

Domestic Violence in Ukraine



December 2000



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Founded in 1983, Minnesota Advocates for Human Rights is the largest Midwest-based, non-governmental organization engaged in international human rights work. The organization has approximately 4,000 members, including more than 800 active volunteers who contribute an estimated \$1.4 million annually of in-kind services. Minnesota Advocates also has Special Consultative Status with the United Nations.

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DEDICATION

This report is dedicated to the women of Ukraine

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DOMESTIC VIOLENCE IN UKRAINE

I had a recent case involving a young woman and her boyfriend who went to visit a friend at home. They drank together all evening, and the friend invited them to stay the night. About an hour after everyone went to bed, the owner of the house heard noises and went to see what it was. She saw the woman on the floor and her boyfriend kicking and beating her. The friend separated them and calmed them down. Then everyone went back to bed. The next morning, the boyfriend left early, saying the young woman was asleep. The friend glanced into the other room and seeing the woman in bed, did not try to wake her. Later, her five-year old daughter came and told her that the young woman was not breathing. The friend called the police and an ambulance, and when they arrived they found that the young woman was dead. The first forensic examination concluded that her death was caused by skull trauma and injury that could only be inflicted by punching and kicking.

The lawyer defending the boyfriend came to me with this case. When I read the forensic conclusion, I didn't like it--it was too strong. After examining all the materials, including the report from the crime scene and the description of events, I concluded that the skull injury could not have been done by hitting, punching or kicking but only from falling and hitting something solid or the floor. The fact that there was a witness is none of my business. It is up to the investigator to find out why she gave this evidence. The court considered my report and exhumed the body of the young woman, but a second forensic examination contradicted my conclusion. Finally, a forensic examination was done in Kyiv with another specialist and it proved that the woman really did die from a fall.¹

I. PREFACE

Domestic violence is a universal problem and one of the most pervasive human rights abuses in the world. Domestic violence has been found to be a serious problem in every country where the issue has been studied. In countries where statistics are recorded, the number of women beaten by their spouses or intimate partners ranges from 40% to 80%.² This violence impacts women of all ages and socio-economic backgrounds.

In 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence Against Women. This Declaration outlines the international legal instruments that protect a woman's right to be free from violence and sets forth the responsibilities of individual governments to ensure that these protections are enforced. In 1994, the United Nations Commission on Human Rights appointed a Special Rapporteur on Violence Against Women to collect comprehensive data and to recommend measures

¹ Summarized from interview, May 19, 2000 (forensic doctor, Dnipropetrovsk).

² Charlotte Bunch, *Women's Rights as Human Rights: Toward a Revision of Human Rights*, 12 HUM. RTS. Q. 486, 490 (1990).

at the national, regional and international level to eliminate violence against women and its causes.

At the United Nations Fourth World Conference on Women, 185 countries committed to eliminate violence against women and to promote and protect women's human rights. The Beijing Platform for Action adopted at the Conference recognizes that violence against women is a violation of human rights and suggests strategies for eliminating this violence. Both the Declaration on the Elimination of Violence Against Women and the Beijing Platform for Action encourage governments and non-governmental organizations ("NGOs") to eliminate violence and to promote research and studies on the nature and causes of violence against women.

Domestic violence is also a problem in Ukraine and a violation of the Ukrainian government's obligation to uphold international human rights standards. In February, May and June 2000, a delegation of researchers for Minnesota Advocates for Human Rights ("Minnesota Advocates") conducted over 100 interviews in Ukraine to investigate domestic violence and evaluate the governmental and societal responses to this problem.³ Minnesota Advocates interviewed representatives of local and international women's NGOs, police officials, prosecutors, judges, forensic medical experts, doctors, psychologists, psychiatrists, academics, private attorneys and government officials to determine the nature and extent of domestic violence in Ukraine. Minnesota Advocates conducted interviews in the cities of Kyiv, Lviv, Berdychiv, Luhansk, Donetsk, Dnipropetrovsk, Odesa and Kharkiv.

In conducting this research, the delegation principally used the following UN definition of domestic violence:

*Domestic violence is the use of force or threats of force by a husband or boyfriend for the purpose of coercing and intimidating a woman into submission. This violence can take the form of pushing, hitting, choking, slapping, kicking, burning or stabbing.*⁴

To the extent possible, the research team also documented the prevalence of and response to psychological abuse. Like other countries of the former Soviet Union,

³ This delegation consisted of Suzanna Banwell, Erin Barclay, Belinda Cooper, Elisabeth Duban, Nicole Willis-Grimes and Robin Phillips. The delegation was assisted in some of the interviews by William Carter, Loretta Frederick and Amy Heyden.

⁴ For the purpose of this report, Minnesota Advocates defines domestic violence as violence against women. This definition reflects research that indicates women are the most common victims of violence in the family. See United Nations Centre for Social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence: A Resource Manual*, at 7, U.N. Doc. ST/CSDHA/20 (1993).

domestic violence is frequently viewed by many in Ukraine as a psychological problem of the women who are being abused.⁵

A. Summary of Findings

Domestic violence is a widespread problem in Ukraine, but professionals in the criminal justice system do not treat it as a serious crime. While the law recognizes that women have the right to live free from violence, in reality, women's human rights are not adequately protected during any step of the legal process. Women who come forward with complaints of domestic violence are often advised by attorneys, police, psychologists and NGOs to reconcile with their husbands. Women who suffer injuries defined by law as "light" or who endure systematic abuse without physical injury must prosecute their cases without the assistance of the government. Prosecutors often refuse to pursue prosecution even when women have been severely injured. The majority of attorneys interviewed did not believe current legislation can be applied to situations of domestic violence and therefore frequently do not seek remedies in court. Presently, the *Verkhovna Rada* (Ukrainian Parliament) is considering a draft domestic violence law. The draft legislation, however, does not directly address the problems in the legal system that create obstacles for women seeking justice.

Ukraine is a member of the United Nations and has committed to adhering to internationally recognized human rights standards. Ukraine is a party to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women ("Women's Convention"). In failing to respond effectively to widespread abuse against women, Ukraine is violating its obligations under international human rights law:

1. Violence against Ukrainian women in their homes is a violation of their fundamental right to security of person as guaranteed in the Universal Declaration of Human Rights.⁶ It is also a violation of the right to freedom from torture and cruel and inhuman or degrading treatment as guaranteed in the International Covenant on Civil and Political Rights;⁷
2. Ukrainian victims of domestic violence have been denied their right to an effective and adequate remedy. By failing systematically to provide effective prosecution for crimes of domestic violence and failing to enforce criminal laws on behalf of domestic violence victims, Ukraine is violating

⁵ Many people interviewed about domestic violence in Ukraine said that it includes not only physical violence, but also moral, psychological and emotional violence. Additionally, statistics kept by some NGOs divide violence into three categories: "physical violence," "psychological violence" and "economic violence."

⁶ G.A. Res. 7 A(III) Dec. 10, 1948, U.N. Doc. A/810 (1948).

⁷ G.A. Res. 2200 A(XXI), December 16, 1966, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976. Ratified by Ukraine on November 12, 1973.

the right to a remedy guaranteed under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and

3. The Ukrainian government is not in compliance with the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women⁸ (including General Recommendations 12 and 19 of the Committee on the Elimination of Discrimination Against Women⁹) and the United Nations Declaration on the Elimination of Violence Against Women,¹⁰ including the following:
 - a. The Ukrainian government has not met its obligation to protect women from violence;
 - b. The Ukrainian government has not met its obligation to ensure that women who are victims of violence are provided with health and social services, facilities and programs and other support structures to promote their safety and rehabilitation; and
 - c. The Ukrainian government has not met its obligation to develop comprehensive legal, political, administrative and cultural programs to prevent violence against women.

B. Recommendations

Based on the findings of the Ukrainian research team, Minnesota Advocates for Human Rights recommends the following:

1. The Ukrainian government should acknowledge that domestic violence is a chronic and significant drain on its economy and its citizens and negatively impacts the population. It should therefore make further efforts to eliminate domestic violence.
2. The Ukrainian government should provide victims of domestic violence equal and effective access to the criminal justice system and an effective remedy for harm they have suffered. The government should uniformly enforce all relevant criminal provisions regardless of the relationship of the victim and the perpetrator.
3. The Ukrainian government should direct the appropriate ministries to prioritize the issue of domestic violence and ensure that their internal

⁸ G.A. Res. 34/180, U.N. GAOR Supp. (No. 46), U.N. Doc. A/Res/34/180, *entered into force* September 3, 1981. Ratified by Ukraine on March 12, 1981.

⁹ U.N. Doc. A/44/38 (1989); U.N. Doc A/47/38 (1992).

¹⁰ G.A. Res. 48/104 (1993).

recommendations, laws, commentary and decrees governing the actions of ministry employees comply with international human rights standards.

4. The Ukrainian government should evaluate and analyze the draft domestic violence law in its next reading and amend it to ensure that it is consistent with international human rights standards protecting women's human rights and that it adequately responds to existing gaps in the law as it is applied to victims of domestic violence.
5. The Ukrainian government should vigorously investigate crimes of domestic violence when they occur and institute appropriate measures to protect victims of violence from further abuse. The Ukrainian government should also evaluate regulations that create negative incentives and discourage effective police response to domestic violence.
6. The Ukrainian government should institute a mandatory program of education and training for all law enforcement officials, including police officers, forensic medical experts, prosecutors and judges on issues of domestic violence. This training and education should include information about the effective and appropriate treatment of victims and perpetrators within the legal system.
7. The Ukrainian government should require medical and legal institutions to keep statistical data on the number and nature of domestic violence crimes.
8. The Ukrainian government should conduct or commission a detailed study on the nature and extent of domestic violence in Ukraine, including a review of the legal system response to the problem.
9. The Ukrainian government should strongly support the efforts of women's organizations and other NGOs actively working on the issue of violence against women and should cooperate with them at local, national, regional and international levels. This support should include, among other activities, conducting public education campaigns, promoting research, collecting data and compiling statistics relating to the prevalence of different forms of violence against women.
10. The Ukrainian government should conform to the Committee on the Elimination of Discrimination Against Women ("CEDAW") General Recommendation 19, the Declaration on the Elimination of Violence Against Women and the Beijing Platform for Action¹¹ in all of its work toward the elimination of violence against women and the provision of services for victims of such violence. Specifically, the government should work to ensure that there is specialized assistance available to women subjected to violence, in particular women who have children, including

¹¹ See *infra*, Section IV, for a detailed discussion of Ukraine's obligations under international law.

assistance in child care, counseling, health services, welfare benefits and housing assistance.

II. DOMESTIC VIOLENCE IN UKRAINE

A. Introduction

Women in Ukraine generally do not speak publicly about domestic violence because of the many social taboos connected with the subject. People who work directly with victims of domestic violence report that domestic violence impacts women at all levels of society. According to sociological research, domestic violence is a widespread phenomenon and “happens both in families of aged people and young families.”¹²

The criminal justice system in Ukraine does not encourage reporting of cases of domestic violence against women. A United Nations Development Program (“UNDP”) report notes that:

*. . . In general, violence against women and girls, especially domestic, sexual and psychological abuse, remain “clandestine.” Unfortunately, against the background of a general increase in crime in the country, sexual crimes are seldom reported or detected.*¹³

Police do not always respond to domestic violence calls, and when they do respond, they often do not remove the perpetrator or effectively protect the human rights of the victims. When women pursue legal remedies to domestic violence, they are often left to prosecute their abusers without the assistance of the state.

B. Historical Background

Throughout history, the area of present day Ukraine has been home to Ukrainians, Crimean Tatars, Poles, Russians, Germans, Greeks and Romanians. The capital city, Kyiv, was founded in 482 A.D. and has remained a cultural and political center of Ukraine since that time. In the 10th century, Kyiv became the center of the empire of Kyivan Rus, the powerful precursor state to present day Russia, Belarus and Ukraine. This empire, a frequent target of attacks from nomadic tribes, declined after the 11th century.

From the mid 15th century to the mid 17th century, most Ukrainians lived within the Polish-Lithuanian Commonwealth. In 1667, the eastern portion of this Commonwealth became part of the Russian Empire, leaving only the western half under Polish control. The cultures and traditions of Poland and Russia continued to dominate and influence the western and eastern portions of Ukraine, respectively. Other regions of

¹² World Bank- Kyiv Institute of Sociology (unpublished study) (1999).

¹³ *Gender Analysis of Ukrainian Society*, United Nations Development Program at 217 (1999) [hereinafter UNDP UKRAINIAN GENDER REPORT].

modern Ukraine such as Crimea were influenced by the Ottoman Turks, and the westernmost portion of the region was subject to Hungarian rule from the Middle Ages to the early 1900s.

During the 15th century, the Cossacks of Ukraine loosely organized themselves to repel Tatar raids. These Cossacks, an autonomous, independent group of Russians, Poles, and escaped serfs based around the city of Zaporizhzhia, fought as mercenaries for the Polish-Lithuanian and Russian empires. Cossack women have historically been thought of as independent, able-bodied women who were successfully able to farm and carry on community activities while the men were away fighting battles. As one scholar noted, this way of life caused “the collapse of a sexual division of labor not only in the agricultural sphere . . . but also in the most quintessentially male sphere, armed combat.”¹⁴

Cossack women enjoyed many rights denied to peasant women such as the right to own property. Despite these rights, women in Cossack communities were still affected by many of the patriarchal norms that were prevalent around the world. For example, a Cossack woman could represent her family at a community meeting only if her husband was dead.¹⁵ Furthermore, while a woman’s husband was away on a military campaign, sometimes for years at a time, she was often forced into sexual relations with male members of her husband’s family, such as her father-in-law and her brothers-in-law.¹⁶ In fact, evidence of violence against women is documented in both the Cossack and the peasant cultures of 17th through 19th century Ukraine. For example, a local newspaper printed in 1879 reported that over half the women in its town experienced violence.¹⁷

Prior to russification of the eastern half of the country in the 17th century, Ukrainian women had the right to own money, control their dowry, appear in court and in some cases hold political office.¹⁸ When Kyiv was a principality, it promulgated a law against domestic violence.¹⁹ Historians have defined women’s roles at that time as separate but equal.²⁰ With the Russian occupation in 1721, the lives of Ukrainian women and men in the eastern region became dramatically more difficult. The Ukrainian people

¹⁴ Shane O’Rourke, *Women in a warrior society: Don Cossack women, 1860-1914* in *WOMEN IN RUSSIA AND UKRAINE* at 46 (Rosalind Marsh ed., Cambridge University Press 1996).

¹⁵ *Id.*

¹⁶ *Id.* at 50-51.

¹⁷ *Id.* at 50.

¹⁸ Martha Bohachevsky-Chomiak, *FEMINISTS DESPITE THEMSELVES 4* (CIUS Press 1988).

¹⁹ Marian J. Rubchak, *Christian virgin or pagan goddess: feminism versus the eternally feminine in Ukraine* in *WOMEN IN RUSSIA AND UKRAINE* 322 (Rosalund Marsh ed., Cambridge University Press 1996).

²⁰ *Id.* at 316.

of this region became serfs of the Russian Empire. It was at this time that Ukrainians, women in particular, suffered the highest mortality rates in all of Europe.²¹

Ukrainian serfs were emancipated in the early 1860s.²² Unfortunately for women, the end of serfdom had no impact on the traditions of patriarchy that had become engrained in the lives of the Ukrainian peasantry.²³ For example, men controlled decision-making in the community and the family. Women's responsibilities were confined to raising children and household chores. In addition, women's sexuality was controlled by strict moral codes of conduct.²⁴

In the late 19th century, a feminist movement emerged. This movement focused on discrimination rather than on victimization of women.²⁵ The most famous female writer of this time, Lesia Ukrainka, was the daughter of an influential activist in the women's movement. She believed that "the second-rate status of women was a result of their reluctance to break with convention."²⁶

C. Ukraine Under Communism

In 1921, Ukraine became part of the Soviet Union. Although Soviet policy toward women and their relations with the community at large was one of formal equality,²⁷ in reality, women were not treated as equals. The Soviet approach to equality for women can be described not only as paternalistic but also as "a shift of functions from the private domain to the public rather than, as in contemporary feminist strategy, through a redefinition of male and female roles."²⁸ It is difficult to ascertain the level of domestic violence during the Soviet era because violence statistics were kept hidden, "since [they] would have broken the mould of the exemplary 'Soviet Family.'"²⁹

²¹ *Id.* at 7.

²² *Id.* at 8.

²³ Christine D. Worobec, *Temptress or Virgin? The precarious sexual position of women in postemancipation Ukrainian peasant society* in 49 *SLAVIC REVIEW* at 227 (1990).

²⁴ *Id.* at 227-229.

²⁵ Martha Bohachevsky-Chomiak, *supra* note 18 at 9.

²⁶ *Id.* at 11.

²⁷ The Constitution of the Union of Soviet Socialist Republics, Article 35 (1) provided that, "women and men have equal rights in the USSR."

²⁸ Gail Warshofsky Lapidus, *Gender and Restructuring: the Impact of Perestroika and its Aftermath on Soviet Women* in *DEMOCRATIC REFORM AND THE POSITION OF WOMEN IN TRANSITIONAL ECONOMIES* 138 (Valentine M. Moghadam, ed., Oxford: Clarendon Press 1993).

²⁹ UNDP UKRAINIAN GENDER REPORT at 218, *supra* note 13.

Although official Soviet policy was aimed at improving women's participation in public life, including politics and education, the role of women in the family remained effectively unchanged. Women were still expected to take primary responsibility for raising children and maintaining the household. While the government encouraged women to become educated and to increase their participation in the professional labor force, lack of investment in the consumer economy meant women still had to spend long hours cooking, cleaning, sewing and laundering without the benefit of modern, time-saving conveniences like washing machines. This encouragement, along with the constant demands of the household, had a markedly negative effect on women. Combined with the unequal division of household labor, "these [pressures from the government] adversely affected women's health, welfare, and opportunities for professional and personal development, and led to increased family tensions and a declining birth rate."³⁰

D. The Transition from Communism and Current Conditions

Ukraine became an independent state in 1991. The transition from communism to democracy throughout the Commonwealth of Independent States ("CIS") was initially met with great enthusiasm. The reality for many people, however, particularly for women, is under-representation in politics, drastic unemployment and a reemergence of gender-based stereotypes of women's role in society. Many political, economic and social policies enacted since 1991 have overturned communist-era policies without providing for the social consequences. Furthermore, benefits women received from the state under communism, such as maternity leave, are often used to justify not employing them, because the burden has now shifted to employers to pay for these benefits. As one scholar noted, "marketization [has] become a masculine project of restructuring. The women's perspective is excluded from policy-making and women do not participate in the process of power or resource distribution."³¹

The impact of the economic transition has been extremely difficult for women. As of January 1999, over 60% of the officially unemployed were women.³² Employers are often hesitant to hire women because of outdated gender stereotypes or fear that they will become pregnant or leave to care for their children. In addition, the social services that the Soviet government once provided to facilitate women's labor force participation have disintegrated. Many state run child-care centers have been forced to close or lack so many resources that mothers hesitate to place their children in them.

Under communism, the majority of women were not employed in industrial or technical industries. These particular industries have been the primary targets of the privatization process. The largely female-dominated institutions of the cultural

³⁰ Gail Warshofsky Lapidus at 150.

³¹ Anastasia Posadskaya, *Gender Dynamics of Economics and Political Change: Efficiency, Equality, and Women in DEMOCRATIC REFORM AND THE POSITION OF WOMEN IN TRANSITIONAL ECONOMIES* at 18.

³² UNDP UKRAINIAN GENDER REPORT at 139, *supra* note 13.

establishment or service sector have offered no comparable opportunities to acquire potentially valuable property.³³ Thus, women have lost in two ways: first, through the loss of jobs, and second, through the missed economic opportunities of privatization.

Further economic hardships have resulted in a consistent decrease in wages and in the standard of living. Family incomes have dropped so low that as of 1997, 70% of families surveyed by the UNDP in the late 1990s identified their incomes as insufficient.³⁴ As a result of these low incomes many people, particularly women, have begun to work second jobs.³⁵ During the last decade, fear of unemployment has been one of the primary concerns facing women, contributing greatly to the psychological burdens of daily living.³⁶

The effects of rapidly deteriorating economic conditions have been compounded by pervasive discrimination against women in the labor market. In 1989, women's salaries within the same fields and occupational levels as men were 28% less on average than those of men.³⁷ This inequality has not been addressed during the period of transition, as women continue to earn 27% less on average than men for equal work.³⁸

The transition process in Ukraine has emphasized strong nationalist and traditional beliefs that reinforce the characteristics of a strictly patriarchal society. "The move toward a market economy has been accompanied by a celebration of masculinity, both literally and metaphorically, and the denigration of the strong and capable woman worker glorified in the first decades of Soviet history."³⁹

Many people interviewed for this report told Minnesota Advocates of the "strong Ukrainian woman" who is seen as the provider for the family and the keeper of Ukrainian traditions. The strong Ukrainian woman is to be revered and respected in Ukrainian society. This image, however, starkly contradicts the reality of Ukrainian women's lives, and in particular the high rates of domestic violence in Ukraine.

³³ Gail Warshofsky Lapidus at 156.

³⁴ UNDP UKRAINIAN GENDER REPORT at 136, *supra* note 13.

³⁵ *Id.*

³⁶ *Id.* In various groups studied in the former Soviet republics, women's fear of unemployment almost doubled from 1991 to 1992.

³⁷ *Id.* at 672.

³⁸ UNDP UKRAINIAN GENDER REPORT at 142, *supra* note 13.

³⁹ Lynne Attwood, *The Post-Soviet Woman in the Move to the Market in WOMEN IN RUSSIA AND UKRAINE* 255 (1996).

E. Evidence of Domestic Violence

While information about domestic violence in Ukraine from official sources is limited, the interviews conducted by Minnesota Advocates confirmed that it is a widespread problem in the country.⁴⁰ In its report on Gender in Ukraine, the UNDP noted:

*In Ukraine, the problem of violence against women is extremely pressing. Without overcoming this disastrous phenomenon in society, it is impossible to create favorable conditions for human self-realization, free expression of will, establishment and development of parity, democracy, and implementation of the principle of equal rights, freedoms, and opportunities for women and men.*⁴¹

Although the Ukrainian government does not routinely keep statistics on the prevalence of domestic violence in the country, professionals who regularly encounter victims of domestic violence were able to estimate the approximate numbers of cases they see in their practices. Police are often the first to see cases of domestic abuse. According to a representative of the police in Berdychiv, between 30% and 40% of daily calls to the police department are related to domestic violence; of those calls, 18% to 20% of the perpetrators are removed from the home and taken to the police station.⁴² A police inspector in Dnipropetrovsk estimated that he receives an average of 20 domestic violence calls in his district on every 24-hour duty shift.⁴³ He said approximately 60% of the calls are from women who were being beaten and 40% from neighbors complaining about the abuse.

Doctors routinely treat victims of domestic violence. An emergency doctor estimated that one-third to one-half of the women who come to the trauma center report that their husbands assaulted them and caused their injuries.⁴⁴ A second emergency doctor reported that ambulance teams deal with approximately four to five cases of domestic violence every day.⁴⁵ Similarly, a forensic doctor estimated that approximately 30% of her cases are domestic violence incidents in which a woman is injured, adding that

⁴⁰ Some statistical data is available about the prevalence of domestic violence. For example, in a survey conducted by the World Bank, Kyiv Institute of Sociology, 12% of the women in the age group up to 28 years old admitted they experienced physical violence from their husbands.

⁴¹ UNDP UKRAINIAN GENDER REPORT at 217, *supra* note 13.

⁴² Interview, February 14, 2000, (police representative, Berdychiv).

⁴³ Interview, May 19, 2000, (police inspector, Dnipropetrovsk).

⁴⁴ Interview, February 14, 2000, (doctor, Berdychiv).

⁴⁵ Interview, June 7, 2000 (doctor, Luhansk).

because of the high numbers of abuse cases she sees, “there seems to be no normal family.”⁴⁶

A high-ranking criminal police investigator provided statistics from the Luhansk region.⁴⁷ In 1998, there were 402 criminal prosecutions for causing serious bodily injury to women, and in 1999 there were 190 cases. In contrast, in 1999, there were 2,234 cases of “hooliganism” against women; of these, 1,846 resulted in criminal charges. The charge of hooliganism is sometimes used when a woman is beaten or insulted without serious health damage.⁴⁸ Of course, these numbers only represent cases that are investigated by the police and ultimately charged and prosecuted.

The numbers of reported cases, although high, do not reflect the real rates of domestic violence because women are often reluctant to report the abuse. Some women feel ashamed of the abuse and will not report it to the police or seek help from the legal system. Women victims often have many conflicting pressures that affect their ability to respond to the problem. In Dnipropetrovsk, an attorney interviewed summarized the situation for women in Ukraine this way:

Sometimes women suffering from domestic violence only go to court after involvement of the neighbors. One woman said that she couldn't call the police because she was unconscious, but the neighbors called. She believed her husband when he said it would not happen again, but it did. There are different reasons why victims endure domestic violence, such as [the fear being alone, economic dependence on their husbands, shame or the feeling that their children need their fathers].⁴⁹

A representative of the Department of Internal Affairs reported a case of a man in his apartment building who frequently comes home drunk and beats his wife:

The neighbors all know about this situation, but the woman is ashamed and tries to hide the abuse. The woman often has bruises on her face and the neighbors can hear her husband shouting at her. When he is sober, the man apologizes, but the next time he drinks, he beats her again. The woman does not have a job and has nowhere to go so she does not seek a divorce.⁵⁰

⁴⁶ Interview, February 15, 2000 (forensic doctor, Lviv).

⁴⁷ The Luhansk oblast has a population of 2.9 million and is one of the top-ranking regions for crime. Ukraine Human Development Report, 1999, United Nations Development Program at 20.

⁴⁸ Interview, May 17, 2000 (police inspector, Luhansk).

⁴⁹ Interview, May 18, 2000 (Women for Women Center attorney, Dnipropetrovsk).

⁵⁰ Interview, February 15, 2000 (Department of Internal Affairs representative, Lviv).

Other women may tolerate abuse because they consider it a normal part of life. A police inspector explained, “many women are exposed to domestic violence on a daily basis. Some women take the approach that it’s their fate. . . . [But] as a rule, when a woman forgives her violator for the first time, it will happen again and again.”⁵¹

Because women may not always address the legal system in cases of abuse, Minnesota Advocates spoke with lawyers, psychologists, counselors and representatives of women’s NGOs for information about the problem. NGOs that operate telephone hotlines reported that they frequently receive calls related to domestic violence. The Women for Women Center⁵² in Dnipropetrovsk reported that during the first quarter of 2000, they received 1,110 calls on their hotline. Of these calls, 116 were categorized as “violence” and 224 as “interpersonal problems.”⁵³ The Women for Women Center in Lviv received 659 calls in the first half of 2000. Of these calls, 50 were categorized by the hotline counselor as “violence”⁵⁴ and 155 were identified as “interpersonal problems.” Hotline operators receive calls both from victims themselves and from third parties, such as concerned neighbors or family members.

In one case reported by a hotline advocate, a woman called about the abuse of a neighbor. The woman heard strange noises coming from her neighbor’s apartment, and rang the doorbell to see if there was a problem. When no one answered, she entered the unlocked apartment and saw her neighbor being beaten by her husband. The woman offered shelter to her neighbor, but the husband became angry and tried to attack the first woman as well. Both women escaped to the apartment next door. The women called the hotline because the man was banging on the door and they were afraid they would be injured.⁵⁵

Many cases of domestic abuse involve beating and punching. Injuries appear to range from bruises and black eyes to more serious trauma. An emergency doctor stated that the most frequent injuries women sustain in domestic violence situations are concussions, abdominal injuries and broken limbs.⁵⁶ An NGO activist recounted a

⁵¹ Interview, May 17, 2000 (police inspector, Luhansk).

⁵² The Women for Women Centers were created by the NIS-US Women’s Consortium in partnership with local women’s NGOs. The Centers receive ongoing funding from the NIS-US Women’s Consortium, Kyiv.

⁵³ The Women for Women Center defines “interpersonal problems” as “family problems, parental problems, spouses’ problems, problems with other family members and relations with other people. “Interpersonal problems” also include one-parent families, loneliness, adaptation problems, change of place or residence, change of place of work/education, adoption, handing over a child to an orphanage, language problems or communication problems, problems of getting acquainted with people.”

⁵⁴ “Violence” is defined in the Women for Women Center categorization scheme as “sexual violence, threat of rape, attempt of rape, incest, physical violence, psychological violence, economic violence.”

⁵⁵ Interview, May 16, 2000 (hotline worker, Donetsk).

⁵⁶ Interview, June 7, 2000 (doctor, Luhansk).

“typical case” in which a husband and wife lived together for twelve years. He abused her regularly and once beat her to the point of unconsciousness.⁵⁷ A hotline worker spoke of a woman who has been with her husband for twenty years. She said that when the man is sober, he is an “ideal” husband, but when he abuses alcohol and drugs, he beats her so severely that she has considered suicide.⁵⁸

Women also suffer injuries that can be classified as severe under Ukrainian law. A police investigator described a notorious case from 1999 in which a 21-year old woman complained to the police about her abusive boyfriend. He had tortured her, beat her with a hammer, cut her, burnt her with cigarettes and threatened her with murder. She was so terrified that she endured the abuse for six months before going to the police.⁵⁹ The man was arrested for battery and torture, causing injuries and threatening murder. He ultimately was convicted and sentenced to eight years in prison.

Professionals who encounter cases of domestic violence in their work often described psychological abuse as well as physical violence. A lawyer mentioned the case of a man who did not physically abuse his wife but often insulted her, used obscenities and threatened to kick her out of their apartment.⁶⁰ A human rights activist described another case in which a high-ranking official openly lived with his lover and also beat his wife. After beating his wife, the man typically stayed with his mistress for a few months. He would then return to his wife with an expensive present, such as a fur coat or a car. The man would tell his wife that she must accept him as he is. The woman has endured this kind of abuse for two years; she has a child with her husband and does not want to divorce him.⁶¹

Other examples indicate that such psychological violence often accompanies physical violence. A hotline worker reported a case in which a woman with two young children called in tears because her husband beat her and threw her out of the house, and she was afraid that he would kill her. She explained that the abuse started about twelve years earlier. Although she worked, he controlled all their money. He came to her workplace and “created scandals” by accusing her of being a bad wife and mother in front of her co-workers. The woman said she felt that he wanted her to become completely dependent on him. The woman did not want to pursue a criminal prosecution and preferred to file for divorce instead.⁶²

⁵⁷ Interview, February 13, 2000 (NGO activist, Kyiv).

⁵⁸ Interview, February 16, 2000 (hotline worker, Lviv).

⁵⁹ Interview, May 17, 2000 (police investigator, Luhansk).

⁶⁰ Interview, May 16, 2000 (lawyer, Donetsk).

⁶¹ Interview, May 18, 2000 (human rights activist, Dnipropetrovsk).

⁶² Interview, May 20, 2000 (hotline worker, Dnipropetrovsk).

In another case, a woman called the hotline and first complained that she had spiritual problems because her husband prevented her from attending church. Later in the discussion, however, the woman revealed that her husband had been abusive for many years and was attempting to control her life. In the past, he had prevented her from working, prohibited her from seeing her friends and controlled how she dressed. He had also severely beaten her on several occasions.⁶³

Both physical and psychological abuse can lead to long-term health disorders, particularly mental health problems. A psychologist at a shelter for abused women stated that many of the victims she sees have psychological disorders such as depression and stress from the abuse.⁶⁴ In some cases, women have suffered such extreme abuse that they see no other recourse but to end their lives. Minnesota Advocates spoke with volunteers who operate a suicide prevention hotline in Lviv known as the “058 Hotline.”⁶⁵ The volunteers are psychology students, lawyers and counselors. In 1998, the 058 Hotline received 8,845 calls. Of these calls, 22% related to intimate relationships or “love affairs,” 12% were “family issues,” and 3% were suicide related. The coordinator of the hotline, a psychiatrist, indicated that the overwhelming majority of calls classified as “suicidal” were the result of repeated domestic violence. Also, the coordinator reported that many of her patients at the hospital are women who have attempted suicide as a result of experiencing ongoing domestic violence. The coordinator indicated that it is common in Ukraine for domestic violence to be hidden under the classification of “suicide” because women often do not come into contact with the mental health or law enforcement systems until they have attempted suicide after continual beatings by their husbands.⁶⁶

Domestic violence may also result in the death of the abuser when a woman attempts to defend herself in an attack. A police officer reported a case in which a woman killed her husband by stabbing him with a knife during an altercation.⁶⁷ A doctor described a case in which a female doctor killed her intoxicated husband because he was beating her. She was convicted of murder and sentenced to ten years, but served only five years because of good behavior.⁶⁸ In another case, a woman killed her husband after many years of abuse. When he fell asleep on the balcony after drinking, she tied his hands with a cord and strangled him.⁶⁹ She said she would feel better living in jail than living

⁶³ Interview, May 20, 2000 (hotline worker, Dnipropetrovsk).

⁶⁴ Interview, May 16, 2000 (psychologist, Kyiv).

⁶⁵ Interview, May 17, 2000 (Lviv); the “058 Hotline” is administered by a group of 75 volunteers from the Lviv Psychiatric Center. The Psychiatric Center receives no outside funding and it provides two small rooms and a phone line.

⁶⁶ Interview, February 16, 2000 (hotline coordinator, Lviv).

⁶⁷ Interview, February 16, 2000 (police representative Lviv).

⁶⁸ Interview, February 16, 2000 (police representative Lviv).

⁶⁹ Interview, May 18, 2000 (judge, Dnipropetrovsk).

with her husband. This woman was ultimately convicted of murder and sentenced to nine years in prison.⁷⁰

Children may become involved in domestic violence in various ways. Children themselves sometimes seek assistance from people outside the family when they are concerned for the safety of their mothers, as in the case of a young boy who contacted an NGO in Donetsk when his father beat his mother.⁷¹ In other cases, men use children as a means to control women's behavior. A hotline worker reported a case in which a man beat his wife in front of their children. When she threatened to leave the man, he said he would kill the children. She could not return to her parents' house, but was finally able to leave her husband and stay with a friend.⁷²

Children are sometimes drawn into violence while trying to protect their mothers from abuse. In a case described by a human rights lawyer, a woman lived with her three children in a rural area. The woman's husband routinely beat her in front of their children. The case came to court when the oldest son seriously wounded his father while trying to defend his mother.⁷³ The boy was arrested, convicted and sentenced to serve time in a juvenile facility. He was later released under a government amnesty. In another case, a 13-year old boy killed his alcoholic father while trying to protect his mother from an assault.⁷⁴

Evidence also suggests that even though the majority of domestic violence cases involve men beating their wives, women also suffer abuse from other family members. An NGO worker recalled a case in which a woman's son who lived with her was an alcoholic and often beat her. They lived together in a small privatized apartment, which could not be legally divided without the consent of both the mother and the son. The NGO was unable to help the woman with the apartment and could only offer her advice on how to handle her stress and protect herself from further abuse.⁷⁵

F. Domestic Violence: Causes and Complicating Factors

Domestic violence is a complex phenomenon that takes many forms. There are no simple explanations for its causes. International research indicates that domestic violence has its roots in the subordinate role women have traditionally held in private and public

⁷⁰ *Id.*

⁷¹ Interview, June 5, 2000 (NGO activist, Donetsk).

⁷² Interview, February 16, 2000 (hotline workers, Lviv).

⁷³ Interview, May 18, 2000 (human rights lawyer, Dnipropetrovsk).

⁷⁴ Interview, May 19, 2000 (prosecutor, Dnipropetrovsk).

⁷⁵ Interview, February 15, 2000 (Women for Women Center worker, Lviv).

life.⁷⁶ The United Nations recognizes domestic violence as “a manifestation of historically unequal power relationships between men and women” in the Declaration on the Elimination of Violence Against Women. It condemns the violence as one of the “crucial social mechanisms by which women are forced into [subordinate positions] compared with men.”⁷⁷

Many people in Ukraine described the strong patriarchal culture as an underlying cause of domestic violence. A psychologist from Lviv described the connection between patriarchy and violence:

*There is a problem with the societal norm that a man is the master. When he cannot support his family, he becomes jealous that the family must rely on the wife to earn money. He then takes his frustration out on the wife and the family to reassert control.*⁷⁸

Minnesota Advocates was told about many cases of men using physical violence to control their wives. For example, in one case, a woman went to an NGO center because she was badly beaten and psychologically abused by her husband.⁷⁹ She said he was jealous without reason. She complained that he believes women should stay home and raise children and he did not want her to leave the house. The woman was afraid that any type of formal intervention would result in even more severe violence. After discussing several alternatives, the woman decided the only acceptable alternative was to divorce the man.

In another case described by a policewoman, an educated woman lived with her husband in a house they had built. The man worked and they were materially very well-off, but he would not allow his wife to work. He routinely humiliated her and beat her. The woman went to the police for help. The police would not respond and “the whole village said she was wrong [to complain] because her husband fed her and gave her money.”⁸⁰ In another case in Donetsk, a woman married to a wealthy man called the hotline because he had been beating her. The man would not allow her to work and never gave her any money. He forced her to stay at home and would not let her leave without his permission.⁸¹

⁷⁶ For a discussion of the causes of domestic violence, see *Domestic Violence, Report of the Secretary-General*, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders at 8, U.N. Doc. A/Conf.144/17 (1990).

⁷⁷ G.A. Res. 48/104 (1993).

⁷⁸ Interview, February 16, 2000 (psychologist, Lviv).

⁷⁹ Interview, May 17, 2000 (NGO representative, Lviv).

⁸⁰ Interview, May 17, 2000, (policewoman, Lviv).

⁸¹ Interview, June 5, 2000 (NGO representative, Donetsk).

Domestic violence has only recently become the subject of research in Ukraine. The UNDP reports that many of the myths about domestic violence that are prevalent in countries around the world are also widespread in Ukraine.⁸² The first myth identified in the UNDP report is that “domestic arguments and fights are intrinsic to poor, uneducated people, belonging to the lower socio-economic brackets of the population.”⁸³ Those people interviewed who provide direct services to women victims of violence confirmed that women from all backgrounds experience violence in their intimate relationships. The UNDP report similarly concludes, “in reality, violence against women has neither a national, social, economic, religious, professional, or educational color or barrier; it occurs and may occur in any family of any structure or background.”⁸⁴ International research does, however, show some correlation between poverty and increased rates of domestic violence.⁸⁵

A second myth identified by the UNDP is that domestic violence is caused by the “new social and economic conditions, the quick pace of modern life [and] the numerous stresses experienced by contemporary humanity.”⁸⁶ Many people interviewed described domestic violence, in particular psychological violence, as especially prevalent in newly rich families known as “New Ukrainians” or “New Russians.”⁸⁷ Evidence gathered by Minnesota Advocates, however, indicates that domestic violence occurs in all socio-economic groups and is not related to the political or economic transition. The unfortunate reality in Ukraine, as in other countries, is that domestic violence has been a problem for centuries. It is not a new phenomenon, nor is it a result of factors new in today’s society. Newspaper accounts from the 19th century in Ukraine report high levels of domestic violence occurring at that time.⁸⁸

The UNDP report and many of the people interviewed identified the myth that if a woman is beaten, she provoked the beating or somehow deserved it.⁸⁹ One police officer suggested that efforts to reduce domestic violence should be focused on increasing

⁸² UNDP UKRAINIAN GENDER REPORT at 220, *supra* note 13.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ L. Heise, M. Ellsberg, and M. Gottemoeller, *Ending Violence Against Women*. Population Reports, Series L, No. 11. Baltimore, Johns Hopkins University School of Public Health, Population and Information Program, December 1999 at 8.

⁸⁶ UNDP UKRAINIAN GENDER REPORT at 221, *supra* note 13.

⁸⁷ The terms “New Russian” and “New Ukrainian” have slightly pejorative meanings. The terms were generally used by people interviewed to refer to entrepreneurs who prospered through illegal means in the years following the collapse of the Soviet Union, and flaunted their wealth.

⁸⁸ *See supra* Section II B, Historical Background.

⁸⁹ UNDP UKRAINIAN GENDER REPORT at 221, *supra* note 13.

women's self-esteem.⁹⁰ Others voiced the opinion that women not only provoke violence, but sometimes even manipulate men into fighting with them to gain an advantage in divorce cases. Research shows that many batterers systematically beat their wives, and the severity of the beatings increases over time. Often, the abuse is not related to a specific act of provocation. The UNDP report explains:

*In reality, violators lose their self-control as a result of an internal psychic and psychological disposition; the "reason" provoking the violent behavior is of little consequence. Research and case studies reveal that a husband who beats his wife once will most likely in time systematically beat her; frequency and degree of domestic violence usually escalates with time.*⁹¹

In Ukraine, many people interviewed identified alcoholism as a cause of domestic violence. Alcoholism may contribute to violence but is not itself a cause. Although some men who are alcoholics beat their wives, other alcoholics never beat their wives. Some men never drink but severely beat their wives, while others who are recovering alcoholics continue to beat their wives after they stop drinking. On the other hand, some men drink in order to beat their wives, and there is evidence that alcoholism or drunkenness can increase the frequency and severity of beatings.

While alcoholism in Ukraine does not "cause" domestic violence, it can lead to a decline in the quality of life and impair an abuser's self-control. According to a judge in Luhansk:

*In 80% of applications for divorce, it appears that the husband is an alcoholic. This doesn't always reflect the true situation. Alcoholism is a common word used in divorce applications. Mentioning this allows the applicant not to spend too much time on the application.*⁹²

Other factors, such as housing problems in Ukraine, exacerbate domestic violence by posing an obstacle to women escaping their abusers. The housing shortage precludes many women from seeking alternative living arrangements and can thus expose them to continued violence.⁹³ Whereas in the Soviet era, housing was all state-administered, most housing has now been privatized. Contrary to expectations, privatization itself has contributed to the housing shortage. One senior police official stated that in his opinion foreigners and organized crime rings are buying all the housing as it becomes privatized and then renting it or

⁹⁰ Interview, May 17, 2000, (police officer, Luhansk).

⁹¹ UNDP UKRAINIAN GENDER REPORT at 221, *supra* note 13.

⁹² Interview, June 8, 2000 (judge, Luhansk).

⁹³ See *infra* Section III D for further discussion of Ukrainian housing law.

reselling it at prices well beyond the reach of most Ukrainians. Another observer noted, “privatization of housing was a good thing but what was missing was control of the mafia.”⁹⁴ This happens, he said, because “first, there is an absence of necessary legislation. Second, there is an absence of state willingness to take control of the privatization process.”⁹⁵ The result of privatization in Ukraine, is not necessarily a shortage of housing but a shortage of *affordable* housing.

Finally, Minnesota Advocates found some evidence that domestic violence may be a factor for trafficking of women into the commercial sex trade and that it may be a risk for women who are returned from trafficking situations as well. Many interviewees described domestic violence as a reason so many young Ukrainian women are willing to consider leaving the country to look for work. Still others told of cases of women who were returned from trafficking only to find reintegration into their families nearly impossible. Some try to return to their marriages without telling their husbands about their experiences. Psychologists reported that the tension and pressure in these relationships was often accompanied by physical violence.⁹⁶

G. Direct Services to Victims of Domestic Violence

Very few government-supported services are available to assist victims of domestic violence. The Ukrainian government operates a Women’s Center in Kyiv that was established by the mayor and receives partial support from the city of Kyiv. It has also received funding from the NIS-US Women’s Consortium.⁹⁷ The Women’s Center provides psychological and legal counseling for women victims of violence, operates a hotline and also runs the only state-sponsored shelter for women in Ukraine. According to the Center’s brochure:

In Ukraine, to protect yourself from violence is not that easy in real life, and violence against women is widespread. Law enforcement bodies rarely consider domestic violence a crime. There are no reliable statistics on the number of women who experience domestic violence every year, day and hour.

⁹⁴ Interview, May 23, 2000 (observer, Odesa).

⁹⁵ *Id.*

⁹⁶ Interview, May 31, 2000 (psychologist, Kyiv). For a full discussion of the relationship between domestic violence and trafficking, see Minnesota Advocates for Human Rights Report, *Trafficking in Women: Moldova and Ukraine* (December 2000).

⁹⁷ The NIS-US Women’s Consortium receives support from the US Agency for International Development through its US partner, Winrock International. It is a membership coalition of women’s NGOs in the former Soviet Union and the United States administered by Winrock International. In Ukraine, the Consortium is a registered NGO with a membership of 140 Ukrainian women’s NGOs.

The Women's Center shelter has been operating since 1998 and has 15 beds. The shelter is free to women classified as "vulnerable,"⁹⁸ and costs 30 hryvnia (approximately US\$5.50)⁹⁹ per month for all other women. A woman can be admitted to the shelter after her claims of violence are investigated and she consults with the Center's psychologist.¹⁰⁰ Women are also brought to the shelter by the police or by ambulance. Women are permitted to stay in the shelter a maximum of 30 days per year. Although Minnesota Advocates heard repeated complaints about the lack of emergency shelters for victims of domestic violence while conducting this research, this shelter appears to be underutilized. The Women's Center coordinator reported that they have "fifteen beds total and two are in use."¹⁰¹ Minnesota Advocates found little evidence that the general public is aware that the shelter exists.

While the state's support of the Women's Center is laudable, it is currently not sufficient to respond to the problem of domestic violence in Ukraine as a whole, or even to the problem of domestic violence in Kyiv. Therefore, NGOs are attempting to fill the gaps. They currently provide the most comprehensive response to the problem. Many of their services are designed to meet the needs of victims and to assist them with developing alternatives to staying in abusive relationships. NGOs typically operate hotlines and counseling centers in cities across Ukraine.

Three Women for Women Centers were created by the NIS-US Women's Consortium in partnership with local women's NGOs.¹⁰² These centers are located in Lviv, Dnipropetrovsk and Donetsk. In addition to the hotlines mentioned above, the Centers also provide free legal counseling, job skills and entrepreneurship trainings for women, and domestic violence seminars for women victims of violence. Each Center employs a full-time lawyer to provide free legal assistance to women experiencing domestic violence. Women calling the hotline are most commonly advised to visit the Women for Women Center for psychological and legal counseling and to take part in the training seminars on domestic violence organized by the Center's staff.

⁹⁸ Interview, May 16, 2000 (Women's Center coordinator, Kyiv). The coordinator did not define the term "vulnerable women," but these and other interviews suggested that this term refers primarily to poor women who are being beaten by their husbands. The coordinator made it clear that this shelter is not for homeless people, nor is it a "needy-person's" shelter. It is a shelter for women victims of domestic violence. Also, to be admitted into the shelter, women must have an HIV/AIDS test and be tested for STDs because the Center "does not want these diseases to spread into the shelter."

⁹⁹ In this report, all approximate equivalents in US dollars are based on the official exchange rate in February 2000 of 5.50 hryvnia per US\$1.

¹⁰⁰ This investigation includes discussions with the woman's family and neighbors to confirm the validity of the woman's story. Interview, May 16, 2000 (Women's Center coordinator, Kyiv).

¹⁰¹ *Id.*

¹⁰² The Women for Women Centers receive on-going funding from the NIS-US Women's Consortium, Kyiv. The Lviv Center has begun seeking alternative funding sources as well.

The Women for Women Center lawyers most often provide counseling related to the protections provided to women under Ukrainian law and their legal rights related to divorce and property division. Lawyers interviewed by Minnesota Advocates indicated that one of the most widespread problems for women victims of violence is lack of awareness of their legal rights and the actions they can take to leave their abusers. The Women for Women Center lawyers also help women draft court documents and legal papers, and in some cases provide letters of support to the court on behalf of their clients.¹⁰³

Many of the domestic violence services directly focus on the mental health of the woman rather than on the criminal behavior of the man.¹⁰⁴ One person interviewed said that victims of domestic violence need “psychological correction.”¹⁰⁵ Notably, few people mentioned any need to change either the behavior or the psychology of the men who were beating their wives and partners. Nevertheless, these NGOs provide a desperately needed service, as evidenced by the many women who contact them.

While prevention efforts are rare, some local activists are attempting to combat domestic violence in Ukraine rather than just provide services to women victims. The city of Berdychiv, population 140,000, has developed a coordinated community response program to domestic violence that is held up as a model of a “successful community response” in Ukraine. The city created a coalition of community members consisting of judges, prosecutors, police, NGOs and clergy to coordinate the town’s response to domestic violence incidents. According to the chair of the council, “the [coalition] members have a written agreement to participate in the work of prevention of domestic violence and it is the council’s conclusion that all violence generates from the family.”¹⁰⁶

In Kyiv, Lviv and Odesa, Minnesota Advocates met with representatives of a US NGO, Project Harmony. Project Harmony has helped establish “Domestic Violence Coalitions” in Lviv and Odesa similar to the coalition in Berdychiv with the goal of improving the community’s response to domestic violence and ultimately reducing the number of incidents. The members of each Coalition include representatives from NGOs and law enforcement, legal professionals, forensic doctors, psychologists, psychiatrists and representatives of religious organizations. In Lviv, the Coalition is currently focusing its efforts on advocating for the passage of a national domestic violence law.¹⁰⁷ In Odesa,

¹⁰³ Interview, May 17, 2000 (Women for Women Center consultant, Lviv). The consultant volunteers one day per week at the Center to counsel women victims of violence, particularly regarding interactions with the police. In one case discussed during the interview, the consultant told of writing a letter to pressure the police to investigate a case. The consultant said her efforts were successful and a criminal case was eventually initiated against the abuser.

¹⁰⁴ In contrast, the counselors at the 058 Hotline in Lviv do not bring a psychological analysis to their intervention even though the director is a psychiatrist.

¹⁰⁵ Interview, May 23, 2000 (NGO representative, Odesa).

¹⁰⁶ Interview February 14, 2000 (community response program chair, Berdychiv).

¹⁰⁷ See *infra* Section III E for a discussion of the draft domestic violence law.

the Coalition provides education in the schools on domestic violence and teen dating violence. Both Coalitions have successfully forged new community-based partnerships across disciplines. These partnerships are intended to be a resource for the future work of each individual member of the Coalition.

Although many different organizations are working to address the broad range of issues created by domestic violence, these services still do not meet the demand in Ukrainian society. This problem was illustrated for example in Odesa, where a representative of a shelter for orphans reported that in the last year the shelter had seen eight cases of “[abused] women with small children who escaped from their houses in the middle of the night with their kids in their arms. Eight is a lot of women to be here considering our priority is children.”¹⁰⁸ Long-term, effective solutions to domestic violence require the full participation and support of the Ukrainian government.

III. UKRAINIAN LAWS AND THEIR IMPLEMENTATION

The Ukrainian legal system is a civil law system. Courts are not bound by the decisions in prior cases as in a common law system. Instead, the courts rely on the plain language of the statute and commentaries that accompany the law in deciding cases.¹⁰⁹ These commentaries are drafted by legal experts who are guided by both existing legislation and resolutions of the Supreme Court Plenum on the implementation of the law. New commentaries to the law are regularly issued by the Supreme Court Plenum.

Because no laws specifically punish domestic violence, the Ministry of Justice and the Supreme Court Plenum have tremendous power in determining whether general laws will be applied in such cases. In the absence of clear legislation, prosecutors and judges in Ukraine do not appear to interpret existing laws consistently nor do they apply them to situations of domestic violence.

Women in Ukraine often do not report domestic violence incidents to the police, prosecutors or forensic doctors because of the widely held belief, repeated during many interviews, that police and prosecutors do not take these complaints seriously. A high-ranking official from the Ministry of Internal Affairs confirmed that the legal system is inadequate to address the needs of domestic violence victims:

Our population doesn't understand that domestic violence is against the law, neither the community nor law enforcement. . . . Law enforcement agencies do not really address the issue of domestic violence. Government institutions and police view domestic violence as a crime within the family.

¹⁰⁸ Interview, May 23, 2000 (shelter worker, Odesa).

¹⁰⁹ Officially, these commentaries are meant to provide guidance in the implementation and interpretation of the law. In practice, however, both prosecutors and judges described the commentaries as controlling legal authority and said that in Ukraine, they are arguably as influential as the codes themselves.

*There are many cases but unfortunately victims can expect no support from the state.*¹¹⁰

A. The Constitution

The Ukrainian Constitution recognizes human rights standards and protection of the fundamental human rights of its citizens. Its broad protections mirror international and European human rights standards. Several Constitutional provisions are relevant to the issue of domestic violence. Article 3 of the Constitution states that:

[H]ealth and life . . . inviolability and security are recognized in Ukraine as the highest social value. . . . The establishment and maintaining of human rights and freedoms is the main duty of the state.

In addition, Article 28 states that “[n]o person may be subject to torture, violence or such treatment or punishment that dishonors his/her personal dignity.” Article 21 provides that human rights and freedoms are “inalienable and inviolable.” Article 24 sets out equal rights and equal protection of the law. Article 24 specifically provides:

Citizens have equal Constitutional rights and freedoms and are equal before the law. There are no privileges or restrictions based upon . . . gender. . . . The equality of rights of women and men are assured by giving women equal opportunities in socio-political and cultural activity; in obtaining education and professional training, jobs, benefits for it; by special measures regarding work and health protection of women, establishment of pension provisions; creation of conditions which will provide them with the possibility to work and to be a mother; legal protection; financial and moral support of motherhood and childhood, including paid vacations and other privileges to pregnant women and mothers.

When asked about the rights of women and legal protections for women victims of violence, many people pointed out that men and women have equal rights under this provision of the Constitution. They interpreted equal rights to mean that the government may not infringe on men’s rights in order to protect women’s rights, just as it would be wrong to infringe on women’s rights to protect men. In particular, this provision was used to defend a man’s right to remain in the jointly-owned family home regardless of his abusive behavior towards his wife. People argued that each party has “equal rights” to the property and that the Constitution prohibits any discrimination based on “gender.” Similarly, a professor of constitutional law cited Article 32, which prohibits interference in personal and family life, as a reason law enforcement authorities might not become involved in a case of domestic violence.¹¹¹

¹¹⁰ Interview, February 15, 2000 (Ministry of Internal Affairs official, Lviv).

¹¹¹ Interview, May 18, 2000 (law professor, Dnipropetrovsk).

The Constitution also protects each citizen's right to housing. Article 47 provides:

Every person has the right to housing. . . . Housing shall be provided for citizens who need social protection by the State. . . . free of charge or for affordable prices according to law. . . . No person may be forcibly deprived of housing other than by court decision on the basis of law.

Arguably, this provision supports the right of an abusive man to remain in the family home. In fact, when explaining why she had no authority to order an abusive man to leave the house, a judge stated that "everyone has a right to somewhere to live, so we can't deny a man that right."¹¹² Based on the application of the law, it appears that in the hierarchy of rights in Ukraine, personal property rights supercede a woman's right to live free from violence in her own home. Lawyers and judges both maintained that the law in Ukraine is very rarely used to exclude a man from his home.

Article 55 of the Constitution states:

The rights and freedoms of every person are protected by the court. Every person is guaranteed the right to appeal the court's decisions, actions or inactivity of bodies of local government, public officials and servants.

The Constitution provides a broad range of protections of the human rights of Ukrainian citizens. Unfortunately, the implementation of laws in the criminal justice system does not always protect the human rights of women as envisioned in the Constitution.

B. The Criminal Justice System

1. Criminal Law

The Ukrainian Criminal Code does not specifically proscribe domestic violence, but the assault provisions of the code prohibit the conduct defined in this report as domestic violence. Assault laws are based on the seriousness of the injury rather than the nature of the assault. According to Ukrainian law enforcement authorities, 90% of domestic violence cases are treated as light injury.¹¹³ Article 106 punishes intentional conduct that results in light bodily harm that causes either no health disorder or only short-term health problems.¹¹⁴

¹¹² Interview, February 14, 2000 (judge, Berdychiv).

¹¹³ Interview, June 7, 2000, (police inspector, Luhansk).

¹¹⁴ *Article 106. Intentional light bodily harm*

Intentional light bodily harm which has caused a short-term health disorder or short-term loss of the capacity to work is to be punished by imprisonment for a period of up to one year or by correctional work for the same period.

Article 107 of the Criminal Code also prohibits “beating and torture” when the victim has sustained physical pain without physical injuries. “Torture,” meaning “systematic acts of abuse that cause pain,” is also prohibited.¹¹⁵ Commentaries to Article 107 explain that the prohibited acts are those which cause physical pain such as blows, defined as “a singular, sudden and powerful impact on the human body which causes physical pain,” and “beating,” defined as “multiple blows inflicted over a period of time on the same victim.” Other forms of abuse characterized as torture include “twisting of the arms or feet, pinching, cutting using sharp objects, and using heat or cold to cause discomfort.”¹¹⁶

The Criminal Code also punishes assaults that cause greater degrees of physical injury. Article 101 prohibits “intentional severe bodily harm” that endangers the victim’s life, causes a long-term health disorder or mental illness or causes the termination of pregnancy.¹¹⁷ “Severe bodily harm” includes mental illness, defined as a “psychiatric disease” resulting from bodily harm. As a result, a woman suffering from a psychiatric disease caused by domestic violence could, in theory, bring a charge for severe bodily injury – a charge often taken more seriously than a light or medium injury charge. In conducting this research, however, Minnesota Advocates found no cases brought under this theory.

Intentional injury resulting in physical injury that is not life-threatening but causes long-term health disorder is punished under Article 102, “intentional medium bodily

Intentional light bodily harm which has not caused the consequences set forth in paragraph 1 of the present article is to be punished by correctional work for a period of up to six months or by fine in the amount of up to forty-fold of the minimum established wage or by measures of public coercion.

¹¹⁵ *Article 107. Beating and Torture*

Intentional striking and beating or other violent acts which have caused physical pain are to be punished by correctional work for a period of up to six months or by fine in the amount of up to forty-fold of the minimum established wage or by measures of public coercion.

The same acts having the nature of torture are to be punished by imprisonment for a period of up to three years.

¹¹⁶ Commentary to Article 107, Criminal Code.

¹¹⁷ *Article 101. Intentional severe bodily harm*

Intentional severe bodily harm, that is intentional bodily harm which endangers life when inflicted or results in loss of any organ or loss of the function of any organ, or in mental illness or some other health disorder involving the persistent loss of at least one-third of the capacity to work, or in termination of pregnancy, or exhibited in the permanent disfigurement of a person, is to be punished by imprisonment for a period of two to eight years.

Intentional severe bodily harm committed by a method with the nature of torture or cruelty, or which is the result of systematic, even if light bodily harm, is to be punished by imprisonment for a period of three to ten years.

Intentional severe bodily harm resulting in the death of the victim or committed by an especially dangerous recidivist is to be punished by imprisonment for a period of five to twelve years.

injury.”¹¹⁸ In contrast to the “severe bodily injury” provision, “intentional medium bodily injury” encompasses psychological disorders – an injury that “generated a reactive state of the nervous system” – such as psychoses or neuroses. This injury is classified according to the degree of injury, as is the case with physical injury. In theory, an action could be brought in the case of a woman who suffers from psychological abuse, in the form of stress or depression, under the medium or light injury provisions depending on the degree of harm. Again, while the statutory framework conceptually allows for this kind of case to be brought, Minnesota Advocates found no such cases in the course of this research.

Finally, domestic violence crimes are often prosecuted as “hooliganism,” defined as acts that “violate public order [and] express a clear disrespect for society.”¹¹⁹ Hooliganism can be punished under Criminal Code Article 206 or under the Administrative Code Article 173 (minor hooliganism). The charge of administrative hooliganism is applied when a person uses obscenities in public, harasses people or otherwise disturbs the peace.¹²⁰ Significantly, administrative penalties for hooliganism are applied when the woman has not sustained any injuries. Minor hooliganism also carries a lighter sentence than hooliganism under the Criminal Code.¹²¹ Finally, criminal charges of hooliganism are investigated by the police.¹²² In contrast, police typically classify cases as administrative hooliganism when the woman does not wish to press

¹¹⁸ *Article 102. Intentional medium bodily harm*

Intentional medium bodily harm, that is intentional bodily harm which does not endanger life but which causes a long-term dysfunction of any organ or other long-term health disorder without the consequences indicated in Article 101 of this Code, is to be punished by imprisonment for a period of up to four years or by correctional work for a period of up to two years.

¹¹⁹ *Article 206. Hooliganism*

Hooliganism, that is deliberate acts in severe violation of public order, which express clear disrespect for society, is to be punished by imprisonment for a period of up to one year or by correctional work for the same period or by fine in the amount of thirty-fold to eighty-fold of the minimum established wage.

Malicious hooliganism, that is the same acts characterized by exceptional cynicism or special brazenness, or involving resistance to a representative of authority or a representative of the public performing his/her duty in regard to the protection of public order or to other citizens involved in suppressing hooliganism acts, or committed by a person previously convicted for hooliganism, is to be punished by imprisonment for a period of one to five years.

Especially malicious hooliganism, that is acts set forth in paragraphs 1 and 2 of the present article, if committed with the use or attempted use of firearms or knives, brass-knuckles or other weapons, as well as of other objects purposefully adapted for the inflicting of bodily harm, is to be punished by imprisonment for a period of three to seven years.

¹²⁰ Interview, June 7, 2000 (police official, Luhansk).

¹²¹ The sentence for minor hooliganism is a fine of three to seven times the minimum wage or corrective work for one to two months with 20% of wages withheld. In some cases, the accused may be arrested and detained for up to 15 days.

¹²² Code of Criminal Procedure, Article 111.

charges herself, and they do not conduct a full investigation. In such cases, the police can only question the neighbors to obtain statements about the public disturbance.

2. Police Response to Domestic Violence

In Ukraine, as in every country, the police are key actors in the criminal justice system's response to domestic violence. Women in Ukraine are repeatedly told that unless they report the abuse to the police, there is nothing the system can do to protect them. Advocates for women report, however, that the police have not historically shown understanding or sympathy for women victims of violence. This attitude not only dehumanizes women but also discourages them from seeking police help. Such a lack of understanding is illustrated in the following case of a policewoman who was also a victim of domestic violence, as reported by her colleague:

*A woman police lieutenant committed suicide after enduring severe abuse from her husband. When she tried to contact the police, her husband beat her more. The head of the department where she worked did not support her, but instead put more pressure on her, accusing her of being late for work and giving her warnings. She never filed charges because she was afraid of both the police and her husband. She was afraid that her colleagues would accuse her of creating more work for them.*¹²³

Police can be unsympathetic to victims of domestic violence or even blame them for the abuse. In one case, a police employee was beaten by her husband. She ran out of the house one evening in her nightgown and went to the police station. The next day, when the woman returned to work, her colleagues ridiculed her about the incident.¹²⁴ Similarly, a policewoman observed an incident in which a woman came to the police station with a black eye, claiming her husband beat her. The officer on duty told her it was her fault because, according to the policewoman, the men were "in solidarity with other men. They don't think domestic violence is a problem."¹²⁵

Police are charged with responding to domestic violence calls. They might also become involved in these situations if a woman comes to the police station looking for help or if they are called to the scene by a victim, neighbor or someone else. The formal police-training curriculum does not include instruction on the appropriate response to domestic violence calls.¹²⁶ A police officer told Minnesota Advocates he was instructed to view domestic violence as a private family matter, not appropriate for police

¹²³ Interview, February 15, 2000 (women's advocate, Lviv).

¹²⁴ Interview, February 16, 2000, (police representative, Lviv).

¹²⁵ Interview, February 15, 2000 (former police officer, Lviv).

¹²⁶ Some police departments are beginning to develop training for police on proper domestic violence response. A police officer in Lviv described a pilot initiative on domestic violence that was being presented to the Ministry of Internal Affairs for approval. Interview, February 16, 2000 (police officer, Lviv).

intervention.¹²⁷ Other police representatives acknowledged that in Ukraine, domestic violence is not considered a serious crime and therefore police give domestic violence cases “low priority.”¹²⁸

Interviews repeatedly revealed that the police often simply do not respond to women’s calls for help. When they do respond, the most common action taken by the police is so-called “preventive work.” Preventive work may take a variety of forms. In cases when police are called to the scene of the abuse, they may speak with the abuser in the home. One police officer reported that in 8% to 10% of domestic violence calls, the police respond by taking the man to jail for his actions, but in 20% of the cases, they leave him in the home and try to persuade him to change his behavior.¹²⁹ Here, preventive work was described as “telling the abuser that he is breaking the law and that he should change his view of the matter. . . . The police will threaten the man with future punishment if he doesn’t stop abusing his wife.”¹³⁰

Police officials also have the discretion to put an abuser on an official “warning list” as an administrative penalty for domestic violence and another form of preventive work.¹³¹ This list is maintained by the local (district or regional) police station. A perpetrator can be placed on this list after he is brought to the police station and officially warned to stop the violence. Perpetrators are placed on this list to be monitored by the police, meaning the police will occasionally visit the family’s home to assess the man’s behavior. A Berdychiv police officer estimated that the police have a 70% success rate using the warning list.¹³² Police in Lviv, however, stated that while this measure can “make the man respect the law,” the preventive measures they may take are limited.¹³³ Although eight families had been registered for the year in a district with a population of 21,000, the same police representative reported that other families in which domestic violence occurred had not been included on the warning list.¹³⁴

Given continuing high levels of domestic violence, the preventive measures taken by the police appear to be largely ineffectual. Unfortunately, this monitoring is one of the only measures taken by district or regional police to protect a woman victim of violence from the perpetrator. A representative of the police in Berdychiv reported that abusive

¹²⁷ Interview, February 16, 2000, (police officer, Lviv).

¹²⁸ Interviews, February 15, 2000 (police officer, Lviv); May 24, 2000 (police representative, Odesa).

¹²⁹ Interview, February 14, 2000 (police officer, Berdychiv)

¹³⁰ *Id.*

¹³¹ See Appendix I, Registration and Official Warning on the Intolerance of Anti-Social Behavior.

¹³² Interview, February 14, 2000 (police officer, Berdychiv)

¹³³ Interview, May 18, 2000 (police official, Lviv).

¹³⁴ *Id.*

men are often “pushed around” by the police and are subject to this type of administrative penalty.¹³⁵

Several police officials explained that the internal evaluation system used by the Ministry of Internal Affairs to determine police performance and crime rates discourages police from taking domestic violence calls seriously. Police in both Dnipropetrovsk and Lviv described the system, in which the effectiveness of a particular district is evaluated based on the number of calls to which they respond. A higher number of calls is interpreted as a higher crime rate in the district, and suggests that police are doing a poor job of keeping public order. Because responding to calls negatively affects their performance rating, they explained, they are less likely to respond to them.¹³⁶

If the police do respond to a domestic violence call and go to the scene of the incident, the officer will generally first make a determination of the level of the woman’s injury based on external factors. For example, if the woman can talk and is mobile, any injuries the officer sees are likely to be classified as light injury. Such a classification does not take into account the possible presence of less visible injuries such as concussion or internal bleeding. Injuries that result from repeated domestic violence frequently go unrecognized. Furthermore, although the Criminal Code provides punishment for the psychological and psychiatric health disorders that a woman is likely to have suffered in a case of chronic domestic abuse, a visual inspection by a police officer will not detect this type of injury.

A police officer reported a connection between the worsening economic situation and lack of responsiveness of the police to domestic violence. Police departments have less money to operate, and domestic violence is not a priority. In some districts, police officers reported that they have not been paid for three to six months.¹³⁷ Many departments do not have enough money to buy fuel for their automobiles. For a time, police were allowed to take public transportation for free while on duty. Now, even that practice has been prohibited by Parliament. One police officer, when asked how he responds to emergency calls, said simply, “I run.”¹³⁸

Several people who provide direct services to victims of violence reported that in many cases, women victims identify the perpetrators of violence as police officers.¹³⁹ An advocate at the Women for Women Center in Lviv described three cases in which women were experiencing “horrible violence in the form of economic repression, verbal abuse

¹³⁵ Interview, February 14, 2000 (police officer, Berdychiv)

¹³⁶ Interviews, February 16, 2000, (police officials, Lviv); May 19, 2000, (police inspector, Dnipropetrovsk).

¹³⁷ Interview, February 16, 2000, (police officers, Lviv).

¹³⁸ Interview, May 17, 2000 (police officer, Lviv).

¹³⁹ Interview, February 16, 2000, (lawyer, Lviv).

and physical violence at the hands of [police officers].” In these cases, two of the women were married to police officers. The third woman was abused by her father who was a police officer.

As a result of the problems associated with ineffective police response, women in Ukraine seldom call the police. Instead, women often choose to seek the assistance and support of neighbors and relatives and to address the issue of domestic violence through more informal channels.

3. Forensic Doctors

The role of forensic doctors is extremely important in the Ukrainian criminal justice system. Forensic doctors are members of the judicial system charged with making medical determinations in criminal cases. Their role is to evaluate and certify the level of a person’s injuries to be used as evidence in court. In the case of injuries caused by domestic violence, the forensic doctor will grade injuries as light, medium or severe based on specific criteria set forth in the Criminal Code and forensic regulations.¹⁴⁰ As in the Criminal Code, severe bodily harm involves life-threatening injury, mental illness or causing the termination of pregnancy. Medium injury is characterized by health disorders that last more than 21 days, and light bodily injury is divided into two categories: those which cause health disorders lasting at least six days but no more than 21 days, and those which cause health disorders lasting less than six days or no lasting health disorders. It is the forensic doctor who, in the final analysis, determines what charges may be brought and how an assault will be treated in the criminal justice system, based on his or her classification of the injury.

Two forensic doctors told Minnesota Advocates of clients who come in regularly to have injuries resulting from domestic violence documented.¹⁴¹ Some clients come once a month, others once every three months. Sometimes the doctors will personally call the police inspectors to ask them to intervene in a particular case. These forensic doctors see about 4,000 patients per year in their offices. Approximately 30% of these cases involve domestic violence.¹⁴²

4. Prosecutors and Judges

Prosecutors generally only become involved in cases of medium or severe injury. When women victims of violence turn to prosecutors for assistance, they are most often faced with the same resistance and traditional beliefs about domestic violence they face in addressing the police. Prosecutors play an important role in the Ukrainian legal system.

¹⁴⁰ See Appendix II, List of Forensic-Medical Criteria for the Assessment of the Degree of Bodily Harm.

¹⁴¹ Interview, February 16, 2000, (forensic doctors, Lviv).

¹⁴² *Id.*

They decide which cases to investigate and pursue. In addition, there is very little, if any, oversight or review of their decisions not to pursue a case.

Ukrainian prosecutors almost universally revealed an unwillingness to take domestic violence cases seriously. Prosecutors also maintained that in most domestic violence cases women are partially to blame, because they often provoke the violence. Finally, there was an overall sense among prosecutors that domestic violence cases were not a priority in an overworked and underfunded office with more important cases to be pursued.

In addition, prosecutors appeared to resist bringing serious charges in domestic violence cases because they perceived them as private matters that should receive lighter sentences than cases that violate public order. A judge from Luhansk explained:

*A person who steals three hryvnia from a stranger on the bus can receive up to 3 years in prison. But a husband who beats his wife receives a lesser sentence, and could be fined 50 hryvnia (approximately US \$9).*¹⁴³

Although the hooliganism provision of the Criminal Code itself makes no distinctions based on the relationship of the victim and the perpetrator,¹⁴⁴ one prosecutor explained that courts will regard the case of violence against a stranger as more serious. The prosecutor stated, “there is a distinction regarding hooliganism - if it is against a stranger, then there is usually a prison sentence. If it is a situation of family violence, then the sentence is lighter.”¹⁴⁵ According to the prosecutor, judges are more lenient when cases involve a domestic dispute. “For family issues, if the husband is accused by the wife then the judges don’t take it seriously. If the husband claims that the wife is trying to get him out of the house, then the judges feel sorry for him. They think she’s responsible for her decision to have married him.”¹⁴⁶

Ukrainian law also reinforces the distinction between public and private acts that is made in practice. Hooliganism prohibits violations of public order. Malicious hooliganism prohibits the use of objects to cause injury and is punishable by imprisonment from three to seven years. In contrast, the intentional light injury and medium injury provisions of the criminal code establish punishments of correctional work for up to six months and imprisonment for up to four years respectively. A prosecutor also noted this distinction: “Look at the legislation – hooliganism is a serious crime. A light to medium injury is a light crime.”¹⁴⁷

¹⁴³ Interview, June 7, 2000 (judges, Luhansk).

¹⁴⁴ See *supra* note 119.

¹⁴⁵ Interview, May 31, 2000 (prosecutor, Kyiv).

¹⁴⁶ *Id.*

¹⁴⁷ Interview, May 31, 2000 (prosecutor, Kyiv).

Prosecutors, lawyers and police identified another aspect of the Ukrainian legal system that can complicate the prosecution of domestic violence cases. At least once a year, the President of Ukraine decrees an amnesty for people convicted of crimes classified under the Criminal Code as “non-serious,” including assault. The Parliament then adopts and publishes the amnesty. Those favored by amnesties include women, women with children, elderly people, women over 55, men over 60, first-time offenders and handicapped people. Amnesties cover people who have been convicted as well as those whose cases are in the process of being investigated. When an amnesty is declared, the cases against the particular people identified in the decree are dismissed regardless of whether their cases have been decided.¹⁴⁸

Both prosecutors and police reported that amnesties make their work more difficult, “because a great number of people leave jail and there is a tendency for crime to increase.”¹⁴⁹ Although an amnesty means that criminal cases, even those still in process, will be dismissed, prosecutors must complete their investigation and make a charge. Likewise, a police officer stated that the most urgent issue in his work was a recent amnesty, under which 35,000 former convicts were expected to return home. As the officer noted, “When they return, they will have deviated a little psychologically. Family conflicts start anew.”¹⁵⁰ In fact, the officer reported that during his last shift, he detained a man who had four prior convictions but had recently been released under an amnesty declaration. “The man was beating his wife and his parents and even set the apartment on fire.”¹⁵¹ Finally, an attorney described a case in which a husband was found guilty of beating his wife, but was freed under a general amnesty before he could be sentenced. He continued to abuse his wife. As the lawyer explained, “these amnesty laws are still applied. On amnesty day, certain crimes in certain categories that took place in a defined time period are amnestied and the criminals [are released].”¹⁵²

5. Private Prosecution

Violent acts that cause no injury or only light injuries are not within the jurisdiction of the prosecutor’s office. The police are charged with conducting basic investigations in these cases, and if they determine that a woman has been assaulted but has only light injuries, they are required to give her a referral to a forensic doctor. In practice, however, police rarely assist in the investigation of domestic violence cases classified as light injury.

¹⁴⁸ Interview, May 17, 2000 (prosecutor, Luhansk).

¹⁴⁹ *Id.*

¹⁵⁰ Interview, May 19, 2000 (police officer, Dnipropetrovsk).

¹⁵¹ *Id.*

¹⁵² Interview, February 15, 2000 (attorney, Lviv).

In reality, victims of domestic violence with light injuries must prosecute their cases themselves without the assistance of a prosecutor. In such cases, the burden is on the woman to go to a forensic doctor, obtain a legally valid report and take her case to court. A forensic doctor reported that some women try to obtain a forensic certificate to document their injuries without a referral from the police. In these cases the women are at a disadvantage, because without the police referral, the report does not carry the same weight in court.¹⁵³

The private prosecution process is often time-consuming, labor intensive and expensive. Even when a woman is successful in prosecution, the penalty for the abuser is minimal. As one judge said, “As it is now, under the private prosecution, women’s rights are not being protected. The maximum sentence in a private prosecution case is usually a fine.”¹⁵⁴ Many women, therefore, do not even pursue prosecution of their cases.

Women prosecuting their own cases may also find resistance from judges who do not take their charges seriously. A judge from eastern Ukraine described a case with a very large file. He explained that it was a private prosecution, in which a woman was hit on the head by her husband. The woman also wrote in the complaint that her husband punched her in the face. The man said that it was her fault because she disturbed him. According to the judge, “Despite the apparent work that this woman had done, [another] judge dismissed the case. Judges usually dismiss private prosecutions because they are very thick and extensive. They take time to look at. Even if the husband is accused, the case usually is appealed and then overturned. So the judge knows that he doesn’t need to put any energy into the case because, one way or another, the defendant will not be punished.”¹⁵⁵ The judge then described some of the problems associated with private prosecution:

*Private prosecution isn’t good. It shows that the state doesn’t care about the violations of the woman. In fact, the whole process of private prosecution causes the woman more humiliation and stress. She has to do all the work. This section of the legislation should be removed. All investigations, [including light injury], should be done by the militia. . . . Cases that are light physical injury should be criminally prosecuted just like medium and severe injury cases. In light injuries that are recurring [the husband who is systematically beating his wife] should be dealt with carefully and also criminally prosecuted.*¹⁵⁶

¹⁵³ Interview, February 14, 2000, (forensic doctor, Berdychiv).

¹⁵⁴ Interview, June 8, 2000 (judge, Luhansk).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

C. Marriage and Family Law

Divorce is the typical remedy used by women in cases of domestic violence. In fact, a former prosecutor reported his view that “in all cases of divorce, the husband beats his wife.”¹⁵⁷ An attorney estimated that “the majority of divorce cases are done on grounds of domestic violence; 95% of divorce cases are due to slander and battery.”¹⁵⁸ A judge maintained that 50% of divorce cases in her court involve husbands beating their wives.¹⁵⁹

Article 38 of the Family and Marriage Code provides that the marriage may be dissolved at the request of one or both spouses. The husband, however, is not entitled to bring an action for a divorce without his wife’s consent in the period of his wife’s pregnancy and for one year after the child’s birth.¹⁶⁰

The Family and Marriage Code also sets forth the procedure for divorce.¹⁶¹ When both spouses consent to a divorce and there are no minor children or disputes regarding the division of common property, the marriage can be dissolved by the registry office without court involvement. Because such cases are uncommon, particularly when there is domestic violence in the marriage, women most often obtain divorces through the court.

Upon receiving a petition for dissolution of a marriage, the court’s first obligation is to establish the reasons for separation and to take measures to attempt to reconcile the spouses.¹⁶² Even if violence is part of a relationship, the judge is likely to order a reconciliation period of up to six months before considering granting a divorce. One judge in Lviv said:

*I want to see if the marriage can be fixed rather than dissolved. Some women file for divorce as a way to threaten their husbands to stop the abuse, but they aren’t really interested in following through with the divorce. Poor people do this because they feel powerless in their life, but in the divorce case the woman has more authority because the divorce proceedings are a government action. Women use the authority of the court to scare their husbands. I try to counsel women to stay in the marriage because of the children, but not in cases of severe injury.*¹⁶³

¹⁵⁷ Interview, February 15, 2000, (former prosecutor, Lviv).

¹⁵⁸ Interview, June 7, 2000 (lawyer, Luhansk).

¹⁵⁹ Interview, February 14, 2000, (judge, Berdychiv).

¹⁶⁰ Marriage and Family Code, Article 38(2).

¹⁶¹ *Id.*, Article 41.

¹⁶² *Id.*, Article 40.

¹⁶³ Interview, February 16, 2000, (judge, Lviv).

The marriage will be dissolved if the court establishes that the spouses cannot live together and the maintenance of the family has become impossible.¹⁶⁴ At the request of one or both of the spouses, the court will decide the following issues: 1) child custody; 2) child support; 3) alimony; and 4) property division.¹⁶⁵

As a general rule, property obtained during the marriage is considered common property of the spouses.¹⁶⁶ Each of the spouses retains her or his own property, that is, the property that belonged to each of them before the marriage, as well as that acquired during marriage by donation or inheritance.

Although some women choose divorce as a means to escape abusive relationships, the legal system does not provide protection from further violence to these women. A lawyer reported that it is not uncommon for women to be threatened with continued abuse if they try to pursue divorce.¹⁶⁷ In one case, a man regularly beat his wife and children, and even after the couple divorced and the man moved out of the house, he returned to beat her.¹⁶⁸ In a second case, a woman who divorced her husband was forced to live with him for 18 months because she did not have alternative housing. She described her experience:

*I married [my husband] for love, but when the first child was born, the quarrels began. . . . I filed for divorce. I was afraid that the judge would refuse the divorce because of my three children. When I told him of the beatings, my husband said I deserved it. The judge said "Why? Doesn't she take care of the children? Doesn't she do housework?" My husband said "No. She does all that but she still deserves it." [The judge granted the divorce]. When we got home, I was beaten so badly an ambulance had to come. My husband said he would kill me. He said, "If I can't have you no one will."*¹⁶⁹

D. The Housing Code

Ukrainian families often live together in one or two room apartments, and it is extremely difficult for a member of the family to find alternative housing.¹⁷⁰ It is even more difficult, indeed close to impossible, to obtain a court order to remove an abusive

¹⁶⁴ Marriage and Family Code, Article 40.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*, Article 22.

¹⁶⁷ Interview, February 15, 2000 (attorney, Lviv).

¹⁶⁸ Interview, February 15, 2000 (forensic doctor, Lviv).

¹⁶⁹ Interview, May 24, 2000 (NGO representative, Odesa).

¹⁷⁰ *See supra* Section II F.

person from an apartment if he has a legal claim to the space. Participants in a roundtable discussion in Lviv offered the following “typical” case:

*A woman came to us for help. She was ill and almost blind. She was living with her alcoholic son who was abusing her. They had been living together for 20 years. They had previously lived in a one-room apartment but the woman had recently moved to another apartment to live with friends. The apartment had been privatized and could not be exchanged through court procedure. Officially, the woman had a place to live, but she could not live with her son because he was beating her and the apartment was too small to divide. According to the privatization law, the apartment can only be divided if both parties agree.*¹⁷¹

Because of the inflexibility of the housing situation, many people reported that often after divorce the couple is forced to continue living together in the same apartment. When asked what a woman could do in such circumstances, the most common reply from lawyers was “nothing.”¹⁷² Indeed, almost no one Minnesota Advocates interviewed believed that a person should lose his right to live in a place if his behavior made it impossible for others who also have a right to live there to continue to do so safely. Yet the consequences for the woman forced to live with an abusive husband are often worse after divorce than when the couple was still married:

*A couple was divorced but still living together. The husband began bringing new women into the house and abusing his first wife in front of their child. He was also physically beating his ex-wife. There was a forensic report and the husband was found guilty. However, before he was sentenced, there was a general amnesty and he was let go. In this case the judge said that if the couple didn't separate, the violence would not stop, but there is no place for the husband to go so they aren't going to separate.*¹⁷³

The Housing Code does provide for eviction of people from housing when a family member or resident makes it impossible for other family members to live with him under Article 116.¹⁷⁴ This section, however, is rarely used to protect a woman from an

¹⁷¹ Interview, February 15, 2000 (roundtable discussion, Lviv).

¹⁷² Interview, February 16, 2000 (attorney, Lviv).

¹⁷³ Interview, February 15, 2000 (attorney, Lviv).

¹⁷⁴ *Article 116. Eviction of citizens without further rehousing*

If a tenant, the members of his/her family or other persons, who reside together with him/her, regularly do any damage or harm to the dwelling, or use it improperly, or with their frequent violations of the socialist rules of collective lodging make it for other persons impossible to live with them in one apartment or in the house, and application of preventive measures and measures of community influence have led to no results, eviction at the demand of the lesser or other interested parties is done without further rehousing.

abusive partner. A judge in Berdychiv stated that she had no authority to remove an abusive man from his home. She continued, “everyone has a right to somewhere to live. I cannot deny him that right.”¹⁷⁵

E. Draft Domestic Violence Law

In 1999, a draft domestic violence law, “Law of Ukraine on Prevention of Domestic Violence,” was introduced in the *Verkhovna Rada* (Ukrainian Parliament). In May 2000 the law passed its first reading in the *Verkhovna Rada*, and is expected to go through two more readings before being adopted. Although the draft law is important because it defines domestic violence and identifies prevention as a government priority, it has many weaknesses in its current form. The law does not address the specific problems in the Criminal Code, the Criminal Procedure Code, or prosecutorial practice that create obstacles for women seeking redress for domestic violence crimes in Ukrainian courts.

The law also incorporates many of the same myths about domestic violence repeated during interviews, including the myth that drugs and alcohol cause domestic violence and that victims provoke domestic violence. Article 19 is particularly troubling because it focuses prevention efforts on the behavior of the victim rather than on the criminal behavior of the perpetrator. This section allows police to issue an “official warning” to people whose “victim behavior”¹⁷⁶ intentionally creates conditions that contribute to the commission of domestic violence.” The language of the proposed statute is vague and does not identify any particular circumstances in which police intervention is appropriate. This provision provides an excuse to perpetrators and undermines efforts to hold them accountable for their violent actions.

The draft law also includes provisions that raise other human rights concerns. For example, Article 8, “Criminal Militia Units on Domestic Violence Prevention,” calls for the formation of specially trained police units to respond to domestic violence incidents. These units will be responsible for carrying out domestic violence prevention activities and registering and monitoring families that either present a “real threat” of domestic violence or in which domestic violence has already occurred. In addition, they will “exercise supervision” over the actions of persons committing or likely to commit domestic violence. The language of this section is very vague. It allows for police intervention in situations where violence has not been committed, without providing guarantees that the human rights of the accused perpetrator will also be respected in the process.

The persons, who are subject to eviction without further rehousing due to the impossibility of collective lodging, can be ordered by the court instead of being evicted to exchange the dwelling they occupy for another specified by the party interest in this exchange.

¹⁷⁵ Interview, February 14, 2000, (judge, Berdychiv).

¹⁷⁶ In Ukrainian, the term is *viktimnost'*.

IV. UKRAINE'S OBLIGATIONS UNDER INTERNATIONAL LAW

A. The United Nations

As a member of the United Nations, Ukraine is obligated to protect the human rights of its citizens. The provisions of the Universal Declaration of Human Rights ("Universal Declaration")¹⁷⁷ and numerous other human rights instruments, such as the Declaration on the Elimination of Violence Against Women, define Ukraine's human rights obligations as a member of the international community. In addition, Ukraine is a party to the International Covenant on Civil and Political Rights ("Civil and Political Rights Covenant")¹⁷⁸ and the Convention on the Elimination of All Forms of Discrimination Against Women ("Women's Convention")¹⁷⁹ and is bound by the terms of these conventions.

The international standards described in these instruments condemn violence against women and domestic violence. The United Nations has recognized an affirmative obligation of member states to protect women from violence perpetrated by private persons and has articulated specific responsibilities of governments to eradicate this violence.

The Ukrainian government's failure to respond to systematic violence against women is a violation of its obligations under international law:

*The state's abdication of its duty to protect its citizens from crimes of violence amounts to a tacit endorsement of that violence. That complicity provides the requisite governmental dimension to consider the violence a human rights issue.*¹⁸⁰

1. Women in Ukraine are being denied the right to security of the person and freedom from torture and cruel, inhuman or degrading treatment.

The Universal Declaration includes several provisions relating to an individual's right to be free from violence and abuse. Article 3 provides that "[e]veryone has the right to life, liberty and security of person." Article 5 provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The Civil and Political Rights Covenant also provides in Article 6 that "[e]very human being has the inherent right to life" and in Article 7 that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

¹⁷⁷ G.A. Res. 7 A(III) December 10, 1948, U.N. Doc. A/810 (1948).

¹⁷⁸ See *supra* note 7.

¹⁷⁹ See *supra* note 8.

¹⁸⁰ Kenneth Roth, *Domestic Violence as an International Human Rights Issue*, HUMAN RIGHTS OF WOMEN 326, 329-330 (Rebecca Cook, ed. 1994).

Evidence available from forensic doctors, legal professionals and other sources indicates that domestic abuse is a serious, widespread problem in Ukraine. The evidence also indicates that the government does not respond effectively to this problem. The police generally do not make arrests nor do they routinely attempt to remove the perpetrator of the assault from the home. Often women are left to pursue prosecution of their abusers without the assistance of the state.

The Ukrainian government has not created a system that provides security to women who are beaten by their husbands or partners. By failing to protect women from private perpetrators of violence, Ukraine has failed to adhere to its obligations under the Universal Declaration and the Civil and Political Rights Covenant.

2. Women in Ukraine are being denied an effective remedy for acts violating their fundamental human rights.

Article 8 of the Universal Declaration and Article 2 of Civil and Political Rights Covenant guarantee that states shall provide an effective and adequate remedy for acts violating fundamental rights guaranteed by constitution or by law.

As set forth in detail above, the Ukrainian legal system does not provide an adequate remedy for the denial of women's fundamental rights to be free from violence. Women face serious obstacles at each step of the legal process. The police do not generally investigate claims of domestic violence, arrest perpetrators or remove abusers from the home. In fact, police sometimes contribute to the abuse. In many cases, women are forced to negotiate the criminal justice system without the assistance of a prosecutor. In addition, the difficulties in obtaining a forensic certificate and retaining an attorney make it even more difficult for women to seek an effective remedy when they have been assaulted in their homes.

Even when a woman successfully prosecutes a complaint, the courts will likely impose only a minimal punishment on the perpetrator. The courts rarely force a man who has assaulted his partner to leave the family home, and the lack of affordable housing precludes many women from seeking alternative living arrangements. This failure to take action exposes the woman to more violence.

Women do not have an effective means of recourse against their violent husbands under the Ukrainian legal system. The legal system's failure to protect women from domestic violence and to punish perpetrators violates Ukraine's obligation under the Universal Declaration and the Civil and Political Rights Covenant to provide an adequate remedy for the violation of a woman's fundamental human rights.

3. Ukraine is not in compliance with the Convention on the Elimination of All Forms of Discrimination Against Women and the Declaration on the Elimination of Violence Against Women.

The Women's Convention forbids discrimination against women. The Committee on the Elimination of Discrimination Against Women ("CEDAW") in its General Recommendation 19 has explained that violence against women constitutes discrimination and ". . . seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." General Recommendation 12 recommends that all parties to the convention report to CEDAW on the existence of support services for victims of family violence, relevant legislation, statistical data and measures adopted to eradicate violence against women in the family.

The Declaration on the Elimination of Violence Against Women includes explicit directions to member countries to ". . . not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination." The Declaration sets forth specific steps a member state should take in combating domestic violence. These steps include: investigating and punishing acts of domestic violence; developing comprehensive legal, political, administrative and cultural programs to prevent violence against women; providing training to law enforcement officials; and promoting research and collecting statistics related to the prevalence of domestic violence.

Article 4(g) of the Declaration directs that states work to ensure that women subjected to violence and their children receive "specialized assistance, health and social services, facilities and programs as well as support structures, and [that states] take all other appropriate measures to promote their safety and physical and psychological rehabilitation."

The provisions of the Women's Convention and the Declaration on the Elimination of Violence Against Women are strengthened and reinforced in the Beijing Declaration and Platform for Action. The Platform for Action sets forth a comprehensive strategy for governments to address the problem of violence against women.

The Ukrainian government fails to meet all of these international standards. As discussed above, crimes of domestic assault are not adequately prosecuted and women are not provided adequate protection from further acts of violence. Minnesota Advocates found little evidence of any effort to ensure that law enforcement officers and public officials responsible for investigating and punishing violence against women receive training about the unique and complicated issues involved in domestic violence cases. In addition, the government does not ensure that the health care community in Ukraine receives training on how to treat victims of domestic violence.

B. The Council of Europe

Ukraine is a member of the Council of Europe, an inter-governmental system for the protection of human rights. As a member, the Ukrainian government ratified the

Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”)¹⁸¹ and is therefore obligated to the human rights provisions contained therein. Like the Universal Declaration and the Civil and Political Rights Covenant at the international level, the European Convention sets forth fundamental civil and political rights that are violated when a woman is a victim of domestic violence and the government does not effectively address the problem.

Article 2 of the European Convention guarantees the right to life and Article 3 guarantees the right to live free from torture: “(n)o one shall be subjected to torture or to inhuman or degrading treatment” Article 5 grants the rights to security: “(e)veryone has the right to liberty and security of person. . . .” Article I states that such rights are inviolable and are expressly guaranteed to “everyone” within the jurisdiction of the state party, in this case Ukraine.

Article 13 guarantees the right to an effective remedy for violations of the rights included in the European Convention, and Article 14 states that all the rights and freedoms of the convention shall be guaranteed without discrimination on such grounds a sex, race, national minority and social origin. The Ukrainian government has undertaken to protect its citizens from infringement of these basic rights. When women in Ukraine are physically, sexually or psychologically abused in their homes, however, their rights are systematically violated. The inadequate response by the Ukrainian government to the issue of domestic violence in the country means that it is not in full compliance with its obligations under the European human rights system.

The Council of Europe has expressed concern over the matter of violence against women in Europe through its work on gender equality, which includes actions focusing on violations of women’s rights. In 1997, for example, the Council of Europe Summit as well as representative members of government adopted a declaration to combat violence against women. The Parliamentary Assembly, the Council body that adopts resolutions and makes recommendations for action, has also carried out studies, compiled reports and made recommendations to the Committee of Ministers on the issue of domestic violence. In its 1999 report, the Committee on Equal Opportunities for Women and Men described domestic violence, stating that “a woman is more likely to be attacked and beaten, even killed, by her partner or former partner than by any other person.”¹⁸² Among the report’s conclusions are the need for governmental support of NGOs, including both financial help and closer cooperation with the judicial system. At the legislative level, the state is required “to check whether existing laws are being correctly applied and to introduce the relevant legislation if it is missing.”¹⁸³ Furthermore, the report states that there “should be

¹⁸¹ 213 U.N.T.S. 222, *entered into force* September 3, 1953. Ratified by Ukraine on September 11, 1997. Ukraine ratified the European Convention with several reservations, notably concerning criminal and military procedures but with the proviso that the reservations would be in force only until domestic law has been amended to conform to European law.

¹⁸² Violence towards women in Europe, (Informational Documents) Committee on Equal Opportunities for Women and Men (1999), *available at* <<http://stars.coe.fr/features/violence.htm>>.

¹⁸³ *Id.*

special procedures to deal with acts of violence towards women” in the police and justice system. Finally, the report emphasizes the importance of raising public awareness and for governments to encourage “the creation of public facilities that make it easier for women to have access to aid agencies.”

As a member of the Council of Europe, the Ukrainian government should observe Council of Europe recommendations on issues such as violence against women. At present, the Ukrainian government has not fully undertaken the types of activities suggested by the Council of Europe Committee on Equal Opportunities for Women and Men. However, Ukraine should participate in adapting national legislation and practices to European norms.

The provisions of the European Convention are enforced at both the national and international level, through the European Court of Human Rights. According to Article 9 of the Ukrainian Constitution, international treaties to which Ukraine is a party are part of the national legislation of the country. Therefore, the rights contained in the European Convention have the force of law in national courts and, after exhausting domestic remedies, an individual whose rights have been violated may also apply to the European Court of Human Rights.

V. CONCLUSION

Women in Ukraine are routinely denied their fundamental right to be free from violence. Existing legal, economic and social structures prevent women from obtaining any real redress for domestic violence crimes. Through its failure to respond appropriately to the problem of domestic violence and its discrimination against the victims of domestic violence in the enforcement of its assault laws, the Ukrainian government has failed to meet its commitments as a member of the United Nations and the Council of Europe and is not in compliance with international human rights standards.

APPENDIX I

Report No. _____

Registration and Official Warning on the Intolerance of Anti-Social Behavior

" __ " month of _____ year of _____

I, _____
position, rank, name of the person who draws up this report

have explained to Mr./Mrs. _____
name and date of birth

who resides at _____

the phone number is _____

and works at _____
name and phone number of company

that he/she with _____
brief description of the offence

according to the Law on Militia of Ukraine is subject to registration and has been
officially warned about the intolerance of anti-social behavior.

Signature _____

Head of the District Interior Department _____

(Translation of Police Warning Report, Ukraine)

**List of Forensic-Medical Criteria
for the Assessment of the Degree of Bodily Harm¹**

Severe bodily injury <i>(Criminal Code, Article 101)</i>	Medium bodily injury <i>(Criminal Code, Article 102)</i>	Light bodily injury which has caused short-term health disorder or short-term loss of the capacity to work <i>(Criminal Code, Article 106 (1))</i>	Light bodily injury which has not caused short-term health disorder or short-term loss of the capacity to work <i>(Criminal Code, Article 106 (2))</i>
<ol style="list-style-type: none"> 1. Life endangering. 2. Loss of sight, hearing or loss of any organ, or loss of the functions thereof. 3. Mental illness. 4. Health disorder accompanied by a persistent loss of the capacity to work by at least a third. 5. Termination of pregnancy. 6. Permanent disfigurement of the face. 	<ol style="list-style-type: none"> 1. Health disorder, which lasts more than three weeks (21 days) provided there is no danger to life or consequences provided for in Criminal Code Article 101. 2. Persistent loss of the general capacity to work for 10 to 33% provided there is no danger to life or consequences provided for in Criminal Code Article 101. 	<ol style="list-style-type: none"> 1. Health disorder, which lasts at least six days but no more than three weeks (21 days). 2. Persistent loss of the general capacity to work for up to 10%. 	<ol style="list-style-type: none"> 1. Absence of short-term health disorder or of insignificant loss of the capacity to work. 2. Insignificant short-term consequences, which last no more than six days.

¹ *Excerpted from B.P. Morozovich and V.M. Zelengurov, FORENSIC-MEDICAL ASSESSMENT OF THE DEGREE OF SERIOUSNESS OF BODILY INJURIES AND FORENSIC MEDICAL CERTIFICATION OF LIVING PEOPLE REGARDING BODILY INJURIES (Methodological Lectures for Students), Ministry of Health of Ukraine, Lviv State Medical Institute, Forensic Medical Department (1979) at 36.*

Domestic Violence in Ukraine

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