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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

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\(^1\) See 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 Against Women . . . of the United Nations Convention on the Elimination of All Forms of Discrimination Against 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 in 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.

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Id. ¶ 5.


\(^3\) 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.


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.\textsuperscript{6} It defines the legal obligations inherent in European Union Membership,\textsuperscript{7} the European Convention on Human Rights ("ECHR"),\textsuperscript{8} the United Nations Convention on the Elimination of Discrimination against Women ("CEDAW"),\textsuperscript{9} and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("Istanbul Convention"),\textsuperscript{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.\textsuperscript{11} Thus, this article provides country-specific data to better understand the environments in which these deficits are believed to occur.\textsuperscript{12} To be sure, providing adequate legal relief to migrant domestic violence victims is a challenging proposition.\textsuperscript{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.\textsuperscript{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

\textsuperscript{6}See infra Part II.
\textsuperscript{10}Istanbul Convention, supra note 5. See infra Part II.F.
\textsuperscript{11}See infra Part V.
\textsuperscript{12}See infra Part V.
\textsuperscript{13}See ISTANBUL CONVENTION EXPLANATORY REPORT, supra note 1, ¶¶ 53, 87, 298-300, 302.
\textsuperscript{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.  

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.  

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.  

For example, parties to the ECHR are explicitly bound to uphold Article 3, which guarantees freedom from torture and inhuman treatment.  

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.  

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.  

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.”  

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.

15. See infra Part VI.  
16. See ECHR, supra note 8, art. 14.  
17. E.g., id. pmbl.  
18. Id. art. 3.  
19. See ISTANBUL CONVENTION EXPLANATORY REPORT, supra note 1, ¶ 87.  
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.\textsuperscript{23} The CEDAW mandates that the pace of policy change be pursued diligently, "by all appropriate means and without delay."\textsuperscript{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.\textsuperscript{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.\textsuperscript{26} Article 22 permits "specialized agencies" ("CEDAW Specialized Agencies") to submit reports ("Shadow Reports") discussing states' implementation efforts.\textsuperscript{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.\textsuperscript{28} CEDAW Specialized Agencies submit Shadow Reports to the CEDAW Committee to supplemental state provided information about compliance with CEDAW obligations.\textsuperscript{29} These are independent reports that examine particular aspects of the state human rights reporting.\textsuperscript{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.\textsuperscript{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.").

\textsuperscript{23} Id. art. 2.
\textsuperscript{25} CEDAW, supra note 9, arts. 2-3.
\textsuperscript{26} Id. art. 18.
\textsuperscript{27} Id. art. 22.
\textsuperscript{28} Id. arts. 17, 21.
\textsuperscript{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.").
\textsuperscript{30} See id.
enjoyment of equality." Furthermore, states are responsible for investigating and punishing acts of violence and for providing compensation for violations of the CEDAW. 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."

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. That human rights body has called for, among others, the elimination of all forms of gender-based violence in the family. 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." 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."

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. 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. In 2002, the U.N. High Commissioner for
Refugees ("UNHCR") issued guidelines on gender-related protection claims.\textsuperscript{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."\textsuperscript{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."\textsuperscript{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.\textsuperscript{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."\textsuperscript{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."\textsuperscript{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.\textsuperscript{47}


\textsuperscript{42} Id. ¶ 29.

\textsuperscript{43} Id. ¶ 30.

\textsuperscript{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’, in not honourable and should be condemned as a human rights violation.” Id. at 10.

\textsuperscript{45} Id. at 18.

\textsuperscript{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).

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.


51. Id. at 6.


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." 56

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." 58

c) "Victims of abuse must be provided with relevant emergency and social services, regardless of their immigration status." 59

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

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

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 (e), (e) and (f)).”

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. 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;

b) Specialized services for particular groups of women, including migrant victims;

c) Employing gender-sensitive language acknowledging the historical imbalance in power between men and women with respect to violence;

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”;  

e) Permitting “immigrants who are survivors of violence to confidentially apply for legal immigration status independently of the perpetrator.”

63. Id. ¶ 26(l).
64. Id.
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. 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." 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. 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.

Occasionally, individuals or groups within a country will consider that a state party has failed to abide by their obligations under the CEDAW. 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. Upon review of a complaint, the CEDAW Committee can issue recommendations to the state party. All but three of the EU-M States examined in this article are party to the Optional Protocol.

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.*
77. Optional Protocol to CEDAW, *supra* note 75, art. 5.
F. Council of Europe and the Istanbul Convention

Regional European bodies have also been focused on eliminating violence against women. 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.” 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.” 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.

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.”

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. 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. 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

80. Id. app. ¶ 3.
81. Id. app. ¶ 24.
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, ¶ 12.
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.
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. Seventh, that gender-sensitive procedures be employed with respect to reception, support, refugee determination, and consideration of international protection. Eighth, that states offer non-refoulement protection when legally appropriate. 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.

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. In fact, the U.N.’s mandate often requires the collection of evidence to monitor compliance. 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. 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. Some of these tools aggregate data, develop a composite index, and argue that doing so presents a useful comparison.

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).
100. See id. ¶ 36.
101. See id. ¶ 4.
103. See, e.g., Cingranelli & Richards, supra note 102, at 403.
fundamentally dangerous from a political standpoint.\textsuperscript{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”\textsuperscript{105} and formal agreements as to appropriate indicators or benchmarks for assessing due diligence have not been developed.\textsuperscript{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.\textsuperscript{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”).\textsuperscript{108} However, the United Nations does not have adequate datasets to track gender violence.\textsuperscript{109} In June 2013, the European Institute for Gender Equality (“EIGE”) released an index that includes gender violence as a factor.\textsuperscript{110} However, the EIGE provides no data on gender violence, citing a lack of data at the European Union level.\textsuperscript{111} Thus, since this study is focused on compliance with CEDAW, a U.N. treaty, and since these authors are not aware of


\textsuperscript{105} CEDAW Committee, General Recommendation No. 19, supra note 31, ¶ 9.


\textsuperscript{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.


\textsuperscript{109} See Ignatieff & Desormeau, supra note 106, at 1-2.

\textsuperscript{110} EIGE REPORT, supra note 107, at 31.

\textsuperscript{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"). This index can provide a frame of reference for constructive comparisons between states. 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. 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. In addition, they have argued that the development of country rankings would be politically untenable and would ultimately oversimplify human rights challenges.

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. 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. In fact, there is a wide variance in human development achievement among countries with similar income levels.

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.
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. 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. 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. 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. 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


123. Id. at 9.
of each treaty.\textsuperscript{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."\textsuperscript{125} Specifically, CEDAW obligations require that states act with due diligence.\textsuperscript{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.\textsuperscript{127} Alternatively, some states create broad guarantees in their legal frameworks but fail to implement them in practice.\textsuperscript{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.\textsuperscript{129} These reports are required to be submitted at regular intervals.\textsuperscript{130} Some EU-M States comply with these requirements, while others do not.\textsuperscript{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.\textsuperscript{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.\textsuperscript{133} The CEDAW Committee provides recommendations as to what protections each state should provide. These include:

\begin{flushleft}
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.
129. CEDAW, supra note 9, art. 18.
130. \textit{Id.}
132. \textit{Id.} ¶ 10.
133. CEDAW, supra note 9, art. 2.
\end{flushleft}
(1) equal protection under the law without regard to migration status;\(^\text{134}\) (2) specialized services for migrant victims;\(^\text{135}\) (3) the use of gender-sensitive language;\(^\text{136}\) (4) migration relief for domestic violence victims who report such victimization;\(^\text{137}\) and (5) asylum for victims of domestic violence.\(^\text{138}\)

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;\(^\text{139}\) (2) provide victims of forced marriage the ability to regain any lost status;\(^\text{140}\) and (3) provide subsidiary protection to migrant victims of domestic violence.\(^\text{141}\)

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”).\(^\text{142}\) Non-refoulement protection is derived from Article 33(1) of the 1951 Refugee Convention.\(^\text{143}\) Subsidiary protection is defined under the Qualification Directive 2004/83 to provide protection to those facing “a real risk of suffering serious harm,”\(^\text{144}\) which is defined as “torture or inhuman or degrading treatment or punishment of an applicant in the country of origin.”\(^\text{145}\) 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.\(^\text{146}\)

\(^{134}\) 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 36.

\(^{139}\) 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).


\(^{145}\) 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.

As the individual EU-M State surveys reveal, reform efforts vary from country to country. A complex host of factors likely contribute to these variations. 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. 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.” 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.”

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. Only fourteen of the EU-M States responded to the request for information, representing over just 50 percent of them. Moreover, of the responses received, the SRVAW determined that they were not comprehensive in addressing the questions posed. The SRVAW concluded, based on the information provided, that all states, including EU-M States, are deficient in meeting their obligations under the CEDAW.

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. Article 3 indicates that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” 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. ECHR violations are enforced through the European Court of Human Rights (“ECtHR”). 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;
b) Relief that is sensitive to the historical gender-component in domestic violence;
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]”,
d) The right to confidentially apply for legal immigration status independently of the abuser, and,
e) The right to asylum for individuals that qualify for refugee status.

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

158. Id. art. 3.
159. Id. art. 14.
160. Id. art. 19.
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. 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.

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. The SRVAW can also try to secure protection for a victim.

C. Council of Europe Compliance and Accountability

All EU-M States are members of the Council of Europe. 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” (“Qualification Directive 2004/83”). That document applies to all EU-M States, except Denmark and attempts to standardize the criteria for international and subsidiary protection for refugees. 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.

Qualification Directive 2004/83 articulates the need for a common policy across the European Union. While this Qualification Directive does not set forth
mandates with regard to humanitarian relief,\textsuperscript{178} it does provide specific and detailed standards for international and subsidiary protections.\textsuperscript{179} Paragraph 21 of the preamble establishes the necessity of introducing a common understanding “of the persecution ground ‘membership of a particular social group.’”\textsuperscript{180} It mandates that acts of gender-related violence are to be considered persecutory.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.”\textsuperscript{184}

With regard to subsidiary protection, Qualification Directive 2004/83 sets forth standards for protection.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.”\textsuperscript{188}

Qualification Directive 2004/83 addresses the concept of non-refoulement, mandating that international obligations be followed in this regard.\textsuperscript{189} Principles of non-refoulement are set forth in several treaties, including the 1951 Refugee Convention\textsuperscript{190} and the 1967 Protocol Relating to the Status of Refugees (“1967 Refugee Protocol”).\textsuperscript{191} Article 33 of the 1951 Refugee Convention mandates that,
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"[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."

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.

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. In spite of the progress made in strengthening protections for domestic violence victims, the SRVAW has called for more to be done. 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.

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. 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. 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

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


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.


humanitarian-based visas have actually been issued. 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.

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. CEDAW Specialized Agencies in the European Union have criticized family unification policies in many of the EU-M countries. 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.” 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.”

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. Before a migrant domestic violence victim has achieved a long-term residence status, her residency security is tied to the family sponsor. 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.

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

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).
203. Istanbul Convention, supra note 5, art. 59(1).
205. Id. art. 1.
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.\textsuperscript{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.\textsuperscript{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;\textsuperscript{210} (2) the legal frameworks place migrant females at high risk of refoulement;\textsuperscript{211} (3) female migrant victims have uneven access to humanitarian relief in the form of asylum;\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\begin{flushright}
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.
\end{flushright}
irrelevant when determining whether gender-specific violence amounts to persecution in a particular case.\(^\text{215}\)

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.\(^\text{216}\) 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.”\(^\text{217}\) 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.\(^\text{218}\) Moreover, the extent to which states have acted with due diligence in implementing these protections is subject to debate.\(^\text{219}\)

E. Asylum Claims Generally

In 2012, there were 335,365 requests for asylum made to EU-M States.\(^\text{220}\) This represents approximately 44 percent of the total number of requests for

\begin{footnotesize}
\begin{enumerate}
\item 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.
\end{enumerate}
\end{footnotesize}
asylum worldwide. By way of comparison, the United States received approximately 11 percent of the total worldwide requests. Germany, France, and Sweden received the greatest percentage of total requests, at approximately 23, 18, and 13 percent, respectively. Belgium and the United Kingdom received significant requests as well, at approximately 8 percent each. The remaining EU-M States received, collectively, approximately 28 percent of the applications—representing almost 96,000 requests. Austria, Italy, the Netherlands, and Poland all received between 10,000 and 18,000 requests.

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. By way of comparison, in 2010, most asylum-seekers in the EU were from Afghanistan, Russia, Serbia, Iraq, and Somalia. 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.

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. 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.”

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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).
223. EUROPEAN ASYLUM SUPPORT OFFICE, supra note 220, at 13.
224. Id.
225. Id.
226. Id. at 18 fig.3.
227. Id. at 29 fig.13.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{236} Other states are in various stages of the process of developing these structures.\textsuperscript{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.\textsuperscript{238} It ratified the CEDAW in July 1991,\textsuperscript{239} as well as the CEDAW Optional Protocol in May

\textsuperscript{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)).

\textsuperscript{233} See infra Part IV.

\textsuperscript{234} See supra Part II.

\textsuperscript{235} See supra Part II.

\textsuperscript{236} See infra Part V.

\textsuperscript{237} See infra Part V.


\textsuperscript{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. The Netherlands signed the Istanbul Convention in November 2012, but has not yet ratified it. It has submitted five party reports to the CEDAW Committee, with a sixth report expected in February 2014.

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. 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. 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.”

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. 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


protection by the local authorities."\textsuperscript{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.\textsuperscript{248}

In 2007, the Regulation on provisions for certain categories of foreign nationals became available to victims of domestic violence without a residence permit.\textsuperscript{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."\textsuperscript{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.\textsuperscript{251}

The CEDAW Committee expressed concern about the Netherlands’ asylum policy and how it might exclude victims of domestic violence.\textsuperscript{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."\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{256}

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

\begin{itemize}
\item \textsuperscript{247} Id.
\item \textsuperscript{248} Buleveld \& Mans, supra note 245, at 59.
\item \textsuperscript{249} Netherland’s Fifth Periodic Report, supra note 242, at 24.
\item \textsuperscript{250} Id.
\item \textsuperscript{252} Comm. on the Elimination of Discrimination Against Women, 45th Sess., 916th mtg., 916th mtg. Summary Record.
\item \textsuperscript{254} Id.
\item \textsuperscript{255} Netherlands: Response to List of Issues, supra note 246, at 25.
\item \textsuperscript{256} Id. at 15, 25.
\item \textsuperscript{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.").
\end{itemize}
The SRVAW noted that the humanitarian residence permit only applies to victims who were granted temporary residence due to their cooperation with the police. 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.”

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

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

B. Sweden


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.”).


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.


Swedish law governing migrants is set forth in the Aliens Act.\textsuperscript{274} According to Chapter 4, Section 1, of the Aliens Act, the term "refugee" includes a gender-related particular social group.\textsuperscript{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.\textsuperscript{276} In 2005, the Aliens Act was amended to permit asylum on the basis of gender-based persecution.\textsuperscript{277} The State Migration Board has issued review guidelines on refugee women.\textsuperscript{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."\textsuperscript{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.\textsuperscript{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.\textsuperscript{281} Sweden affords "essentially the same rights to beneficiaries of subsidiary protection" as it does to beneficiaries of refugee status, including family reunification benefits.\textsuperscript{282}

In recent years, Sweden has experienced a series of highly publicized honor killings.\textsuperscript{283} As a consequence, in February 2002, the Swedish Minister for Integration adopted a strategy on how to protect girls living in vulnerable situations.\textsuperscript{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.\textsuperscript{285} One such case involved an Afghani woman, and the ECtHR determined that "women are at


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

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

\textsuperscript{276} Id.

\textsuperscript{277} Id.


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

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

\textsuperscript{281} Id.

\textsuperscript{282} The Impact of the EU Qualification Directive, supra note 251, at 33.

\textsuperscript{283} Coomaraswamy Report, supra note 194, ¶ 1797.

\textsuperscript{284} Id. ¶¶ 1797, 1802.

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.\textsuperscript{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.\textsuperscript{287} The CEDAW Committee has commended
Sweden for its gender-related protection.\textsuperscript{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.\textsuperscript{289}

Sweden's 2012 HDI worldwide ranking is seventh.\textsuperscript{290} Its 2012 GII worldwide
ranking is second.\textsuperscript{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.\textsuperscript{292} As of 2012, Sweden had in place 184 shelters, addressing
about 66 percent of the reported need.\textsuperscript{293}

\textbf{C. Denmark}

Denmark ratified the ECHR in April 1953,\textsuperscript{294} the CEDAW in April 1983,\textsuperscript{295}
and the CEDAW Optional Protocol in May 2000.\textsuperscript{296} It signed the Istanbul
Convention in October 2013, and ratified it in April 2014.\textsuperscript{297} Denmark reported on
its obligations under the CEDAW through an initial report in 1984,\textsuperscript{298} and seven
periodic reports thereafter, with the most recent report submitted in 2008.\textsuperscript{299}

\begin{itemize}
  \item \textsuperscript{286} Id. ¶ 55.
  \item \textsuperscript{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).
  \item \textsuperscript{288} Rep. of the Comm. on the Elimination of Discrimination Against Women, 24th & 25th Sess.,
  \item \textsuperscript{289} See SWEDISH MIGRATION BD., supra note 278, at 1.
  \item \textsuperscript{290} HUMAN DEVELOPMENT REPORT 2013, supra note 108, at 151 tbl.3.
  \item \textsuperscript{291} Id. at 156 tbl.4.
  \item \textsuperscript{292} WAVE REPORT, supra note 120, at 13.
  \item \textsuperscript{293} Id. at 14-15.
  \item \textsuperscript{294} ECHR Treaty Status, supra note 238.
  \item \textsuperscript{295} CEDAW Treaty Status, supra note 239.
  \item \textsuperscript{296} CEDAW Optional Protocol Treaty Status, supra note 240.
  \item \textsuperscript{297} Istanbul Convention Treaty Status, supra note 88.
  \item \textsuperscript{298} Rep. of the Comm. on the Elimination of Discrimination Against Women, 5th Sess., Mar. 10-
  \item \textsuperscript{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
    (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
\end{itemize}
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.\textsuperscript{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] residence permit can also be granted, if exceptional reasons make it appropriate."	extsuperscript{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.\textsuperscript{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."\textsuperscript{303}

Denmark’s 2012 HDI worldwide ranking is fifteenth.\textsuperscript{304} Its 2012 GII worldwide ranking is third.\textsuperscript{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."\textsuperscript{306} There is a nationally organized women’s hotline that provides services twenty-four hours a day, with language interpretation.\textsuperscript{307} Women in shelters who are caring for children are provided with additional support including rehabilitation, schooling, and housing.\textsuperscript{308} The judicial system provides support in connection with protection order enforcement.\textsuperscript{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.\textsuperscript{310} As a consequence, between 2005 and 2008, Denmark focused on a
national action plan to combat domestic violence against women and children. Following the institution of the national action plan, the number of migrant domestic violence victims in shelters in 2006 had declined to 27 percent. By 2012, the number of shelters had climbed to forty-five, meeting 78 percent of the need.

D. Finland

Finland ratified the ECHR in May 1990. It ratified the CEDAW in September 1986, and the CEDAW Optional Protocol in December 2000. It signed the Istanbul Convention in May 2011, but has not yet ratified it. Finland reported on its obligations under the CEDAW through an initial report in February 1988, and five periodic reports thereafter, with the latest report in May 2012.

Finland’s history of developing systems to protect not only domestic violence victims, but migrants who suffer from this abuse, began in 1995. Prior to that time, Finland reported that not only was violence against women considered a “taboo” subject, but that “the legislation in force contain[ed] rules that [were] de facto discriminatory against women.” However, as of 1995, Finland reported...
that assault, battery, and rape were criminalized in the Penal Code even when they occurred within the confines of a domestic relationship.\textsuperscript{324}

By 2001, Finland reported that it had amplified its domestic legislation to include restraining order protections,\textsuperscript{325} was providing free legal assistance to victims,\textsuperscript{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.\textsuperscript{327} Seven years later, Finland reported that despite its efforts, violence against women had remained constant.\textsuperscript{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.\textsuperscript{329} While some gender-based immigration relief was available in the context of "honor crimes" and female genital mutilation,\textsuperscript{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.\textsuperscript{331} As of 2013, Finland was not reporting that it had granted asylum in this context.\textsuperscript{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.”\textsuperscript{333}

\textsuperscript{324} Finland’s Third Periodic Report, supra note 321, at 12-13.
\textsuperscript{326} Id. at 10-11.
\textsuperscript{327} Id. at 13-14.
\textsuperscript{329} Id. ¶ 78.
\textsuperscript{330} Id. ¶ 86.
\textsuperscript{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. Its 2012 HDI worldwide ranking is twenty-first. Its 2012 GII worldwide ranking is sixth. Finland provides some services to victims in the form of a national women’s hotline that offers translation services. However, as of 2012, Finland had only two shelters, and was therefore able to meet only about 3 percent of the reported need.

E. Germany

The Federal Republic of Germany ratified the ECHR in December 1952. It ratified the CEDAW in July 1985. It ratified the CEDAW Optional Protocol on January 15, 2002. It signed the Istanbul Convention in May 2011, but has not ratified it. The government submitted its initial CEDAW report in September 1988. In October 2007, Germany issued its sixth periodic report to the Committee, with a follow-up report issued in September 2011. 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.

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.
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

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.
356. Id. ¶ 60.
understand or combat the high levels of violence within migrant communities.\textsuperscript{358} Rather, it noted that “a secondary analysis of the representative study . . . is available,” which focused on “the relationship between health, violence and migration.”\textsuperscript{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.”\textsuperscript{360}

Germany’s 2012 HDI worldwide ranking is fifth.\textsuperscript{361} Its 2012 GII worldwide ranking is sixth.\textsuperscript{362} Female victims of violence are accepted into shelters “regardless of their residence status.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.”\textsuperscript{366} The law also restricts asylum-seekers’ area of residence to distribute them among the communities and not overburden specific local administrations.\textsuperscript{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.”\textsuperscript{368}


\textsuperscript{359} Id.


\textsuperscript{361} HUMAN DEVELOPMENT REPORT 2013, supra note 108, at 151 tbl.3.

\textsuperscript{362} Id. at 156 tbl.4.

\textsuperscript{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.”).

\textsuperscript{364} 880th mtg. Summary Record, supra note 360, ¶ 44.

\textsuperscript{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.).

\textsuperscript{366} Germany’s Response to List of Issues and Questions, supra note 358, ¶ 23.

\textsuperscript{367} 880th mtg. Summary Record, supra note 360, ¶ 43.

\textsuperscript{368} Id.
Germany offers other forms of protection to migrant domestic violence victims. In the form of "Prohibition of Deportation," the state offers subsidiary protection pursuant to Article 15 of the Qualification Directive. 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."

In a 2010 case, a German administrative court considered the case of a single woman from Nigeria. Her case involved severe domestic violence, as well as FGM and forced marriage. 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. 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. The court did not base its decision on her social group in any context. The applicant was found eligible for protection from deportation under Section 60(7) sentence (1) of the Residence Act. 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."

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. During the proceedings, the asylum-seeker stated that she was subject to violence and threats by her family members living in Kirkuk. 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.

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371. AufenthG [Residence Act] (Ger.).
374. Id.
375. Id.
376. Id.
377. Id.
378. Id.
381. Id.
On the other hand, a similar case decided in 2009, had a different outcome.\textsuperscript{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.\textsuperscript{383} She had defied them under threat of death.\textsuperscript{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.”\textsuperscript{385}

\textbf{F. Slovenia}

Slovenia ratified the ECHR in June 1994.\textsuperscript{386} It ratified the CEDAW in July 1992,\textsuperscript{387} and the CEDAW Optional Protocol in September 2004.\textsuperscript{388} It signed the Istanbul Convention in September 2011, but has not yet ratified it.\textsuperscript{389} Slovenia issued its first CEDAW report in November 1993,\textsuperscript{390} and three periodic reports thereafter, the latest being in May 2007.\textsuperscript{391} It was obliged to issue a report on May 1, 2013, but has not yet done so.\textsuperscript{392}

Slovenia’s asylum law is found in two pieces of legislation\textsuperscript{393}: the 2000 Asylum Act\textsuperscript{394} and the 2007 Aliens Act.\textsuperscript{395} Article 48 of Slovenia’s Constitution
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.” Slovenia only gained its independence in 1991. As such, the UNHCR has provided greater oversight and assistance in the form of commenting on its legislation. The UNHCR has thus had a direct impact on the lives of refugees and asylum-seekers within Slovenia.

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

G. France

France ratified the ECHR in May 1974. It ratified the CEDAW in December 1983 and the CEDAW Optional Protocol in June 2000. It signed the Istanbul Convention in May 2011, and ratified it July 2014. France reported on its obligations under CEDAW through an initial report in February 1986, and four periodic reports thereafter, with the latest report in April 2006. France was
obliged to submit another periodic report on January 13, 2013, which was submitted in February 2014.\footnote{412}

The right of asylum in France has been subject to many changes in recent years.\footnote{413} Since July 25, 1952, it has been amended several times.\footnote{414} Significant amendments were introduced by the Asylum Act adopted on December 10, 2003, which entered into force on January 1, 2004.\footnote{415} France recognizes relief based on membership in a "particular social group."\footnote{416} In a recent study of nine EU Member 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.\footnote{417} France's 2012 HDI worldwide ranking is twentieth.\footnote{418} Its 2012 GII worldwide ranking is ninth.\footnote{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."\footnote{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."\footnote{421} The protection must be renewed annually to determine whether the conditions that necessitated protection continue to exist.\footnote{422}

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)).


\footnote{415. Id.}

\footnote{416. Maryellen Fullerton, \textit{A Comparative Look at Refugee Status Based on Persecution Due to the Membership of a Particular Social Group}, 26 \textit{CORNELI Int'l L.J.} 505, 510 (1993) ("In France, national legislation defines refugees using the precise terms of the [1951 Refugee] Convention definition.").}

\footnote{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).}

\footnote{418. \textit{HUMAN DEVELOPMENT REPORT} 2013, supra note 108, at 151 tbl.3.}

\footnote{419. Id. at 156 tbl.4.}

\footnote{420. CHEIKH ALI ET AL., supra note 417, at 46.}


\footnote{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

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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.
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. Serious harm is defined as ranging from being subject to the death penalty to degrading treatment in the country of origin.

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.

Italy's 2012 HDI worldwide ranking is twenty-fifth. Its 2012 GII worldwide ranking is eleventh. Asylum-seekers may request state-funded legal aid. 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. However, as of 2012, shelters were scarce with only 25 percent of the need met.

I. Belgium

Belgium ratified the ECHR in June 1955. It ratified the CEDAW in July 1985 and the CEDAW Optional Protocol in June 2004. Belgium signed the Istanbul Convention on September 11, 2012, but has not yet ratified it. It reported on its obligations under the CEDAW through an initial report in July 1987 and four periodic reports thereafter, with the most recent report in October 2012.

439. HUMAN DEVELOPMENT REPORT 2013, supra note 108, at 151 tbl.3.
440. Id. at 156 tbl.4.
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.
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. 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. 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.

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.” 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.” 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. 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.”


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 for Refugees has found that domestic violence is persecution under the ECHR); see also Coomaraswamy Report, supra note 194, ¶ 1573.


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.
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. 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. 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, and permits the review of asylum claims in an environment sensitized to the “special needs of women refugees.”

The Aliens’ Police Act governs deferral of deportation protections if a deportation would violate non-refoulement obligations. 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. Humanitarian relief is available pursuant to the Residence Act of 2005. 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. Under current law, if


474. Report by Nils Mužniček 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 Mužniček] (“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.”).


476. Id. ¶ 1565.


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

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Muižnieks, 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
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,
492. Id.
493. ECHR Treaty Status, supra note 238.
Istanbul Convention in May 2011, and ratified it in April 2014. Spain issued its first CEDAW report in August 1985, and six periodic reports thereafter, with the latest in September 2013.

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.” 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. 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. 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. 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]).” Royal Decree 2393/2004 attempts to address these figures by allowing victims who have protection orders to request temporary residence.

494. CEDAW Treaty Status, supra note 239.
495. CEDAW Optional Protocol Treaty Status, supra note 240.
496. Istanbul Convention Treaty Status, supra note 88.
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. 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.

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

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.” The interpretation of this article has developed to include sexual assault victims as a particular social group. The legislation further declares that either state actors or non-state actors under certain circumstances, may carry out such persecution. As a practical matter, authorities cite to the UNHCR Gender-Based Guidelines in adjudicating cases. Spain’s highest appellate body affirmed this through case 1528/2007, involving an Algerian applicant who claimed relief based on domestic violence. The claim involved gender-based persecution in the form of physical and mental abuse.
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


519. Id.

520. Id.

521. Id.


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.


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.’]".\(^{535}\) 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.\(^{545}\)

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\(^{533}\) Id.

\(^{534}\) 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.


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Ireland confers refugee status on successful asylum seekers. If an asylum-seeker is unsuccessful, following any appeals, she may pursue voluntary departure, subsidiary protection, or humanitarian leave to remain. Subsidiary protection is provided when an individual can demonstrate by "substantial grounds" that she would face a real risk of suffering serious harm. 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." Serious harm is defined as ranging from being subject to the death penalty to degrading treatment in the country of origin. Those granted subsidiary protection receive temporary residence permits, employment access, health care, and sponsored housing.

In 2012, Ireland considered the case of a Nigerian woman who had applied for asylum and subsequently for subsidiary protection. 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. She was refused asylum because internal host-country protection was found to be available to her. 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.

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

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548. Id.

549. Id. at 3.

550. Id. at 3-4.


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.\textsuperscript{559} During 2012, it met only about 31 percent of its shelter demand.\textsuperscript{560}

\textit{N. Czech Republic}

The Czech Republic ratified the ECHR in March 1992,\textsuperscript{561} the CEDAW in February 1993,\textsuperscript{562} and the Optional Protocol in February 2001.\textsuperscript{563} It has neither signed nor ratified the Istanbul Convention.\textsuperscript{564} It reported on its obligations under the CEDAW through an initial report in October 1995,\textsuperscript{565} and three periodic reports thereafter, with the final report submitted in April 2009.\textsuperscript{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."\textsuperscript{567} Asylum applications are governed by the Residence of Foreign Aliens in the Territory of the Czech Republic.\textsuperscript{568} The Asylum Act, in Section 12, envisions particular social group claims.\textsuperscript{569}

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

\begin{footnotes}
\footnotetext{559. WAVE REPORT, \textit{supra} note 120, at 13.}
\footnotetext{560. \textit{Id.} at 14-15.}
\footnotetext{561. ECHR Treaty Status, \textit{supra} note 238.}
\footnotetext{562. CEDAW Treaty Status, \textit{supra} note 239.}
\footnotetext{563. CEDAW Optional Protocol Treaty Status, \textit{supra} note 240.}
\footnotetext{564. Istanbul Convention Treaty Status, \textit{supra} note 88.}
\footnotetext{570. \textit{Id.} § 14.}
\end{footnotes}
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. 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." Subsidiary protection is issued for a specific duration, and is renewable, as long as the actual risk of serious harm still persists. In the Czech Republic, refugees are afforded essentially the same rights as beneficiaries of subsidiary protection, including family reunification benefits.

In 2011, the Supreme Administrative Court of the Czech Republic considered a case involving an Uzbeki national from Kyrgyzstan 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. The trial court denied her claim to relief, and the appellate reviewing body dismissed the appeal. 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." The court focused its inquiry on whether the home country authorities could or should offer protection in assessing eligibility.

The Czech Republic's 2012 HDI worldwide ranking is twenty-eighth. Its 2012 GII worldwide ranking is twentieth. 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."

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).
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


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.\footnote{See Comm. on the Elimination of Discrimination Against Women, 35th Sess., 733d mtg. ¶ 7, U.N. Doc. CEDAW/C/SR.733 (May 25, 2006).} 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.\footnote{Id. ¶ 12.} The CEDAW Committee acknowledged that Cyprus was working on the issue,\footnote{Id. ¶ 27.} 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.\footnote{Comm. on the Elimination of Discrimination Against Women, 35th Sess., 734th mtg. ¶ 26, U.N. Doc. CEDAW/C/SR.734 (May 25, 2006).} 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.”\footnote{Id. 1127.} Cyprus reported “that national law contained gender-
specific asylum provisions and that women could be granted asylum in their own right."

Cyprus modified its refugee law in 2007 and 2009, 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. 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. 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.

Cyprus’ 2012 HDI worldwide ranking is thirty-first. Its 2012 GII worldwide ranking is twenty-second. While Cyprus has in place a national women’s helpline, it does not provide twenty-four hour assistance. 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. Recipients of asylum and subsidiary relief have access to employment in restricted areas. Cyprus also provides residency on humanitarian grounds. Cyprus provides family unification protections to recipients of asylum and subsidiary relief.

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. 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.
605. Id. § 19a.
606. Id. § 201.
to its treatment of migrants. 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.”\(^{615}\)


\(^{609}\) Id. at 39.  


\(^{613}\) Id. ¶ 48.  


\(^{615}\) 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 1985\(^{620}\) 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.


\(^{623}\) 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/44e9bddd07d1b8_3-UdSRIC_74_2006_pl_en%5Bl%5D.doc.


\(^{626}\) HELSINKI FOUND. FOR HUMAN RIGHTS, DUBLIN II: NATIONAL ASYLUM PROCEDURE IN POLAND I (2010).
Against Gender Violence in Europe

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.
633. ECHR Treaty Status, supra note 238.
634. CEDAW Treaty Status, supra note 239.
635. CEDAW Optional Protocol Treaty Status, supra note 240.
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. However, in September 2003, Luxembourg enacted legislation on domestic violence that authorized "the removal of a perpetrator of domestic violence from the family home." Luxembourg offers assistance to domestic violence victims, which includes providing information about bringing charges against the perpetrator or requesting a protection order. However, as of 2008, "[n]o population-based survey on violence against women [had] been conducted."

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

R. Lithuania


643. Luxembourg’s Fifth Periodic Report, supra note 638, ¶ 19.
644. Id. ¶ 53.
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.
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. 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.” The Lithuanian government returns these “asylum seekers to the country of transit without reviewing the substantive merits of their applications.”

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. 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.”

Lithuania’s 2012 HDI worldwide ranking is forty-first. Its 2012 GII worldwide ranking is twenty-eighth. While Lithuania has in place a national women’s hotline, as of 2012, it had no shelters to serve victims of violence.

S. Greece

Greece ratified the ECHR in November 1974, the CEDAW in June 1983, and the Optional Protocol in January 2002. It signed the Istanbul Convention in May 2011, but has not ratified it. It reported on its obligations under the
CEDAW through an initial report in April 1985, and four periodic reports thereafter, with the most recent report in December 2010.

Greek law provides for two types of protections: refugee status and subsidiary protection. Until June 7, 2013, Greece offered humanitarian-based relief, as well. 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.” In 2011, a new legal framework reforming the asylum system was adopted in 2011. 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. 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. Greece has in place a procedure for prioritizing case reviews of matters involving persons belonging to vulnerable groups.

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


673. Id.

674. Id.

675. Id.


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. However, shelter services are vastly under supported with only about 9 percent of the need met in 2012. Greece offers no right to free legal representation, but will provide it to eligible low-income individuals. 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. 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.

T. Estonia

Estonia ratified the ECHR in April 1996. It ratified the CEDAW in October 1991, but has not signed the Optional Protocol. It has neither signed nor ratified the Istanbul Convention. Estonia reported on its obligations under the CEDAW through an initial report in June 2001, and a second periodic report in October 2005. Its latest reported was due on November 20, 2012, but has not yet been submitted.

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. In 2002, the

681. WAVE REPORT, supra note 120, at 13.
682. Id. at 14-15.
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.
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.).


\(^{698}\) 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.

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. The abusive conduct included the murder of the couple’s two children. 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. 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.” 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. 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. Its 2012 GII worldwide ranking is thirty-second. 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. As of 2012, Slovakia had in place two shelters, addressing about 5 percent of the reported need.

V. Croatia

Croatia ratified the ECHR on November 1997, the CEDAW in September 1992, and the CEDAW Optional Protocol in March 2001. It signed the


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.\(^\text{724}\) It reported on its obligations under the CEDAW through an initial report in January 1995,\(^\text{725}\) and two periodic reports thereafter, with the latest in September 2013.\(^\text{726}\) Croatia’s legislation provides for asylum and subsidiary protections.\(^\text{727}\) 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.\(^\text{728}\) However, as of 2012, Croatia did not offer a national women’s helpline,\(^\text{729}\) but its nineteen shelters provided shelter for 77 percent of the needed population.\(^\text{730}\) Croatia’s 2012 HDI worldwide ranking is forty-seventh.\(^\text{731}\) Its 2012 GII worldwide ranking is thirty-third.\(^\text{732}\)

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.\(^\text{733}\) While its first report to the CEDAW Committee in 1994 recounted the widespread nature of the human rights abuses during the previous years,\(^\text{734}\) by 2003, its second report reflected marked changes in the protections available to female victims of violence in general.\(^\text{735}\) Croatia adopted a Law on Gender Equality in 2008,\(^\text{736}\) as well as a Law on Protection from Domestic Violence in 2003.\(^\text{737}\)

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\(^{722}\) CEDAW Treaty Status, supra note 239.

\(^{723}\) CEDAW Optional Protocol Treaty Status, supra note 240.

\(^{724}\) Istanbul Convention Treaty Status, supra note 88.


\(^{728}\) 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.

During the period from 2008 through 2010, Croatia implemented an official national strategy, 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. While the governing law envisions particular social group claims to protection, 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, but some victims may receive some assistance in appeals. 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.

In 2012, Croatia created an Administrative Court with responsibility for appeals of asylum claims. During 2013, the UNHCR anticipated working with Croatia to support the growth in asylum-seekers and improve the quality of the asylum system. It planned to work with Croatia to improve programs for vulnerable groups. 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. 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.” The protections include the right of non-refoulement where a


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.

742. Id.
746. Id.
747. HRW, WORLD REPORT 2013, supra note 741, at 421.
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.
757. Id. pt. 11, ¶ 334(v).
758. Id., ¶ 339C(iii).
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.\textsuperscript{760}

The SRVAW expressed concern “about the absence of a national strategy on the prevention and elimination of violence against women.”\textsuperscript{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.”\textsuperscript{762}

The United Kingdom’s 2012 HDI worldwide ranking is twenty-sixth.\textsuperscript{763} Its 2012 GII worldwide ranking is thirty-fourth.\textsuperscript{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.\textsuperscript{765} As of 2012, the United Kingdom had in place 1,105 shelters, addressing about 87 percent of the reported need.\textsuperscript{766}

\textbf{X. Latvia}

Latvia ratified the ECHR in June 1997.\textsuperscript{767} It ratified the CEDAW in April 1992.\textsuperscript{768} It has not signed nor ratified the Optional Protocol.\textsuperscript{769} Additionally, it has neither signed nor ratified the Istanbul Convention.\textsuperscript{770} Latvia issued its first report to the CEDAW Committee in June 2003.\textsuperscript{771} While it was obliged to issue a periodic report on May 14, 2005, it has not yet done so.\textsuperscript{772}

Latvia provides asylum relief and a subsequent permanent residence permit,\textsuperscript{773} as well as subsidiary relief in the form of an annually renewable temporary residence permit, which embodies the principles of non-refoulement to

\begin{itemize}
\item \textsuperscript{760} CHEIKH ALI ET AL., supra note 417, at 33-34.
\item \textsuperscript{761} Coomaraswamy Report, supra note 194, ¶ 1849.
\item \textsuperscript{762} Id.
\item \textsuperscript{763} HUMAN DEVELOPMENT REPORT 2013, supra note 108, at 151 tbl.3.
\item \textsuperscript{764} Id. at 156 tbl.4.
\item \textsuperscript{765} WAVE REPORT, supra note 120, at 13, 284.
\item \textsuperscript{766} Id. at 14-15.
\item \textsuperscript{767} ECHR Treaty Status, supra note 238.
\item \textsuperscript{768} CEDAW Treaty Status, supra note 239.
\item \textsuperscript{769} CEDAW Optional Protocol Treaty Status, supra note 240.
\item \textsuperscript{770} Istanbul Convention Treaty Status, supra note 88.
\item \textsuperscript{773} Asylum Law § 27 (Jan. 20, 2005) (Lat.), available at http://www.legislationline.org/documents/id/3815.
\end{itemize}
migrants seeking the state’s protection. 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.” In some circumstances, Latvia provides humanitarian relief. The protection offers employment eligibility and family unity protections.

Latvia’s 2012 HDI worldwide ranking is forty-fourth. Its 2012 GII worldwide ranking is thirty-sixth. Latvia provides free legal assistance for asylum appeals only. However, it does provide translation for all interviews. Family unity protection is afforded to successful asylum-seekers. As of 2012, Latvia had neither a national women’s hotline, nor any shelters. 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.” Moreover, the laws did not recognize psychological violence” for purposes of criminal liability.

Y. Bulgaria

Bulgaria ratified the ECHR in September 1992. It ratified the CEDAW in February 1982 and the Optional Protocol in September 2006. It has neither signed nor ratified the Istanbul Convention. It reported on its obligations under the CEDAW through an initial report in June 1983, and two periodic reports

774. Id. § 2.
775. Id. § 35(1)(1).
777. Asylum Law, §§ 37, 40 (Lat.).
778. HUMAN DEVELOPMENT REPORT 2013, supra note 108, at 151 tbl.3.
779. Id. at 156 tbl.4.
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.
786. ECHR Treaty Status, supra note 238.
787. CEDAW Treaty Status, supra note 239.
788. CEDAW Optional Protocol Treaty Status, supra note 240.
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thereafter, with the latest report in September 2010. It is obliged to issue its next report on July 30, 2016.

Bulgarian asylum law is governed by the Law for Asylum and Refugees, and its subsequent amendments. It enacted protections for victims of domestic violence with the passage of the Protection from Domestic Violence Act ("DVA"). 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. 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. Shelter services were provided to less than 8 percent of the reported demand, in 2012. Bulgaria’s 2012 HDI worldwide ranking is fifty-seventh. Its 2012 GII worldwide ranking is thirty-eighth.

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. 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. Domestic violence is prosecuted as a criminal matter only in

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795. Protection Against Domestic Violence Act, arts. 2-3 (Bulg.).

796. Protection Against Domestic Violence Act, arts. 2-3 (Bulg.).
exceptional circumstances and where substantial injury is involved, and the victim is unable to bring a private prosecution by him or herself.  

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.  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.  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.  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.  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.  Over the next two years, the CEDAW Committee reviewed the claim, and issued its finding in July 2012.  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.  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.”  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.  During a
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. In July 2009, she received a Bulgarian residence permit. With the escalating domestic violence, however, she contemplated pursuing a divorce.

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. The Bulgarian authorities issued a restraining order against Ms. Jallow, and placed the child under the care and custody of her husband. Soon thereafter, he instituted divorce proceedings against Ms. Jallow, and sought custody of their daughter.

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. She argued that due to language barriers she had extremely limited access to the institutions that are charged with addressing gender-based violence. 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. 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.

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.

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.

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 2002 830 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,
826. ECHR Treaty Status, supra note 238.
827. CEDAW Treaty Status, supra note 239.
828. CEDAW Optional Protocol Treaty Status, supra note 240.
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,
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,
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).
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

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.
Refugee protection is indefinite. 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. 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." Tolerated stay status is valid for one year, but can be withdrawn at any time or renewed upon expiration.

Hungary's 2012 HDI worldwide ranking is thirty-seventh. Its 2012 GII worldwide ranking is forty-second. In 2012, Hungary provided no shelter services, and was unable to provide support to the more than 1,000 individuals that needed assistance. All asylum seekers are eligible for free legal aid. Hungary affords essentially the same rights to beneficiaries of subsidiary protection as it does to beneficiaries of refugee status, including family reunification benefits.

Hungary recognizes in law and practice that gender-related claims may warrant specific considerations. 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." 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.

853. Id.
854. Id.
856. Id. at 156 tbl.4.
857. WAVE Report, supra note 120, at 13, 131.
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 1987\(^ {867}\) 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.


\(^{870}\) 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. 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. 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. 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. 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 obliges parties to implement gender-based asylum protection to further eradicate violence against women and domestic violence. Article 61 reiterates non-refoulement principles for this purpose, as well. However, to date, only eight EU-M States have ratified the Convention.

878. See supra note 756 and accompanying text.
880. Id. ¶ 42.
881. Id.
882. Istanbul Convention, supra note 5, art. 60.
883. Id. art. 61.
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.\textsuperscript{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.

\textsuperscript{885} Istanbul Convention, supra note 5, art. 68.