CHAPTER - 6

GLOBAL TRENDS RELATING TO DOMESTIC VIOLENCE

6.1 DOMESTIC VIOLENCE IN CHINA:

Sexual violence is a global problem. It occurs in different cultures and in many settings of society, including the community, workplace, school, and home. The negative impact of sexual violence is not confined to the survivors; it affects the health of the whole population. Apart from reproductive and sexual health problems, including unwanted pregnancy and transmission of diseases, survivors of sexual violence may experience psychological distress comparable to Post-Traumatic Stress Disorder and may even commit suicide.

6.1.1 Scope of Chinese Societies

Broadly speaking, the Chinese population includes immigrants in Western and Asian societies, and those living in Mainland China, Hong Kong, Macau, and Taiwan. However, the majority of the Chinese live in predominantly Chinese societies, such as those of Mainland China, Hong Kong, Macau, and Taiwan. These societies differ in terms of their socio-political and socio-economic structures.

There are also huge differences between people in rural areas and those in cities, and between Northern and Southern China. In Southern China, in regions such as the Pearl River Delta and Shanghai, there is a longer history of economic development and exposure to Western cultures. When comparing men from Shanghai and Beijing, the latter are
reportedly more traditional and dominant in the home, while the former are generally viewed as less dominant. Chinese populations are heterogeneous. Caution should therefore be exercised in interpreting findings from studies, because no study can represent all Chinese people in these societies.

6.1.2 Risk Factors for Sexual Violence

Sexual violence is an abuse of a gendered power. Survivors are usually less powerful, women, children and employees, while men especially as parents or caretakers and employers are potential abusers. The study of sexual violence in China is still in its infancy. Studies of risk factors associated with intimate partner violence in general and sexual violence in particular are included in this review. When discussing the cultural, individual and other risk factors, it is important to note that the limitations of the study designs are such that it is only possible to establish that many of them are associated behaviours and circumstances, and not a causal relationship. Nonetheless they are important markers of risk contexts.

6.1.3 Cultural values and attitudes

Patriarchy has been identified as playing an important role in violence. Within the family, men may use violence to exert their position of dominance over their partner or their children. Patriarchy may also contribute to male domination in the society.

6.1.4 Patriarchal authority at home

The social and cultural legitimacy of women's subordination is regarded as an important factor that contributes to violence against
women. Patriarchal authority and holding a strong belief in patriarchal
gender relationships were reported to have significant correlations with
spousal violence in Chinese populations.

In Chinese culture, male dominance and patriarchal ideology have
been seen as core family values and treated as proverbs of life. Even
females were found to have held on to traditional values and to believe
that there were good reasons to beat a wife, especially as a way of
preserving the "face" of the male partner.

The lack of legal and social support for survivors is an indication
of the social isolation that makes it difficult for a survivor to disclose
intimate partner violence. This is particularly true for survivors growing
up in rural areas of China and for immigrants to cities.

Regarding survivors of spousal violence, Liu argues that even
though divorce has been used by battered women as a way to end their
abusive experience in many countries, it is not common for battered
women in China to use divorce as a way out of an abusive relationship.
Divorce has been controlled strictly by the government and by social
norms, and battered women lack personal resources. Thus, "enduring
violence" has become a main coping strategy for battered women in
China.

6.1.5 Patriarchal authority in society

In modern China, after 1949, the government of the People's
Republic of China declared in a constitutional legal document that
women should enjoy equal rights with men in respect of politics,
economics, culture, education, and social life. In reality, however, legal
equality between men and women does not amount to true equality. The
patriarchal social order and family system have long been supported by the economic and social processes in Chinese society. This has resulted in the subordination of women and in violence against women. The government's inaction in combating domestic violence has been criticised as a social factor, in particular, the gender insensitivity of the criminal justice system, insufficient laws combating violence against women, the lack of coordination between government departments in helping survivors, and system failure in survivor protection.

6.1.6 One-stop service for survivors of sexual violence:

A number of one-stop services are also available, these include:

Multi-purpose Crisis Intervention and Support Center: The Crisis Center, operated by the Tung Wah Group of Hospitals, is a crisis intervention and support service which aims to provide comprehensive support to survivors of sexual violence and individuals and families in crisis, or those that are facing domestic violence, and to link them with appropriate health care and social services units. The Crisis Center commenced operation on 26 March 2007. Services provided include a 24-hour hotline, crisis intervention, immediate medical examination, treatment including pregnancy prevention, screening for sexually transmitted diseases, medical follow-up (including treatment for sexually transmitted diseases), gynaecological treatment, providing a report to the police, taking statements from survivors, forensic examination, and other legal proceedings.

The Sexual Violence Crisis Centre: Apart from the mainstream casework units, a Sexual Violence Crisis Centre was set up by the Association Concerning Sexual Violence Against Women in 2000, with
funding support from the Hong Kong Jockey Club Charities Trust. Its aim is to provide a one-stop service for female survivors of sexual violence. Located in Kwong Wah Hospital, Rainlily provides services to female survivors of sexual violence including a hotline, 24-hour crisis intervention, the arrangement of police interviews and forensic examinations, medical service support, in-depth or long term counseling, escort services, a survivors' support group, volunteer training, and publicity.

Negative responses from service providers, family and community members are associated with higher levels of psychological symptoms and poorer self rated recovery among survivors. It is important then to inculcate a culture among services for sexual assault survivors that promote positive, supportive responses which can in turn lead to better psychological outcomes for survivors.

6.1.7 National policy and law making

China has been a party to the Convention on the Elimination of All Forms of Discrimination Against Women since 1980. The Chinese government adopted the Beijing Declaration and Platform for Action at the Fourth World Conference on Women, held in September 1995. The Chinese government has made several important laws to stop domestic violence and sexual harassment.

6.1.8 Marriage Law: Article 43 of the Marriage Law of the People's Republic of China states that a victim of domestic violence shall have the right to make a request to an organ of public security to halt the violence and the public security organ shall stop the violence and shall subject the wrongdoer to an administrative penalty.
6.1.9 Protection of Rights and Interests of Women Law: The government's commitment to stop all forms of domestic violence is also stated in the Law of the People's Republic of China on the Protection of Rights and Interests of Women which was amended in 2005 to include sexual harassment. Article 40 states, "Sexual harassment of women is prohibited. The female victims shall have the right to file complaints with the units where they work and the departments concerned." It is further stated in Article 46: "Domestic violence against women is prohibited. The State takes measures to prevent and stop domestic violence. The departments of public security, civil affairs, judicial administration, as well as urban and rural mass organisations of self-government at the grass-roots level and public organisations shall, within the scope of their respective duties, prevent and stop domestic violence, and provide succour to female victims."

6.1.10 Protection of Minors Article 8 states: "The parents or other guardians of minors shall fulfill their responsibility of guardianship and their obligations according to law to bring up the minors. They shall not maltreat or forsake the minors, nor shall they discriminate against female or handicapped minors. Infanticide and infant-abandoning shall be forbidden." Sexual violence against children should be prohibited and survivors should be protected.

Policy papers, stating guidelines for development of women and children, have also been published. The Programme for the Development of Chinese Women (1995 to 2000) states that equality between men and women, and the prevention of domestic violence should be adopted as basic state policies. In the Programme for the Development of Chinese Women (2001 to 2010) the government stresses the importance of the development of women and children, and makes a solemn commitment to
the international community. In the Programme for the Development of Chinese Children (2001 to 2010) it was emphasised that children should be protected from any form of violence, including sexual violence, by the enforcement of the law.

(A) **Central mechanism for handling domestic violence**

The National Working Committee on Children and Women under the State Council is a coordinating organisation, responsible for advising government departments on the prevention of domestic violence. The major tasks of the Committee are to coordinate government departments to implement the policies set out by the Programmes for the Development of Chinese Women and Chinese Children.

The All-China Women's Federation is the largest Non-Governmental Organization that aims to improve the status of women in China. Its basic function is to support women, protect their rights and interests, and promote equality between the sexes. It promotes the ending of domestic violence as well as the protection of women and children at national and local levels through its affiliated branches in all provinces.

(B) **Prevention and intervention services**

The following prevention and intervention services are available in Mainland China:

- **Legal and policy responses:** The Law of the People's Republic of China on the Protection of Rights and Interests of Women has been passed by the central government and legislation by the provincial governments is in the process of enactment. Hunan and Anhwei Provinces have already passed their laws and regulations on the
Protection of Rights and Interests of Women. They have provided a clear legal definition of sexual harassment in the workplace. Anhwei has set up a specialised unit to combat sexual harassment in the workplace. Shanghai passed a similar law and regulation on April 26, 2007. The law and regulation define different types of sexual harassment and also clarify the roles of related government departments in handling sexual harassment complaints.

Some local governments are also active in combating domestic violence. For example, Fuzhou local government has established the Circuit Court for Women. The purpose of which is to safeguard women's rights and interests. It comprises eight judges, some of whom are women, as well as special jurors, including the director of the Minhou Women's federation and the heads of women's federations in 16 administrative districts. This special court serves the needs of women that are survivors of domestic violence and simplifies the legal procedures of domestic violence cases.

- **Hotline and community-based programmes**: There are increasing numbers of services in Mainland China which aim to halt or prevent domestic violence, including hotline and counseling services, shelters for battered women, and educational programmes and campaigns such as the "zero domestic violence community" campaign of the All-China Women's Federation in 2005. The hotline service is the most accessible service for women survivors in Mainland China. Most of the hotline services are provided by the All-China Women's Federation in provinces and cities. They provide information on laws, women's rights, and counseling. Service provision varies greatly between municipalities.

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provinces, autonomous regions, and special administrative regions.

In Shanghai, the Shanghai Women's Federation dealt with 3,000 hotline cases in a year. About 40% concerned marital conflict and about 10% reported domestic violence. Only a few callers enquired about sexual violence. The Shanghai Women's Federation organises a public campaign to promote the six rights of women (political, economic, cultural and education, property, marriage, and family) and also promotes schooling for all girls. There are two refuges for battered women in Shanghai. Although its provision of beds is modest, it is underutilised. There are three main reasons for this: (1) the lack of publicity; (2) the lack of social security and housing arrangements after divorce that makes it difficult for battered women to leave an abusive relationship; (3) the service providers are worried that it may be difficult to maintain the refuge as temporary accommodation, because service users might not want to leave after a short period of time in view of the lack of support services. There are virtually no services for women from rural areas and cities other than Shanghai.

In Beijing, in addition to the services provided by the Beijing Women's Federation, another key Non Governmental Organization is the Maple Women's Psychological Counseling Center. It also provides a hotline and counseling services to survivors of domestic and sexual violence. In Shaanxi, the Research Association for Women and Family provides training and services for battered women.

In Nanjing, an anti-domestic violence network was established in 2003. It is an Non Governmental Organization with members drawn from community leaders and volunteers, which aims to build a strong support network and identify domestic violence cases at an early stage. A refuge
was first established in 2002. There are now over 20 refuges in Nanjing. However, very few battered women have made use of the service. Apart from the refuges, there are campaigns and public forums on domestic violence prevention. New services have been provided in recent years, such as a counseling service\(^{37}\) and a crisis support centre. \(^{38}\) Because resource support from government is weak, these services are mainly run by volunteers.

In Shenzhen's Lo Wu district, a centre for the prevention of family violence in Lo Wu was established in 2004.\(^{39}\) The government units involved includes the judiciary, prosecutors, police, health and civil affairs departments, and the Women's Federation. It is mainly a service coordinated by government departments. They provide support and information for the victims of family violence, and make formal referrals to the forensic services for physical examinations, which can be used as evidence in court proceedings. The centre has 10 units, covering 10 streets in Lo Wu district. It forms a strong network reaching out to families. Except for a few salaried employees who work for the Women's Federation, most of the workers are volunteers.

- **Health care and forensic examination:** There is no specific health service or health care package available for survivors of sexual violence. A forensic examination can be included in some injury examination services for domestic violence, such as that provided by Fada Institute of Forensic Medicine and Science, \(^{40}\) which is subordinate to the Institute of Evidence and Forensic Science (China University of Political Science and Law). In principle, survivors of sexual violence can use this service.
6.2 DOMESTIC VIOLENCE IN HONG KONG

(a) Social policy and law reform

In Hong Kong, zero tolerance of violence is the policy for combating domestic and sexual violence, but what this actually means is vague. Calls have been made for a domestic violence policy which clearly states the commitment of the government to tackle domestic violence, its philosophy to combat domestic violence and its strategies to fight and prevent domestic violence.

Hong Kong has a very comprehensive legal system which defines criminal sexual offences and criminal procedures. At present, there are three ordinances in Hong Kong that provide survivors with protection against domestic and sexual violence. They are the Crimes Ordinance (CAP 200), which defines criminal offences such as marital rape, rape, unlawful sexual act, indecent assault, incest, and other child-related sexual offences, as well as the Prevention of Child Pornography Ordinance (CAP 579). The Offences against the Person Ordinance (CAP 212) can also be applied to domestic violence appeals. The three criminal laws, which are part of the criminal justice system, are punitive in nature. Two civil statutes are preventive in nature: the Domestic Violence Ordinance (CAP 189) and the Sex Discrimination Ordinance (CAP 480).

Two major procedures deal with domestic and sexual violence cases. For criminal cases, the decision on whether or not to prosecute depends on whether the Department of Justice considers that "there is enough evidence to secure a conviction, and whether the prosecution is in

the public interest." Following arrest, a person charged with a criminal offence will make a first court appearance before a magistrate. The appearance will be in the magistracy which has jurisdiction over the location where the alleged violence occurred. A defendant who wants to be legally represented can choose between private lawyers or the lawyers who participate under the Duty Lawyer Scheme.

Marital rape has been criminalised only recently. In a landmark decision, the House of Lords in Regina v R, found that a husband might be guilty of the rape of his wife if the wife did not consent to sexual intercourse. Subsequent to consultation, all parties consulted including the Government agreed that marital rape was an offence and that the law should be amended to clarify that beyond doubt. As a result, a new section 117(1B) of the Crimes Ordinance (CAP 200) was enacted: in order to avoid any doubt, it is declared that for the purposes of sections 118, 119, 120, and 121, "unlawful sexual intercourse" includes sexual intercourse that a man has with his wife.

In civil cases, an Injunction Order under the Domestic Violence Ordinance (CAP 189) can be used in domestic and sexual violence cases. The existing the Domestic Violence Ordinance (CAP 189), was created in 1986, and can no longer meet the challenges of the many faces of domestic violence. The amendment bill, which was gazetted on 15 June 2007, was introduced into the Legislative Council (LegCo) on 27 June 2007. The Government proposed amendments to the Domestic Violence Ordinance to enhance protection for survivors of domestic violence.

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253 S. 41. The 2006-07 Policy Address: Strong Governance for the People. 2006. Hong Kong
The Sex Discrimination Ordinance (CAP 480) is also part of the civil law. The Sex Discrimination Ordinance is an anti-discrimination law passed in 1995. Discrimination on the basis of sex, marital status, pregnancy, or sexual harassment is made unlawful under this law. Protection is granted in seven different fields. The law applies to both males and females. The Sex Discrimination Ordinance provides for the establishment of an Equal Opportunities Commission to work towards the elimination of discrimination and harassment, as well as to promote equal opportunity between men and women. A complaint on sexual discrimination or sexual harassment can be lodged with the Equal Opportunities Commission. After a complaint is received, the EOC must first investigate the complaint and decide if it should be disallowed or should proceed to conciliation.

(b) Central mechanism for handling domestic violence

A Working Group on Combating Violence, chaired by the Director of Social Welfare, was created in 2001 to provide high-level coordination between the parties dealing with domestic and sexual violence. One of its tasks has been to develop approaches to the problem, from prevention and service provision to intersectoral collaboration, and so on. The Committee on Child Abuse, and similar working groups have been established to deal with child abuse and elder abuse. The working groups have adopted various procedures for handling child abuse, domestic and sexual violence cases. The Procedural Guidelines for Handling Adult Sexual Violence Cases were revised in 2007 in order to adopt a multi-disciplinary approach to working with survivors of sexual violence. The approach ensures close cooperation and collaboration with other professionals, to minimise the need for the survivor to repeat the ordeal of answering questions and to ensure that appropriate support and assistance
are facilitated. In most circumstances, with the consent of the survivors, the designated social worker and the Multi-purpose Crisis Intervention and Support Center operated by the Tung Wah Group of Hospitals, act as case manager to handle sexual violence cases.

Thus the development of professional and specialised services for sexual violence in Hong Kong is advanced and comprehensive. The criminal justice, health, and welfare systems are well developed and coordinated so that they both serve the survivors of sexual violence and deal with offenders. Over 90% of the social services are funded by the government. The great limitation of the services for sexual violence, and in general, domestic violence, is the lack of a policy. Service provision, though comprehensive, is pragmatic and uncoordinated. It is treatment-oriented, using a medical approach, rather than prevention or empowerment approaches. In terms of law reform, although the Bill of Rights Ordinance and the Sex Discrimination Ordinance were enacted in the 1990s, gender discrimination still permeates the laws and social policies of Hong Kong. While the government stresses that it objects to all kinds of discrimination, it has not revised or repealed statutory provisions or modified development strategies that are gender biased. Examples include the New Territories small house policy, the offence of gross indecency and the government's public housing policy.

In the recent reform of the Domestic Violence Ordinance, the government did not criminalise domestic violence or establish a domestic violence policy. The definition of violence remains narrow and does not include all forms of abuse such as psychological abuse, stalking, and sexual abuse in intimate relationships (including homosexual relationships). Furthermore prevention has yet to be comprehensively addressed.
The lack of a policy on sexual violence in both Mainland China and Hong Kong means there is no coherent basis from which to monitor the problem and to develop appropriate responses to survivors and programmes for perpetrators and to develop effective prevention strategies.

6.3 DOMESTIC VIOLENCE IN ENGLAND:-

Violence against women was recognised as a fundamental infringement of human rights in the 1993 United Nations Declaration on the Elimination of Violence against Women and was a major topic at the 1995 Beijing Fourth World Conference on Women (UN Women, 1995). The serious consequences of domestic violence have also been recognised by the World Health Organisation. Over the past 30 years there have been major changes in the national policy and comprehension of domestic violence in the United Kingdom driven and in response to advocacy and campaigning by the women's movement and non-governmental organisations providing services to abused women. In the shadow of policy developments, since the late 1980s, the criminal justice system, in particular the police service has been involved in configuring justice responses to the problem of domestic violence. Responses followed in the health and social care services policy arena. Many government and non-government institutions started commissioning research on domestic violence and formulating policy recommendations. At the end of the 1990s two events had a particular influence on the development domestic violence policy in the United Kingdom; first, the increasing interest in aligning United Kingdom policies with the strategic objectives agreed in the Beijing Platform for Action (UN Women, 1995) to promote the human rights of women, and secondly New Labour taking power in England (1997) with a manifesto commitment to take forward
policy development to combat domestic violence. During the period between 1997 and 2010, the main focus of policy and legislation on domestic violence was on implementing measures based on prevention, protection and justice and the provision of support for victims of domestic abuse, to be implemented by partnerships of service providers at local and national levels. Interestingly, in formulating policy, the government defined domestic violence in a gender-neutral way. Since 2010, following the election of a Coalition government (Conservatives and Liberal Democrats), there is a shift in policy direction with increased focus on a more broad gender-based agenda to end violence against women and girls.

Each of the four countries of the United Kingdom develops their own domestic violence strategy. Scottish policy is outlined in the Scottish Government and the Convention of Scottish Local Authorities (2009), 'Safer Lives: Changed Lives a Shared Approach to Tackling Violence against Women in Scotland' and focuses on Prevention; Protection of victims; Provision of services and Participation of all agencies to ensure policy making and practice development around violence against women is informed by those who use domestic violence services. Recent initiatives in relation to domestic violence in Scotland are framed within meeting gender equality priorities. In Northern Ireland, the current strategy is set out in —Tackling Violence at Home — A Strategy for Addressing Domestic Violence and Abuse in Northern Ireland and is supported by Action Plans up to 2012. In 2008 the Northern Ireland government published — Tackling Sexual Violence and Abuse — A Regional Strategy (2008). These two strategies run in tandem and it planned that in March 2012 a joint Domestic and Sexual Violence and Abuse Action Plan will be published taking forward actions on a collaborative basis.
Tackling Domestic Abuse: The All Wales National Strategy supported also by yearly action plans. This was superseded in 2010 with the publication of “The Right to be Safe” which is six year integrated strategy for tackling all forms of violence against women and has an increased focus ensuring that —the whole violence against women agenda is tackled effectively.

DEFINITIONS :-

English criminal law does not explicitly criminalise domestic violence. Until recently there was no shared definition of domestic abuse among all interested parties. Lack of a common definition of domestic abuse has led to misinterpretations and hampered research and policy recommendations with different agencies and the government using a variety of different definitions. In 2004, government agencies agreed to the use of the following gender-neutral definition which views domestic violence as existing in a range of adult relationships:

*Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.*

An adult is defined as any person aged 18 years or over. Family members are defined as mother, father, son, daughter, brother, sister and grandparents whether directly related, in-laws or step-family. The definition is supported by an explanatory text:

*The definition acknowledges that domestic violence can go beyond actual physical violence. It can also involve emotional abuse, the destruction of a spouse's or partner's property, their isolation from*
friends, family or other potential sources of support, control over access to money, personal items, food, transportation, the telephone and stalking. Violence will often be witnessed by children and there is an overlap between the abuse of women and abuse (physical and sexual) of children. The wide adverse effects of living with domestic violence for children must be recognised as a child protection issue. They link to poor educational achievement, social exclusion and to juvenile crime, substance misuse, mental health problems and homelessness from running away. It is acknowledged that domestic violence and abuse can also manifest itself through the actions of immediate and extended family members through the perpetration of illegal activities, such as forced marriage, so-called 'honour crimes' and female genital mutilation. Extended family members may condone or even share in the pattern of abuse.\(^{254}\)

The United Kingdom Government is currently reviewing policy in this area and is utilising the United Nations Declaration’s (1993) definition, namely:

*Any act of gender-based violence 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’.*

The current government is consulting on whether to extend this definition to include younger people.

6.3.1 THE DEVELOPMENT OF POLICY ON DOMESTIC VIOLENCE

The Home Office is defined as the lead government department for the co-ordination of domestic violence policies and initiatives, providing guidance to other governmental departments and co-operating with non-governmental organisations to develop and implement policy. The Home Office provides undertakes research, provides information and releases statistics on the prevalence of domestic violence.

6.3.2 Domestic Violence Policy Development in England 1990-2004

From the beginning of the 1990s the approach taken by successive English administrations to address domestic violence has been to promote an inter-ministerial approach to policy development at a national level and multi-agency co-ordination at local level to implement policy and to provide services. This approach is in line with United Nations recommendations (United Nations, 1993) and mirrors policy development and implementation in other related fields (for example child protection and crime prevention) and was supported in 1992 by a House of Commons Home Affairs Committee (1992) on Domestic Violence. Local level inter-agency co-ordination to tackle domestic violence was called for in a Home Office Circular published in 1995, and the establishment of local domestic violence forums in which police, social services, housing services, probation, health services, legal professionals, and a range of voluntary agencies work together in local communities to tackle domestic violence.

Inter-ministerial consultation on domestic violence paved the way for the publication of *Living without Fear: An Integrated Approach to*
Tackling Violence against Women in 1999 (Home Office and the Women’s Unit of the Cabinet Office). While many hoped that this would set out a comprehensive national strategy on domestic violence, the government at this time chose to position itself as supporting locally driven and non-governmental sector multi-agency initiatives, adding value to and supporting this work, rather than taking a leading role in combating domestic violence. The central government role was framed firmly in terms of implementing criminal justice measures and crime reduction. Further guidance for local areas was published in 2000, namely, Domestic Violence: Break the Chain Multi-Agency Guidance for Addressing Domestic Violence. In June 2003 the Home Office published a policy consultation paper Safety and Justice: The Government’s Proposals on Domestic Violence following wide-ranging consultation with and advocacy by a number of parties including survivors of domestic violence arguing for a more pro-active approach (Hague, 2005). Safety and Justice (2003) detailed the extent of domestic violence in England, the impact on victims and the wider costs to society and introduced the government’s proposed strategy for tackling domestic violence based on three elements, prevention, protection and justice and support for victims to rebuild their lives. It also proposed legislative and non-legislative changes to the way domestic violence is dealt with in England and Wales and suggested a range of new measures including multi-agency reviews of domestic violence murders; criminalising breach of non-molestation and occupation orders and extending their availability; making common assault an arrestable offence; giving victims the status of vulnerable/intimidated witnesses; registration of domestic violence offenders, and specialist domestic violence courts (Home Office, 2003). Safety and Justice, in contrast to the majority of previous public sources, recognised not only female victimisation in domestic abuse but also

### 6.3.3 Recent Domestic Violence Policy Development in England 2005 to 2011

The 2005 Home Office publication of *Domestic Violence: A National Report* marked a shift in central government policy. Noting the contribution to date of statutory and voluntary organisations, it announced that the Government has now become a full member of that partnership (p.3) working in the field of domestic violence. The National Report (2005) made seventeen commitments to support and develop public services to respond proactively to domestic abuse and included support of new measures including Specialist Domestic Violence Courts and Independent Domestic Violence Advisers. The *National Domestic Violence Delivery Plan* (2005) set out objectives focusing on the reduction of the prevalence of domestic violence and domestic violence related homicides; increasing the rate domestic violence is reported to the police and brought to justice, and the provision of support and protection to victims. Performance indicators were listed to measure progress in these areas, with yearly reviews timetabled and annual progress reports were published in the period 2006 to 2009. Although this could be seen to be the first major step in national planning in which the government took a clear lead, criticisms were made of this approach. The Sixth Home Affairs Select Committee Report on Domestic Violence (2008) faulted the process of policy implementation, in particular that policy was disproportionately focused on criminal justice responses at the expense of
effective prevention and early intervention and called for a more direct focus on violence against women more generally and an increased emphasis on prevention.

A subsequent government consultation paper *Together we can end violence against women and girls* (2009) focused more explicitly on actual violence against women and girls, noting the fear of domestic abuse and its impact on people’s everyday lives. It made fresh proposals regarding prevention, supporting victims and bringing perpetrators to justice and finally.

Following a change in the administration in 2010, the English government introduced a new consultation criticising the previous administration for adopting a —top-down— approach to domestic violence and calling for more localised responses to the problem emphasising prevention, provision of support to victims, partnership working and risk reduction, signalling a return to the approach taken before 2005. It focuses firmly on gender based violence and including so called honour based violence and female genital mutilation (*Call to End Violence against Women and Girls*, 2010). The consultation also recognised that men and boys could be victims of domestic violence and the impact of domestic abuse on families and children. In March 2011 a new action plan *Call to End Violence against Women and Girls: Action Plan* was published setting out immediate and longer term priorities for action and the responsibilities of different government departments and framing policy development within an equalities and prevention framework with a distinct and new focus not only on adults but also on the protection of children from domestic and gender based violence within families, schools and from harmful material on the internet. It is

255 http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmhaff/263/26304.htm
backed by a £28 million fund to support the provision of specialist services for victims and prevention work.

6.3.4 Recent Policy relating to the impact of domestic abuse on children 2000 to 2011

After 2000, policy development increasingly recognised the inter-relationship between domestic violence and the abuse and neglect of children. The Framework for the Assessment of Children in Need and their Families (Department of Health, 2000) noted the impact of domestic abuse on parenting capacity. The Every Child Matters Outcomes Framework (Department for Children, Schools and Families, 2003) set targets that children affected by domestic violence are identified, protected and supported. The National Service Framework for Children, Young People and Maternity Services, 2004 highlighted the serious effects on children who witness domestic violence. A Vision for Services for Children and Young People affected by Domestic Violence provided guidance focused on meeting the needs of children affected by domestic violence within the planning of integrated children’s services and this was strengthened by subsequent publication of Working Together: A guide to inter-agency working to safeguard and promote the welfare of children (2006, revised 2010) which contains statutory and non-statutory guidance to public agencies to work together in relation to domestic violence to protect children, including unborn children; empower mothers to protect themselves and their children; and to identify the abusive partners, hold them accountable for their violence and provide them with opportunities to change.
6.3.5 RELEVANT LEGISLATION

There are a range of civil remedies and criminal offences which are relevant in cases of domestic violence. Legislation has been developed to offer protection to victims and to children who witness domestic violence.

(A) Civil Law

The 1970s saw the emergence of some civil remedies for domestic abuse including the Domestic Violence and Matrimonial Proceedings Act, 1976\(^{256}\) and the Domestic Proceedings and Magistrates‘ Courts Act, 1978. This early legislation introduced equal protection to victims whether married or unmarried and included non-molestation and ouster orders\(^{257}\) but were limited in their scope. Moreover, magistrates tended to interpret orders restrictively, and judges were reluctant to apply ouster orders, viewing this solution as excessive. Domestic violence was also included in the Housing (Homeless Persons) Act of 1977. Victims of domestic abuse (with responsibility for children) were classified as 'in priority need', which obliged the local authority to provide accommodation.

From the 1990s more significant legislation began to be developed, superseding earlier legislation. A Family Homes and Domestic Violence Bill was introduced to Parliament in 1992 but failed to pass, resulting in increased advocacy, especially from the women's movement, for new legislation. The Family Law Act, 1996, Part IV sets out civil law remedies concerning the rights of occupation a non-owning spouse or

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\(^{256}\) Repealed and replaced in 1997

\(^{257}\) A non-molestation order restrains the defendant from interfering with the plaintiff, while an ouster order requires one person to vacate the house and not return to the property for a certain period of time (Family Law Act, 1996).
civil partner; the court's powers to regulate occupation of family home; the court's duties to make certain orders and the court's powers to grant non-molestation orders (molestation being defined as violent, or pesterling, or threatening behaviour or harassment). A non-molestation order can be applied to a broad range of people (a new category of associated persons) in order to prevent further violence to the applicant or children. Ex-parte orders (Section 45) can be made taking into account the risk of significant harm but the court must allow the respondent to make representations as soon as just and convenient. Breached orders are subject to the power of arrest (Section 47). Under the previous legislation the power of arrest was more discretionary. Harne and Burton argue that the criteria for occupation orders are more restrictive than the former ouster order, as the court needs to take into account the conduct of two parties. Overall, this Act offers protection to a wider range of women, in more situations and for longer periods of time than earlier legislation. The Civil Partnership Act, 2004 (section 82, Schedule 9) amends Part IV of the Family Law Act, 1996 so that the same provisions apply to civil partners as to married couples. The Protection from Harassment Act, 1997, which extends to both civil and criminal law, deals with violence from outside the home. Whilst the Protection from Harassment Act, 1997 was originally designed to combat the problem of stalking, it is used by those who cannot apply for any order under the Family Law Act, 1996. The Protection and Harassment Act, 1997 is useful when dealing with post-separation harassment or violence with a non-cohabitant partner and for stalking. Hague argues that limitations of this Act are that it did not include occupation orders, or consider children; or the possibility that the

258 Associated persons – s. 62 (3) FLA 1996- includes spouses/civil partners; former spouses/civil partners; cohabitants/ former cohabitants; live in the same household (not lodgers, tenants, employees);relatives; engaged couples; intimate personal relationship with each other of significant duration; parents of a child; or both have parental responsibility of a child.
attacker is a close relative (e.g. father, son or brother).

Housing legislation with provisions for victims of domestic violence also developed from the 1990s. The Housing Act, 1996 broadened the definition of homelessness for those who are eligible for accommodation, including victims of domestic violence and articulating this explicitly. This legislation provides for housing assistance to victims by engaging with their landlords (supported housing), who can take special measures to assure the accommodation. The Homelessness Act, 2002 broadened the definition of violence to include all types of violence, not only domestic violence. Moreover, the provision of safe accommodation for victims of domestic violence has become a priority for local authorities who have been obliged to generate the homeless prevention strategies for victims of domestic abuse. In April 2003 the 'Supporting People' housing programme for vulnerable people was launched and specifically included victims of domestic violence within eligible groups which could be supported by local authority area based grants. In 2006, new schemes including sanctuary schemes ‘and panic rooms’ were developed as placing a victim in temporary accommodation was recognised by some as less expensive. However, this approach is criticised as it cannot make security and surveillance as the main policy response.

Despite the fact that there is considerable research evidence pointing to potential impact of domestic violence on children’s and young people's physical, mental and emotional health (Worrall et al. 2008), English legislation regarding the protection of children witnessing or living in contexts of domestic abuse has been relatively slow to develop.

259 The sanctuary scheme is defined as a possibility for the victim to remain in the accommodation by setting up additional protection measures (e.g. internal doors, safety glass, smoke alarms as well as immediate delivery of legal solutions under Family Law Act 1996 etc.) (Netto et al. 2009)
The major legislation regarding children, the Children Act 1989, which covers both public law (child protection) and private law (arrangements after relationship breakdown) did not explicitly acknowledge the risks and practical problems faced by women and children experiencing domestic violence. It did provide some level of intervention by local authorities if a child or children were assessed as being in need (under section 17) and for child protection intervention (under section 47) if a threshold of significant harm was reached. It was not until 2002 that The Adoption and Children Act 2002, amended the definition of significant harm provided by the Children Act 1989, by adding a new category of—impairment suffered from seeing or hearing the ill-treatment of another recognising the impact of domestic abuse on children. This legislation also enabled courts to remove a suspected child abuser from his or her property, as a part of an application for an Emergency Protection Order or Interim Care Order. The Children Act, 2004 promoted a multi-agency approach to local service delivery. This Act promoted consultation among different parties (e.g. schools, health services) regarding children’s safety and calls for closer cooperation between children’s services and the police in the identification and investigation of domestic abuse (Children Act, 2004). Harne highlights concerns relating to ensuring confidentiality given that this legislation enables a broader network of agencies and parties to possess information on children and their families.

(B) Domestic Violence, Crime and Victims Act, 2004

The Domestic Violence, Crime and Victims Act, 2004 was hailed as—the biggest piece of legislation on domestic violence in over 30 years. It extends protection offered by civil law to victims of domestic violence by making the breach of a—non-molestation order made under Part IV of the Family Law Act, 1996 a criminal offence, dealt with by the
criminal as opposed to the civil courts and with a maximum penalty of 5 years. It also extends the availability of injunctions to same sex couples and to those who, while not living together, have or have had in an intimate relationship of significant duration (Section 4). Section 12 of the Act amends previous legislation relating to restraining orders allowing courts to make restraining orders on conviction or acquittal for any criminal offence based on balance of probability evidence if there is a need for an order to protect a person or persons. These orders are intended to be both preventative and protective.

A new offence deeming that all members of a household aged 16 or over may be liable for the offence of causing or allowing the death of a child or vulnerable adult is introduced (Section 5). The women’s movement in the United Kingdom is concerned about this section of the Act, noting that a woman who has been intimidated, threatened or otherwise abused may have been unable to intervene when the perpetrator’s abuse of a child resulted in death; but despite this will be held equally guilty of a homicide she was powerless to prevent.

Protection for victims and witnesses is extended by the introduction of a statutory Victims Code of Practice and a Commissioner for Victims and Witnesses (Section 32). The Act also introduces statutory multi-agency domestic homicide reviews when anyone over 16 years dies of violence, abuse or neglect from a relative, intimate partner or member of the same household (Section 9). This section aims to promote multi-agency learning to develop joint responses to protect victims and bears a resemblance to arrangements for statutory reviews following the serious injury or death of a child. The Act also introduced some measures which have now been superseded; including making common assault an

\(^{260}\) Section 5 of the Protection from Harassment Act 1997.
arrestable offence (i.e. attracts a maximum of five years imprisonment or more).

Although the Domestic Violence, Crime and Victims Act, 2004 set out very important measures, some of the proposals introduced in the Safety and Justice (2003) are absent from the Act. The Domestic Violence Crime and Victims Act, 2004 did not include the criminalisation of the breach of an occupation order and or eliminate the time limits placed on such an order. Moreover, there are no solutions regarding the availability of legal defences to victims who kill the perpetrator or the situation of migrant women. Although the Act did not fulfil the expectations of all parties (mainly non-governmental organisations), it was accompanied by a funding commitment to national domestic violence helplines, internet services and refuge services. An early evaluation of the implementation of this Act found limited progress in implementing its provisions had been made as well as presented some decline in the use of non-molestation orders and recommended on-going monitoring of the impact of the Act.

(C) Criminal Law

Recognising domestic violence as a crime has become an increasingly important part of government policy on crime control. Young perceives this approach towards domestic violence policy as a criminalisation of social issues. The legal solutions adopted in the United Kingdom reflect the extent to which domestic violence has become increasingly recognised as a significant social problem. Although, current criminal law does not explicitly criminalise domestic violence, the cost borne by society estimated in 2010 to be £36.7bn per annum at a minimum is one driver for changing policy and legal responses. In the
event that civil remedies fail, the criminal justice system may step in by applying criminal sanctions including the following legislation.

The legislation applied depends on the circumstances and offence of the domestic violence. Annex E of the *Crown Prosecution Service’s Policy for Prosecuting Cases of Domestic Violence* (2011) provides a detailed outline of types of behaviour that can occur in cases of domestic violence and that might amount to a criminal offence\(^{261}\).

There are two key problems concerning criminal law and domestic violence. First, criminal law may be seen as being more concerned with punishing the offender rather than helping the victim. Second, many people, such as neighbours, may be reluctant to become involved in what may be seen as a private matter between partners, and in the past the police were cautious about intervening in violent incidents resulting from domestic disputes. Recent policy developments supporting a pro-arrest approach have changed this picture to the extent that current government policy initiatives have noted that criminalisation may be at the expense of prevention work. Although criminal justice inventions are necessary, further remedies in relation to prevention and support of victims are seen to be needed.

6.4 DOMESTIC VIOLENCE IN RUSSIA

According to the Committee on the Elimination of Discrimination against Women, the Russian Federation is obliged to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise (article 2 (e)) and to take all appropriate measures, including legislation, to modify or abolish existing laws,

regulations, customs and practices which constitute discrimination against women (article 2 (f)).

The Convention also requires that the state modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (article 5 (a)).

Article 16 (1) of the Convention obliges the states to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

6.4.1 Scale of the problem

In Russia, statistical data on crimes of domestic violence against women is fragmentary, difficult to obtain, and often simply non-existent. Nevertheless, a number of independent studies as well as statements made by representatives of government agencies provide us with an overview of the scale of the problem. In 2008, a representative of the Russian Ministry of Internal Affairs cited the following figures:

- violence, in one form or another, is observed in every fourth family;
- two-thirds of homicides are attributable to household / domestic motives;
- each year about 14 thousand women die at the hands of husbands or other relatives;
- up to 40 percent of all serious violent crimes are committed within

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262 Interview with Police Lieutenant General M. Artamoshkin, Acting Head of the Department for the protection of Public Order under the auspices of the Russian Ministry of Internal Affairs, published on the website of the Ministry of Internal Affairs 01/24/2008, see www.mvd.ru/news/14047/
Data on the percentage of murders committed within the family is confirmed by statistics from other regions. Thus, according to Igor Orlov, the Minister for Public Safety in the Perm Region, more than 70% of all homicides occur in the home. Russian women suffer three times more abuse in the family than they encounter violence from strangers.

According to the official data from the Russian Ministry of Internal Affairs, as of December 2008 there are 212,700 domestic offenders on file with the police.

Data on such crimes reveals increasing numbers of crimes against children. In 2008-2010, there were several cases of child homicide motivated by revenge, like the tragedy that occurred in Tatarstan.

On June 3, 2008 in the Republic of Tatarstan, 37-year-old, Alexander Grigoriev killed his 5-year-old son Alexei with the aim of settling scores with his wife, whom the killer suspected of infidelity. When Grigoriev came home that evening he asked his son why his mother was not at home. The boy replied to his father that while he was away "some man" had come to visit his mother. Wishing to take revenge on his wife, the father decided to slaughter his five-year-old son. Grabbing a knife in the kitchen, the man struck his son in the stomach at least four times. The boy died on the scene. Based on the evidence, the office of the Zarechnyi Interdistrict Investigational Department of Tatarstan instigated criminal

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263 T. Semileyskaya. "This year, in the Perm Region more than 370 people have been killed in domestic violence incidents," New Region - Perm, 06. 26.2008
proceedings under the Russian Criminal Code Article 105 (the intentional homicide of a person known by the killer to be in a helpless state).

Another trend revealed by statistics is the increase in the number of crimes of violence against women, especially crimes committed within the family: the period of 2002–2006 alone shows that the total number of "household" crimes increased by one-and-a-half times.

Our study, which was conducted in the regions of Russia, also confirms the constant growth of the number of registered offences. For instance, on the territory of the Udmurt Republic there were 47% more recorded domestic violence crimes in 2008 than during the same period of 2007.

As shown by the Udmurt Republic data received as a result of our investigation, there is increasing use of arms in domestic crime: 7% of homicides are committed with firearms; 28% with knives and 50% with other objects used as weapons.

In analysing such statistics, it is necessary to take into account that many victims do not report crimes to police. According to the research data of the "Congenial Home Centre," 60-70% of women suffering from domestic abuse do not seek help from law enforcement authorities.

6.4.2 Lack of specific legislation on domestic violence

(A) Weaknesses in existing legislation

In Russia, there is no developed legal framework that, in conformity with the Committee on the Elimination of Discrimination

against Women, regulates relations between family members. There is no specific law on domestic violence, which would criminalise all forms of domestic violence and set out the functions of law enforcement agencies and special services aimed at the protection of the rights of victims and the accountability of perpetrators.

Under existing laws, it is possible to render only partial protection to women victims of violence. In view of the gaps in legislation it is extremely difficult to prove crimes of domestic violence (even physical violence, which has ensuing visible evidence).

The various forms of violence against women, particularly domestic violence, are not recognized by the Russian Criminal Code as separate offences. The only applicable criminal provisions are those relating to bodily injuries or other crimes. Thus, acts of violence against women in the family, like any violent crime against a person, are punishable under Part VII of the Russian Criminal Code (crimes against the person):

- Article 112 (intentional causing of average gravity harm to health);
- Article 115 (intentional causing of minor harm to health);
- Article 116 (beating);
- Article 119 (threat of homicide or of causing grave harm to health)

None of the above-mentioned articles takes note of the relationship between the perpetrator and the victim. Moreover, a perpetrator repeated acts of violence against the same person are not specifically criminalized under Russian law. Article 18 of the Russian Criminal Code excludes "records of convictions for intentional crimes of small gravity" or of conditional sentences to be taken into account when considering
recidivism of crimes. Only Article 117 of the Russian Criminal Code (torture, the causing of physical or mental suffering by means of the systematic infliction of beatings or other forcible actions) takes into consideration the following aggravating circumstances: the victim is a minor, apparently helpless "or materially or otherwise dependent on the guilty person". However, this article is rarely invoked.

The Russian justice system considers violence committed in a public place against a stranger, to be a much greater social danger than the same actions committed within a family against relatives. In the statistical data of the Russian Ministry of Internal Affairs published on the Ministry's website, there is a separate statement on crimes committed in public places. However there is no data on crimes committed at home. Thus, domestic violence is not considered to be a crime against society, but continues to be treated as a private family matter.

A further obstacle to obtaining justice for victims is that most cases of domestic violence are brought as private prosecutions. Since the adoption of amendments to the Penal Code of the Russian Federation in 2003, there has been a significant change in examining cases of domestic violence. Most of them have fallen into the category of private prosecution cases (Article 115, 116. Part1, Article 129 and Article 130 of the Penal Code of the Russian Federation). From the perspective of legislators, this is justified on the basis that these crimes affect the rights and interests of specific citizens and it depends on them whether or not criminal proceedings are initiated against the offenders. However, in practice, this has meant that victims have been left virtually without protection from the State.

Article 20 of the Code of Criminal Procedure provides that private
prosecution cases may be initiated only on the basis of the statement of
the injured party and are subject to termination if the parties have
reconciled. The case is considered opened when the aggrieved party files
a complaint that meets the requirements set forth in Article 318 of the
Code of Criminal Procedure of Russia with a magistrate. If the complaint
meets the requirements, the magistrate initiates the proceedings and the
injured party becomes a private claimant.

Thus, the aggrieved party in cases of private prosecution has to
perform a dual role. On the one hand, as the victim, she is entitled to have
her interests protected by the State. However, this depends solely on her
will and is instigated only at her own volition.

On the other hand, she has to act as a prosecutor, to present
evidence, to formulate the charges and to seek the conviction of the guilty
party. To serve as a prosecutor assumes knowledge of the prosecution
process, the foundations of criminal law, the rules of gathering and
presenting evidence. It is obvious that ordinary citizens do not possess
such knowledge, and therefore are unable to properly present their case in
court. When, in addition to issues raised above, the same question
pertains to victims of domestic violence, a great role is played by the
factors of post-traumatic stress, to which the victim is subject, as well as
to the stage in the cycle of violence during which the complaint is filed. It
should be noted that the victim usually continues to live with the abuser
in one apartment, which gives him the opportunity to pressure and to
intimidate her.

As a result, according to court statistics, the vast majority of cases
of private complaint are terminated for two reasons:
The failure to fulfil the court’s requirements to resolve the shortcomings of the complaint;

The reconciliation of the parties.

Typically, at the stage of filing the complaint, victims are unable to fulfil all the requirements, not only because of legal ignorance, but because of post-traumatic stress disorder as a result of the act of violence.

This happens because the complaints are usually filed immediately after the violence has occurred, while at that time the cycle of violence is passing into the stage of repentance by the abuser and forgiveness (reconciliation) by the victim. Women feeling guilty and believing the words of the abuser that violence will not happen again, remove the complaint and agree to reconciliation.

As a result, according to experts, 9 cases out of 10 are terminated due to the reconciliation of the parties. Thus, the offenders who have committed domestic violence go unpunished.

Under the current Penal Code of the Russian Federation, most crimes related to domestic violence against women should be covered by the crime “torment” under Article 117, which falls into the public prosecution category:

**Article 117. Torment**

1. *The infliction of physical or mental suffering by means of systematic beating or by any other violent actions, unless this has involved the consequences referred to in Article 111 or 112 of this Code, shall be punishable by deprivation of liberty for a term of up to three years.*
2. The same act committed:

a) against two or more persons;

b) against a person or his relatives in connection with the official activity of this person or the discharge of his public duty;

c) against a woman who is in a state of pregnancy, which is evident to the convicted person;

d) against obvious juvenile or a person who is in a helpless state, as known by the convicted person, or in material or any other dependence on the convicted person, and also in respect of a person, kidnapped or seized as a hostage;

e) with the use of torture;

f) by a group of persons, a group of persons under a preliminary conspiracy, or an organized group;

g) by hire;

h) by reason of national, racial, or religious hatred or enmity, shall be punishable by deprivation of liberty for a term of three to seven years.¹⁸ »

The commentary to this article indicates that "torment" should be understood as the infliction of physical and mental suffering to a victim, including systematic beatings, use of torture, threats, and insults. Other violent means of torment include, for example, sleep, food, and water deprivation, cold-rooms, biting, whipping, and binding.¹⁹ All of these actions, particularly systematic beating, not to mention threats and insults, exist in virtually every case of domestic violence.

In order for an action to be recognized as torment, it is essential to establish the systematic character of such actions by the perpetrator. As
directed by the Supreme Court of the Russian Soviet Federative Socialist Republic, whose interpretation is systematically followed to this day, in cases of torment three or more criminal acts constitute a systematic character. It is known that domestic violence is also characterized by being systematic.

However, according to the same ruling of the Supreme Court, battery, which does not constitute torment, committed in the course of an argument and caused by personal hostility cannot be regarded as torment.

Interpretation of the crime clearly presents a problem. On the one hand, torment is classified as ‘violent acts committed three times or more, such as battery, torture, threats and insults, which caused minor harm to the health of the victim.’

On the other hand, the law does not contain a clear time frame within which these systematic violent actions must be committed: whether this should happen within a year, a month or a day.

Moreover, the formula “battery, which does not constitute torment, committed in the course of an argument and caused by personal hostility” is open to an overly broad interpretation: is violence a ‘argument or disagreement’ or a manifestation of ‘personal hostility’? What does it mean exactly –“which does not constitute torment”? It is abundantly clear that these vague definitions would not be interpreted in favour of a female victim.

Thus, the only article of the Penal Code, which covers the crimes related to domestic violence, is ineffective.
(B) Lack of protective measures

Under Russian legislation there is no provision to issue a protective order. This measure, as international experience has shown, is primarily preventive, and could help to prevent more violent crimes. According to international studies, the life and well-being of a woman is most at risk at the time when she is leaving her abuser. In Russia such killings have taken place.

(C) Case in Voronezh in June 2008:

A 37-year-old special education teacher brutally massacred his ex-wife. The murderer, who had worked previously in criminal investigation, killed the victim with a screwdriver. According to the investigation, the suspect went to the pharmacy, where his ex-wife worked as a pharmacist. But the conversation between ex-spouses escalated into a quarrel. In anger, the man stabbed his former wife more than 60 times with a screwdriver in the head and neck, whereupon she died on the scene.

A protective order is a legal document designed to protect against abuse and to provide victims of domestic violence with appropriate forms of legal assistance. These are usually issued by judges after a hearing conducted in accordance with the special provisions of the Civil Code dealing with domestic violence, instigated at the request of the victims of the abuse, their lawyers or their representatives. Protective orders provide victims of domestic violence with a broad range of legal protection. First of all, the perpetrator of the abuse must stop the harassment, threats, physical violence. A protective order prohibits the defendant from entering into any contact with the plaintiff, whether by telephone, letter, in the form of gifts or by personal visits. The warrant may also prohibit
the defendant from approaching his former victim, to visit those places where she is working or studying. Sometimes, judges require the defendant to undergo a course of treatment for abuse of drugs or alcohol or to attend psychological counseling for the cessation of physical violence.

Thus, the main purpose of protective orders is the separation of the two conflicting parties: the alleged abuser and his potential victim. By issuing a protective order, the judge has not yet rendered a decision on the merits of the issue of guilt and responsibility, but imposes upon both parties a certain order of lawful behaviour in the coming months of paramount importance is the prevention of further escalation of violence and its possible grievous consequences.

As demonstrated by the Commission's expert survey, representatives of the judicial system support the need for increased preventive efforts, which must be backed by legislation.

The Commission stresses the ineffectiveness of the current Russian law, particularly in the area of domestic violence. The current legal framework does not take into account the specifics of such criminal acts against women and the danger that the violence poses to their health, safety and life. Protective measures for victims, such as protective orders, which are particularly necessary in a situation of domestic violence, do not exist.

The Commission believes that assigning the status of private prosecution to most domestic violence cases (Art. 115, 116(1) of the Penal Code) means that victims will remain without adequate state protection. They have to act in the prosecutorial capacity themselves,
while not having legal education nor right to legal aid. This situation is at odds with the obligations of the Russian Federation to protect the rights and freedoms of citizens. In particular, this constitutes a breach of Art. 2 of the Committee on the Elimination of Discrimination against Women which demands that the states ensure through competent national tribunals and other public institutions the *effective protection* of women against any act of discrimination.

**D) Lack of governmental support and public policies aimed at combating violence against women**

Today in Russia the main obstacle to effective response to violence against women is the absence of a federal public policy that defines the problem as a serious impediment to the observance and achievement of women's rights as human rights.

In the early 90s, there was a significant rise not only of public activity in the area of women's rights, but also in that of the state. This was particularly noticeable during the Beijing Conference in 1995, which stimulated the adoption of the Beijing Platform for Action for the advancement of women at both the regional and Federal levels. This led to the establishment of national and regional mechanisms for monitoring the status of women and to the development of effective interaction between public organizations and various government agencies. At the same time, there were the first attempts to adopt legislation on the prevention of domestic violence which, unfortunately, did not bear fruit. But gradually, the problem of women's rights in general, as well as that of violence against women, has ceased to be a priority of the government and to be analyzed with adequate gravity.
The administrative reform of the Federal government (as of 2004), accompanied by structural changes and staff changes, has effectively destroyed the previously existing national mechanisms for establishing equal rights for women. To date, virtually all state agencies dealing with gender equality have been liquidated or have ceased to function.

The National Action Plan for the advancement of women and enhancing their role in society (2001–2005) ended in 2005. In 2004, the Commission on Women in the Russian Federation under the leadership of Deputy Minister of the Russian Federation suspended its work. The Commission on Women, Family and Demographics under the auspices of the President of the Russian Federation in the Federation Council was also eliminated.

Work on a wide range of gender issues at the state level is handled by the State Duma Committee on Family, Women and Children and the Ministry of Social Development and Health. The issues of violence are not a priority in their work.

The insufficient action of the State is also beginning to be noticed by the people of Russia: according to a Gallup survey (2008); 73.3 percent of the respondents stated that the State has not taken the necessary measures to combat domestic violence.

Another example demonstrating the non-priority of the problem is the lack of the Russian Federation in a campaign to combat violence against women, conducted by the European Council in 2006 to 2007. To date, Russia is the only member country of the European Council who did not respond to the European Council's questionnaire regarding this campaign.
The State's attitude of non-priority towards issues of violence against women is also reflected in the lack of an adequate number of specialized agencies such as social hostels and shelters where female victims can find refuge. According to a study undertaken by ANNA, in Russia there are only twenty-three such institutions, which are usually funded by local budgets. The total number of beds is about 200, and this includes not only women but children as well.

Despite all the work done over the last 20 years to combat violence against women in Russia, a systemic approach at government level is still lacking. Although a measure of progress is reflected in the Report, the Russian government has not yet done enough. There is no body within the legislative and executive branch of the federal government, no federal programme or national action plan to combat violence and help its victims. The Russian government must demonstrate political will and make respect for the rights of women, particularly in the area of violence against women, its priority. A consolidated federal programme or a national plan of action to combat violence and help its victims is required.

6.5 DOMESTIC VIOLENCE IN UNITED STATES OF AMERICA:

Domestic violence is a distinctive and complex type of violence. The intimate relationship between the victim and the perpetrator is historically construed as private and therefore beyond the reach of law. The often hidden site of the violence buttresses this conceptualization. The victim is often financially dependent on her abuser, and other economic and familial factors complicate the victim’s response to abuse. Moreover, women who complain of domestic violence frequently face intimidation, retaliation, and stigmatization, and thus incidents of
domestic violence are notoriously under-reported and under-prosecuted throughout the world, including the United States.

Any meaningful analysis of the nature and content of the United States’ obligations with respect to domestic violence must flow from a comprehensive understanding of the reality that States are obliged to address. Until the United States enacts effective preventative and remedial measures to eradicate violence against women within its borders, the promise of women’s rights in the United States will remain a deferred dream.

Each year, between one and five million women in the United States suffer nonfatal violence at the hands of an intimate partner. Domestic violence affects individuals in every racial, ethnic, religious, and age group; at every income level; and in rural, suburban, and urban communities. Notwithstanding the prevalence of domestic violence across demographic categories, it is overwhelmingly a crime perpetrated against women. Women are five to eight times more likely than men to be the victims of domestic violence. The Department of Justice reports that between 1998 and 2002 in the United States, 73% of family violence victims were female, 84% of spouse abuse victims were female, and 86% of victims of violence committed by an intimate partner were female.

Not only are women more likely than men to experience domestic violence, but they also represent an even greater percentage of victims in the most serious of the assault cases by an intimate partner. Women are also far more likely than men to be the victims of battering resulting in death at the hands of an intimate partner. In 1996 alone, over 1,800 murders were attributed to intimate partners, and nearly 75% of those victims were women. In the United States, more than three women are
murdered by their husbands or boyfriends every day, and approximately one-third of women murdered each year are killed by an intimate partner. According to an estimate by the Centers for Disease Control and Prevention, from 1981 to 1998, the number of domestic violence fatalities in the United States exceeded 300,000.

Government sources indicate that one-third of women in the United States experience at least one physical assault at the hands of an intimate partner during the course of adulthood. Due to feelings of shame and fear of retribution that prevent women from reporting assault, this statistic may significantly underestimate the incidence of domestic violence in the United States. The historical characterization of domestic violence as a “private” or family matter may also contribute to the under-reporting of domestic violence.

Not all women in the United States experience domestic violence with the same frequency. The data suggests that although the domestic violence epidemic cuts across the lines of gender, race, and immigration status – affecting women and men, African Americans,Latinas,American Indian and Alaska Natives and whites, and immigrants and United States citizens – it has a particularly pernicious effect on groups which lie at the intersection of these categories: poor ethnic minorities, immigrants, and American Indians and Alaska Native women.

While poor minority and immigrant battered women in the United States are among those most in need of governmental support and services, including domestic violence services, these groups are chronically underserved. This greater need for an effective government response is due, in large part, to the social, familial, and financial isolation experienced by many minority and immigrant women.
Nationwide, black women report their victimization to the police at a higher rate (67%) than white women (50%), black men (48%), and white men (45%). African American women account for 16% of the women reported to have been physically abused by a husband or partner in the last five years, but were the victims in more than 53% of the violent deaths that occurred in 1997. A recent study found that 51% of intimate partner homicide victims in New York City were foreign-born. Another study determined that 48% of Latinas reported their partners’ violence against them had increased since they immigrated to the United States.

The greater level of reported domestic violence among African Americans, Hispanics, American Indian and Alaska Native women and immigrants is attributable, in large part, to the extreme levels of poverty in minority and immigrant communities. African Americans and Hispanics make up 22.8% of the population, but account for 47.8% of those living in poverty. Poor women experience victimization by intimate partners at much higher rates than women with higher household incomes; in the United States between 1993 and 1998, women with annual household incomes of less than $7,500 were nearly seven times as likely as women with annual household incomes over $75,000 to experience domestic violence.

Data also indicates that women are at much greater risk of domestic violence when their partners experience job instability or when the couple reports financial strain. Abuse has also been found to be more common among young, unemployed urban residents – a large percentage of whom are racial minorities and immigrants. The majority of homeless women were once victims of domestic violence, and more than half of all women receiving public assistance were once victims of domestic violence. Although accurate statistics on the intersection of race and
gender in the homeless population and the population of those receiving public assistance in the United States are not available, statistics do demonstrate that racial minorities make up the majority of the homeless population and that the majority of women receiving public assistance are racial minorities.

Thus, combinations of poverty, age, employment status, residence, and social position – not race or culture, per se – may explain the higher rates of abuse within certain ethnic communities. Yet race remains salient because of its inextricable connection with these other factors. Race also plays a significant role in the victimization of at least one group: American Indian and Alaska Native women. Unlike other groups, the majority of American Indian and Alaska Native women reporting intimate partner violence identify their abuser as non-Native. American Indian and Alaska Native women face unique access to justice because determining which government (federal, state, or tribal) is responsible for the investigation and prosecution of violent crimes on Indian lands depends on the race of the perpetrator and the race of the victim.

6.5.1 FEDERAL LEGAL AND LEGISLATIVE DEVELOPMENTS

As noted above, Violence Against Women Act is a comprehensive legislative package first enacted in 1994 and reauthorized with new provisions in 2000 and 2005. As described below, Violence Against Women Act will be reauthorized in 2011. The passage of Violence Against Women Act was unquestionably a bellwether moment in the fight against domestic violence in the United States, but on its own Violence Against Women Act does not and cannot fulfill the United States’ obligation to prevent, investigate, and punish violations of women’s rights to be physically safe. Nor does it provide compensation
for damages resulting from failures of the United States to do so.

Violence Against Women Act seeks to provide funding for training of police, prosecutors, and advocates in dealing with domestic violence, funds shelters, civil legal services, and other services for domestic violence victims, especially in “demonstration” projects that can be replicated by other organizations, and encourages best practices by states by conditioning receipt of funding on, among other things, states’ use of mandatory arrest policies when domestic violence is reported and the removal of fees for applying for protective orders. Violence Against Women Act further criminalizes certain acts of domestic violence that cross state lines, making them federal, criminal matters, and it requires states, territories, and Native American tribes to give full faith and credit to protective orders made by other states, territories, and tribes. Portions of Violence Against Women Act, which will be discussed in other sections of this briefing, also provide immigration relief to battered immigrants and seek to prevent discrimination against domestic violence victims who live in certain types of federally funded housing.

Yet Violence Against Women Act fails to accomplish three crucial objectives: (1) it does not provide any direct remedy when abusers or police officers violate victims’ rights, (2) it does not require participation by all states or monitor their progress, and (3) it does not fully or adequately fund all the services that are needed for victim safety.

6.5.2 Domestic Violence and Child Custody, and Economic Considerations in Family Law Litigation

A substantial body of empirical research confirms that domestic violence has serious negative effects on children. Numerous studies show
an alarming co-occurrence of domestic violence and child physical and sexual abuse. The weight of the research demonstrates that 30% to 60% of children living in homes where domestic violence occurs are also physically or sexually maltreated. It is beyond dispute that children who suffer from direct physical and/or sexual abuse often experience multiple emotional and behavioral problems, as well as a variety of trauma symptoms, including nightmares, flashbacks, hyper-vigilance, depression, and regression to earlier stages of development. Significantly, studies show that children who are exposed to domestic violence, but who have not been physically or sexually abused themselves, exhibit levels of emotional and behavioral problems, trauma symptoms, and compromised social and academic development comparable to children who are direct victims of physical and sexual abuse. Consequently, domestic violence is known to have multiple, seriously detrimental effects on children even when children are not themselves the direct targets of parental aggression.

Research also confirms that men who batter are likely to parent very differently from other fathers. Violent fathers tend to be under-involved with their children and more likely to use negative parenting practices, such as spanking, shaming, and exhibiting anger towards their children. Other parenting deficits common to violent fathers include systematically undermining and interfering with the other parent’s authority, utilizing controlling and authoritative parenting styles, having unreasonable expectations of other family members, refusing to accept input from others, remaining inflexible, and elevating their own needs above those of their children. In addition, violent parents tend to be very poor role models, impeding their children’s development of healthy relationships and conflict resolution skills.
While it is often assumed that domestic violence and its impact on children end once a battered parent separates from her abuser, research demonstrates otherwise. First, it is now known that the effects of trauma, once engrained, do not go away on their own, but survive even when the threat that created the trauma is removed. Second, studies show that domestic violence often first starts and frequently escalates at the time of separation. Third, abusive partners often intensify stalking, harassment, and other non-violent coercive tactics upon separation, where physical proximity is less likely. In addition, where children are involved, abusive parents often utilize custody proceedings to continue their campaign of abuse against their former partners. Indeed, the threat to seek custody is a common strategy used by abusive parents to enhance post-separation power and control over a former partner. Finally, children often remain the bridge that keeps their parents connected long after the parents have physically separated. In light of this reality, it is not uncommon for abusive parents to use their children as instruments of ongoing coercive control even after separation, often during visitation exchange. In one recent study, 88% of women surveyed reported that their abusers had used their children to control them in various ways and to varying degrees not only during their relationships, but beyond.

The harsh interplay between domestic violence and custody disputes is not rare. Studies show that 25 to 50 percent of disputed custody cases involve domestic violence. When abused women attempt to leave their abusive relationships, they are often threatened with the loss of their children. Batterers are more likely than non-abusive fathers to seek sole custody of their children, and are just as likely to gain custody as non-abusive fathers.
6.5.3 Law and Policy Problems

As a result of an increasingly sophisticated understanding of domestic violence, including its detrimental impact on adult victims and children, and its corresponding relevance to child custody determinations, both legislative bodies and professional organizations in the United States have taken strong action to discourage custody awards to violent parents. In 1990, for instance, the United States House of Representatives passed House Concurrent Resolution 172 which “expressed the sense of Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.” In 1989, and then again in 1994, the American Bar Association passed resolutions calling for statutory presumptions against allowing custody to batterers. In 1994, the National Council of Juvenile and Family Court Judges added a rebuttable presumption against allowing custody to batterers to its Model Code on Domestic and Family Violence. The American Psychological Association added its recommendation in 1996 that states adopt statutes giving custody preference to the non-violent parent whenever possible. Currently, nearly all states in the United States require the court to consider domestic violence when making custody awards, and twenty-two states, plus the District of Columbia, have legislative presumptions against joint custody where domestic violence has occurred.

Despite extensive research on the detrimental effects of domestic violence on children and the risks that attend unrestricted parental access where domestic violence has occurred, many courts are still reticent about assessing the impact of domestic violence on children when crafting custody arrangements. A number of empirical studies confirm that courts
frequently fail to identify and consider domestic violence and fail to provide adequate safety protections in court orders, even where a history of substantiated violence is known to exist. This same phenomenon has been observed in the context of child custody mediations, child custody evaluations, and visitation determinations.

Because domestic violence and its impact on children and their battered parents is neither consistently identified nor adequately accounted for in child custody determinations, the safety of domestic violence victims and their children is compromised in family courts today across the United States.

Like custody proceedings, child protection proceedings are governed mostly by state and local law, although similar standards are utilized nationally. Using New York as a representative example, child protection proceedings may be initiated at the discretion of the agency administering child protective services if an investigation by the agency reveals credible evidence to support a report or complaint alleging child maltreatment. The presence of domestic violence in the home has been used as the credible evidence needed to support the allegations of child endangerment contained in a report or complaint. Proceedings have been initiated against the parent who has been the victim of domestic violence, alleging neglect on the part of the victim for failing to protect the child from witnessing domestic violence. Once court proceedings are initiated, the court has the power to order removal of a child if “necessary to avoid imminent danger to the child’s life or health.” Although the National Council of Juvenile & Family Court Judges Guidelines and agency “best practices” indicate that victims of domestic violence should not be deemed unfit parents based upon the batterer’s actions, this rule is not always adhered to in practice.
6.5.4 Effects and Consequences of Domestic Violence and Law

(A) Child protection proceedings

Adult victims of domestic violence are often blamed for failing to protect their children. Instead of taking steps to remove the batterer from the home and hold him accountable, child protection systems allege neglect on the part of the abused caregiver and remove the children from her custody. The manner in which many states apply ‘failure to protect’ statutes against the non-offending caregiver results in re-victimization of battered women by the unjust removal of children from their care.

These results often occur whether or not the adult victim has consented to the batterer’s presence in the home, despite estimates that one-half to two-thirds of all abuse occurs when women are single, separated, or divorced. This practice of victim-blaming allows the batterer to continue to deprive the woman of power and control over her life, even after she has taken steps to separate herself and her children from the abusive partner.

When a woman does not take steps to leave an abusive partner, it may be used as evidence against her in child protection proceedings. However, this presumption of neglect ignores the reality that domestic violence often escalates upon separation from the abuser, and that it is the victim who best understands her unique situation, including the risks which leaving may pose for herself and her children. The manner in which child protection systems require an abuse victim to meet someone else’s expectations regarding actions that should be taken for the safety of herself and her children further undermines her autonomy and may actually exacerbate the danger of abuse.
When a victim does draw attention to her domestic violence experience by reaching out for help, the result can be an investigation by child protective services, a finding that she is a neglectful parent and, ultimately, the termination of her parental rights. This deters many women from reporting instances of abuse, causing them to forego the pursuit of security and justice out of fear that they will lose their children.

(B) Custody proceedings in divorce and family courts

Additionally, victims of domestic violence involved in custody proceedings reported court systems that were broken or biased against them in the administration of justice and deviations in the judicial process that resulted in violations of due process. For example, victims have reported ex parte communications between one party and the judge, disallowance of witness testimony that would support the victim’s story, inaccurate or lack of access to hearing transcripts, legal guardians who were ineffective representatives of the child victims, and the use of unsubstantiated allegations leading to removal of custody.

Often, decisions made throughout the custody proceedings by various actors, many of whom are “advocates” of the victim/mothers, actually placed the children in danger. For example, victim/mothers reported that they were told by their attorneys, legal guardians, or the judges not to oppose visitation, even when the mothers felt it was unsafe to allow the abusers access to the children or the children themselves protested the visitation. Frequently, courts failed to grant victim/mothers adequate child support, the direct result of which was a contested custody dispute. In one study, 58% of women interviewed reported that requesting child support triggered retaliation by the abuser, often in the form of custody battles.
Victims also reported their voices went unheard in custody proceedings and they were advised by their advocates and court personnel to refrain from mentioning domestic abuse during custody disputes. In one study, half of the women interviewed stated their own attorneys told them that the mention of domestic abuse would hurt their case, and the other 0% were advised by court personnel, including mediators, to ignore their experience as domestic abuse victims.

When domestic violence is not identified and when a history of domestic violence is not accounted for in custody proceedings, custody and/or unrestricted access to the child may be granted to the abusive parent, thereby threatening the safety and wellbeing of the child and his or her battered parent.