

WE'RE ALL IN THIS TOGETHER: A GLOBAL COMPARISON ON  
DOMESTIC VIOLENCE AND THE MEANS NECESSARY TO  
COMBAT IT

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I. INTRODUCTION

“There is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, never tolerable.”<sup>1</sup> Statistics show that more than one in three women around the globe are victims of domestic violence.<sup>2</sup> Different cultural and socio-economic factors explain how and why domestic violence is perpetuated, perpetrated, and how it affects women globally. Regardless of differing approaches to combat it, statistics demonstrate that women from continent to continent experience similar rates of violence irrespective of social class, race, or religion.<sup>3</sup>

This note will discuss the differing roles that governments play in perpetuating domestic violence. Specifically, how absence of legislation, insufficient legislation, and failure to enforce existing legislation results in victims being left unprotected at the hands of their government. This note will analyze and compare three specific and diverse countries: the United States, the Russian Federation, and the Arabic Republic of Egypt, by looking at each country's constitution, criminal or penal codes, and international treaties. Finally, this note will discuss how legislation and governmental

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<sup>1</sup> WORLD HEALTH ORG., GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE 2 (2013), [http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1) [hereinafter GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN].

<sup>2</sup> *Violence Against Women: Intimate Partner and Sexual Violence Against Women*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/fs239/en/> (last updated Jan. 2016).

<sup>3</sup> GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN, *supra* note 1, at 18 fig.2 (depicting a global map on regional domestic violence rates).

involvement protects, or fails to protect, victims. While it is recognized that both women and men suffer domestic abuse, this paper will solely refer to women as victims.

Section II will analyze domestic violence legislation and enforcement of legislation in the United States. Although the United States has promulgated both federal and state domestic violence legislation, statistics show that American victims are not necessarily better protected in comparison to other women in other countries.<sup>4</sup> The high rate of domestic violence in the United States is a result of poor enforcement of laws. While there are a myriad of enforcement issues that could be analyzed, this paper will focus on two: Native American women and their access to the justice system, and protection orders and firearms under 18 U.S.C. 922(g)(8).

Section III will analyze domestic violence laws and enforcement within the Russian Federation. The Russian Constitution calls for gender equality,<sup>5</sup> and the government is party to the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").<sup>6</sup> Nevertheless, Russia struggles to combat a high incidence of domestic violence. This is due to the fact that there is no Russian legislation tailored to prevent domestic violence or to aid victims.<sup>7</sup> Additionally, victims endure seemingly insurmountable burdens when they attempt to access the criminal justice system.<sup>8</sup>

Section IV will analyze the current status of domestic violence in the Arab Republic of Egypt. Similarly to Russia, Egypt's Constitution has a gender equality clause, and Egypt is a party to CEDAW.<sup>9</sup> However, the Egyptian government has done little to protect victims with legislation.<sup>10</sup> An explanation of this lies within the

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<sup>4</sup> *Domestic Violence Arrest Policies*, AM. BAR ASS'N (Mar. 2014), [http://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/Resources/statutorysummarycharts/2014%20Domestic%20Violence%20Arrest%20Policy%20Chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/statutorysummarycharts/2014%20Domestic%20Violence%20Arrest%20Policy%20Chart.authcheckdam.pdf); GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN, *supra* note 1, at 18 fig.2.

<sup>5</sup> KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 19 (Russ.).

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Mar. 1, 1980, 1249 U.N.T.S. 13.

<sup>7</sup> *Violence Against Women in the Russian Federation*, THE ADVOCATES FOR HUMAN RIGHTS, [http://www.stopvaw.org/russian\\_federation](http://www.stopvaw.org/russian_federation) (last updated Oct. 2014).

<sup>8</sup> *See id.*

<sup>9</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 11; Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6.

<sup>10</sup> IMMIGRATION & REFUGEE BD. OF CAN., RESPONSES TO INFORMATION REQUESTS (RIRS) 1–2 (2005), [http://www.justice.gov/eoir/vll/country/canada\\_coi/egypt/EGY100090.E.pdf](http://www.justice.gov/eoir/vll/country/canada_coi/egypt/EGY100090.E.pdf); THE EGYPTIAN CTR. FOR WOMEN'S RIGHTS, VIOLENCE AGAINST WOMEN IN EGYPT 1, [http://www.un.org/womenwatch/daw/vaw/ngocontribute/Egyptian%20Center%20for%20Women\\_s%20Rights.pdf](http://www.un.org/womenwatch/daw/vaw/ngocontribute/Egyptian%20Center%20for%20Women_s%20Rights.pdf) (last visited Jan. 20, 2016).

entanglement of government and religion in Egypt—along with much of the Middle East.<sup>11</sup> The Egyptian Constitution contains a provision that mandates all legislation conform to Sharia law,<sup>12</sup> and patriarchal interpretations of Sharia law often condone violence against women and promote a male dominated society.<sup>13</sup> The result is a general nationwide ignorance of the seriousness of domestic violence and the knowledge necessary to combat it.

Finally, Section V of this note will analyze the procedures that are currently in place to combat domestic violence on a global scale and scrutinize the ways in which they are ineffective, while suggesting avenues that may have a greater impact. These strategies include self-governing preventative measures, the use of punitive sanctions imposed on individuals who commit acts of domestic violence, or countries who allow systematic acts of domestic violence, and finally the use of international criminal courts to prosecute individuals and governments.

## II. UNITED STATES

The United States' reputation as a "superpower"<sup>14</sup> with the longest full-fledged democracy in the world<sup>15</sup> does not result in immunity from the domestic violence epidemic. Principally, the United States Constitution is one of the only constitutions in the world with no gender equality clause.<sup>16</sup> While the Fourteenth Amendment includes the Due Process and Equal Protection Clauses,<sup>17</sup> domestic violence victims seeking remedies under either provision have been largely unsuccessful.<sup>18</sup>

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<sup>11</sup> Lisa Hajjar, *Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis*, 29 LAW & SOC. INQUIRY 1, 19 (2004).

<sup>12</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014 (noting in the preamble that all legislation must conform to the principles of Sharia law).

<sup>13</sup> Hajjar, *supra* note 11, at 10.

<sup>14</sup> Jonathan Adelman, *Why the U.S. Remains the World's Unchallenged Superpower*, FORBES (Nov. 24, 2013, 9:36AM), <http://www.forbes.com/sites/realspin/2013/11/24/why-the-u-s-remains-the-worlds-unchallenged-superpower/>.

<sup>15</sup> *Id.*

<sup>16</sup> See generally U.S. CONST. (demonstrating an absence of a clause that specifically prohibits the unequal treatment of men and women). United States Supreme Court Justice Ruth Bader Ginsburg put it blatantly when she said "every Constitution written since the end of World War II includes a provision that men and women are citizens of equal stature. Ours does not." *Great Lives in the Law: Justice Ruth Bader Ginsburg: A "Lady" Who Led the Fight for Gender Equity*, DUKE LAW, <http://law.duke.edu/features/2005/ginsburg/> (last visited Jan. 20, 2016).

<sup>17</sup> U.S. CONST. amend. XIV, § 1.

<sup>18</sup> See *Failure to Protect Basics: Constitutional Law*, BERKMAN CTR. FOR INTERNET & SOC'Y, <http://cyber.law.harvard.edu/vaw00/basics.html> (last visited Nov. 15, 2014). *Contra Estate of Macias v. Ihde*, 219 F.3d 1018, 1026–27, 1028–29 (9th Cir. 2000) (accepting that a victim's

Although the United States Constitution does not directly protect victims, there is both federal and state legislation in place that does.<sup>19</sup> However, despite those laws, more than one in four American women are victims of domestic violence—close to the same percentage of women that are affected globally.<sup>20</sup> These statistics verify that notwithstanding legislation, American women are not safer than women from other regions around the world. Because of the United States' global status, seemingly infinite resources and strong democracy, it raises the question—*why?* As this section will analyze, the United States faces a multitude of issues regarding enforcement of legislation. Furthermore, our international allies continue to wonder why the United States refuses to ratify CEDAW, while 187 of the 194 countries around the world have ratified the convention.<sup>21</sup>

#### A. *Domestic Violence Legislation in the United States*

All fifty states, as well as the United States Federal Government have some sort of domestic violence legislation in place.<sup>22</sup> The laws are not necessarily prohibitive, although *some* states have criminalized domestic violence.<sup>23</sup> Mainly, legislation is in place for the general *protection* of victims and the *prevention* of domestic violence.<sup>24</sup> For example, in all states, police are required to follow statutory arrest procedures when responding to domestic disturbances.<sup>25</sup> On a federal level, the government promulgated the

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Equal Protection rights under the Constitution could be violated by a police department when the abuser, and eventual murderer of the victim was not arrested after continually violating a protection order).

<sup>19</sup> *Domestic Violence Arrest Policies*, *supra* note 4; PROTECTING VICTIMS OF DOMESTIC VIOLENCE: A LAW ENFORCEMENT OFFICER'S GUIDE TO ENFORCING ORDERS OF PROTECTION NATIONWIDE, INT'L ASS'N OF CHIEFS OF POLICE 2, <http://www.theiacp.org/portals/0/pdfs/ProtectingVictimsOfDV.pdf> (last visited Sept. 14, 2015) [hereinafter PROTECTING VICTIMS OF DOMESTIC VIOLENCE].

<sup>20</sup> GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN, *supra* note 1, at 18; *Intimate Partner Violence: Consequences*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> (last updated Mar. 3, 2015); *Violence Against Women: Intimate Partner and Sexual Violence Against Women*, *supra* note 2.

<sup>21</sup> Lisa Baldez, *U.S. Drops the Ball on Women's Rights*, CNN (Mar. 8, 2013, 11:34 PM), <http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/>.

<sup>22</sup> *Domestic Violence Arrest Policies*, *supra* note 4; PROTECTING VICTIMS OF DOMESTIC VIOLENCE, *supra* note 19.

<sup>23</sup> *State Statutes: Misdemeanor Crimes of Domestic Violence*, BATTERED WOMEN'S JUSTICE PROJECT (Apr. 2008), [http://www.americanbar.org/content/dam/aba/migrated/d/mviol/docs/State\\_MCDV\\_Matrix.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/d/mviol/docs/State_MCDV_Matrix.authcheckdam.pdf).

<sup>24</sup> See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 2001(a), 108 Stat. 1796, 1910 (1994).

<sup>25</sup> See *Domestic Violence Arrest Policies*, *supra* note 4.

Violence Against Women Act (“VAWA”) in Title IV of the Violent Crime Control and Law Enforcement Act of 1994.<sup>26</sup> The Act provided grants to police and prosecutors for domestic violence training, introduced federal rape shield laws, and mandated reporting, to name a few provisions.<sup>27</sup> VAWA has been reauthorized three times since its original promulgation—in 2000, 2005, and most recently in 2013.<sup>28</sup>

Enacting state and federal legislation to protect domestic violence victims is vital to prevention because it announces on an international level what kind of behavior the government, and the people of that nation, will not tolerate. In other countries where there are no domestic violence laws, the lack of recognition itself seems to perpetuate violence against women.<sup>29</sup>

### 1. The Refusal of the United States to Ratify CEDAW

Legislation is key to preventing domestic violence, but the United States’ continual refusal to ratify CEDAW is concerning.<sup>30</sup> The treaty “defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.”<sup>31</sup> The treaty seeks to end all forms of discrimination against women; by signing the treaty, members (State parties) effectively commit to take necessary measures to protect women against all forms of discrimination.<sup>32</sup> President Carter signed the treaty in 1980, and while subsequent presidents have contemplated ratifying it, they have either failed, or have been thwarted by Congress.<sup>33</sup> The United States is currently one of only seven countries that have not ratified

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<sup>26</sup> Violent Crime Control and Law Enforcement Act of 1994 § 40001.

<sup>27</sup> *Id.* §§ 40121, 40412(7), 40509.

<sup>28</sup> LISA N. SACCO, CONG. RESEARCH SERV., RS42499, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING 9 (2015), <https://fas.org/sgp/crs/misc/R42499.pdf>.

<sup>29</sup> *See infra* Parts III, IV.

<sup>30</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6.

<sup>31</sup> *Overview of the Convention*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/> (last visited Jan. 15, 2016).

<sup>32</sup> *Id.*

<sup>33</sup> LUISA BLANCHFIELD, CONG. RESEARCH SERV., R40750, THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW): ISSUES IN THE U.S. RATIFICATION 4–5 (2011); Janet Benshoof, *U.S. Ratification of CEDAW: An Opportunity to Radically Reframe the Right to Equality Accorded Women under the U.S. Constitution*, 35 N.Y.U. REV. L. & SOC. CHANGE 103, 121 (2011). The President is vested with the power to make treaties, but a two-thirds vote from the Senate is required to ratify. U.S. CONST. art. II, § 2, cl. 2.

CEDAW.<sup>34</sup> Therefore, while American politicians favor protecting victims, evidenced by the ratification of VAWA and its progeny, it remains a conundrum why the government refuses to join the overwhelming majority. This is even more perplexing considering that American politicians were actively involved in the drafting of the treaty.<sup>35</sup>

The United States may refuse to ratify CEDAW because the United States government does not want to be legally bound by the policies set forth in the treaty. The U.N. requires that each country formulate reports on the measures that that country will take to implement CEDAW policies.<sup>36</sup> Additionally, the provisions legally bind each country.<sup>37</sup> Failing to ratify CEDAW is concerning, however what is even more concerning is the realization that legislation currently in place is not being properly enforced.

*B. The Perpetuation of Domestic Violence in the United States is Partially Due to Poor Enforcement of Laws*

Federal and state legislation put the United States in an ideal position to help prevent domestic violence. However, *enforcement* of legislation is an issue. This note will not encompass a comprehensive analysis on all enforcement issues, rather it will focus on two: Native American women whose access to the justice system is burdened, and victims with protection orders whose abusers retain firearms in violation of 18 U.S.C. 922(g)(8).

1. Failure to Enforce Federal and State Domestic Violence Laws Against Non-Natives Leaves Native American Women Unprotected

Compared to non-Native American women, Native American women are seven times more likely to be subject to domestic violence.<sup>38</sup> Not only are they more likely to be abused, they are significantly less likely to be protected by the legal system.<sup>39</sup> Studies

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<sup>34</sup> Baldez, *supra* note 21.

<sup>35</sup> See *Women's Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, THE LEADERSHIP CONFERENCE (Nov. 18, 2010), <http://www.civilrights.org/advocacy/testimony/cedaw-ratification.html>.

<sup>36</sup> *Country Reports*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reports.htm> (last updated Dec. 28, 2007).

<sup>37</sup> *Id.*

<sup>38</sup> Jeana Petillo, Note, *Domestic Violence in Indian Country: Improving the Federal Government's Response to this Grave Epidemic*, 45 CONN. L. REV. 1841, 1849 (2013).

<sup>39</sup> Amy Radon, Note, *Tribal Jurisdiction and Domestic Violence: The Need for Non-Indian*

indicate that this is due to gaps in reservation, state, and federal laws.<sup>40</sup> Receipt of protection often turns on what jurisdiction the offense was committed in and whether the perpetrator is Native.<sup>41</sup> Due to loopholes, “[i]t’s almost like non-Native people have a license to brutalize Native women.”<sup>42</sup>

Loopholes make it difficult to prosecute non-Native perpetrators under American laws when they commit crimes against Native women on reservations.<sup>43</sup> The federal government has transferred their authority to a small number of states for crimes committed involving Natives on reservations.<sup>44</sup> This means that the State may arrest and prosecute Natives, but the Tribal governments cannot arrest and prosecute non-Natives.<sup>45</sup> For the majority of other states, the State and the Tribal government have concurrent jurisdiction over major crimes committed on reservations.<sup>46</sup> Historically, the Tribal government has jurisdiction where the victim and perpetrator are *both* Native, and the State has jurisdiction where *neither* are Native.<sup>47</sup> The lack of protection arises when a Native woman is married to a non-Native and the couple lives on a reservation. Neither the Tribal nor the State government has sole jurisdiction to prosecute the non-Native.<sup>48</sup>

The federal government does have jurisdiction to prosecute non-Natives, but prosecutions are few and far between.<sup>49</sup> The reluctance of the federal government to prosecute these crimes stems from a lack of resources, combined with the fact that the crimes are typically misdemeanors, and rank low on the federal radar in comparison to more statutorily serious crimes, like felonies.<sup>50</sup> As a result, Native women are left helpless and unprotected, even while there are laws in place that are meant to protect them. Because fifty-six percent of Native women marry non-Natives, and are seven times more likely

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*Accountability on the Reservation*, 37 U. MICH. J.L. REFORM 1275, 1276 (2004).

<sup>40</sup> Kimberly Alleyne, *Law Enforcement Gaps Leave Native Women Vulnerable to Rape and Domestic Violence*, AMERICA’S WIRE, <http://americaswire.org/drupal7/?q=content/law-enforcement-gaps-leave-native-women-vulnerable-rape-and-domestic-violence-1> (last visited Nov. 15, 2014); see Petillo, *supra* note 38, at 1850–51.

<sup>41</sup> Petillo, *supra* note 38, at 1850–51.

<sup>42</sup> Alleyne, *supra* note 40.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *See id.*

<sup>49</sup> *Id.* Government data shows that the federal government declines to prosecute sixty-seven percent of sexual assault crimes occurring on reservations. *Id.*

<sup>50</sup> *Id.*

to be abused by an intimate partner, the issue is of enormous concern.<sup>51</sup>

The recent reauthorization of VAWA in 2013 was amended to allow tribal governments to prosecute non-Natives who commit crimes on reservations.<sup>52</sup> This will help close the gap of Native women who are not currently protected by United States laws and the loopholes will eventually disappear. This is a positive step, but will take time to be successfully implemented.<sup>53</sup>

## 2. 18 U.S.C. 922(g)(8) is Selectively Enforced by the Judiciary

Another enforcement issue involves Title 18 of the United States Code, Section 922(g)(8).<sup>54</sup> The codified provision of VAWA prohibits abusers who have an order of protection filed against them for domestic violence to retain or purchase firearms.<sup>55</sup> This legislation is imperative because statistics show that “[f]irearms—especially handguns—were the weapon most commonly used by males to murder females in 2012” and “[o]f the females killed with a firearm, 61 percent were murdered by male intimates.”<sup>56</sup> However, not all judges agree with the provision.<sup>57</sup> One district court judge held that it violated the Second Amendment right to bear arms and permitted an abuser to retain his firearms.<sup>58</sup> Although the decision was overturned,<sup>59</sup> the district court judge is not alone in his opinion.

Those who oppose the provision argue that it violates the abuser’s Second Amendment rights and that “the laws are impermissible federal gun control measures ‘dressed up . . . as domestic violence laws.’”<sup>60</sup> However, the claims of constitutional violations should be irrelevant in regards to enforcing the provision. Congress promulgated VAWA with a Full Faith and Credit Clause on all orders of protection.<sup>61</sup> This means that states must recognize protection

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<sup>51</sup> Petillo, *supra* note 38, at 1849; Alleyne, *supra* note 42.

<sup>52</sup> Petillo, *supra* note 38, at 1855.

<sup>53</sup> *Id.*

<sup>54</sup> 18 U.S.C. § 922(g)(8) (2013).

<sup>55</sup> *Id.*

<sup>56</sup> VIOLENCE POLICY CENTER, WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2012 HOMICIDE DATA 5 (Sept. 2014), <http://www.vpc.org/studies/wmmw2014.pdf>.

<sup>57</sup> See *United States v. Emerson*, 46 F. Supp. 2d 598, 598 (N.D. Tex. 1999), *rev’d*, 270 F.3d 203 (5th Cir. 2001).

<sup>58</sup> *Id.* at 610–11.

<sup>59</sup> *United States v. Emerson*, 270 F.3d 203, 210 (5th Cir. 2001).

<sup>60</sup> Lisa D. May, *The Backfiring of the Domestic Violence Firearms Bans*, 14 COLUM. J. GENDER & L. 1, 11 (2005).

<sup>61</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-332, § 2265, 108 Stat. 1796, 1930 (1994).

orders across borders and follow the federal provision, *even if* the state does not have their own statutory equivalent.<sup>62</sup> Recent news reports demonstrate that judges across the country allow abusers to retain their firearms in violation of the provision.<sup>63</sup> These allowances result in an injustice for victims and contribute to the number of women who are murdered by their abusers every year.

### III. RUSSIA

Since the collapse of the Soviet Union, Russia has experienced increased social challenges, including domestic violence.<sup>64</sup> The Russian government does not compile comprehensive data, but available statistics demonstrate that approximately fourteen thousand Russian women are murdered annually as a result of domestic violence.<sup>65</sup> The Russian Constitution promises gender equality and Russia is a party to the CEDAW; however, that is the extent of protection the government provides.<sup>66</sup> The government does not provide adequate amount of shelters or other outlets for victim rehabilitation.<sup>67</sup> In fact, there is a scarcity of shelters in Russia for domestic violence victims generally, with only one municipal location in each of the large cities of St. Petersburg and Moscow, neither of which are specifically for domestic violence victims, rather “for

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<sup>62</sup> *See id.*

<sup>63</sup> *See* Melissa Jeltsen, *These Abusers Aren't Allowed to Own Guns. So Why Aren't States Removing Them?*, HUFFINGTON POST (Oct. 14, 2014, 4:34 PM), [http://www.huffingtonpost.com/2014/10/14/domestic-violence-guns-restraining-orders\\_n\\_5982774.html](http://www.huffingtonpost.com/2014/10/14/domestic-violence-guns-restraining-orders_n_5982774.html) (recounting Michigan resident Nicole Beverly's story about her husband who was permitted to keep the firearm he terrorized her with after an order of protection was issued); Michael Luo, *In Some States, Gun Rights Trump Orders of Protection*, N.Y. TIMES (Mar. 17, 2013), <http://www.nytimes.com/2013/03/18/us/facing-protective-orders-and-allowed-to-keep-guns.html?pagewanted=all&r=1> (describing the story of Stephanie Holten, whose former husband was permitted by a Washington state judge to retain his firearms after an order of protection was issued against him, and twelve hours after the order was issued, Holten's husband ambushed her and her young children with a semi-automatic rifle).

<sup>64</sup> *See Violence Against Women in the Russian Federation*, *supra* note 7.

<sup>65</sup> Henry Meyer & Ksenia Galouchko, *Putin Allies Let Abuse Law Linger Despite Killings*, BLOOMBERG BUSINESS (Oct. 28, 2013, 9:13 AM), <http://www.bloomberg.com/news/articles/2013-10-27/putin-allies-let-abuse-law-linger-as-a-woman-is-killed-each-hour>; Joy Ziegeweid, *Justice for Russian Women? Russia Begins to Face Its Domestic Violence Problem*, HUMAN RIGHTS BRIEF (Nov. 2, 2014), [http://hrbrief.org/2014/11/justice-for-russian-women-russia-begins-to-face-its-domestic-violence-problem/#\\_ftn20](http://hrbrief.org/2014/11/justice-for-russian-women-russia-begins-to-face-its-domestic-violence-problem/#_ftn20).

<sup>66</sup> KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 19 (Russ.); *Violence Against Women in the Russian Federation*, *supra* note 7.

<sup>67</sup> IMMIGRATION & REFUGEE BD. OF CAN., RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE; SUPPORT SERVICES AND AVAILABILITY OF SHELTERS (2010-2013), (2013), <http://www.refworld.org/docid/52a83c964.html> [hereinafter RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION].

women ‘living in a crisis.’”<sup>68</sup> The small number of shelters that are available nationwide are primarily run by non-governmental organizations, and those that are government-funded have restrictions that make it difficult for victims to take advantage of their services.<sup>69</sup> Aside from a lack of shelters and outlets for victims, the government places barriers in front of victims in regards to their access to the justice system making it difficult for them to leave their abuser, or press criminal charges.

*A. An Analysis of Russian Legislation and Government Involvement and How Both Leave Domestic Violence Victims Unprotected*

In order to understand how the Russian government leaves its domestic violence victims unprotected, several issues must be analyzed, including Russian legislation under the Criminal Code and Criminal Procedural Code, police response, and women entering the judicial system.

1. Russian Laws are Insufficient to Protect Victims Because They Do Not Recognize Domestic Violence

The Russian Constitution contains a provision promising equal treatment of men and women, but the government fails to enforce the provision with additional legislation.<sup>70</sup> The Russian Criminal Code does not contain *any* specific provisions for abusers to be prosecuted under either.<sup>71</sup> Instead, domestic violence crimes are often prosecuted under articles 115 or 116 of the Criminal Code, both of which are assault-like provisions.<sup>72</sup> For example, article 115 is codified as “intentional infliction of light injury” and article 116 is codified as “battery.”<sup>73</sup> Because Russian laws fail to define domestic violence, abusers are held liable under these assault-like provisions rather than concrete domestic violence laws. It logically follows that lack of recognition in the law contributes to the perpetuation of domestic violence within the country. If the Criminal Code included specific provisions for domestic abusers to be convicted under, it is

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<sup>68</sup> *Id.*

<sup>69</sup> *See id.*

<sup>70</sup> KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 19 (Russ.).

<sup>71</sup> RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION, *supra* note 67; *see generally* UGOLOVNIY KODEKS ROSSIISKOI FEDERATSII [UK RF] [Criminal Code] (Russ.) (noting the absence of any provision for domestic violence).

<sup>72</sup> *Violence Against Women in the Russian Federation*, *supra* note 7; *see* UGOLOVNIY KODEKS ROSSIISKOI FEDERATSII [UK RF] [Criminal Code] arts. 115–16.

<sup>73</sup> UGOLOVNIY KODEKS ROSSIISKOI FEDERATSII [UK RF] [Criminal Code] arts. 115–16.

likely that domestic violence awareness and prevention would increase.

## 2. Russia's Ratification of CEDAW Does Not Protect Victims Because the Government Does Not Adhere to the U.N.'s Suggestions

Although there is no domestic-violence-specific Russian legislation, Russia is party to CEDAW,<sup>74</sup> a United Nations treaty previously discussed in Section II.<sup>75</sup> "Under CEDAW, governments . . . must take all necessary measures to combat violence against women, . . . and [to] ensure[] that perpetrators are investigated, prosecuted and sanctioned."<sup>76</sup> As an international treaty, CEDAW can be considered a form of legislation because it has been ratified by Russia and, under the Vienna Convention of 1969, State parties who ratify U.N. treaties are bound by international law.<sup>77</sup> The treaty also requires State parties to contemplate additional legislation for the protection of women.<sup>78</sup> Russia ratified the treaty in 1981,<sup>79</sup> and the Russian Constitution states that where there are conflicts between the treaty and Russian laws, *the treaty takes precedent*.<sup>80</sup> In fact, Russia is one of the few countries that did *not* make "reservations" (or objections) to any of the treaty's provisions.<sup>81</sup> However, the U.N. Universal Human Rights Index shows that there have been continuous recommendations to the Russian government to statutorily define domestic violence and more consistently prosecute abusers.<sup>82</sup> So while it made no reservations, Russia nevertheless fails to fully adhere to the treaty. In explaining this, it is important to understand

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<sup>74</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6.

<sup>75</sup> See *supra* Part II(A)(1).

<sup>76</sup> ANNA NAT'L CTR. FOR THE PREVENTION OF VIOLENCE, VIOLENCE AGAINST WOMEN IN THE RUSSIAN FEDERATION 3 (2010), [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ANNA\\_NCPV\\_RussianFederation46.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ANNA_NCPV_RussianFederation46.pdf).

<sup>77</sup> Vienna Convention on the Law of Treaties, art. 2, May 23, 1969, 1155 U.N.T.S. 331.

<sup>78</sup> See Ziegeweid, *supra* note 65.

<sup>79</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6.

<sup>80</sup> KONSTITUTSIJA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 15(4) (Russ.).

<sup>81</sup> See *Declarations, Reservations and Objections to CEDAW*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last visited Jan. 20, 2016). Before signing the treaty, a country may make certain reservations or objections to it, but this a long debated practice because it allows governments to pick and choose which parts of a treaty will apply to their country. Edward T. Swaine, *Reserving*, 31 YALE J. INT'L L. 307, 308 (2006).

<sup>82</sup> See *Universal Human Rights Index: Russian Federation*, U.N. HUMAN RIGHTS, <http://uhri.ohchr.org/EN/search/results?cc=RU> (last visited Jan. 19, 2016).

the effect of ratifying a U.N. treaty such as CEDAW. The provisions contained therein legally bind the State parties who sign the treaties. However, there are no real legal ramifications for failure to follow the provisions. The lack of consequence could explain Russia's failure to comply with the U.N.'s consistent recommendations. The country faces no real consequence for violations. Instead, violating the treaty merely opens up Russia to liability for individuals or other States to report them.<sup>83</sup>

### 3. Russian Police Do Not Adequately Report Domestic Disturbances

Many victims report that Russian police officers are often reluctant to intervene in domestic disturbances.<sup>84</sup> Officers take advantage of the absence of domestic violence laws in the Russian Criminal Code<sup>85</sup> and "ignore disturbance calls" since they are not technically crimes under national law.<sup>86</sup> Often, victims are encouraged to reconcile with their abuser and resolve their issues without police intervention.<sup>87</sup> Some Russian women report that the police will only respond to a domestic disturbance call if the victim's life is in danger.<sup>88</sup> Since "danger" is subjective, it follows that the standard varies from officer to officer. Non-governmental organizations have provided domestic violence training to Russian police in some regions.<sup>89</sup> However, the trainings have no significant impact, evidenced by victim's continually reporting that the police are ineffective sources of protection.<sup>90</sup> The U.N. has also noted these inadequacies with the Russian police.<sup>91</sup> In their recommendations, they have urged the Russian government to "ensure that police officers refusing to register such complaints are appropriately disciplined."<sup>92</sup> To date, there is no evidence to suggest that the government has taken any tangible steps toward addressing police force inadequacies.

### 4. Russian Laws Make it Nearly Impossible for Victims to Achieve

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<sup>83</sup> See *Human Rights Bodies—Complaints Procedures*, U.N. HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx> (last visited Jan. 19, 2016).

<sup>84</sup> RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION, *supra* note 67.

<sup>85</sup> See *id.*; see generally UGOLOVNYI KODEKS ROSSIISKOI FEDERATSII [UK RF] [Criminal Code] (Russ.) (containing the criminal code of Russia).

<sup>86</sup> RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION, *supra* note 67.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See *Universal Human Rights Index: Russian Federation*, *supra* note 82.

<sup>92</sup> *Id.*

## Justice in Court

Russian domestic violence victims face procedural burdens when they attempt to access the criminal justice system. These burdens stem from the mandatory procedures in the Russian Criminal Procedural Code (“CPC”).<sup>93</sup> The CPC requires the victim to privately prosecute her abuser and seemingly encourages reconciliation between the parties.<sup>94</sup>

Unlike in the United States, where the government prosecutes the abuser, Russian law requires a private criminal proceeding where the victim prosecutes her own abuser without government assistance.<sup>95</sup> The CPC plainly states that crimes under article 115 and 116 “are . . . cases of private prosecution, [and] are initiated only upon application from the victim or . . . his legal representative.”<sup>96</sup> Even in cases where the abuser murders the victim, public prosecution is not guaranteed.<sup>97</sup> A relative of the decedent is expected to file charges and prosecute the abuser in order to achieve justice for him or her.<sup>98</sup> Private prosecution could explain why there are so few domestic violence cases in Russian courts.<sup>99</sup> There is no information available addressing whether the victim is responsible for bearing the cost of prosecution; if she is, however, it is unlikely that she will have the legal knowledge to prosecute her abuser, or the financial means to hire a private attorney. There is currently a substantial gender pay-gap in Russia, with women earning substantially less than men.<sup>100</sup> Additionally, the average Russian salary is low to begin with since the economic crisis.<sup>101</sup> Therefore, if a female victim were expected to pay attorney’s fees, it is likely that she would be unable to afford it on her own, which may result in a failure to bring a case against her abuser at all.

Reconciliation is a recurring theme in the sections of the CPC.<sup>102</sup> Article 20 provides that “cases . . . are subject to termination in

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<sup>93</sup> See UGOLOVNO-PROTSESSUAL’NYI KODEKS ROSSIISKOI FEDERATSII [UPK RF] [Criminal Procedural Code] arts. 20, 318 (Russ.).

<sup>94</sup> See *id.* art. 20(2).

<sup>95</sup> *Id.* arts. 20(2), 318(1).

<sup>96</sup> *Id.* art. 20(2).

<sup>97</sup> *Id.* art. 318(2).

<sup>98</sup> See *id.* arts. 318(2), (7).

<sup>99</sup> See RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION, *supra* note 67.

<sup>100</sup> Constantin Ogloblin, *The Gender Earnings Differential in Russia After a Decade of Economic Transition*, 5 APPLIED ECONOMETRICS & INT’L DEV. 5, 6, 10 tbl.1 (2005).

<sup>101</sup> See *id.* at 11.

<sup>102</sup> See UGOLOVNO-PROTSESSUAL’NYI KODEKS ROSSIISKOI FEDERATSII [UPK RF] [Criminal Procedural Code] arts. 20(2), 25, 318(4) (Russ.).

connection with . . . reconciliation . . . .”<sup>103</sup> This implies that if the victim and abuser reconcile, the court is permitted to terminate criminal proceedings.<sup>104</sup> Article 318 of the CPC provides that even if a public prosecutor enters the case, reconciliation is still permissible.<sup>105</sup> Additionally, the judge is legally *required* to explain rights of reconciliation to the victim.<sup>106</sup> This attitude perpetuates the age-old tradition of keeping domestic violence a private matter and represents an ancient outlook. Rather than being encouraged to leave their abusers, Russian laws encourage victims to try and “fix” the relationship and return to the abusive home.

It is worth noting that reconciliation between the victim and abuser is not always grounds for terminating criminal proceedings.<sup>107</sup> For example, reconciliation is not permitted to terminate rape and “violent actions of sexual character” cases.<sup>108</sup> Domestic violence victims could bring both types of these cases against abusers, like marital rape, for example. However, neither provision includes a stipulation on whether a domestic partner qualifies as a victim.<sup>109</sup> Based on police and judicial response, it is likely that the common law application of the provisions does not apply to domestic partners, meaning that marital rape and intimate partner rape do not qualify as crimes. Therefore, the reconciliation exception is not likely to be applied in domestic violence cases.

*B. New Legislation Introduced to the Duma Could be the Resolution  
Russia Needs to Prevent Domestic Violence*

Discussion of new legislation could cure some of the difficulties that Russia currently has with preventing domestic violence.<sup>110</sup> A bill was introduced into the Duma in May 2013, which is designed to prevent domestic violence in Russia.<sup>111</sup> For the first time, victims will be able to obtain orders of protection.<sup>112</sup> It is also proposed that a fund be

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<sup>103</sup> *Id.* art. 20(2).

<sup>104</sup> *Id.* arts. 20(2), 25.

<sup>105</sup> *Id.* art. 318(4).

<sup>106</sup> *Id.* art. 318(6).

<sup>107</sup> *Id.* art. 20(3).

<sup>108</sup> *See id.* art. 20(3); UGOLOVNIY KODEKS ROSSIYSKOY FEDERATSII [UK RF] [Criminal Code] arts. 131, 132 (Russ.).

<sup>109</sup> UGOLOVNIY KODEKS ROSSIYSKOY FEDERATSII [UK RF] [Criminal Code] arts. 131, 132 (Russ.).

<sup>110</sup> RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION, *supra* note 67.

<sup>111</sup> *Id.* The Duma is the elected legislative body in Russia that is responsible for the promulgation of Russian laws. *Duma*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/173419/Duma> (last visited Jan. 19, 2016).

<sup>112</sup> *See* RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION, *supra* note 67.

established to aid victims.<sup>113</sup> Additionally, private prosecution for domestic violence cases should be eliminated under Article 115 and 116 of the Criminal Code.<sup>114</sup> If passed, such new legislation would also bring Russia closer to meeting its obligations under CEDAW.

#### IV. EGYPT

Egypt is an ancient country whose culture is deeply rooted in religion and history.<sup>115</sup> As a result of such ancient traditions, the country is a quintessential example of a patriarchal society that is only on the cusp of domestic violence awareness, even while 28% of women report being subject to some sort of violence within their home.<sup>116</sup> Recently, Egypt has undergone major political reconstruction. In 2011, former President Hosni Mubarak's regime was overthrown, and in 2012 former President Mohamed Morsi, a Muslim Brotherhood member, was elected and subsequently forced to resign in 2013.<sup>117</sup> Soon after Morsi's resignation, the people of Egypt nominated a new president, and voted on and enacted a new constitution.<sup>118</sup> Since the new constitution embraces more democratic ideals than its predecessor, it may spark discussion both within the country and around the world on what is next for Egypt in regards to protection for abused women.

##### *A. Egyptian Legislation Fails to Recognize Domestic Violence Laws in the Constitution and Criminal Code*

Although Egypt's new constitution is significantly more democratic than its predecessor, for example criminalizing torture, human trafficking, and violence against women,<sup>119</sup> it still poses major questions. The constitution's promise of gender equality has been subject to recent scrutiny; some claim that there is a "gap between official rhetoric about human rights and the state's longstanding

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<sup>113</sup> *Id.*

<sup>114</sup> *See id.*

<sup>115</sup> *See generally Egypt Country Profile - Overview*, BBC (June 30, 2015), <http://www.bbc.com/news/world-africa-13313370> (describing Egypt's past and currently cultural and political tendencies).

<sup>116</sup> *Domestic Violence: A Woman's Permanent Scar*, DAILY NEWS EGYPT (Sept. 24, 2012), <http://www.dailynewsegypt.com/2012/09/24/domestic-violence-a-womans-permanent-scar/>.

<sup>117</sup> *Egypt Country Profile - Overview*, *supra* note 115.

<sup>118</sup> *Egypt Profile—Timeline*, BBC (July 2, 2015), <http://www.bbc.com/news/africa/world-africa-13315719>.

<sup>119</sup> Kareem Fahim & Mayy El Sheikh, *In Egypt Charter, New Rights, But No Great Change*, N.Y. TIMES (Dec. 1, 2013), <http://www.nytimes.com/2013/12/02/world/middleeast/in-egypt-charter-new-rights-but-no-great-change.html?pagewanted=all>.

repressive tactics.”<sup>120</sup> Aside from the gender equality stipulation in the constitution, other pieces of Egyptian legislation do little to address the issue of domestic violence.<sup>121</sup> An explanation for the lack of recognition of domestic violence within Egyptian legislation may begin with an analysis of the national religion of Egypt: Islam.<sup>122</sup> Islam plays an enormous role in the Egyptian legal system, and analyzing the connection between Islam and domestic violence in Egypt could explain why so many Egyptian women fall victim to domestic violence.

Islam is directly related to Sharia law, which is a combination of the Qur’an, “the Muslim holy book,” the Hadith, the “sayings and conduct of the prophet Mohammed,” and the Fatwas, the “rulings of Islamic scholars.”<sup>123</sup> The Egyptian Constitution plainly states: “[t]he principles of Islamic Sharia are the main source of legislation.”<sup>124</sup> This merger of religion and politics has existed since 1981, when Egyptian Islamists pressured the government to amend the constitution.<sup>125</sup> Since then, the Supreme Constitutional Court in Egypt has had the authority to determine whether Egyptian legislation properly conforms to Sharia law.<sup>126</sup> Although the integration of religion and politics is a common practice in Middle Eastern Islamic countries,<sup>127</sup> it can allow for the perpetuation of domestic violence by using certain interpretations of Sharia law as a justification for the failure to adequately protect victims of domestic violence.<sup>128</sup>

### 1. How Sharia Law Plays a Role in the Perpetuation of Domestic Violence in Egypt

The Egyptian Constitution has been described as bible-like because of its strict adherence to Sharia law.<sup>129</sup> However, engaging in

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<sup>120</sup> *Id.*

<sup>121</sup> See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 11; see, e.g., Hajjar, *supra* note 11, at 11 (saying that, although every Muslim society has found rape to be a punishable crime, criminal sanctions for rape have not been extended to cover rape within marriage).

<sup>122</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 2.

<sup>123</sup> *Sharia*, BBC, [http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia\\_1.shtml](http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml) (last updated Sept. 3, 2009).

<sup>124</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 2.

<sup>125</sup> Hajjar, *supra* note 11, at 24–25.

<sup>126</sup> *Id.* at 25.

<sup>127</sup> See *id.* at 5.

<sup>128</sup> Nooria Faizi, Comment, *Domestic Violence in the Muslim Community*, 10 TEX. J. WOMEN & L. 209, 211 (2001).

<sup>129</sup> Fahim & Sheikh, *supra* note 119.

religious beliefs does not inherently translate to a governmental sanction of domestic violence. Therefore, it is important to analyze how Sharia law, and the implementation of it into Egyptian law, perpetuates domestic violence.

The notion that Islam promotes the disparity of sexes is a result of conflicting interpretations of the Qur'an and Hadith.<sup>130</sup> It is true that patriarchal interpretations of the Qur'an seemingly condone the disproportionate treatment of women.<sup>131</sup> These interpretations give men permission to beat their wives when they fail to obey their husbands,<sup>132</sup> and to engage in sexual acts with their wives in whichever manner they choose.<sup>133</sup> In fact one of the most commonly quotes verses of the Qur'an reads:

Men are the protectors [a]nd maintainers of women, because God has given [t]he one more (strength) than the other, and because [t]hey support them [f]rom their means. Therefore the righteous women [a]re devoutly obedient, and guard [i]n (the husband's absence) [w]hat God would have them Guard. As to those women [o]n whose part ye fear [d]isloyalty and ill-conduct, [a]dmonish them (first), ([n]ext), refuse to share their beds, ([a]nd last) beat them; [b]ut if they return to obedience, [s]eek not against them [m]eans (of annoyance): For God is Most High, Great.<sup>134</sup>

Many scholars believe that interpreted, this verse essentially charges men with the responsibility of protecting their wives and families by setting an example for them.<sup>135</sup> However, abusers choose to rely on the verse as a "license [to] abuse" their wives.<sup>136</sup> Scholars disagree with the justification because of the Prophet Mohammed's disapproval of striking women.<sup>137</sup> They believe that the word "beat" in the verse "is not an accurate translation."<sup>138</sup> This notion is further

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<sup>130</sup> Hajjar, *supra* note 11, at 4 n.7.

<sup>131</sup> *See id.* at 10.

<sup>132</sup> THE QUR'AN 4:34.

<sup>133</sup> *See id.* 2:223. Rape is criminalized under the penal code, but common law application has not extended the crime to include intimate partners. *See* Hajjar, *supra* note 11, at 11. The office of the High Commissioner of the United Nations noted this in their recommendations under the universal human rights index, asking the Egyptian government to introduce legislation to eliminate marital rape. U.N. Econ. & Soc. Council, Comm. On Econ., Soc., & Cultural Rts., Concluding Observations on the Combined Second to Fourth Periodic Reports of Egypt, ¶ 15, U.N. Doc. E/C.12/EGY/CO/2-4 (Dec. 13, 2013).

<sup>134</sup> Faizi, *supra* note 128, at 212.

<sup>135</sup> *Id.* at 212, 213.

<sup>136</sup> *Id.* at 211–12.

<sup>137</sup> *Id.* at 213.

<sup>138</sup> *Id.* at 212, 213.

supported by other portions of the Qur'an, which *mandate* the equal treatment of men and women<sup>139</sup> and all those who worship Allah.<sup>140</sup> The conflicting interpretations perpetuate domestic violence because legislation so heavily relies on Sharia law, and the majority of government officials are men,<sup>141</sup> some of whom are likely to rely on patriarchal interpretations. The result as it applies to domestic violence leaves victims not only unprotected by their government, but directly in harm's way.

In addition to patriarchal interpretations of Sharia law, the Egyptian Criminal Code permits abusers to escape without liability. Any person who violates the penal code may evade punishment under the law so long as the "deed" is committed in "good faith" pursuant to Sharia law.<sup>142</sup> Therefore, even if a domestic violence case was brought before the court, an abuser could claim he was acting in good faith by beating his wife. If the judge has adopted a patriarchal interpretation of Sharia law, it follows that he would be more inclined to agree with the abuser. It is up to the Egyptian government to determine how to move forward in the protection of victims while simultaneously preserving an adherence to Islam.

*B. Egyptian Reservations to CEDAW Make it Difficult for the Treaty to be Effective*

In 1981, Egypt, along with many other countries, ratified CEDAW.<sup>143</sup> However, in ratifying the convention, each country is permitted to make certain "declarations" or "reservations."<sup>144</sup> This means that if a portion of an international treaty conflicts with the laws or principles of a country that wants to ratify the treaty, that country may "tailor[] [it] to their individual preferences."<sup>145</sup> Unlike Russia,<sup>146</sup> Egypt made four reservations to the treaty, which can be found on the U.N.'s website.<sup>147</sup> Of particular relevance are the second

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<sup>139</sup> See THE QUR'AN 33:35.

<sup>140</sup> See *id.* at 49:13.

<sup>141</sup> See Sahar F. Aziz, *Egypt and Other Arab Democracies Will Not Survive Without Including More Women*, CHRISTIAN SCI. MONITOR (Dec. 12, 2012), <http://www.csmonitor.com/Commentary/Opinion/2012/1212/Egypt-and-other-Arab-democracies-will-not-survive-without-including-more-women>.

<sup>142</sup> Law No. 58 of 1937 (Criminal Code), *al-Waqā'i' al-Miṣrīyah*, art. 60 (Egypt).

<sup>143</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6.

<sup>144</sup> *Declarations, Reservations and Objections to CEDAW*, *supra* note 81.

<sup>145</sup> Swaine, *supra* note 81, at 307–08.

<sup>146</sup> See *supra* note 81 and accompanying text.

<sup>147</sup> *Declarations, Reservations and Objections to CEDAW*, *supra* note 81.

and fourth reservations, which both have the capacity to effect domestic violence victims. The second reservation protests the treaty's provisions on a woman's right to divorce her husband.<sup>148</sup> The Egyptian government cited Sharia law to explain that a woman's right to divorce is restricted, in that a judge must agree to it.<sup>149</sup> As it relates to domestic violence, this reservation is of enormous concern since it potentially strips a wife of her right to leave her husband, who may also be her abuser. The fourth reservation is a catchall, and provides that "[t]he Arabic Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia."<sup>150</sup> Thus, while Egypt has universally announced its support of eradicating discrimination against women by ratifying CEDAW, the prerequisite that it must conform to Sharia law defeats the purpose of ratification. Depending on the interpretation of Sharia that legislators choose to use in promulgating laws, the government could enact laws that directly violate CEDAW but align with Sharia law.

### *C. Why Egypt May be on the Cusp of New Views on Domestic Violence*

Although there is no current legislation or structured system to prevent domestic violence, a new constitution and a newly elected president could spark new ideals. President Abel Fattah el-Sisi was elected in June of 2014<sup>151</sup> and is the first Egyptian President that has recognized sexual violence and gang rape.<sup>152</sup> It is hopeful that criminalizing other previously unrecognized crimes will spur talks of promulgating domestic violence legislation.

## V. POSSIBLE REMEDIES

In order to eliminate domestic violence, it is imperative that governments work to create solutions. This section will explore three possible solutions that, if applied, could have a positive impact on the elimination of domestic violence: self-regulation, imposition of sanctions, and the use of international courts.

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Mayy El Sheikh, *Egypt: Sisi Wins With 97 Percent*, N.Y. TIMES (June 4, 2014), <http://www.nytimes.com/2014/06/04/world/middleeast/egypt-sisi-wins-with-97-percent.html>.

<sup>152</sup> Mona Eltahawy, *Egypt has a Sexual Violence Problem*, N.Y. TIMES (June 20, 2014), <http://www.nytimes.com/2014/06/21/opinion/mona-elatahawy-egypts-sexual-violence.html>.

First, governments must self-regulate. Previous analysis on the United States, Russia, and Egypt demonstrate various methods that each country has employed to prevent domestic violence and prove that self-regulation is essential.<sup>153</sup> I argue that it is the first and most important step in eradicating domestic violence. Some examples of self-regulation include promulgating legislation and introducing educational measures to achieve primary prevention.

Next, imposing sanctions on individuals and on governments should be considered. Studies show that several factors are involved to determine whether sanctions will have a positive or a negative impact in deterring behavior, meaning that sanctions are a risk and should be imposed only after careful consideration and planning. Often, sanctions are imposed unilaterally by one country onto another, which tends to produce negative effects.<sup>154</sup> In regards to domestic violence, parties to CEDAW have not imposed sanctions on another country involving domestic violence.<sup>155</sup> Unfortunately, neutral entities such as the United Nations have not imposed such sanctions either and are not permitted to impose such sanctions when conduct violates U.N. treaties, such as CEDAW.<sup>156</sup> It follows that the imposition of sanctions as it relates to domestic violence is virtually non-existent. Therefore, while sanctions may produce positive results, there is no data to support the theory.

Finally, the use of international courts could prove effective in eradicating domestic violence worldwide. There are currently two international courts in place to prosecute crimes on an international scale: the International Criminal Court (ICC) and the International Court of Justice (ICJ).<sup>157</sup> The courts are distinct from one another;

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<sup>153</sup> See *supra* Parts II–IV.

<sup>154</sup> Lance Davis & Stanley Engerman, *History Lessons: Sanctions: Neither War nor Peace*, 17 J. ECON. PERSPECTIVES 187, 188, 189 (2003) (indicating that unilateral sanctions were popular in the mid-to-late 1900s and were primarily imposed by the United States); Christopher Wall, *Human Rights and Economic Sanctions: The New Imperialism*, 22 FORDHAM INT'L L.J. 577, 593, 594–95 (1998) (discussing how unilateral sanctions imposed by the United States specifically are common and often negatively effect the sanctioned country, while simultaneously giving the United States a bad reputation for constantly imposing such sanctions).

<sup>155</sup> See Laboni Amena Hoq, Note, *The Women's Convention and its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights*, 32 COLUM. HUM. RTS. L. REV. 677, 686, 703 (2001).

<sup>156</sup> See generally Consolidated United Nations Security Council Sanctions List (Jan. 17, 2016), <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/consolidated.pdf> (providing a list of all sanctions imposed on individuals and entities by the United Nations).

<sup>157</sup> *About the Court*, INT'L CRIM. CT., [https://www.icc-pi.int/en\\_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx](https://www.icc-pi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx) (last visited Jan. 19, 2016); *The Court*, INT'L CT. JUST., <http://www.icj-cij.org/court/index.php?p1=1> (last

for example, the ICC is an independent individual organization, while the ICJ operates as an organ of the United Nations, but both are similar in the fact that they are international courts of last resort, although the ICJ is not a court of last resort for individuals.<sup>158</sup> The use of international tribunals should also be considered, albeit tribunals are more commonly formed as a response to one specific heinous act against humanity.<sup>159</sup> As effective as both courts have proven to be, there are changes that could be made to both in order to better effect the elimination of domestic violence.

#### A. Governmental Implementation of Self Governing Measures

This note argues that governments have an obligation to regulate themselves and the conduct of their citizens in order to prevent domestic violence. Among the three countries previously analyzed, two have globally announced their position on domestic violence by becoming parties to CEDAW.<sup>160</sup> Although the United States is not a party to CEDAW, it nonetheless has introduced legislation and preventative measures as well.<sup>161</sup> However, a public announcement is not sufficient. As evidenced by statistics, domestic violence is still prevalent in all three countries.<sup>162</sup> It is fundamentally imperative for governments to take an active role in the prevention of domestic violence in order to work towards its complete elimination; the mere image of opposition is neither sufficient nor effective. In an effort to eliminate domestic violence, U.N. Women, an entity of the United Nations, lists strategies governments should implement, including: “[i]nvesting in gender equality and women’s empowerment,” “[i]ntroducing or reforming legislation,” “[s]ecuring resources/gender-responsive budgeting,” “[p]romoting primary prevention,” “[c]onducting research,” and “[m]onitoring and [n]ational [a]ccountability.”<sup>163</sup> It appears that most of the aforementioned

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visited Jan. 19, 2016).

<sup>158</sup> *Frequently Asked Questions*, INT’L CT. JUST., <http://www.icj-cij.org/information/index.php?p1=7&p2=2> (last visited Jan. 19, 2016); *ICC at a Glance*, INT’L CRIM. CT., [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx) (last visited Jan. 19, 2016).

<sup>159</sup> *UN Documentation: International Law*, U.N., <http://research.un.org/en/docs/law/courts> (last updated Jan. 27, 2016); *See, e.g., Selected International Courts and Tribunals: Online Sources of Translation Into English*, L. LIBRARY CONG. 2, 5 (2012), [http://www.loc.gov/law/find/pdfs/2012-007612\\_courts\\_RPT.pdf](http://www.loc.gov/law/find/pdfs/2012-007612_courts_RPT.pdf) (providing a list and information about the tribunals of Rwanda and Uganda).

<sup>160</sup> *See supra* Part I.

<sup>161</sup> *See supra* Part II.

<sup>162</sup> *See supra* Part I.

<sup>163</sup> *Programming Essentials, Monitoring & Evaluation*, U.N. WOMEN,

cannot be achieved without government involvement or, more specifically, government funding. Therefore, the first obstacle in self-governing is to take these initial steps and introduce programs and legislation that are geared toward preventative measures.

Although imperative in the process, merely introducing programs and strategies is not adequate; government's must be willing to consistently monitor programs, and collect data to ensure the strategies put into place are effective. U.N. Women encourages the use of "[m]onitoring and evaluation" in order to ensure that strategies are having an effect.<sup>164</sup> This process includes "collecting, analyzing and using information to track a programme's progress toward reaching its objectives [and] . . . the systematic assessment of an activity, project, programme, strategy, policy, topic, theme, sector, operational area or institution's performance."<sup>165</sup> In laymen's terms, the U.N. encourages governments or entities to analyze their programs, legislation, or whatever else they may have in place, and then determine whether those efforts are producing concrete results.

Although necessary to the process, I would argue that self-governing is not *always* effective. This note has sought to compare different governments and demonstrate how their ineffectiveness has led to increases in domestic violence. Therefore, self-governing measures may fail when the governments themselves are the root of the problem. If government action, or lack of action, is the force behind the perpetuation of domestic violence in that region, encouraging self-governing measures is not likely to help; instead, the infrastructure of the government must change.

*B. Imposition of Sanctions on Individuals Who Systematically Commit Acts of Domestic Violence, or on Governments Who Fail to Act*

Next, this note suggests that imposing sanctions has the potential to be an effective deterrent and a positive tool in eliminating domestic violence. Sanctions can be seen as a means of achieving "foreign policy goals," and are typically imposed on a country or entity as an economic burden in response to some act committed by that country

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<http://www.endvawnow.org/en/modules/view/14-programming-essentials-monitoring-evaluation.html#13> (last visited Jan. 19, 2016). U.N. Women was created for the purpose of eliminating discrimination against women and girls. *Id.*

<sup>164</sup> *What is Monitoring and Evaluation?*, U.N. WOMEN, <http://www.endvawnow.org/en/articles/330-what-is-monitoring-and-evaluation-.html?next=331> (last visited Jan. 19, 2016).

<sup>165</sup> *Id.*

or entity.<sup>166</sup>

Many scholars have analyzed whether sanctions are an effective deterrent. One theory provides that the effectiveness of sanctions depends on the nature of the relationship between the country that is imposing the sanction, and the one receiving it, as well as whether the sanctioned country is democratic.<sup>167</sup> This analysis is linked to the response a sanctioned country will have. Sanctions typically produce a “rally around the flag” effect where citizens increase their support for their government, although sanctions sometimes do foster leadership change.<sup>168</sup> Therefore, it is imperative that sanctions are thoroughly thought out before being imposed as to avoid negative effects. Nonetheless, there are countries that have contradicted the theory that sanctions only succeed under the previously mentioned conditions, proving that their imposition is not outcome determinative.<sup>169</sup> I would argue that domestic violence sanctions have the ability to decrease its high global incidence. However, *who* imposes them is of immense importance. Unilateral sanctions by countries are less likely to be effective. Instead, a neutral party, such as the United Nations should impose sanctions, and do so as a result of State parties violating international treaties.

One example of unilateral, and ineffective sanctioning lies with the United States, who has a reputation of unilaterally imposing sanctions on a global scale.<sup>170</sup> These sanctions have seldom been effective, and are typically always met with resentment by the receiving country.<sup>171</sup> However, if an impartial international organization were the force behind the sanction, there would likely be a different effect. I argue that unilateral sanctions fail because the effect is that of one (typically) larger and more powerful country imposing a punitive measure on a (sometimes) smaller, less powerful

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<sup>166</sup> Kim Richard Nossal, *International Sanctions and International Punishment*, 43 INT'L ORG. 301, 304, 305 (1989).

<sup>167</sup> Cristiane Carneiro & Dominique Elden, *Economic Sanctions, Leadership Survival, and Human Rights*, 30 J. INT'L LAW 969, 972 (2009). If the two countries are friendly, for example, the sanctions are more likely to succeed. *Id.* In contrast, sanctions imposed on “autocratic regimes that insulate themselves from the international community” are likely to fail. *Id.* One scholar reasons that autocratic leaders tend to repress their citizens in order to prevent the possibility of destabilizing their regimes. *Id.*

<sup>168</sup> Carneiro & Elden, *supra* note 167, at 971; Ella Shagabutdinova & Jeffrey Berejikian, *Deploying Sanctions While Protecting Human Rights: Are Humanitarian “Smart” Sanctions Effective?*, 6 J. HUM. RTS. 59, 60 (2007).

<sup>169</sup> See Carneiro & Elden, *supra* note 167, at 971 (discussing how the sanctions imposed on both Turkey and Fiji did not conform to predicted results).

<sup>170</sup> Wall, *supra* note 154, at 579.

<sup>171</sup> *Id.* at 593–94 (discussing China's response to the United States' imposition of sanctions in the early 1990s).

country. If the appearance of power is removed from the equation, those countries or entities being sanctioned may respond with less disdain. This is especially true since nearly every country in the world is party to the U.N.,<sup>172</sup> and their voluntary status likely implies some sort of respect for the organization. Currently, the U.N. Security Council has the authority to impose sanctions and as of January of 2016 has sanctioned 602 individuals and 381 entities or other groups.<sup>173</sup> However, of those sanctioned, none were related to domestic violence, or in response to the violation of a U.N. treaty.<sup>174</sup> Instead, many are related to war crimes, terrorism, and other similar crimes against humanity.<sup>175</sup>

Many State parties to CEDAW have continuously violated the treaty and should therefore be subject to sanctions.<sup>176</sup> However, the United Nations Human Rights Index only provides *recommendations* to State parties to improve their status; there is no real ramification for violating the treaty.<sup>177</sup> The U.N. is not vested with the authority to impose sanctions on State parties who violate CEDAW, but interestingly, the text of the treaty encourages State parties to “undertake[] . . . sanctions where appropriate[,] prohibiting all discrimination against women.”<sup>178</sup> It is unclear by the text whether the treaty is encouraging State parties to impose sanctions on its own countrymen, or to unilaterally impose sanctions on other State parties who violate the treaty. Regardless, I argue that the U.N. itself should have the power to impose sanctions on State parties who violate the treaty. Sanctions should not be left in the hands of the State parties. The current lack of consequences for violators of CEDAW, and inability to impose sanctions does not aid in the furtherance of the treaty’s objectives.

### *C. The Use of International Courts to Prosecute Individuals and Governments*

Finally, I argue that the use of international courts should be more

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<sup>172</sup> See generally Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 6 (listing member nations to the U.N. and their status as signatories on the convention).

<sup>173</sup> Consolidated United Nations Security Council Sanctions List, *supra* note 156.

<sup>174</sup> See generally *id.* (demonstrating an absence of domestic violence and U.N. treaty violations).

<sup>175</sup> See *id.*

<sup>176</sup> See Hoq, *supra* note 155, at 686, 703.

<sup>177</sup> See *supra* note 82 and accompanying text.

<sup>178</sup> Hoq, *supra* note 155, at 681 n.16.

consistently used to prosecute individuals that systematically commit acts of domestic violence, or prosecute countries who lay dormant while acts of domestic violence are systematically committed within their country. There are currently two international courts: the International Criminal Court (“ICC”) and the International Court of Justice (“ICJ”). Both courts are responsible for hearing international cases and are courts of last resort, although the ICJ is not a court of last resort for individuals.<sup>179</sup> However, there are difficulties with each court.

“The ICC is an independent international organization,” separate from the United Nations.<sup>180</sup> The court is governed by the Rome Statute and is based on a treaty that has been ratified by 123 countries.<sup>181</sup> As an individual entity, the court operates primarily off of voluntary contributions.<sup>182</sup> The court hears crimes of genocide, war crimes, and crimes against humanity; however the matter must be tried in a national judicial system first, unless the proceedings are not genuine.<sup>183</sup> To date, the Court’s cases have been primarily out of Africa, prosecuting individuals for egregious crimes of international concern.<sup>184</sup> In fact, the court is not permitted to try countries, governments, or entities, but only individuals.<sup>185</sup> The court has never prosecuted a domestic violence case, however. All cases that have been brought before the court relate solely to genocides and crimes against humanity that relate to war crimes in Africa.

I would argue that domestic violence qualifies as a crime against humanity and that the ICC should have jurisdiction to prosecute individual abusers. Domestic violence occurs between intimate partners and although one act does not typically affect massive groups of people, it does affect the victim, any children involved, and friends and family of the victim.<sup>186</sup> The lack of effect on a mass group of people could explain why individual abusers are not considered candidates for prosecution under the ICC. However, I would also

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<sup>179</sup> *Frequently Asked Questions*, *supra* note 158; *ICC at a Glance*, *supra* note 158.

<sup>180</sup> *About the Court*, *supra* note 157.

<sup>181</sup> *Id.*; *ICC at a Glance*, *supra* note 158.

<sup>182</sup> *About the Court*, *supra* note 157. The contributions typically come from State parties to the United Nations, international organizations, and the like. *Id.*

<sup>183</sup> *Id.*; *ICC at a Glance*, *supra* note 158.

<sup>184</sup> *See generally All Cases*, INT’L CRIM. CT., [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx) (last visited Jan. 19, 2016) (listing pending cases in the ICC).

<sup>185</sup> *Understanding the International Criminal Court*, INT’L CRIM. CT. 13, <http://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>.

<sup>186</sup> *Domestic Violence*, U.S. DEP’T JUST., <http://www.justice.gov/ovw/domestic-violence> (last updated Oct. 6, 2015).

argue that the ICC should better investigate instances of domestic violence worldwide to determine whether individuals can be held accountable for the increase or perpetuation of domestic violence. Circumstances could include human trafficking rings or mail-order bride services where women are often abused. Charges against individuals who run such organizations are imperative because unlike the ICJ, the ICC is permitted to bring cases against individuals unilaterally and of their own accord.

Next, the ICJ is considered a “judicial organ of the United Nations” and has been in existence since 1945.<sup>187</sup> The court functions on two bases: it hears cases and also performs purely advisory proceedings to settle disputes between State parties.<sup>188</sup> Unlike the ICC, the ICJ does not have jurisdiction to handle cases involving individuals or non-government entities.<sup>189</sup> Instead, the ICJ *solely* has jurisdiction to hear cases involving governments, and such cases may only be heard if they are requested by one or more State parties.<sup>190</sup> The ICJ has no authority to simply bring a case itself; there must be a request by another party.<sup>191</sup> State parties having the power to bring cases before the ICJ would appear to promote good behavior, however in actuality, it is less effective than if the ICJ were able to initiate proceedings itself. The U.N. is the entity that monitors countries to ensure that they are adhering to treaties. Therefore, if an egregious violation, or a systematic violation is committed, the U.N. is more likely to have information concerning the violation and is therefore in a better position to initiate a case within the ICJ in comparison to another State party.

Under CEDAW, all conflicts are mandatorily arbitrated, and only when the conflict cannot be arbitrated does the ICJ become involved.<sup>192</sup> According to one article, there are three reasons why the interstate reporting procedure is ineffective under CEDAW.<sup>193</sup> First, each State party is likely to be apprehensive to report another State party for fear of retaliation, since every State is potentially vulnerable to criticism on their own domestic violence policies.<sup>194</sup>

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<sup>187</sup> *The Court*, *supra* note 157.

<sup>188</sup> *How the Court Works*, INT’L CT. JUST., <http://www.icj-cij.org/court/index.php?p1=1&p2=6> (last visited Jan. 19, 2016).

<sup>189</sup> *Frequently Asked Questions*, *supra* note 158.

<sup>190</sup> *Id.* State parties include any of the 192 countries that are currently a member of the United Nations. *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> Hoq, *supra* note 155, at 684.

<sup>193</sup> *Id.* at 684–85.

<sup>194</sup> *Id.* at 684.

Second, State parties are not required to report other State parties for violations, which makes this “honor system” quite ineffective.<sup>195</sup> Finally, there is no data to determine whether interstate reporting is effective because there has not been one State party who has reported another since the inception of CEDAW.<sup>196</sup> This information confirms that if the ICJ had the authority to unilaterally bring cases the court would be more effective in general, especially in regards to eliminating domestic violence.

## VI. CONCLUSION

This note has sought to compare government action for domestic violence victims on a global basis. The current frameworks of legislation and domestic violence prevention in the United States, Russia, and Egypt substantially differ; however, each is similar with regard to the protection that each country provides for victims. In the United States, domestic violence is clearly recognized and the government has implemented legislation to prevent it. However, American women remain at risk because of improper and ineffective enforcement of laws by all arms of the government. In Russia, the government has failed to implement domestic violence into the criminal codes, even when the country has globally recognized the need to eradicate discrimination against women by ratifying CEDAW. The government continuously burdens victims who seek assistance, evidenced by a lack of police and judicial response and obstacles within the criminal justice system. In Egypt, the role of religion and its pervasive entwinement with government and politics results in the perpetuation of domestic violence, and ignorance as to its severity. Patriarchal interpretations of Sharia law justify the actions of abusers and keep women ignorant as to their rights under the same religion.

There are solutions that could be implemented by each region, or by the United Nations to prevent domestic violence, but action is necessary. Additionally, if the United Nations hopes for the various treaties that have been enacted and promulgated by these countries to be effective, there must be some sort of consequence for violating the treaty. However, if the standpoint of the United Nations is that creating the treaties forces countries to begin to speak about their various stigmas, then the United Nations has at least accomplished

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<sup>195</sup> *Id.* at 684. However, the lack of requirement to report could be cured with a ratification of the convention. *Id.* at 685.

<sup>196</sup> *Id.* at 685.

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that objective.