, the pace of reform is uneven across states, and the development of increasingly specific model systems may serve to bring some states that have heretofore been lagging further into line with the more robust and comprehensive state systems that exist today.

885. Istanbul Convention, *supra* note 5, art. 68.

