

1994

The Constitutional Right to Housing in the Russian Federation: Rethinking the Guarantee in Light of Economic and Political Reform

Sheila O'Leary

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

O'Leary, Sheila. "The Constitutional Right to Housing in the Russian Federation: Rethinking the Guarantee in Light of Economic and Political Reform." American University International Law Review 9, no. 3 (1994): 1015-1069.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE CONSTITUTIONAL RIGHT TO HOUSING IN THE RUSSIAN FEDERATION: RETHINKING THE GUARANTEE IN LIGHT OF ECONOMIC AND POLITICAL REFORM

Sheila O'Leary*

INTRODUCTION

The Russian Federation Constitution¹ guarantees a right to housing for all citizens of the Russian Federation.² This right has historical antecedents in both the Union of Soviet Socialist Republics' (USSR) Constitution³ and the Russian Socialist Federated Soviet Republic (RSFSR)

* J.D. Candidate, 1995, Washington College of Law, The American University. The author wishes to thank Stephen Butler for his helpful suggestions on drafts of this Comment.

1. KONST. RF (1993). The most recent Russian Federation Constitution was adopted by national referendum on December 12, 1993. *The Russian Election, How Russia Voted*, DAILY TELEGRAPH, Dec. 14, 1993, available in LEXIS, Nexis Library, News File. The Soviet Union was officially dissolved by decree of each member republic in December 1991. RUSSIA AND REPUBLIC LEGAL MATERIALS 1 (Parker Sch. Foreign & Comp. L. Columbia Univ. ed.), (1993) [hereinafter PARKER SCHOOL BULLETIN]. After the dissolution of the Soviet Union in 1991, the Russian Federation did not adopt a new constitution. *Id.* Instead, the Russian Federation retained the RSFSR Constitution and amended it substantially. *See Coming to Pieces?*, ECONOMIST, Mar. 14, 1992, at 59 (estimating that the RSFSR Constitution was amended 204 times between 1990 and 1992.) In 1992, the name of the constitution was changed from the RSFSR Constitution to the Russian Federation Constitution. *Amendments to Russian Federation Constitution*, F.B.I.S. USR-92-091, July 16, 1992, at 1 [hereinafter 1992 Amendments].

Until the dissolution of the Soviet Union, the USSR Constitution was supreme over those of individual Soviet republics, although each republic possessed its own constitution. KONST. SSSR art. 74 (1977). In areas where the Soviet Union and individual republics shared concurrent jurisdiction, the USSR Constitution authorized republics to expand or modify a republic's constitution provided the change did not conflict with the USSR Constitution. *Id.* art. 76; *see THE SOVIET UNION THROUGH ITS LAWS* 5-95 (Leo Hecht ed., 1983) [hereinafter THE SOVIET UNION THROUGH ITS LAWS] (comparing the 1977 USSR Constitution and the 1977 RSFSR Constitution).

2. KONST. RF art. 40 (1993).

3. KONST. SSSR art. 44 (1977). The right to housing is one of several social

Constitution,⁴ both precursors of the current Russian Federation Constitution. As recently as 1986, at the XXVII Party Congress, President Mikhail Gorbachev promised an apartment or separate house to every Soviet citizen by the year 2000.⁵ Since that time, the housing crisis in Russia has become one of the most urgent socioeconomic problems facing the country.⁶ Millions of Russians live in housing which is sub-

rights the 1977 USSR Constitution guaranteed to all soviet citizens of the USSR. *Id.*; see, e.g. KONST. SSSR art. 40 (providing the right to work); KONST. SSSR art. 43 (providing the right to health protection); KONST. SSSR art. 45 (providing the right to education). Throughout its history, the Soviet Union has had four constitutions: in 1918, 1924, 1936 and 1977. ARYEH UNGER, CONSTITUTIONAL DEVELOPMENT IN THE USSR 1 (1982). Only the 1977 Constitution guaranteed the right to housing. *Id.* at 196. The appearance of the right in the 1977 Constitution is largely attributed to growing worldwide focus on human rights abuses in the USSR and an attempt on the part of then President Leonid Brezhnev to demonstrate to the world that soviet citizens enjoyed substantial civil rights. See *infra* note 21 and accompanying text (discussing the influence of the Soviet government's political agenda on social rights). Although the right to housing appeared as a constitutional guarantee only in 1977, the history of the Soviet Union demonstrates that the goal of providing adequate housing to its citizens existed with varying degrees of success since 1917. See Vic George & Nick Manning, *Housing in the Soviet Union*, in SOCIALISM, SOCIAL WELFARE AND THE SOVIET UNION 129-159 (Vic George ed., 1980) (tracing the development of housing policy in the Soviet Union).

4. KONST. RSFSR art. 42 (1978).

5. Gregory D. Andrusz, *Note on the Financing of Housing in the Soviet Union*, 42 SOVIET STUD. 555, 555 (1990) [hereinafter Andrusz, *Note on the Financing of Housing*]. At the XXVII Party Congress in 1986, Gorbachev emphasized "the social importance and acuteness of the housing problem." Gregory D. Andrusz, *Housing Policy in the Soviet Union*, in HOUSING AND URBAN DEVELOPMENT IN THE USSR 228, 229 (1991) [hereinafter Andrusz, HOUSING AND URBAN DEVELOPMENT]. At that Congress, Gorbachev spoke of the importance of encouraging development in private housing construction; improving the system of housing distribution; and considering a system of rental charges based on quality and size of housing as opposed to government-fixed rents. *Id.* In April 1986, Gorbachev issued the decree "On the principal directions for accelerating the solving of the country's housing problem." *Id.* at 229-30. This decree acted as a comprehensive policy statement of his plans for reforming the housing sector. *Id.* One of Gorbachev's chief economic advisors, Abel Aganbegyan, stated the "housing problem [is] the worst social problem" confronting the Soviet Union and that solving the problem should be the "keystone" of perestroika. *Id.* at 228.

6. Nadezhda Kosareva et al., *On the Path to Housing Reform*, in PROB. OF ECON. 69 (1991). Over 55% of the housing stock in urban areas lacks some standard amenities such as sewerage, heating, water supply, hot water, or gas. *Id.* at 72. In rural areas the percentage of homes without these amenities reaches 90%. *Id.* Aggra-

standard even by Russian norms. Government funds for new construction⁷ and maintenance of existing housing fall severely short of the

vating the problem is that many households are severely overcrowded. 3 INTERNATIONAL MONETARY FUND ET AL., A STUDY OF THE SOVIET ECONOMY 365 (1991) [hereinafter IMF REPORT]. The government established that the social norm is twelve square meters per person. THE RSFSR HOUSING CODE, art. 38, in LEGISLATIVE ACTS OF THE USSR, BOOK 5 103, 124 (Progress Publishers, 1986) [hereinafter RSFSR HOUSING CODE]. A 1989 survey conducted by the state statistics agency (Goskomstat) revealed that 3.1% of households lived in space with less than five square meters per person; 20.2% lived in space with 5.1 to 9.0 square meters per person; and 41.3% live in space with 9.1 to 15.0 square meters per person. IMF REPORT, *supra*. In 1986 research was conducted in the Russian city of Tver to determine the percentage of the population living in substandard housing. Natasha Kalinina, *Housing and Housing Policy in the USSR, in THE REFORM OF HOUSING IN EASTERN EUROPE AND THE SOVIET UNION* 245 (Bengt Turner et al. eds., 1992). The city population at the time was 442,000. *Id.* at 251. The study concluded that six percent of families lived in "good" housing (individual apartment with modern conveniences and a separate room for each person); 29% lived in "adequate" housing (individual apartment with no less than seven square meters per person or a separate house with indoor plumbing and gas hook-up with no less than seven square meters per person); and 65% lived in housing that "does not conform to modern standards" (overcrowded, few amenities, few individual apartments). *Id.*

Young urban families have the poorest housing conditions, while middle-aged and old city dwellers live in the best conditions. V. Perevedentsev, *The Housing Question and Perestroika*, PROBS. OF ECON. 59, 62 (June 1991). Most young urban families typically live with relatives. *Id.* Of these young urban families, most receive a separate dwelling unit by the time the wife is thirty. *Id.* For middle-aged and old urban dwellers, there is no incentive to relocate once spouses die and children leave home: rent is nominal, extra rooms can be sublet, and many older people prefer to hold on to extra living space in the event younger relatives need housing. *Id.* Consequently, much of the urban housing stock is concentrated in the hands of middle-aged and older tenants, creating shortages and doubled-up living situations for the younger population. *Id.*

In an attempt to address problems in the housing sector, several ministries of the Russian Federation government finalized a comprehensive housing policy strategy in June 1993 entitled "The State Targeted Program Housing." State Targeted Program Housing (1993) [hereinafter Housing Program] (copy on file with *The American University Journal of International Law and Policy*). The Housing Program is designed to implement the goals of an earlier government resolution calling for economic restructuring of certain public sectors. *Id.* A number of provisions of the Housing Program point to the problem of substandard housing. See *id.* at § I, art. 5 (stating that over ten million families are in need of improved living conditions).

7. See Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 18-20 (discussing government participation in the housing construction industry). Between 1951 and 1960, the housing construction industry experienced great success in meeting its centrally-planned goals for housing construction. *Id.* The massive amounts of hous-

need.⁸ Many citizens blame the housing crisis for a host of other social

ing built during this period was in large part necessitated by the destruction of the housing stock that resulted from the second World War. *Id.* at 19; *see also id.* at 20 (charting the investment in housing during this period). However, the numbers began to decline in the 1960s. *Id.* This decline was likely a result of the rising construction costs associated with the governmental plans to increase construction in urban areas requiring in-fill and adverse-weather climates like Siberia and the Far North. *See* Gregory D. Andrusz, *Housing Policy in the Soviet Union*, in HOUSING POLICY IN THE SOVIET UNION 237 (George Sillince, ed., 1991) (discussing factors contributing to the increase in housing costs after 1960).

Between 1986 and 1987, and following the XXVII Party Congress, there was an increase in the commissioning of new apartments. Kosareva, *supra* note 6, at 69. After this short-lived boost, however, housing construction decreased again. *Id.* Housing construction of state and socially-owned housing declined 14% between 1989 and 1990. F.B.I.S. SOV-91-049, at 54 (Mar. 13, 1991). According to the state statistic bureau (Goskomstat), in Russia, new housing construction in the first quarter of 1992 was down 31% from the first quarter of 1991. STRUYK ET AL., UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF HOUSING AND URBAN PROGRAMS, IMPLEMENTING HOUSING ALLOWANCES IN RUSSIA: RATIONALIZING THE RENTAL SECTOR 18 (1992) [hereinafter, STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES].

The reasons for the poor success in the state housing construction industry are numerous. Methods for determining housing demand are outmoded and inaccurate. *See* Kalinina, *supra* note 6, at 248. Most urban construction consists of multistory large-panel apartment buildings that are technologically and economically inefficient. *Id.* at 247. Machinery used to construct the housing is also obsolete. *Id.* at 247. Shortages of building materials and parts for building equipment worsens the problem. IMF REPORT, *supra* note 6, at 325. Shortages are particularly a problem in non-state housing construction where builders must often resort to the black market to find materials required for building. Kalinina, *supra* note 6, at 247. Construction of state housing is planned and administered by a central agency in each city or region leading to inefficient and cumbersome management of the industry. IMF REPORT, *supra* note 6, at 325. This type of central planning tends to discourage innovation and further promotes inefficiency in planning and production. *Id.*

8. IMF REPORT, *supra* note 6, at 325. The inconsistent quality of housing construction combined with the shortage of materials for repair creates major maintenance problems in Russia. *Id.* The problem was made more severe by the low revenue the government receives in rents to cover the cost of maintenance. *Id.* A constitutional commitment to maintaining extremely low rents resulted in households typically paying one to three percent of income for rent. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 15. This compares to the United States where 25 to 30% of income for rent is considered standard. M. STONE, SHELTER POVERTY 34 (1993). Revenue from rental income has traditionally been subsidized with government funding from other sources to meet the budgetary needs for maintenance departments. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 5. The

ills affecting the country.⁹ Although the Soviet Union and RSFSR his-

amounts of these subsidies have been decreasing in recent years while rents have stayed the same. *Id.* This has led to a serious shortage in the already inadequately funded maintenance budget. *Id.*; see also IMF REPORT, *supra* note 6, at 325 (explaining that the inconsistent quality of building methods and scarcity of resources are two primary factors leading to inadequate upkeep of the housing stock). The Russian Federation estimated it needed a maintenance budget of 78 billion rubles for 1992. As of March 1992 the aggregate available funds amounted to 28 billion rubles. *Id.* CHARLES HANSON ET AL., UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF HOUSING AND URBAN PROGRAMS, HOUSING REFORM IN THE RUSSIAN FEDERATION: A REVIEW OF THREE CITIES AND THEIR TRANSITION TO A MARKET ECONOMY 3 (1992). On March 2, 1994 the official rate of exchange was \$1 to 1,668 rubles. *Russia: Central Bank of Russia Reports—Foreign Exchange Rates*, Reuter Textline, Mar. 2, 1994, available in LEXIS, World Library, Txtee File.

Recently, the government has proposed specific legislative and policy objectives to phase out the maintenance subsidies by a program of increasing revenues from state housing through raising rents. See *Law of the Russian Federation on Basic Principles of Federal Housing Policy* art. 15 [hereinafter *1992 Housing Principles*] (stating that rent and utilities will be computed to cover the cost of maintenance and repair expenses, and a new rent increase will be phased in over a five year period) (unofficial translation on file with author); Housing Program, *supra* note 6, § 3, art. 7 (calling for implementation of a program to raise rents annually over a five year period with the objective that fifth year rents from state housing will cover 70 to 80% of the cost of maintenance, repair and utilities).

To augment the government's massive effort to move the state housing stock into private hands through sale and free privatization of the state housing stock, see *infra* notes 194-95, 206-217 (detailing the government's housing privatization program), residents may themselves hire and pay private property management companies to maintain their buildings. *1992 Housing Principles, supra*, art. 5 (stating that citizen groups, tenants associations, and other public organizations may voluntarily participate in maintenance of their buildings or may competitively contract companies to provide property management services); *Russian Federation Decree on Approval of Tentative Regulations on Free Privatization of Housing in the Russian Federation* art. 4.3 (RF) (1993) [hereinafter *Tentative Regulations on Free Privatization*].

A recent presidential decree on condominiums provides regulations for privatized buildings to form condominium associations. "President of the Russian Federation Decree No. 2275 On Approval of Provision Regulations on Condominiums" art. 2 (RF) (1993) [hereinafter *Condominium Law*]. Homeowners in the condominium association are responsible for collecting fees from unit owners to cover the cost of maintenance and repair of the building. *Id.* art. 4. While the government may still retain ownership of the unprivatized units in the condominium and will thus be required to maintain those units and pay a proportionate fee for maintenance of the common units, the overall cost of maintenance and repair is shared between the private owners and the government. *Id.*

9. Thomas A. Reiner, *Land and Housing in the USSR During the Gorbachev Years*, in *SOV. GEOGRAPHY* 683, 687 (1991). Housing shortages along with limited

torically undertook extensive and costly government programs to house their populations, the constitutional guarantee has always fallen short of the promise. Considered in light of recent and continuing economic and political changes in the Russian Federation, it is time for the government to reevaluate its ability to constitutionally guarantee a right to housing.

This Comment discusses the Soviet and Russian governments' failure to fulfill the promise of providing housing to all citizens. Neither government devised a legal and administrative framework truly committed to meeting the constitutional guarantee. Part I describes the legislative and administrative frameworks the government designed to guarantee the right to housing. It comments on the failure of those systems and presents the state of housing law and policy as it existed before *perestroika* and privatization reforms.

Part II discusses the influence of *perestroika* and privatization on housing issues. Through examples of legal and policy reform, Part II illustrates the Russian Federation's unofficial recognition of its inability to constitutionally guarantee housing for all of its citizens. Part III comments on the future of the right to housing and suggests that the provision of adequate housing become a policy goal rather than a constitutional right. In accord with this suggestion, Part III offers recommendations for legislative and policy reform. Finally, this Comment concludes by calling on the Russian Federation government to devise a legislative and housing policy strategy which reflects the public desire for government involvement in housing policy within an economically viable framework to achieve a fair system of housing distribution.

funds and materials for maintenance leads to unpleasant living conditions which in turn lead to personal stress. *Id.* The problem worsens because the housing allocation system limits a family's mobility and opportunity to secure an alternative situation in another location. *See infra* notes 83-93 and accompanying text (describing the internal passport system which for years controlled citizen mobility). To deal with some of the shortcomings in the housing sector, people turn to thievery as a means of obtaining materials for repair, or bribery to acquire apartments without proceeding through the normal channels. Reiner, *supra*, at 687. *See also* Andrusz, *Note on the Financing of Housing, supra* note 5, at 556 (commenting on the "mafia's" role in contributing to corruption in the housing sector). One commentator suggests that there is a direct correlation between substandard living conditions and low birth rates. Andrusz, *HOUSING AND URBAN DEVELOPMENT, supra* note 5, at 234.

I. A CONSTITUTIONAL RIGHT TO HOUSING

Article 40 of the Russian Federation Constitution guarantees all citizens of the Russian Federation a right to housing.¹⁰ The Soviet and Russian Federation governments devised elaborate administrative and legal systems to allocate housing and establish a legal basis for the right to housing. An evaluation of the government's performance record in fulfilling its constitutional promise of universal housing begins with an understanding of the administrative and legal structure created to guarantee the right to housing.

A. LEGAL FRAMEWORK OF THE RIGHT TO HOUSING

Laws affecting the right to housing and its administration remained substantially the same from passage of the 1977 RSFSR Constitution until dissolution of the Soviet Union in 1991.¹¹ The defining characteristic of Soviet housing law was its basis in socialist economic principles. Soviet housing law was used both as a tool for the state to advance housing policy goals, and cultivated through legislative initiatives to meet the state's changing economic goals for the housing sector.¹²

10. KONST. RF art. 40 (1993). Article 40 provides:

1. Each person has the right to housing. No one may be arbitrarily deprived of housing.
2. Organs of state power and organs of local self-government encourage housing construction and create the conditions for exercise of the right to housing.
3. Housing is provided free or at affordable cost to low-income or other citizens indicated in the law who require housing from state, municipal, or other housing stocks in accordance with norms prescribed by law.

Id.

11. *See infra* notes 193-205 and accompanying text (discussing the legislative and policy changes that began after the introduction of *perestroika* and privatization of state housing).

12. In 1988, 1989, and 1992 major constitutional amendments altered the legislation-making process in Russia. *See* Law on Constitutional Amendments, F.B.I.S. SOV-88-223 at 48 (Dec. 5, 1988); 1992 Amendments, *supra* note 1; *see also* *Perestroika and the Rule of Law*, in PERESTROIKA AND THE RULE OF LAW: ANGLO-AMERICAN AND SOVIET PERSPECTIVES 7, 7-14 (W.E. Butler ed., 1991) [hereinafter *Perestroika and the Rule of Law*] (discussing changes in political structure relative to lawmaking that took place in 1988 and 1989). Until that time laws were made through a highly politicized process with the Communist Party and its agenda at the helm. *See* Comment, *The U.S.S.R. Digest of Laws: Legal Reform A La Russe*, 17 N.Y.U. J. INT'L L. & POL. 949, 952-957 (1985) [hereinafter *Digest of Laws*] (describ-

Until President Gorbachev emphasized the concept of respect for the rule of law,¹³ socialist principles of law governed the legal framework

ing the organization of the Soviet Union's legal system).

The current legislation process is described in articles 104-109 of the December 1993 Russian Federation Constitution. KONST. RF arts. 104-109 (1993). Legislation may be initiated by the president, either chamber of parliament (the Federation Council or the State Duma), deputies of the State Duma, the ministries to the Russian Federation, and legislative organs of the components of the Russian Federation. *Id.* art. 104(1). Legislative initiatives may also come from the judiciary. The Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, and the Superior Court of Arbitration of the Russian Federation may all initiate new legislation for matters under their jurisdiction. *Id.* Draft laws are submitted to the state duma. *Id.* art. 104(2). Federal laws are adopted by the state duma by a majority vote of the total number of deputies. *Id.* art. 105(2). The State Duma consists of 450 deputies. *Id.* art. 95(3). Laws passed by the State Duma must be submitted to the upper chamber of Parliament, the Federation Council, within five days of passage. *Id.* art. 105(3). The federal law is deemed passed if more the half the total number of Federation Council members vote for the law or if the Federation Council does not examine the law within 14 days of receipt of the draft law. *Id.* art. 105(4). Some laws, particularly those involving appropriations, taxes, the federal budget, international issues, and national security issues, are subject to compulsory examination of the Federation Council. *Id.* art. 106. If the Federation Council rejects the law, the two chambers may form a committee to resolve any differences. *Id.* The draft is then resubmitted to the State Duma. *Id.* If the Federation Council and State Duma cannot resolve their differences over the draft law in committee, the draft law may nonetheless be resubmitted to the State Duma and may be adopted over Federation Council objection provided two-thirds of the total number of State Duma deputies vote for the draft law. *Id.* art. 105(5).

Federal laws must be submitted to the president for signature within five days after adoption. *Id.* art. 107(1). The president must sign the law within 14 days. *Id.* art. 107(2). If the president rejects the law, the rejection may be overridden on repeat examination in the parliament if two-thirds of the total number of deputies of the Federation Council and two-thirds of the total number of deputies of the State Duma vote in favor of the law. *Id.* art. 107(3). The president must then sign the law seven days after its adoption. *Id.* art. 107(3).

In addition to initiating legislation, the president of the Russian Federation may issue decrees. *Id.* art. 90(1). Implementation of these decrees is mandatory throughout the Russian Federation unless they contravene the Russian Federation Constitution or other federal laws. *Id.* art. 90(2)-(3). The ministries of the Russian Federation may also issue decrees. *Id.* art. 115(1). These decrees are mandatory and may be rescinded by the president only if they are in contravention to the Russian Federation Constitution, other federal laws, or Presidential decrees. *Id.* art. 115(2)-(3). In the final analysis, the December 1993 Russian Federation Constitution vests a considerable amount of control to the executive branch of government to initiate legislation.

13. See *infra* note 173 and accompanying text (defining the concept of the rule

of housing law. As one scholar noted, "[s]ocialist legality represents the rule of the Party, not the rule of law."¹⁴ Socialism views law as a tool of the government to regulate the state's political and economic agenda.¹⁵ In the Soviet Union, the state controlled all means of production and was responsible for ensuring that citizens received adequate public services.¹⁶ Citizens were not allowed to own private property, including housing, as this might have led to private monopolies which would challenge and perhaps undermine the political power of the state.¹⁷

In the Soviet Union, a number of interconnected state agencies controlled the economic functions of a particular sector.¹⁸ Through elaborate systems of administrative law and social legislation, central planning authorities delegated to various state agencies the responsibility to regulate a given sector.¹⁹ Centralization through legal norms provided the state with the authority to maintain control over these various agencies and to continue the state's monopoly of the sector while ensuring the

of law).

14. SOVIET CIVIL LAW (O.N. Sadikov ed., 1988). This Comment is not a forum for a discussion of the philosophical basis of socialist jurisprudence. To understand the uniqueness of socialist jurisprudence, however, requires an understanding of the crucial role ideology plays in its formation. See Olympiad S. Ioffe, *Ideological Dogmata and Practical Tasks of Soviet Law*, in SOVIET LAW AND SOVIET REALITY 1, 1-17 (F.J.M. Feldbrugge ed., 1985) (discussing the official Marxist-Leninist dogma which forms the philosophical underpinnings of socialist law). Ioffe synthesizes Marxist-Leninist theory into five ideological dogmata used in Soviet law to justify the Soviet government's use of law as a tool to "support and strengthen the unlimited political power of the ruling summit." *Id.* at 13.

15. *Digest of Laws*, *supra* note 12, at 949. The Soviet government maintained a monopoly on controlling the economy and used the law as its tool to legitimize its economic agenda. *Id.* Laws changed frequently as the agenda changed. *Id.* Periodic codification of the laws was a means of updating and consolidating the changes in the law. *Id.*; see SOVIET CIVIL LAW, *supra* note 14, at 10-11 (describing the role of the Communist Party of the Soviet Union (CPSU) in the development of civil law). "[T]he development of civil law in all principal questions is carried out under the direct and unmediated guidance of the Communist Party." *Id.* at 11.

16. STANISLAW J. SAWICKI, SOVIET LAND AND HOUSING LAW: A HISTORICAL AND COMPARATIVE STUDY 102 (Stanislaw J. Sawicki ed., 1977). The Soviet legal system did not distinguish private and public spheres as, according to Soviet law, all means of production were owned by society as a whole and not by individual citizens. *Id.* The state therefore had to control resources in all sectors and the means of production to ensure that the state's economic and political goals were met. *Id.*

17. *Id.*

18. *Id.* at 103.

19. *Id.*

smooth functioning of the country's planned economy.²⁰ Law was thus used as an instrument for fulfilling the state's economic goals. Only goals significant to the government's economic and political agenda were advanced and protected by Soviet law.²¹

As the economic goals of the state changed, Soviet law had to remain dynamic to provide the legal framework legitimizing the state's acts. Soviet law developed primarily through legislative reform.²² The RSFSR Constitution (and subsequent Russian Constitution) was the fundamental law of the Russian Federation.²³ The Constitution, however, provided only general guidelines for legislation.²⁴ Various sources of civil²⁵ and administrative law contained specific legislative provisions to

20. *Id.*

21. KONST. SSSR arts. 33-69 (1977). This conclusion is demonstrable in the former Soviet Union's attitude toward human rights and housing as reflected in the Constitution. *Id.* The 1977 USSR Constitution introduced numerous human and civil rights not contained in the 1924 and 1936 USSR Constitutions and extended some of those rights. *Id.*; see also UNGER, *supra* note 3 (specifying several of those civil rights). This "bill of rights," however, was not a secure set of inalienable citizens' rights, but merely reflected the political climate of the time. *Id.* at 194. In 1977, human rights were a major international concern, with much of the attention focused on the Soviet Union's treatment of its dissident population. *Id.* This fact, coupled with the Soviet Union's growing participation in international institutions and treaties (in an attempt to gain political legitimacy in the international arena) are the primary reasons for the emergence of these new human rights in the 1977 Constitution. *Id.*

In the area of housing, the Soviet government was able to use its monopoly over the housing sector to not only constitutionally guarantee the provision of housing, but to regulate citizens' employment and mobility. See *infra* notes 83-93 and accompanying text (discussing the *propiska* system as a means of controlling the geographic and employment mobility of citizens).

22. See SOVIET CIVIL LAW, *supra* note 14, at 14 (detailing the hierarchy of laws and the process of legislative development as it existed in the former Soviet Union). The concept of separation of powers was rejected in Soviet law. *Id.* at 41. According to the 1977 Constitution, all power "belong[ed] to the people" and the will of the people was carried out by the peoples' deputies in Congress. *Id.* Therefore, to delegate law-making power to any non-representative entity was to undermine or contradict the spirit and word of the Constitution. *Id.*

23. See SOVIET CIVIL LAW, *supra* note 14, at 17; SAWICKI, *supra* note 16, at 106.

24. See SAWICKI, *supra* note 16, at 106-07 (stating that in the absence of additional documents explaining the principles of the Soviet Constitution relative to housing, the language of the Constitution alone was not sufficient to clarify the state's housing policy).

25. SOVIET CIVIL LAW, *supra* note 14, at 3. Civil law regulates a wide range of

implement the rights generally guaranteed in the Russian Constitution.²⁶

The 1962 Principles of Civil Legislation (Civil Law Principles), an important normative law,²⁷ defined the overall framework of civil law²⁸ and contained guidelines on housing. In 1964, the Civil Code of the Russian Federation²⁹ codified and expanded upon the Civil Law Principles. The Civil Code did not consolidate or replace all of the then existing laws related to housing. Earlier legislation and other laws regu-

social and economic relationships, which generally fall into three categories: those involving economic matters, those designed to respond to the spiritual and material needs of citizens, and those between citizens and property. *Id.*; see W.E. BUTLER, SOVIET LAW 175 (W.E. Butler ed., 2d ed., 1988) (stating that Soviet civil law regulates "property and personal non-property relationships").

While undeniably a creation of socialist framers, Soviet civil law did exhibit strong influence from European, particularly Roman, models of civil law. See, e.g., SOVIET CIVIL LAW, *supra* note 14, at xiv (noting the influence of European civil codes on the Soviet civil code); BUTLER, *supra* note 25, at 175-76 (discussing the historical development of the civil code and the fact the 1922 Code was rooted in the "Romano-Germanic experience"); OLYMPIAD S. IOFFE & PETER B. MAGGS, SOVIET LAW IN THEORY AND PRACTICE 32-33 (1983) (stating that Soviet legal development has imitated many Western models).

26. BUTLER, *supra* note 25, at 41. There are "fundamental" and "technical" sources of law. *Id.* Fundamental sources of law establish the general scope and goals in an area of the law. *Id.* Technical sources of law define the substance and methods for enactment of the fundamental laws. *Id.*

27. *Digest of Laws*, *supra* note 12, at 953. "Normative" refers to those laws which take broad rules with general application and turn them into concrete pieces of legislation. *Id.* A less popular term used as a synonym for "normative acts" is "legislative acts." SOVIET CIVIL LAW, *supra* note 14, at 17 n.1.

28. SOVIET CIVIL LAW, *supra* note 14, at 18-19. The current Principles law went into effect in 1962. *Id.* at 18. In 1991, the USSR passed a Principles law which was to go into effect in January 1992 and to be subsequently adopted by the union republics. *Fundamentals of Civil Legislation of the USSR and the Republics*, SovData DiaLine—SovLegisLine, May 31, 1991, available in LEXIS, Europe File. The dissolution of the Soviet Union in late 1991 left the future of this new Civil Code in question. *Russian Federation Reaches Back to 1991 USSR Fundamentals of Civil Law*, 3 P.S.S.E.E.L. 5 (1992). In July 1992, however, the Supreme Soviet passed a resolution stating that the Fundamentals of Civil Legislation is controlling law in the Russian Federation only to the extent that it fills in the gap on areas not covered by the existing RSFSR Civil Code or other relevant legislation. See *id.* (stating that in 1992, the Russian Federation adopted the 1991 USSR Civil Code and made it enforceable to the degree it does not conflict with existing Russian law). As of this writing the Russian Federation government is drafting a new civil code, the first half of which is completed.

29. SOVIET CIVIL LAW, *supra* note 14, at 18.

lating housing remained in other statutes.³⁰ Local governments were also allowed to create more detailed provisions for the management of the housing stock in their localities as long as these provisions did not conflict with federal law.³¹

This hodgepodge of normative law sources continued to regulate housing law until 1981 when the Principles of Housing Legislation³² (Housing Principles) were adopted. The Housing Principles replaced the Civil Law Principles and Civil Code as the main document regulating housing law. Like the Civil Law Principles, the Housing Principles was a normative document providing the basis for the development of a more detailed legal framework for housing law. In 1982, the RSFSR Housing Code was passed. It not only contained the general precepts of housing law as stated in the Housing Principles, but also elaborated on more specific provisions for implementing those principles.³³ The Housing Code outlined specific guidelines for the distribution of housing,³⁴ standards for unit size and condition,³⁵ tenants rights and responsibilities,³⁶ and government regulation of privately owned housing.³⁷ Areas of housing law not directly addressed in the Housing Principles or

30. SAWICKI, *supra* note 16, at 107.

31. SAWICKI, *supra* note 16, at 107.

32. FUNDAMENTALS OF HOUSING LEGISLATION OF THE USSR AND THE UNION REPUBLICS, in LEGISLATIVE ACTS OF THE USSR, BOOK 2 129-56 (Progress Publishers ed., 1982).

33. RSFSR HOUSING CODE, *supra* note 6, at 103-64. The Code states that: Housing relations in the RSFSR shall be regulated by the Fundamentals of the Housing Legislation of the USSR and the Union Republics and other acts of housing legislation of the USSR, *this Code*, and other acts of housing legislation of the RSFSR, promulgated in accordance with the Fundamentals of Housing Legislation of the USSR and the Union Republics.

Id. at 108-09 (emphasis added) (footnote omitted).

34. RSFSR HOUSING CODE, *supra* note 6, arts. 28-49 (specifying the guidelines for allocation of housing in state and socially owned housing).

35. RSFSR HOUSING CODE, *supra* note 6, art. 38. The "norm" for state or socially owned housing is not less than twelve square meters per person. *Id.*

36. RSFSR HOUSING CODE, *supra* note 6, art. 10. Citizens have the right to state-owned, socially-owned, or cooperative housing for indefinite use. *Id.* Citizens may own a house in accordance with existing legislation. *Id.* Citizens may not be evicted except for the reasons specified in the Housing Code. *Id.* See *infra* notes 49-58 and accompanying text (discussing tenants rights in the Russian Federation). Citizens must "take good care" of their living accommodations. RSFSR HOUSING CODE, *supra* note 6, art. 10. Housing may not be used for private gain. *Id.*

37. RSFSR HOUSING CODE, *supra* note 6, arts. 127-39.

Housing Code law continued to be regulated by the Civil Code.³⁸

In December 1992, the Supreme Soviet passed a new Principles of Federal Housing Policy (1992 Housing Principles) which continued to profess the right to housing.³⁹ According to the 1992 Housing Principles, "[c]itizens of the Russian Federation have the right to housing."⁴⁰ The 1992 Housing Principles also introduced several new concepts into housing policy such as rent increases and subsidies that alter the existing popular concept of the right to housing.⁴¹ What is perhaps most significant about the 1992 Housing Principles is the market-oriented nature of the mechanisms which the law suggests the state may employ to fulfill the Constitution's guarantee of housing.⁴² Many of these suggestions are substantively different from the vision of the state's obligation to provide housing contained in other existing housing laws such as the Housing Code. Despite fundamental inconsistencies in the concepts underlying particular provisions of each document, the Russian Federation Constitution, the 1992 Housing Principles, the Housing Code and the Civil Code continue to compose the foundation of federal housing law.

While federal law defines the basic framework of housing law, lower level entities also possess lawmaking authority. Ministries and departments of the national government as well as local authorities may issue legal ordinances.⁴³ Certain cooperative or social organizations are al-

38. ENCYCLOPEDIA OF SOVIET LAW 364 (F.J.M. Feldbrugge et al. eds., 2d ed. 1985) [hereinafter ENCYCLOPEDIA].

39. 1992 *Housing Principles*, *supra* note 8. The Housing Principles "determines basic principles of exercising [the] constitutional right of citizens of the Russian Federation for housing under new social and economic conditions, establishes [the] general basis for legal regulation of housing relationships . . . [and] development of diverse forms of property and types of real estate in [the] housing sector." *Id.* at pmbl.

40. 1992 *Housing Principles*, *supra* note 8, art. 2.

41. 1992 *Housing Principles*, *supra* note 8, art. 15; *see infra* notes 160-172 and accompanying text (discussing the right to low cost housing as one of the elements of the right to housing).

42. The preamble to the 1992 Housing Principles Law states:

The goal of federal housing policy is to ensure social guarantees for the right to citizens for housing, to accomplish construction and rehabilitation of state, municipal and *private* housing stock; to create conditions for the attraction of *non-budget sources of financing* . . . ; to develop *private property*, to protect *entrepreneurs and owners rights* in the housing sector; and to promote *competition* in construction, repair and maintenance of the housing stock, manufacture of building materials, articles and goods to furnish houses.

1992 *Housing Principles*, *supra* note 8, at pmbl. (emphasis added).

43. SOVIET CIVIL LAW, *supra* note 14, at 22. Federal law, in the Principles of Housing Legislation and Housing Code, lays down the general contours of the law.

lowed to issue normative acts which carry the force of common law for members of the respective cooperative or social organization.⁴⁴ Executive agencies responsible for registering and allocating housing may promulgate legally binding rules.⁴⁵ These executive rules often relate to the registration of citizens for housing and differ from locality to locality,⁴⁶ and are often unpublished.⁴⁷ One scholar suggests that executive laws are unpublished because they sanction discriminatory action by housing officials.⁴⁸

Tenants enjoy substantial rights in Russia.⁴⁹ While it is difficult for

Id. It is law made by ministries and local authorities, however, which details how the objectives of the law are carried out day-to-day. *Id.*

44. ENCYCLOPEDIA, *supra* note 38, at 23. Rules of regulations of a housing cooperative are designed by members of the housing cooperative. SAWICKI, *supra* note 16, at 141. Therefore, members that are discontent with a particular administrative or managerial policy or decision may question that policy or decision. *Id.* This avenue is not available to tenants of housing in state or socially owned housing. *Id.*

45. OLYMPIAD S. IOFFE & PETER B. MAGGS, THE SOVIET ECONOMIC SYSTEM: A LEGAL ANALYSIS 202 (F.J.M. Feldbrugge ed., 1987). While the Fundamental Principles of Housing Legislation and the RSFSR Housing Code formulate the primary rules for housing allocation, local executive committees are permitted to develop supplementary rules in accordance with local needs. *Id.*

46. *Id.*

47. *Digest of Laws*, *supra* note 12, at 949. The reasons for not publishing the laws may be the administrative inconvenience of compilation. *Id.*

48. Ger P. van den Berg, *The Conflict of Civil and Administrative Law in the USSR: Right to Housing and Freedom of Choice of Residence in Soviet Law and Practice*, in SOVIET ADMINISTRATIVE LAW: THEORY AND POLICY 299, 306 (G. Ginsburgs et al. eds., 1989) (suggesting unpublished housing laws allow housing officials to discriminate against certain nationality groups and ex-convicts). Van den Berg notes several secret pieces of legislation which adversely affected the housing rights of Crimean Tatars. *Id.* n.31. Ironically, when the legal position of nationalities improved in 1988, the relevant legislation remained unpublished. *Id.* at 306.

49. RSFSR HOUSING CODE, *supra* note 6 and accompanying text. Tenants in state and socially owned housing sign a lease with the government which allows them an indefinite tenancy. *Id.* art. 10. If the dwelling unit later becomes too small or otherwise inappropriate for a family they will be deemed "in Need of Improved Living Conditions" and allocated a more appropriate unit. *Id.* art. 29. Particularly needy tenants (chronically ill, families with many children) are given priority for improved living conditions. *Id.* art. 36. Tenants may vacate their units for up to six months (with possibilities for extensions) without forfeiting their leases. *Id.* art. 60. Tenants may sublet their units during that time, and should they return to their unit before the sublet period is expired, they have the right to evict the sublettor. *Id.* art. 65. Other individuals who reside with the lessee may assume the tenancy of the dwelling unit.

citizens to obtain housing, it is nearly impossible for the state to evict a tenant once the tenant acquires housing.⁵⁰ Such strong pro-tenant rights are a reflection of the state's commitment to the economic goal of providing universal housing. Tenant protections, detailed in the Housing Code, are incorporated into the lease signed between tenants and the state.⁵¹ The Housing Code contains strong anti-eviction regulations.⁵² For example, even where the state may legally evict a tenant from government housing, the government must provide the tenant alternative living accommodations.⁵³ Eviction without relocation only occurs where a tenant is in gross violation of the tenant's duties under the lease.⁵⁴ Tenants enjoy several other rights and privileges under the Housing

Id. art. 53. For example, when the primary tenant dies, the other tenants retain legal possession of the premises. *Id.*

In reality, many tenants in state and socially owned housing live in substandard housing for years. See *supra* note 6 and accompanying text (reporting the average number of tenants living in substandard conditions in a sampling of cities in the former Soviet Union). Although these tenants qualify for improved living conditions, the wait is usually several years. See *infra* note 147 and accompanying text (citing the typical percentage of households waiting for improved living conditions in a sampling of cities in the former Soviet Union).

50. IOFFE & MAGGS, *supra* note 45, at 262.

51. IOFFE & MAGGS, *supra* note 45, at 262.

52. RSFSR HOUSING CODE, *supra* note 6, arts. 90-99. Tenants may be evicted from housing if the building they live in is scheduled for demolition, is deemed uninhabitable, is in danger of collapsing, or is scheduled to be converted to non-residential use. *Id.* art. 91. In cases of eviction under these circumstances, the state must provide tenants with alternative living accommodations. *Id.* arts. 92-93. Tenants may be evicted without allocation of alternative living accommodations if they destroy the unit, use the unit for "improper purposes," or violate the "rules of socialist community life." *Id.* art. 98. In such cases, the tenant first receives notice of the pending eviction and an opportunity to correct the situation. *Id.* Persons who arbitrarily occupy units will be evicted without alternative living accommodations. *Id.* art. 99. Tenants who are evicted from departmental housing or cooperative farms through no fault of their own are provided alternative housing. *Id.* arts. 95-96. Alternative living accommodations must comply with the same housing standards that meet the standards for acceptable housing as defined in the Principles of Housing Legislation. *Id.* art. 90. According to the Housing Code, the social norm is not less than 12 square feet per person. *Id.* art. 38; see PARTY, STATE AND CITIZEN IN THE SOVIET UNION: A COLLECTION OF DOCUMENTS 179-86 (Mervyn Matthews ed., 1989) [hereinafter PARTY, STATE AND CITIZEN] (reprinting articles of the RSFSR Civil Code controlling eviction that complement the Principles of Housing Legislation).

53. RSFSR HOUSING CODE, *supra* note 6, arts. 90-99.

54. RSFSR HOUSING CODE, *supra* note 6, art. 98.

Code. For example, all tenants may sublet their apartments,⁵⁵ temporarily absent tenants may retain their rights to a unit for up to six months,⁵⁶ tenants sent to work abroad may reserve their living space for the entire time they are abroad,⁵⁷ and all tenants may exchange their dwelling units with each other provided the tenants adhere to the procedure specified in the Housing Code.⁵⁸

Article 46 of the Russian Federation Constitution helps citizens enforce the right to housing by allowing tenants to challenge any denial of their right to housing in court.⁵⁹ Citizens who wish to appeal official agency decisions may choose either an administrative appeal process or a judicial process.⁶⁰ According to the administrative procedure, the aggrieved party addresses a complaint to the organization overseeing the agency against which the party has a complaint.⁶¹ The judicial appeal procedure, a new phenomenon for the resolution of housing disputes, represents an effort to enhance the fairness of the process by holding government officials accountable for their actions in court.⁶² As yet, no

55. RSFSR HOUSING CODE, *supra* note 6, art. 76.

56. RSFSR HOUSING CODE, *supra* note 6, art. 60.

57. RSFSR HOUSING CODE, *supra* note 6, art. 62.

58. RSFSR HOUSING CODE, *supra* note 6, arts. 69-73.

59. KONST. RF art. 46 (1993). Article 46 provides in relevant part:

1. Each person is guaranteed judicial protection of his rights and freedoms.
2. The decisions and actions (or inactions) of organs of state power, organs of local self-government, public associations, and officials can be appealed in court.

Article 46 amended article 63 of the RSFSR Constitution. KONST. RF art. 63 (1992 as amended). Article 63 of the RSFSR Constitution provides in relevant part:

Each individual shall be guaranteed judicial protection of his rights and freedoms and the right to legal assistance. The decisions and actions of officials, government bodies, and public organizations resulting in violations of the law or the abuse of authority, as well as those restricting rights of citizens, may be challenged in a court of law.

KONST. RF art. 63 (1992).

Although published before the December 1993 Russian Federation was passed, many of the sources used in this Comment to evaluate article 63 are equally relevant to article 40 considering the similar language of the two constitutional articles.

60. See *Appeal to Courts Against Actions by Officials*, 18 SOVIET L. AND GOV'T 28, 30 (Summer 1979) [hereinafter *Appeal to Courts*] (characterizing the differences between the two procedures).

61. See *id.* (summarizing the administrative appeal procedure).

62. See *infra* notes 183, 188-90 and accompanying text (discussing the Law of Appeals passed in 1987 and amended in 1989).

reliable information is available that compares the effectiveness and popularity of its use to that of the traditional administrative procedure.⁶³

The current legislative framework for housing law in the Russian Federation is flawed in several respects. First, the central pieces of legislation regulating housing law, the 1992 Housing Principles and the RSFSR Housing Code, do not present a consistent normative framework for developing supplementary housing laws and policy. The RSFSR Housing Code, passed during the Soviet era, reflects an economic and political relationship between law and housing⁶⁴ which the more market-oriented 1992 Housing Principles attempts to alter.⁶⁵ Because the Housing Code is designed to implement the provisions of the Housing Principles, it is imperative that a new Housing Code be adopted that reflects the policies and concepts contained in the Housing Principles.⁶⁶

Second, laws affecting the civil right to housing are unpublished. This is a severe handicap to a citizen who wishes to protect his or her right to housing.⁶⁷ Finally, even where strong tenants' rights exist, the pro-

63. See *Appeal to Courts*, *supra* note 60, at 30 (weighing the advantages of the judicial procedure over the administrative procedure).

64. See *infra* note 202-05, 220 and accompanying text (discussing legislation designed to increase production in the cooperative and individual housing tenures); see also *infra* notes 181-91 and accompanying text (citing pieces of legislation introducing judicial review of legislative and administrative acts); 1992 *Housing Principles*, *supra* note 8 and accompanying text. Housing sector changes that have resulted from the government-pursued policies of *perestroika* and privatization are indicative of the current climate of economic and political reform. *Id.*

65. See 1992 *Housing Principles*, *supra* note 8, at pmb1. (stating that one of the primary goals of federal housing policy is "to develop private property, to protect entrepreneurs and owners rights in the housing sector; to promote competition in construction, repair and maintenance of the housing stock . . ."). But see *id.* para. 2 (declaring that "[t]he goal of Federal Housing policy is to ensure social guarantees for the right to housing . . ."); *id.* art. 2 (relating that "[c]itizens of the Russian Federation have the right for housing").

66. See 1992 *Housing Principles*, *supra* note 8, at pmb1. (stating that the goal of the Federal Housing Policy is to ensure the rights of citizens for housing, construction, and rehabilitation of the state, and to create conditions to attract non-budget sources of financing). In fact, the Russian Federation Ministry of Housing and Architecture is in the process of drafting a new housing code. While bureaucratic in-fighting is impeding completion of the draft, it remains a priority on the government's legislative agenda for 1994. STEPHEN B. BUTLER & SHEILA E. O'LEARY, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF HOUSING AND URBAN PROGRAMS, LAWS RELATING TO HOUSING AND URBAN DEVELOPMENT IN THE RUSSIAN FEDERATION: MARCH 1994, at 7 (1994).

67. *Digest of Laws*, *supra* note 12, at 950. Attempts are currently underway to compile much of the unpublished legislation in certain areas of the law into a digest

tection these laws provide can be deceptive when tenants seek to enforce those rights. Some reports conclude that tenants generally experience success in the appeal process.⁶⁸ Other commentators, however, state that many appeal review boards are reluctant to grant appeals because the original decision regarding the tenant was made by an entity with whom the review board has a dependent relationship.⁶⁹ Also, due to the lack of public education and shortage of housing lawyers, many tenants simply do not realize the array of rights they possess.⁷⁰

B. ADMINISTRATIVE FRAMEWORK OF THE RIGHT TO HOUSING

1. Housing Tenure and the Internal Passport System

Historically, two of the most significant factors in determining how the right to housing was administered in Russia consisted of the tenure category of the housing⁷¹ and the *propiska* (internal passport) held by a tenant.⁷² "Housing" in the Russian Federation generically refers to four separate categories, or tenures, which compose the housing stock. These tenures include state housing, socially-owned housing, cooperative housing, and individual housing.⁷³

of laws. *Id.* Some success in this task has been reported, but access to the digest is restricted and not generally available to the public except on a need-to-know basis. *Id.*

68. See Louise Shelley, *The Structure and Function of Soviet Courts, in THE DISTINCTIVENESS OF SOVIET LAW* 199, 204-05, 213 (F.J.M. Feldbrugge ed., 1987) (describing the general nature and outcome of housing cases submitted to the appeal process).

69. See John Quigley, *Law Reform in the Soviet Courts*, 29 COLUM. J. TRANSNAT'L L. 59, 63, 66-68 (1990) (commenting on the administrative appeal process). Judges are usually dependent upon local government officials for renomination and funding for the court's facilities. *Id.* at 67. Judges may also be dependent on local housing officials for their living accommodations. *Id.* This kind of pressure makes it difficult for a judge to remain impartial in settling disputes between tenants and local government housing officials. *Id.*

70. See Shelley, *supra* note 68, at 205 (stating that few of all potential housing cases are ever filed because tenants do not know their rights).

71. See *infra* notes 73-79 and accompanying text (distinguishing between and defining the four categories of housing tenures).

72. See *infra* notes 83-93 and accompanying text (explaining the role that the internal passport system plays in allocating housing and controlling citizens' mobility).

73. RSFSR HOUSING CODE, *supra* note 6, art. 5; see STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 4 (illustrating the breakdown of tenants in each type of housing tenure in the Russian Federation and Moscow).

State housing consists of dwellings owned and allocated by local soviets (municipal governments), ministries, state committees, and departments (departmental housing).⁷⁴ The majority of the housing stock in Russia falls under this category.⁷⁵ Socially-owned housing belongs to and is administered by cooperative farms and other cooperative organizations, trade unions, and other social organizations.⁷⁶ Cooperative housing is owned by house-building cooperatives.⁷⁷ Residents in cooperative

74. RSFSR HOUSING CODE, *supra* note 6, art. 5. State housing is "houses and living accommodations in other buildings that belong to the state." *Id.*; see also Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 260 (categorizing the four housing tenures).

The disparity between the amount of housing that belonged in the "municipalized" and "nationalized" tenures used to be greater than it is now. *Id.*; see also RSFSR HOUSING CODE, *supra* note 6, art. 6 (explaining the definition of "state housing" as a combination of housing belonging to the local soviets and departmental housing). Municipalized housing belongs to the local soviet which allocates the housing to all individuals within its jurisdiction. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 260. Nationalized housing belongs to a state institution, trade union, or enterprise. *Id.* These entities own and distribute housing to individuals who work for these entities. *Id.* President Gorbachev strongly supported a policy of transferring all state housing to the local soviets with the expectation that housing will be more equitably and efficiently managed. *Id.* at 261-62 (citing legislative and policy examples during the Gorbachev years to transfer departmental housing to local soviets).

75. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 6. In 1990, 79% of the urban housing stock in Russia was state housing. *Id.* In the country as a whole, state housing represented 67%. *Id.* In Moscow, state housing accounted for 89.5% of all housing. *Id.*; see also Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 20-24 (illustrating the percentage of units in each tenure); Kalinina, *supra* note 6, at 254 (showing housing stock by types of tenure in the Soviet Union in 1991).

76. RSFSR HOUSING CODE, *supra* note 6, art. 5. Socially-owned housing is "houses and living accommodations in other buildings that belong to collective farms and other cooperative organizations, their associations, trade unions, and other social organizations." *Id.*

77. RSFSR HOUSING CODE, *supra* note 6, art. 5(c). There is a long history of House Building Cooperatives (HBCs) in the former Soviet Union. See SAWICKI, *supra* note 16, at 130-33 (reviewing the history of the HBCs in the former Soviet Union and stating that their popularity was in large part attributable to the concept of house building cooperatives as consonant with Soviet economic and political philosophy). Individuals may join one of three different types of HBCs: cooperatives for building private houses or apartments and garages; cooperatives for building holiday or rest homes; and cooperatives for building small gardens to market produce. *Id.* at 133-34. State legislation governs certain areas of HBC membership and organization, but HBCs are free to develop their own more elaborate rules and regulations provided

housing, often members of the intelligentsia or other individuals of similarly elevated social status, can afford to pay more for housing.⁷⁸ Individual housing is both privately and independently owned, though still subject to compliance with many provisions of the Housing Code.⁷⁹ Important administrative distinctions in allocation, leasing, and evictions exist among each of the four tenures.⁸⁰ Despite these differences, each tenure category must comply with the relevant provisions of the Principles of Housing Legislation and the Housing Code.⁸¹

Until recently, the Russian Constitution guaranteed the right to housing, but not the right to freely choose the residence.⁸² Historically, legal residency was determined by a citizen's possession of a *propiska*⁸³—the

that they do not conflict with state law. *Id.* at 133-42.

78. Henry Morton, *Who Gets What, When and How? Housing in the Soviet Union*, 32 SOVIET STUDIES 255 (1980).

79. RSFSR HOUSING CODE, *supra* note 6, art. 5(c); see SAWICKI, *supra* note 16, at 113-29 (tracing the social and legal history of private home-ownership in Russia). An individual homeowner and tenant may execute a lease to regulate their landlord/tenant relationship, but the lease terms are regulated by legislation. IOFFE & MAGGS, *supra* note 45, at 261.

80. RSFSR HOUSING CODE, *supra* note 6 and accompanying text. The Housing Code addresses all of these issues for each of the four housing tenures. *Id.* arts. 16-27 (division of housing administration of each of the tenures); arts. 28-108 (allocation, leasing and eviction in state and socially owned housing); arts. 111-26 (allocation, leasing and eviction in cooperative housing); arts. 127-39 (allocation, leasing and eviction in individual housing).

See *supra* note 80 and accompanying text (detailing the distinctions in grounds for evicting tenants in each of the four tenures); see also van den Berg, *supra* note 48, at 355-73 (discussing the limitations of the right to own private dwellings); SOVIET CIVIL LAW, *supra* note 14, at 265-31 (explaining certain aspects of leasing and eviction procedures of tenure categories); PARTY, STATE AND CITIZEN, *supra* note 52, at 179-86 (reprinting specific articles of the RSFSR Civil Code which discuss leasing and eviction regulations).

81. RSFSR HOUSING CODE, *supra* note 6, art. 3.

82. KONST. RF art. 27(1). Article 27(1) states that "each person who is legally present on the territory of the Russian Federation has the right to travel freely and choose his place of stay and residence." *Id.* No such provision has ever existed in the previous Russian Federation or RSFSR Constitutions.

83. Van den Berg, *supra* note 48, at 302. Introduction of the internal passport system dates back to Tsarist Russia where it was introduced in connection with a poll tax and military recruitment. PARTY, STATE AND CITIZEN, *supra* note 52, at 161. In 1906, peasants and others formerly of subject status were granted freedom of residence. *Id.* After the Revolution, the Civil Code of 1922 continued to grant freedom of residence to citizens. Van den Berg, *supra* note 48, at 302. Freedom of residence

legal right to live at a particular address.⁸⁴ Citizens were allowed to have a *propiska* for only one location, thus making it mandatory to register for departure from one location before obtaining a *propiska* for a new location.⁸⁵ Obtaining permission from the passport office administering the issuance of *propiskas* was a difficult process and citizens devised elaborate schemes to meet the requirements for receiving a *propiska* for a new location.⁸⁶ The Soviet and Russian governments

was an enforceable right and the RSFSR Procuracy vigorously pursued violations of this right by government officials. *Id.*

In 1932, Stalin issued a law requiring internal passports. PARTY, STATE AND CITIZEN, *supra* note 52, at 160. The law was introduced in large part to limit the size of urban populations. Steven Erlanger, *Russia to Replace Residency Permit*, N.Y. TIMES, Dec. 27, 1992, at 5. The RSFSR Civil Code of 1964 stipulates that a citizen has the right to choose his or her residence, but only "in conformity with the law," that is, in conformity with the internal passport rules. *Id.* at 302. Until June 1993, the *propiska* system was governed by the 1974 "Statute on the Passport System of the USSR." PARTY, STATE AND CITIZEN, *supra* note 52, at 160, 167-75 (reproducing the text of the statute).

84. Simona Pipko & Albert J. Pucciarelli, *The Soviet Internal Passport System*, 19 INT'L LAW. 915, 917 (1985). Russian citizens were required to keep their internal passports with them at all times. *Id.* at 916. The passport contained a recent photograph of the citizen, name, place and date of birth, nationality, marital status, identity of children, record of military service, place of employment, notations for failure to pay court-appointed alimony, and a *propiska*. *Id.*

85. Erlanger, *supra* note 83, at 5. This requirement of registering a departure from one's address applied whenever a citizen left his or her address for a period in excess of one and one-half months. *Id.* A citizen who did not register his or her departure from a prior residence was denied permission to register at a new residence. *Id.* The *propiska* system in urban areas allowed relatively liberal change of residence. Ioffe, *supra* note 14, at 155. This was not true in rural areas where the *propiska* regime significantly restricted movement for agricultural workers. *Id.*

86. Pipko & Pucciarelli, *supra* note 84, at 919. Individuals wishing to obtain a *propiska* first had to offer proof that they had obtained housing. *Id.* Due to the chronic housing shortage, this was most often done by moving in with relatives, obtaining employment with an organization that provided its employees housing, or paying non-regulated rent to sublet an apartment (often a very expensive proposition for average citizens). *Id.* Even after housing was obtained, an individual had to complete the time-consuming, bureaucratic process of applying for a *propiska* and receiving permission from the agency of internal affairs. *Id.*

One method of obtaining a *propiska* was for two families with equally-sized apartments to exchange their residences. Morton, *supra* note 78, at 238. Even this could be a complicated task. *Id.* One author tells a story about parents of a recently widowed son who wished to move to Moscow from their home in Vladimir, about 100 miles from Moscow, to assist their son and grandson. *Id.* Arranging to obtain an apartment in Moscow involved an elaborate exchange of apartments of families in

used the *propiska* system as a way of stemming the tide of migration into metropolitan areas.⁸⁷ A strong link existed between the *propiska* system and the labor market. Citizens who would not otherwise qualify for a passport in a particular location, frequently secured employment with an organization which provided housing to employees in order to move from one location to another.⁸⁸

Critics contend that the *propiska* system interfered with constitutional guarantees of work and education,⁸⁹ limited access to food and consumer goods more plentiful in urban than rural areas,⁹⁰ and that it violated international human rights standards.⁹¹ A committee established to assess the constitutionality of certain legislative acts found the *propiska* system unconstitutional.⁹²

Dislike of the *propiska* system grew until June of 1993, when Russian

five separate cities before the parents received a *propiska* for a one-bedroom apartment in Moscow. *Id.*

87. Morton, *supra* note 78, at 237. While no official list of "closed cities" is published, all major metropolitan areas are closed to immigrants. *Id.*

88. Pipko & Pucciarelli, *supra* note 84, at 918. For many individuals wishing to relocate to an urban area, this was one of the few means available to obtain a *propiska* to live in an urban area. *Id.*

89. Vladimir A. Kartashkin, *The Randolph W. Thrower Symposium: Comparative Constitutionalism: Human Rights and the Emergence of the State of the Rule of Law in the USSR*, 40 EMORY L.J. 889 (1991). Until the recent December 1993 Constitution came into effect which eliminates the absolute right to housing, the Russian Federation Constitution guaranteed citizens the right to work. KONST. RF art. 53 (1992). A person without a residence permit, however, could not obtain employment. Kartashkin, *supra*, at 899. Citizens of the Russian Federation also have the right to education, KONST. RF art. 43 (1993), but many institutions of higher learning only accept students with permanent residence permits. Kartashkin, *supra*, at 899.

90. Ioffe, *supra* note 14, at 155-56. Ioffe states that access to many of the necessities for daily life were limited by the *propiska* system. *Id.* at 155. For example, quantity and quality of foodstuffs are most plentiful in urban areas. *Id.* While Soviet law did not prohibit citizens from travelling to urban areas to shop, the time and expense incurred made this an unrealistic option for many citizens. *Id.* at 155-56.

91. See Kartashkin, *supra* note 89, at 897 (noting that the right to choose freely a place of residence is in accord with the Universal Declaration of Human Rights, the two Covenants on Human Rights, and the two Documents of the Conference on Security and Cooperation in Europe).

92. See *infra* notes 182, 184-89 (discussing the history and accomplishments of the Constitutional Supervisory Committee). The Constitutional Supervisory Committee was an entity established in 1988 by President Gorbachev to review the constitutionality of various legislative acts of the former Soviet Union. F.B.I.S. SOV-88-22 (Dec. 5, 1988).

President Boris Yeltsin signed into law a decree concerning the right of citizens to choose their place of residence.⁹³ The law does not expressly eliminate the *propiska* system. Instead, it retains a registration requirement that obligates citizens to register their place of residence with the appropriate local government office whenever the citizen changes his or her permanent place of residence.⁹⁴ Failure to register, however, may not be considered grounds for limiting a citizen's right to freedom of movement guaranteed by law.⁹⁵ The right to freedom of movement is also contained in the December 1993 Russian Federation Constitution, although abolition of the *propiska* system is not expressly mentioned.⁹⁶ It is hoped that most cities will agree to comply with the less-restrictive registration requirements and will effectively abolish the *propiska* system in their jurisdictions. Regardless of the future role of the *propiska* system, it is important to understand the government's historical use of it to control citizen mobility and place of residence.

2. Not-so-dependable Guarantees of the Right to Housing

As evidenced by federal housing policy, the government interprets the right to housing as a signal that the government is responsible for allocating a separate dwelling unit to each family.⁹⁷ The extent of the government's involvement in the housing sector⁹⁸ clearly demonstrates

93. *Law of the Russian Federation No. 5242-1 On the Right of Citizens in the Russian Federation to Freedom of Movement and to Select Their Permanent and Temporary Place of Residence within the Russian Federation*, published in F.B.I.S. USR-93-108, Aug. 20, 1993, at 89 [hereinafter *Freedom of Movement Law*].

At least one major city, Moscow, has refused to implement the law on the right of citizens to choose their place of residence. *Moscow, Kuban Criticize New Residence Law*, published in F.B.I.S. SOV-93-177, Sept. 15, 1993, at 40. Moscow administrators charge that the *propiska* system was one of the few tools the city possessed to help control the flow of immigrants and "speculators" into an already overcrowded city and a stricter registration procedure is required to maintain safety in the city. *Id.* Administrators opposed to the new law point out that the huge flow of immigrants to Moscow this year has caused an increase in apartment rents, more competition for jobs, and a burden on the social infrastructure. *Id.*

94. *Freedom of Movement Law*, *supra* note 93, art. 6.

95. *Freedom of Movement Law*, *supra* note 93, art. 3. The law leaves to the "organs of internal affairs" the responsibility to ensure that citizens comply with the registration requirements. *Id.*

96. KONST. RF art. 27 (1993).

97. Van den Berg, *supra* note 48, at 300 (quoting from the Principles of Housing Legislation of the USSR).

98. See STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at

the sector's importance in advancing the government's political and economic agenda. As the longstanding existence of the *propiska* system indicates, however, the government's concern in providing housing is less a desire to achieve social justice than a means to control the population's mobility.⁹⁹

The following subsection explores other indications of the government's commitment and ability to provide universal housing in amounts less than the constitutional guarantee suggests. Until the 1993 Constitution, the Russian Federation Constitution contained several dependable guarantees of the right to housing, including development and upkeep of the state and socially-owned stock, assistance for cooperative and individual building, fair allocation of housing, and low charges for rent and utilities.¹⁰⁰ The government's performance in each of these areas was a benchmark for determining government effectiveness in fulfilling its constitutional promise. The next section uses these four categories to critique the government's performance in achieving its goal of a right to housing for all citizens.

6 (stating that 79% of urban housing and 67% of all housing in the Russian Federation belongs in the state housing stock).

99. Kalinina, *supra* note 6, at 257-58. Kalinina suggests that, in addition to the role of providing shelter, the housing system has been used to regulate resettlement, migration, selection, and placement of personnel. *Id.* at 257. Waiting lists for enterprise housing allow employers to control employee behavior by tying employee performance to promises of better living conditions and permitting queue jumping on the waiting list. *Id.* Additionally, there is an ingrained system of privileges for *nomenklatura* (government bureaucrats) to allocate better housing conditions for high-ranking personnel to encourage career advancement. *Id.* Kalinina thus concludes that true housing reform will allocate housing based not on status, but on income and regulated by market principles and social guarantees. *Id.* at 258. Not surprisingly, many government bureaucrats oppose any movement to eliminate the *propiska* system for fear of losing their own housing privileges. Kartashkin, *supra* note 89, at 899.

100. KONST. RF art. 58 (1992). The Constitution states that:

Citizens of the Russian Federation will have the right to housing. This right will be secured by the development and maintenance of available state and public housing, assistance in cooperative and private resident construction, the equitable distribution of living area under public supervision, and the allotment of this living area as the program for the construction of well-planned housing is carried out, as well as the right to low-cost apartments and utilities. Citizens of the Russian Federation must treat their assigned living quarters with care.

Id.

a. *Development and Upkeep of State and Socially-owned Housing*¹⁰¹

There are massive state bureaucracies in Russia that are responsible for the construction of new housing¹⁰² and maintenance and repair of the existing state housing stock.¹⁰³ With the exception of a brief period following World War II when the government committed significant resources to the construction of new housing,¹⁰⁴ the demand for state housing has always exceeded the supply.¹⁰⁵ Moreover, for various administrative and economic reasons discussed below, the government has failed to maintain the quality of the existing stock at an acceptable standard.

Although a housing shortage has existed for decades, the Soviet government made significant strides after World War II to improve the country's building record.¹⁰⁶ During the Khrushchev years, housing construction was a major state economic goal and massive, unprecedented construction was undertaken.¹⁰⁷ This period was followed by a sharp decrease in government investment in housing.¹⁰⁸ This decrease, cou-

101. KONST. RF art. 58 (1992).

102. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 18-20.

103. See ANGUS OLSON, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, PRIVATIZATION OF MANAGEMENT AND MAINTENANCE OF MUNICIPALLY-OWNED HOUSING: MOSCOW PILOT DESCRIPTION AND DOCUMENTS 9-10 (1993) (overviewing the administrative structures and functions of the entities responsible for the maintenance of municipal housing in Moscow).

104. See Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 18-20 (discussing the construction boom that occurred in 1951-1960).

105. See *infra* notes 145-50 and accompanying text (discussing the legendary housing shortages in the Soviet Union and Russian Federation).

106. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 19-20. The destruction caused by World War II, where one-sixth of the country's urban housing stock was destroyed and one-sixth severely damaged, combined with the rapid industrialization of the 1930s, made improvement of the nation's housing stock imperative by 1945. *Id.* at 19. Consequently, the government increased funding for construction, accelerated building schedules, and legitimized the entire construction industry. *Id.* Investment in housing during the five-year-plan from 1951 to 1955 was double the amount invested in the previous five-year-plan. *Id.* The five-year-plan investment of 1956-1960 was more than double the investment during the 1951 to 1955 period. *Id.*

107. IOFFE & MAGGS, *supra* note 45, at 261.

108. IOFFE & MAGGS, *supra* note 45, at 261. From 1961-1980 the investment in housing according to Five Year Plans (FYPs) was as follows:

pled with an increase in urbanization and demand for state housing, led to a chronic housing shortage which continues to plague Russia.¹⁰⁹

The current inability of the construction industry to meet the goal of an apartment for every family stems from a combination of limited capital for investment in constructing new housing,¹¹⁰ technological backwardness of construction tools and materials,¹¹¹ flawed methods of determining the demand for accommodation,¹¹² and corruption in the system of allocating funds for construction.¹¹³

	Actual investment (million rubles)	As a percentage of of total capital investment
7th FYP (1961-65)	45218	18.6
8th FYP (1965-70)	59696	17.2
9th FYP (1971-75)	75354	15.3
10th FYP (1976-80)	86305	13.6

Id.

These numbers reflect a reduction in output due primarily to increased construction costs and a shortage of good building land. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 237.

It is misleading to assume that country-wide housing construction experienced a decline. *Id.* In certain areas of the country, where the government was attempting to encourage industrial expansion, significant government expenditures were allocated to build worker housing to attract employees. In these areas, the quantity and quality of housing is often better than in less-industrialized areas. *Id.* at 7.

109. See George & Manning, *supra* note 3, at 159 (discussing the causes of the government's failure to resolve the housing shortage). George and Manning suggest that one reason for the government's inability to adequately house its citizens is the government's attitude that while housing is a necessary consumption item, it generates little economic return. *Id.* Consequently, they argue that the government has been less inclined to invest money in housing as compared to education and health services, which are seen as investments in human capital. *Id.*

110. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 257. Huge amounts of the state's housing budget are expended on maintenance and capital repairs. *Id.* For example, from 1981 to 1985 50% of the state's subsidy for the housing sector was spent on structural and capital repairs. *Id.*

111. See Kosareva et al., *supra* note 6, at 75 (criticizing the outmoded construction methods of the industry); IMF REPORT, *supra* note 6, at 325 (evaluating the 590 industrial housing plants responsible for constructing high rise urban apartment buildings as technically obsolete [and] energy and capital intensive).

112. See IMF REPORT, *supra* note 6, at 325-26 (discussing the all-powerful role of the housing construction firm).

113. Kalinina, *supra* note 6, at 246-49. The use of adequate methods to determine demand is vital because it is the starting point from which plans for financing and construction begin. *Id.* According to Kalinina, the current system of determining de-

Figures published by the Soviet government construction committee in 1988, aptly illustrate the magnitude of the problem.¹¹⁴ According to the committee's figures, to meet the goal of a separate dwelling unit for each family by the end of the century,¹¹⁵ the number of housing units available would have to increase by fifty percent.¹¹⁶ This goal was unlikely to be fulfilled at the time it was set and is incompatible in the current economic climate where inflation drives up the industry's construction costs by the month.¹¹⁷

In addition to expanding housing to meet demand, the Constitution promises adequate maintenance of existing units.¹¹⁸ While availability and quality of housing are principle concerns for urban residents, the issue of housing stock quality is particularly acute in rural areas. According to some estimates, over fifty percent of the urban housing stock is considered substandard by Housing Code measures.¹¹⁹ Over fifty-five percent of urban housing stock and ninety percent of rural stock are without some or all of the standard amenities of sewerage, heating, indoor plumbing, hot water, or gas facilities.¹²⁰

mand fails to consider two or more families living together. *Id.* at 248. See Kosareva et al., *supra* note 6, at 70 (criticizing government statistics on housing need and suggesting that it is much lower than it should be because it does not count the number of families living two or more to a dwelling).

114. Andrusz, *HOUSING AND URBAN DEVELOPMENT*, *supra* note 5, at 228. In 1988, the State Construction Committee stated that the housing stock was 4,300 million square meters of floor space. *Id.* To meet the total demand for housing by the year 2000 would require construction of an additional 2,800 million square meters—nearly half of the existing stock. *Id.*

115. See Andrusz, *Note on the Financing of Housing in the Soviet Union*, *supra* note 5, at 555 (repeating the government's goal of universal housing by the year 2000).

116. Andrusz, *Note on the Financing of Housing in the Soviet Union*, *supra* note 5, at 555.

117. See *Investment Surge in Construction Industry May Spell Trouble*, *COMMERSANT*, June 23, 1993, at 20-21 (stating that prices for construction materials and labor have increased six-fold in the past year); see *supra* note 7 and accompanying text (discussing the decline in housing investment and construction during the past 30 years).

New housing construction declined 33% between 1987 and 1991 and dropped an additional 23% between 1991 and 1992. Raymond Struyk & Nadezhda Kosareva, *UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, THE RUSSIAN HOUSING MARKET IN TRANSITION 4* (1993) [hereinafter *STRUYK & KOSAREVA, TRANSITION*].

118. KONST. RF art. 58 (1992).

119. See Kosareva et al., *supra* note 6, at 69-72 (assessing the number of residents living in substandard housing conditions).

120. Kosareva et al., *supra* note 6, at 72. See *CHARLES HANSON ET AL., UNITED*

Historically, the state housing stock was maintained by state property management entities whose budgets were heavily subsidized by the government.¹²¹ While these state property management entities still exist as the administrative structure to maintain state housing, a substantial amount of the funds they received from the federal budget has been eliminated.¹²² Funds available for maintenance from rents and remaining government subsidies are far less than the amount needed to adequately maintain the housing stock.¹²³ The increased cost of building materials further compounds the difficulty of making repairs.¹²⁴ Government efforts to sell and privatize the housing stock and transfer the cost of maintenance to residents¹²⁵ addresses the problem to a limited degree. Even in cities where substantial portions of the state housing has been privatized, until the owners organize themselves to assume responsibility for maintaining their buildings and possess the financial resources to do so without government subsidies, the expense of building maintenance will continue to reside with the government for sometime and remain a major budgetary expense.¹²⁶

STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF HOUSING AND URBAN PROGRAMS, HOUSING REFORM IN THE RUSSIAN FEDERATION: A REVIEW OF THREE CITIES AND THEIR TRANSITION TO A MARKET ECONOMY 13 (1992) (citing the large discrepancy in utility services between state, socially-owned, housing cooperatives, and private residential houses).

121. STRUYK & KOSAREVA, TRANSITION, *supra* note 117, at 7. State housing is maintained by 479 repair and maintenance boards scattered throughout the country with staffs of 100 to 150 people. *Id.* In 1990, 80% of the maintenance boards' budgets was subsidized by state funds. *Id.*

122. STRUYK & KOSAREVA, TRANSITION, *supra* note 117, at 4.

123. See *supra* note 8 and accompanying text (reporting on the inadequate funds available to meet the maintenance budget).

Seven to nine percent of state housing is termed "ramshackle" (substandard) by the state. Housing Program, *supra* note 6, § I, art. 5. Since 1990, the state has become increasingly less efficient in improving the substandard stock of housing. In 1990, 60 to 70% of the substandard housing was repaired. *Id.* In 1991, the percentage dropped to between 50 and 55%. *Id.* In 1992, that figure fell to approximately 33%. *Id.* These decreasing numbers are attributed to the cessation of federal government funds for maintaining local housing stocks and the increasing cost of maintenance supplies as prices are liberalized. *Id.*

124. COMMERSANT, *supra* note 117, at 21.

125. See *infra* notes 239-40 (discussing government efforts to privatize the housing stock and encourage owners to take over property management of the building).

126. See *Tentative Regulations on Free Privatization*, *supra* note 8, art. 4.2. These regulations state that "housing unit owners (partnership and associations)" may contract

b. *Assistance for Cooperative and Individual House Building*¹²⁷

The housing policy of the Russian Federation has long supported increased cooperative and individual house construction.¹²⁸ In recent years, the government has recognized that some of the burden of providing housing should be allocated to the private market.¹²⁹ For some time, increased availability and creativity in housing financing options,¹³⁰ greater autonomy in design and structure,¹³¹ and legislation

with private maintenance firms or the existing government maintenance and repair firms for property management services. *Id.* The emphasis on "partnerships and organizations" seems to imply that the unit owners must formally organize themselves as a legal entity before entering into maintenance contracts with outside firms (i.e., a condominium). The government housing Program states that government subsidies for maintenance will be phased out over a five year period. Housing Program, *supra* note 6, art. x.

127. KONST. RF art. 58 (1992).

128. KONST. RF art. 58 (1992). RSFRS HOUSING CODE, *supra* note 6, art. 111 (granting the right to citizens to join housing cooperatives). At the XXVII Party Congress, President Gorbachev placed particular importance on expanding the housing cooperative and individual housing tenures. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 229. In 1986, the Central Committee of the Communist Party (CPSU) and the Council of Ministers passed a decree which stated that citizens' involvement in creating housing cooperatives is considered a major contribution toward resolving the country's housing shortage. IOFFE & MAGGS, *supra* note 45, at 89-90. See *id.* at 284, 302 (discussing legislative measures instituted in 1988 to encourage the development of these housing tenures); *Government of the Russian Federation Decision No. 40 On Increasing Housing Construction Using the Funds of the Public, Enterprises and Organizations* (RF) (1991) (providing for the establishment of government financing and tax benefits to subsidize cooperative and individual housing construction); Housing Program, *supra* note 6, § III, art. 4 ("it is important to provide all-around incentives for individual and cooperative (collective) housing construction . . .").

129. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 297. Much of the expense of constructing and maintaining the housing cooperatives falls on cooperative members. IOFFE & MAGGS, *supra* note 45, at 90-92. To belong to the cooperative, members must typically provide a sum up front (usually 40%) and the remainder is borrowed from the state to be amortized over a long-term period. *Id.* at 90.

130. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 286-87. For example, state savings banks increased loan ceilings to borrowers constructing or improving single family homes, *id.* at 286, and offered extremely favorable interest rates to the borrowers constructing individual or cooperative housing. Kalinina, *supra* note 6, at 253. Starting in 1992, to encourage housing cooperative purchases in a high-inflation economic climate, the government offered substantial subsidies to house-

securing rights for individual homeowner and housing cooperative residents¹³² spurred renewed public interest in these two tenures.¹³³ Unfortunately, unavailability of long-term construction finance options,¹³⁴ the lack of an adequate legal basis and regulatory structure for mortgage lending,¹³⁵ and the increasing expense of construction and

holds purchasing units through a housing cooperative which began construction before January 1992. See STRUYK & KOSARAVA, *TRANSITION*, *supra* note 117, at 54 (reporting that the subsidy amounted to 70% of the increase in unit cost and interest rate increases).

131. Andrusz, *HOUSING AND URBAN DEVELOPMENT*, *supra* note 5, at 290, 304-5. Formerly, housing cooperatives built housing according to specific government-planned design schemes. *Id.* at 304. Currently, cooperatives that have the funds may work with an architect to custom design the building and furnishings. *Id.* at 304-05.

132. Andrusz, *HOUSING AND URBAN DEVELOPMENT*, *supra* note 5, at 284 (discussing the effect of the 1988 law "On Measures to Accelerate the Development of Individual Housing Construction"); see *id.* at 302 (discussing the effect of the 1988 law "On Measures to Accelerate the Development of Housing Cooperatives").

In December 1992, an amendment to Article 12 of the Russian Federation Constitution provided that individuals may own land for individual housing construction. KONST. RF art. 12 (1992). A series of presidential decrees enacted throughout the Spring of 1993 has developed this right into normative law. In December 1992, President Yeltsin issued a decree allowing citizens to sell their land to third parties, provided the land is sold to a natural person and retains its designated use, or a different use authorized under law. STEPHEN B. BUTLER & SHEILA O'LEARY, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF HOUSING AND URBAN PROGRAMS, *THE LEGAL BASIS FOR LAND ALLOCATION IN THE RUSSIAN FEDERATION* 24 (1992). Procedures were enacted in June 1993 to provide a mechanism for such purchases and sales. *Id.*

133. Andrusz, *HOUSING AND URBAN DEVELOPMENT*, *supra* note 5, at 291. There was a four-fold increase between 1987 and 1988 in the number of private home loans borrowed by Russian citizens. *Id.* This increase was a result of the favorable loan terms and public confidence in the government's commitment to increase private home ownership. *Id.*

The number of loans to individuals increased from 73,400 in 1988, to 94,800 in 1991; the number of loans to cooperatives increased from 574,000 in 1988, to 648,000 in 1991. STRUYK & KOSAREVA, *TRANSITION*, *supra* note 117, at 53.

134. STRUYK & KOSAREVA, *TRANSITION*, *supra* note 117, at 50. High and volatile interest rates that present potentially grave credit risks cause banks to favor short-term loans over long-term financing options. *Id.*

135. Traditional mortgage lending in Russia involved loans having very long terms (sometimes 50 years) and fixed, low interest rates (two to three percent) subsidized by the government. STRUYK & KOSAREVA, *TRANSITION*, *supra* note 66, at 51-52. Loan volume was determined by centralized economic planning and lending was done by the State Savings Bank. *Id.* at 50. Maintaining a mortgage lending system with

building materials costs¹³⁶ present formidable obstacles to continued growth of these tenures.

*c. Fairness of Housing Distribution*¹³⁷

State housing is allocated by local governments responsible for the distribution of state housing stock within their jurisdictions.¹³⁸ Housing is distributed according to a formula for social norms which computes the size unit a family needs based on household composition.¹³⁹ Families or individuals who possess no housing¹⁴⁰ or insufficient housing,¹⁴¹ and are legal residents of the jurisdiction,¹⁴² may register with the appropriate local agency for an improvement in their housing condi-

these characteristics is extremely risky and undesirable in the current economic climate. During the past two years, Russian Federation policy-makers and bankers have pursued a number of initiatives to establish a workable legal and regulatory basis for mortgage lending. *See id.* at 63-65 (describing initiatives undertaken to reduce the interest rate risk and credit risk for bankers). A draft law on real estate mortgage is currently under consideration in the Russian Government. BUTLER & O'LEARY, *supra* note 68, at 3.

136. *See supra* note 118 and accompanying text (commenting on the high cost of housing construction and building materials).

137. KONST. RF art. 58 (1992).

138. RSFSR HOUSING CODE, *supra* note 6, arts. 16-17. Local housing officials, with direction from central authorities, retain exclusive control over housing distribution in their jurisdictions. van den Berg, *supra* note 48, at 301. These officials often use their authority to control the flow of migration in their jurisdiction, reward with housing privileges those loyal to the system, deny rights to those who are not loyal and generally control the distribution of housing in ways not always consistent with the "principles of fairness in the distribution of living space as expressed in the . . . Constitution." *Id.*

139. Kalinina, *supra* note 6, at 250. In 1991, citizens of the Russian Federation possessed 11.0 square meters of living space per person. F.B.I.S. SOV-91-049 at 54 (Mar. 13, 1991).

140. *See IOFFE & MAGGS, supra* note 45, at 202 (explaining that individuals who possess no housing are those who are not themselves tenants or subtenants but are living in another legal tenant's dwelling and are thus subject to eviction by that legal tenant at any time).

141. *See IOFFE & MAGGS, supra* note 45, at 202 (finding insufficient housing means living space below the social norm as defined by the Housing Code and other local regulations). Typically, living space that is less than five to seven square meters per person is classified as below the social norm and an individual or family may register for an improvement in living condition. Kalinina, *supra* note 6, at 250.

142. *See supra* notes 83-93 and accompanying text (discussing the *propiska*, the internal passport system).

tion.¹⁴³

Due to the chronic housing shortage, people remain on waiting lists for years before receiving adequate housing.¹⁴⁴ At the beginning of 1990, an average of twenty-three percent of all families and individuals in the Soviet Union were on waiting lists.¹⁴⁵ In some cities, up to thirty-six percent of the population are on a housing waiting list.¹⁴⁶ In 1989, the average waiting period to receive improved housing conditions was eight years¹⁴⁷ and eighteen percent of all families have been waiting for over ten years.¹⁴⁸ Many inadequately housed citizens live in severely overcrowded apartments or alternative housing such as barrack accommodations, log huts, trailers, dormitories and basements while they wait for improved living conditions.¹⁴⁹ Inadequate housing conditions are often linked by anecdote and statistics to decreased worker productivity, increased substance abuse, domestic violence, decreasing birth rates and general social malaise.¹⁵⁰

143. IOFFE & MAGGS, *supra* note 45, at 202.

144. Perevedentsev, *supra* note 6, at 61. The problem is even greater than the numbers cited in this Comment suggest because the number of citizens registered on the waiting list does not include the hundreds of temporary workers and settlers, who must wait five years before they are legally able to register, and who are unaccounted for on the waiting lists but are actually in need of housing. *Id.*

145. Kalinina, *supra* note 6, at 250. That number was an increase from 22.3% in 1987. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 239.

146. Kalinina, *supra* note 6, at 245. Government statistics for 1988 show the number and percentage of families waiting for housing and the total city population for several large cities in the Russian Federation to be:

	No. households on waiting list	% Household on waiting list
Chelyabinsk	109,500	31
Gorky	123,100	27
Leningrad	282,900	20
Moscow	334,800	12
Novosibirsk	111,600	25
Rostov-on-Don	74,100	23

Id.

147. Kalinina, *supra* note 6, at 250.

148. Peredventsev, *supra* note 6, at 69-70.

149. Andrusz, *Note on the Financing of Housing in the Soviet Union*, *supra* note 5, at 555; Perevedentsev, *supra* note 6, at 62; *see* Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 245 (citing the number of households on waiting lists in major cities throughout the RSFSR in 1988).

150. *See* Reiner, *supra* note 9, at 687 (commenting on the social costs of housing

Not all individuals, however, remain on these waiting lists for years to receive improved housing. A well-established system of apartment exchanges is sanctioned in the Housing Code¹⁵¹ and is coordinated officially through government-funded apartment exchange bureaus.¹⁵² Official and tolerated unofficial systems of subletting vacant rooms¹⁵³ and purchasing privatized units in newly-constructed government housing are additional alternatives.¹⁵⁴

For those with political, academic or other similar connections to the government, an independent system of preferential housing allocation exists as a means to circumvent the state housing waiting list.¹⁵⁵ Furthermore, the state itself allots a privileged status to registrants who fall into special categories.¹⁵⁶ Those with the financial means may purchase or rent housing. An organized real estate market and private brokerage agencies are becoming more pervasive in larger Russian cities.¹⁵⁷ Ac-

shortages).

151. RSFSR HOUSING CODE, *supra* note 6, arts. 6-7.

152. See RSFSR HOUSING CODE, *supra* note 6, art. 67 (providing that residents of state and socially owned housing may legally exchange apartments); see also Reiner, *supra* note 9, at 688 (describing the system of apartment exchanges); Morton, *supra* note 78, at 243-46 (detailing the official and unofficial systems of apartment exchanges); JILL KHADDURI, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF HOUSING AND URBAN PROGRAMS, NOTES ON THE RESIDENTIAL REAL ESTATE MARKET IN RUSSIA 3 (1992) (describing the official apartment exchange process).

153. Gregory Andrusz, THE SOVIET UNION: AN INTRODUCTION IN THE REFORM OF HOUSING IN EASTERN EUROPE AND THE SOVIET UNION 237 (Bengt Turner et al. eds., 1992). It is legal for residents of state housing to sublet their entire unit or just a portion. RSFSR HOUSING CODE, *supra* note 6, art. 76.

154. KHADDURI, *supra* note 152, at 5 (describing the increasing popularity of auctioning as a means of privatizing newly-built state housing).

155. See Reiner, *supra* note 9, at 687 (describing the categories of citizens that typically receive preferential treatment in housing allocation); IOFFE & MAGGS, *supra* note 45, at 203 (stating that government bureaucrats often receive housing through means other than the official waiting-list system).

156. RSFSR HOUSING CODE, *supra* note 6, art. 36. Those receiving priority allocation are: (1) disabled veterans of World War II and their families and families of those killed in that war; (2) decorated veterans generally; (3) those suffering from certain chronic illnesses; (4) veterans generally; (5) those civilians disabled in wartime; (6) families of those killed in service to the state, whether in peace or wartime; (7) industrial and office workers who have worked for a certain length of time; (8) families with three or more children, unmarried mothers and mothers who have received the distinction of "Mother-Heroine"; and (9) families with twins. *Id.*

157. See KHADDURI, *supra* note 152, at 1-18 (summarizing the results of an investigation of the real estate industry in Moscow and St. Petersburg). Khadduri sug-

quiring housing through these alternate means, however, is often more costly than traditional routes.¹⁵⁸ Considering the disparities that exist in the housing system because some individuals have more money and better connections than others, it is reasonable to conclude that the Soviet and Russian governments' system of housing allocation does not live up to the constitutional promise of "fair distribution" of housing.

d. *Low Rents and Low Charges for Utility Services*¹⁵⁹

One constitutional promise the Soviet and Russian governments have fulfilled is the guarantee of low rents and utility charges. Rents in Russia have not increased since 1928.¹⁶⁰ As of 1992, the combined cost of rent and utilities was one to three percent of household income.¹⁶¹ A major reason why the Russian Federation has maintained low rents for state housing despite the rising cost of maintenance and construction is to compensate the Russian population for the poor quality of the housing stock.¹⁶² Maintaining low cost rent remains a central housing poli-

gests the growth of the real estate industry is a result of the government's massive push to privatize the housing stock. *Id.* at 1. Khadduri reports that, at present, the industry is in its nascent stages and consists of extremely diverse legal and illegal groups. *Id.* She predicts, however, that the industry will eventually grow and absorb the older system of state apartment exchanges and sublets. *Id.*

158. See Morton, *supra* note 78, at 242 (describing the unsuccessful attempts of an average-income family to join a housing cooperative); see also KHADDURI, *supra* note 152, at 1 (stating that the current real estate industry currently caters almost exclusively to high cost locations).

159. KONST. RF art. 58 (1992).

160. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 257. Rent is based on a charge per square meter and is not related to location or quality of the unit. Kalinina, *supra* note 6, at 255. Renters in state housing pay between 13.2 kopeks (100 kopeks = 1 ruble) and 16.5 kopeks per square meter within the social norm. Space in excess of the social norm is charged at triple that rate. *Id.*

161. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 258. In the winter of 1992, The Urban Institute, a Washington, D.C. research institute, conducted a study on the characteristics of income and housing expenditures in Moscow. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at vii. Using data from the Russian Federation's National Statistics Office for March 1992, the study revealed that the average monthly household income in Moscow for families in municipal housing was 3,381 rubles (about \$34 at that time). *Id.* Rent in municipal housing was charged at 0.89 rubles per square meter of living space. *Id.* at 7. The study concluded that rent plus utilities (heating, hot and cold water, garbage disposal, electricity, and gas) was two percent of household income. *Id.*

162. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 316.

cy goal of the Russian Federation. Article 40 of the recently passed Russian Federation Constitution mandates that "housing is provided free or at affordable cost to low income and other citizens indicated in the law who require housing"¹⁶³ In the prevailing climate of economic uncertainty in Russia, this reiteration of the constitutional right to low cost housing, and by implication the government's responsibility to shoulder the financial burden of ensuring that right, underscores the importance of the social right to housing.

The government's choice to maintain such artificially low rents has detrimental economic side effects. Income derived from rents to cover maintenance is a fraction of the need,¹⁶⁴ resulting in a severely undermaintained housing stock.¹⁶⁵ Where rental costs represent only a fraction of household income, the incentive for overhoused tenants (those with excess living space) to move into cheaper units and free up space for underhoused tenants is removed.¹⁶⁶ Thus doubled-up families must remain on state waiting lists for improved living conditions while elderly individuals whose children no longer live with them continue to remain in two and three bedroom apartments.

The Russian government has realized that it can no longer afford to maintain such artificially low rents. A program of staged rent and maintenance fee increases was planned for implementation in the Spring of 1994.¹⁶⁷ The rental increase will be supplemented by a housing subsidy which will provide government rental subsidies for those tenants in state housing unable to afford the increased rents.¹⁶⁸ The planned rental increase/housing subsidy program serves the function of increasing gov-

163. KONST. RF. art. 40 (1993).

164. Kalinina, *supra* note 6, at 255. Because revenue from rent collection is not enough to cover the cost of maintaining the housing stock, the government subsidizes three quarters of the maintenance cost of state housing. *Id.* A 1992 Urban Institute report conducted in the city of Moscow concluded that maintenance and utilities cost the city 26.12 rubles per square meter per month. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at vii. The public pays 3.4% of the cost of maintenance and utilities. *Id.* The Moscow city budget is able to cover only 25% of the total cost of maintenance and utilities of its housing stock. *Id.*

165. See *supra* notes 119-21 and accompanying text (discussing the crisis in housing maintenance and repair).

166. Kalinina, *supra* note 6, at 255. See Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 313 (citing research conducted in the Soviet Union in 1981 which showed that 44.3% of urban families are overhoused according to the social norm).

167. Housing Program, *supra* note 6, § III art. 7.

168. Housing Program, *supra* note 6, § III art. 7.

ernment revenues to maintain the existing housing stock, while at the same time ensuring that the most economically vulnerable members of the population are not left without adequate housing. This program remains true to the spirit of the right to housing while instituting much needed housing sector reforms.

Measured by its own standards as set out in the Constitution, the former RSFSR, and now the Russian Federation, have been unable to live up to the guarantees promised by the right to housing. The present housing crisis in Russia is a result of an ill-conceived housing policy,¹⁶⁹ inequitable housing allocation practices¹⁷⁰ and overly-politicized housing legislation.¹⁷¹ More recent housing policy initiatives under the programs of *perestroika* and privatization indicate the government is prepared to address the economic problems in the housing sector.

II. PERESTROIKA AND PRIVATIZATION

The government's guarantee of a right to housing has fallen short of its plans and promises. This section argues that the Russian government has unofficially acknowledged that it can no longer fulfill the constitutional guarantee of housing.¹⁷² Section A explores the role of former President Mikhail Gorbachev as a catalyst for policy, legislative, and social change. Section B discusses how the Gorbachev era set the stage for the substantive changes in policy and legislation which have oc-

169. See Kalinina, *supra* note 6, at 246 (explaining the inadequacy of government methods of measuring housing supply and demand).

170. See *supra* notes 156-59 and accompanying text (describing the inequities that exist in the housing distribution system).

171. See *supra* notes 15-17 and accompanying text (showing the history of Soviet law as a tool for carrying out the government's political and economic agenda).

172. See Housing Program, *supra* note 6, § 3, art. 5 (stating that there is a "state of crisis in the housing sector . . ."); *id.* art. 7 (citing one of the problems in the crisis is that "local government authorities are incapable to ensure the required volumes of construction of the regions with persisting housing deficits . . ."). Perhaps the Housing Program's most obvious statement of the goal of delegating portions of the housing stock to private entities (and thus freeing the government of this burden) is the following assertion:

[T]he task of the federal housing policy is to enhance in every possible way the growth of the housing stock share in private possession of the citizens and legal entities by privatization of the existing state and municipal housing stock, as to support development of the new private commercial housing construction.

Id. art. 3.

curred over the last two years in the Russian Federation.

A. THE EFFECT OF *PERESTROIKA* AND THE RULE OF LAW ON THE
RIGHT TO HOUSING

The Gorbachev era had a dramatic impact on the housing sector. First, President Gorbachev reintroduced the concept of the rule of law¹⁷³ in an attempt to give legitimacy and respect to existing laws

173. See *Perestroika and the Rule of Law*, *supra* note 12, at 8 (stating that various manifestations of the rule of law concept are apparent throughout Russian and Soviet history); Leon Lipson, *Piety and Revision: How Will the Mandarins Survive Under the Rule of Law*, 23 CORNELL INT'L L.J. 191, 194 (1990) (averring that many of the rule of law reforms attempted during the Krushchev era are reemerging in the Gorbachev reforms).

The concept of the rule of law is not subject to uniform interpretation. *Perestroika and the Rule of Law*, *supra* note 12, at 1; Mark R. Beissinger, *The Party and the Rule of Law*, 28 COLUM. J. TRANSNAT'L L. 41, 43-47 (1990) (describing various interpretations of the rule of law as understood by Western legal scholars). Beissinger suggests three Western interpretations of the rule of law: the formalist approach, the rationalist approach, and the substantive approach. *Id.* The formalist approach requires strict adherence to juridical standards, whatever they may be. *Id.* at 43. A shortcoming of this approach is that it legitimizes any action by members of society or by the state provided that the activity is within the framework of the legal system. *Id.* The rationalist approach accepts the existing political order, but attempts to codify it so that it will remain free from influence and modification at the will of political leaders. *Id.* at 44. Ideology may influence lawmakers, but lawmakers do not possess the power arbitrarily to change the law at their personal will, leading to rule by despotism. *Id.* Rather, this approach does not necessitate eradication of one-party rule. *Id.* at 44-45. It draws a distinction between the party's ability to influence law through connections with individual lawmakers (acceptable), though the party is not free to change law once the legislature has established it. *Id.*

For purposes of this Comment, the definition of the rule of law used is that embodied in the substantive approach advanced by Beissinger. In this approach, the rule of law means not just adherence to the letter of the law, but a specific political order. *Id.* at 45. The substantive approach embraces constitutionalism and "a series of political innovations: the separation of government powers, bureaucratic accountability, judicial independence, limited government, inviolable political rights, and the existence of autonomous spheres of society." *Id.* at 46. This definition is selected because it most closely resembles the concept of the rule of law that underlies many of President Gorbachev's political reforms, particularly attempts to establish an independent judiciary, judicial review of legislative acts in the establishment of the Constitutional Supervisory Committee and attempts at electoral reform. *Id.* at 50-56; see also *Perestroika and the Rule of Law*, *supra* note 12, at 10-15 (citing examples of the rule of law as the guiding force in President Gorbachev's reforms, including parlia-

and the Constitution.¹⁷⁴ Second, he instituted specific legislation and policy changes to achieve a more economically viable and fair distribution of the housing stock.¹⁷⁵

Soviet citizens have long been cynical about the ability of the judiciary to enforce citizens' rights.¹⁷⁶ The advent of *glasnost* brought an outpouring of public complaints about a host of government policies and programs, including housing.¹⁷⁷ To address many of these complaints, President Gorbachev's philosophy of *glasnost* encouraged accountability on the part of government and a willingness to admit to past and current mistakes.¹⁷⁸ As a result of this new open political process and emphasis on the rule of law, legal and constitutional reform gained new importance during the Gorbachev era.¹⁷⁹

174. See *infra* notes 181-92 and accompanying text (tracing President Gorbachev's efforts to introduce the concept of the rule of law into legislation and to institutionalize judicial review by establishment of the Constitutional Supervisory Committee).

175. See *infra* notes 193-205 and accompanying text (discussing the legislative and policy changes Gorbachev made in the housing sector).

176. Ioffe, *supra* note 14, at 1. Two of many reasons for the prolonged existence of the current inadequate system of housing were the popular hesitancy to complain publicly about officials' administration of housing, and the well-founded cynicism among the populace that the promises of the Constitution did not exist apart from Communist Party interpretation and selective fulfillment of them. *Id.*

177. See Andrusz, *Note on the Financing of Housing in the Soviet Union*, *supra* note 5, at 557 (commenting on the increase of letters in the press complaining about the inequities in housing distribution); see also Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 314 (retelling several stories that appeared in the press and on television of residents' discontent with their housing situation and blaming local government officials for their housing troubles); Robert Sharlet, *Party and Public Ideals in Conflict—Constitutionalism and Civil Rights in the USSR*, 23 CORNELL INT'L L.J. 341, 357 (1990) (commenting that with *glasnost* came an outpouring of public complaints about the quality of life).

178. Lipson, *supra* note 173, at 191.

179. See Beissinger, *supra* note 173, at 41-58 (1990) (commenting on the importance of the rule of law in legislation passed during the Gorbachev era and its relationship to the Communist Party).

1. Embracing the Rule of Law

The reemergence of the rule of law in Russia resulted in a host of new legislation.¹⁸⁰ Two laws that helped set the stage for broad-based change in legal thinking were the 1988 amendment establishing the Constitutional Supervisory Committee (CSC)¹⁸¹ and the 1987 Law on Appeals.¹⁸² The Constitutional Supervisory Committee was charged with ensuring the constitutionality of acts of legislative and quasi-legislative organs.¹⁸³ Although unable categorically to deem laws unconstitutional or repeal legislation,¹⁸⁴ the CSC possessed the power to suspend

180. See Kartashkin, *supra* note 89, at 889 (reviewing legislative changes in the area of civil and human rights as a result of the emergence of the state of the law); see also Rett R. Ludwikowski, *Soviet Constitutional Changes in the Glasnost Era: A Historical Perspective*, 10 N.Y.L. SCH. J. INT'L & COMP. L. 119, 139-46 (analyzing President Gorbachev's 1988 Law on Constitutional Amendments). These changes extended to every part of the legal framework of the former Soviet Union. *Id.*; see also *Perestroika and the Rule of Law*, *supra* note 12, at 10-16 (commenting on changes to the Constitution, parliamentary representation, the presidency, the judiciary, law enforcement and the economy that reflected President Gorbachev's renewed emphasis on the rule of law); *supra* notes 181-92 (discussing the Constitutional Supervisory Committee and the Law on Appeals).

181. See FBIS SOV-88-23 at 51 (Dec. 5, 1988) (stating that the Constitutional Supervisory Committee was established by constitutional amendment in 1988).

182. See Law on the Procedure for Legal Appeal Against Unlawful Acts by Public Officials Infringing Upon the Rights of Citizens, 1987 Ved. Verkh. Sov. SSSR (no. 26), item 388. *But see* Robert Kushen, *Soviet Judicial Review of Administrative Action* PSSEEL 10, 10 (Mar. 1990) (criticizing the shortcomings of the Law on Appeals).

183. Beissinger, *supra* note 173, at 50; see Herbert Hausmaninger, *The Committee of Constitutional Supervision of the USSR*, 23 CORNELL INT'L L.J. 287 (1990) (reviewing in substantial detail the history of the establishment and accomplishments of the CSC). A Constitutional Court ultimately replaced the CSC in 1991 after the Chair of the CSC called for the CSC's disbandment in favor of an entity with more authority to repeal unconstitutional legislation. Peter B. Maggs, *Enforcing the Bill of Rights in the Twilight of the Soviet Union*, 4 U. ILL. L. REV. 1049, 1062 (1991). During its existence from spring 1990 through August 1991, however, the CSC ruled on a number of important cases, including the unconstitutionality of the *propiska* system. See *id.* at 1052-62 (reviewing and commenting on decisions of the CSC).

184. See Quigley, *supra* note 69, at 65 (explaining the process of repealing laws in conflict with the Constitution). Where a law is deemed by the CSC to be in conflict with the Constitution, then the law is suspended pending two-thirds approval of the suspension by the Congress of Peoples Deputies. *Id.* If the Congress approves repeal, then the law is unenforceable or the unlawful provision is removed from the law. *Id.* If the Congress does not vote for repeal, the law remains in force. *Id.*

legislation which violated citizens' civil and human rights.¹⁸⁵ This type of constitutional review was a new concept in a society where law and the Constitution existed only as tools to fulfill the Communist Party's agenda.¹⁸⁶ The 1987 Law on Appeals and the 1989 amendment to the Law on Appeals¹⁸⁷ allowed citizens to appeal the unlawful actions of court officials, defense and security officials, and other state actors.¹⁸⁸ The Law on Appeals attempted to check the arbitrariness present in bureaucracies and hold officials legally accountable for their actions.¹⁸⁹ Obviously, the mere existence of a law which purports to embrace the rule of law is insufficient proof that the principle has entrenched itself in the Russian legal system and the psyche of the Russian population. Institutional changes, including more efficient and powerful courts, independent judges, and more and better-trained lawyers are necessary for legal reform to be truly effective.¹⁹⁰ By reasserting the importance of the rule of law in Russian law and society, however, President Gorbachev began constricting the ability of the government to engage in unchecked manipulation of the law to advance its own political and economic agenda as had been the case during the Soviet period.¹⁹¹

2. Legislative and Policy Changes in the Housing Sector

In 1986, at the XXVII Party Congress, President Gorbachev promised to fulfill the goal of adequate housing for all by the year 2000.¹⁹²

185. Maggs, *supra* note 183, at 1049.

186. *See supra* notes 15-17 and accompanying text (describing Soviet law as a tool of the state).

187. Lipson, *supra* note 173, at 194. The 1989 amendment significantly broadened the scope of the 1987 law. *Id.* Before the amendment, complaining individuals could pursue redress only against actions of individual officials. *Id.* at 95. If the offending action was committed by a collective decision, all members of the collective were immune from the complaining individual's actions. *Id.* The amended law allows complaining individuals to take action against single officials or the collective. *Id.*; *see also* Kushen, *supra* note 183, at 10-11 (evaluating the 1989 amendment to the 1987 Law on Appeals).

188. Beissinger, *supra* note 173, at 51-52; *see* KONST. RF art. 46 (1993) (providing for appeal by citizens).

189. Beissinger, *supra* note 173, at 49-50.

190. Lipson, *supra* note 173, at 195; *see* George P. Fletcher, *Comment*, Vol. 1, No. 2 PSSEEL 11 (Mar. 1990) (stating that major changes in Russian legal education and the professional bar are necessary before statutory remedies will be effective).

191. *See supra* notes 15-17 and accompanying text (explaining how the Soviet government used law to advance its own objectives).

192. *See* Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5 and accom-

Housing reform during the Gorbachev years emphasized transferring the financial and administrative burden of managing the huge state housing stock from the central government into the hands of municipalities and private entities.¹⁹³ In 1988, the government legalized the sale of state apartments to private individuals.¹⁹⁴

Privatization of state housing proceeded slowly at the beginning,¹⁹⁵ but accelerated rapidly in the spring of 1992. In February 1992, 96,000 units had been privatized in the Russian Federation;¹⁹⁶ in April 1992, 130,000 units were privatized; by June 1992, 146,000 units were privatized.¹⁹⁷ By December 1992, 638,000 units per month were privatized.¹⁹⁸ In the beginning of 1993, the pace of housing privatization began to slow.¹⁹⁹ The reasons for this decrease may be attributed to the fact that in early 1993, all of the choice apartments were already privatized, leaving a remaining stock which was in poor condition and undesirable for privatization. An additional reason for this decrease is that tenants in state housing saw no gain in tenure security from privatization because they already possessed strong tenant rights.²⁰⁰

As an additional means of decreasing the state housing stock, President Gorbachev emphasized the need for the government to assist in the growth of the housing cooperative and individual housing tenures²⁰¹

panying text (remarking on President Gorbachev's 27th Congress speech on the right to housing and housing reform).

193. See *infra* notes 194-95, 205 and accompanying text (discussing major pieces of housing legislation passed during the Gorbachev years to privatize the state housing sector and expand the cooperative and individual housing tenures).

194. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 22. In 1991, the "Law on Privatization of the Housing Pool in the RSFSR" established new and detailed procedures for privatizing state and municipal housing. *Law on Privatization of Housing*, SOVETSKAYA ROSSIYA, July 26, 1991, at 3. See also STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 12-13 (summarizing the contents of the Law).

195. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 12. In 1989, 10,500 citizens purchased apartments in state and socially owned housing. *Id.* In 1990, 43,000 apartments were purchased, and from January through November 1991, an additional 90,000 apartments were purchased. *Id.*

196. STRUYK & KOSAREVA, TRANSITION, *supra* note 117, at 29.

197. STRUYK & KOSAREVA, TRANSITION, *supra* note 117, at 29.

198. STRUYK & KOSAREVA, TRANSITION, *supra* note 117, at 29.

199. STRUYK & KOSAREVA, TRANSITION, *supra* note 117, at 29. In the first two months of 1993, only 592,000 units were privatized. *Id.*

200. See *supra* notes 49-58 (reviewing the powerful tenant protections contained in the Housing Code).

201. See Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 284

and improve the distribution of housing.²⁰² House-building cooperatives and individual housing, while never prohibited in the Soviet Union, increased in popularity after passage of two pieces of legislation.²⁰³ The two laws, "On Measures to Accelerate the Development of Individual Housing Construction" and "On Measures to Accelerate the Development of Cooperative Housing Construction," both passed in 1988, encouraged development of housing outside the state and socially-owned housing tenures.²⁰⁴

B. PRIVATIZATION AND HOUSING REFORM

The economic reality that the government could no longer afford to maintain its housing stock was the catalyst behind the government's massive campaign to privatize the housing stock in 1991.²⁰⁵ Like *perestroika* and *glasnost*, the policy of privatization involves changes not only in economic and legal structures, but changes in public attitudes as well.²⁰⁶

(quoting the government's position that increasing individual housing construction was a "task of paramount importance").

To spur growth in this part of the housing sector, government policy encouraged elimination of all obstacles to public interest in individual housing construction, including bureaucratic red tape, limited access to building materials and credit, and restrictive allocation of building plots. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 284.

202. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 229.

203. See *infra* note 205 and accompanying text (discussing how the passage of legislation increased the popularity of the two tenures). See generally Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 285-86 (projecting that by the year 1995, this sector will be at least 60 million square meters in comparison to 17.4 million square meters in 1986).

204. See Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5, at 284, 302 (detailing the provisions of the law and its effect on development of the tenure).

205. See NADEZHDA KOSAREVA & RAYMOND STRUYK, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF HOUSING AND URBAN PROGRAMS, HOUSING PRIVATIZATION IN THE RUSSIAN FEDERATION 1 (1992) (commenting on the history of the privatization movement in the housing sector in Russia).

206. Vladimir Gurevich, *What the Russian Public Thinks About Privatization*, MOSCOW NEWS, Oct. 7, 1992, available in LEXIS, Nexis Library, Moscow News File. In the fall of 1992, a Russian research institute conducted a survey of 5,000 citizens in four Russian cities to inquire what they thought of privatization. *Id.* There was overwhelming support for privatization despite the fact that many acknowledged it would result in increased unemployment. *Id.* The majority of those polled agreed that land and housing should be privatized, with some portion of each sector remaining within

In 1990, after the USSR decentralized government control of the housing stock, the RSFSR passed the law "On Local Self Administration in the RSFSR."²⁰⁷ The law, essentially a declaration of policy, did little to immediately alter the existing government monopoly on housing.²⁰⁸ In 1991, the Supreme Soviet of the Russian Federation passed "On Delimitation of State Property in the Russian Federation" and the implementing law calling for the central government to transfer major portions of its housing stock to municipal governments, along with corresponding maintenance and construction agencies.²⁰⁹

From a political perspective, decentralization of the stock was logical because it put control of housing allocation into the hands of local governments that best understood the locality's needs and priorities. From an economic perspective, however, the new responsibility overwhelmed local governments with the additional cost of maintaining their increased housing stock.²¹⁰ To remedy the situation, in July 1991, the Supreme Soviet passed the "Law of the RSFSR on the Privatization of the Housing Pool of the RSFSR," giving local governments substantial discretion in the quantities and methods used to privatize the housing stock.²¹¹ The law was amended in 1992 to mandate that local governments provide free-of-charge privatization in an effort to accelerate the pace of privatization and subsequently transfer the cost of unit maintenance from

the control of the state. *Id.*

207. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 22. The law stated that all housing, along with engineering and utility infrastructures, would devolve from state to municipal property. *Id.*

208. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 22.

209. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 22. This law went beyond the law "On Local Self Administration in the RSFSR" because it called for a transfer of control of property administered by local soviets to control by the municipality. *Id.*

210. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 24.

211. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 12 (describing the content of the law). In Moscow, residents are allowed to privatize their units for free. *Id.* Privatization was slow at first, but as of October 1992, 5.9% of all residential housing in Moscow was privatized. *Russia: Moscow City Government Amends Housing Privatization List*, Reuter Textline, Oct. 10, 1992, available in LEXIS, News Library, Europe File. See HANSON ET AL., *supra* note 8 and accompanying text (explaining the policy of privatization of state housing in the cities of Moscow, Novosibirsk and Ekatarinberg). In Novosibirsk, privatization of housing is being transferred free of charge up to the social norm. *Id.* at 47. A fee is charged for the amount of space beyond the norm. *Id.* The process for privatizing state housing in Ekatarinberg is the same as the process in Novosibirsk. *Id.* at 34.

the local government to the owner of the privatized unit.²¹²

The Russian Federation has been attempting other methods to encourage privatization of the state housing stock and emergence of a private housing sector, including auctions of units in newly completed residential buildings,²¹³ establishment of an informal real estate market,²¹⁴ and apartment exchanges.²¹⁵ Vigorous efforts by policymakers and bankers are underway to establish a housing finance system and to make mortgage lending widely available.²¹⁶

In December 1992, the Congress of People's Deputies passed two constitutional amendments vital to the process of housing reform. The amendment to Article 58 of the Russian Constitution²¹⁷ by no means eliminated the state-guaranteed right to housing, but it expanded the

212. "Law of the Russian Federation on the Privatization of the Housing Stock of the Russian Federation" art. 1 (RF) (1992) (on file with author). Cities are allowed to charge a nominal processing fee, but there is no purchasing price for the units. *Id.* at 3. Interestingly, despite the provision for free housing in most cities, the percentage of the population that chooses to privatize is no higher than 25 to 30%. STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 2.

In December 1992, a poll of 2,000 Moscow households was conducted to determine the motivations behind tenants who chose to privatize their units, as opposed to those who chose not to privatize. JENNIFER DANIELL ET AL., UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, OFFICE OF HOUSING AND URBAN PROGRAMS, HOUSING PRIVATIZATION IN MOSCOW: WHO PRIVATIZES AND WHY?, Executive Summary (1993). The strongest reason suggested for privatizing rental units is their economic value. *Id.* at 2. The ability to rent out the unit, leave the unit to heirs, or shield against the uncertain future of rent increases in state housing tend to be the primary reasons tenants privatize. *Id.* Concerns about increased maintenance fees and taxes are the primary reasons tenants give for not privatizing. *Id.*

213. See KHADDURI, *supra* note 152, at 5 (describing the auction as the predominate technique for selling state housing units). A recently passed law provides the authority and regulations to be observed in holding competitions to transfer uncompleted residential buildings to private entities for construction and sale. *Russian Federation Government Resolution On Approval of Regulations on the Procedure of Transfer of Incomplete Residential Buildings for Completion of Construction and for Sale* (RF) (1993).

214. See KHADDURI, *supra* note 152, at 1-18 (discussing the organization of the informal real estate brokerage system for exchanges of apartments in Russia).

215. KHADDURI, *supra* note 152, at 2-3; see Morton, *supra* note 78 and accompanying text (commenting on the informal and formal apartment exchanges in Russia).

216. See STRUYK AND KOSAREVA, TRANSITION, *supra* note 117, at 54-65 (discussing efforts of policymakers and bankers to establish the legal basis and institutional capacity for mortgage lending).

217. RF CONST. art. 58 (1992).

conditions under which that guarantee would be fulfilled.²¹⁸ The amendment to Article 12 of the Russian Federation Constitution removed the restriction on the right of individuals to own and sell land used for individual housing construction.²¹⁹ While substantial restrictions still remain on the conditions under which individuals may own and sell the land,²²⁰ including the requirement that the land retain its designated use, the amendment set the stage for the beginning of a private market in land transactions.

In December 1992, the Congress of People's Deputies passed a new Principles of Federal Housing Policy (Housing Principles), incorporating many of the pro-reform ideas of *perestroika* and privatization and establishing a framework for major housing reform. The Housing Principles reiterates the constitutional right to housing but states that the government may fulfill its obligation to provide housing through a variety of mechanisms. Essentially, the state's obligation to provide housing is satisfied not only through the provision of state public housing but also when a citizen obtains housing at its own expense or when the government provides rental subsidies to citizens or subsidies for construction or rehabilitation of housing.²²¹ The Housing Principles also call upon state and local governments to grant preferential loans for housing construction;²²² allow citizens to participate in the maintenance of their buildings;²²³ and enforce of stricter eviction measures against citizens who default on rent or utility payments.²²⁴ All of these measures are designed to encourage private participation in the responsibility for the housing stock, expand the housing options available to citizens, and relieve the government of the expense of providing housing to all citizens.

In June 1993, the Russian Federation government expanded upon the Housing Principles when it adopted the State Program Housing (Housing

218. See *supra* note 10 (comparing the text of the 1992 amendment to Article 58 with the previous provision).

219. RF CONST. art. 12 (1992).

220. See BUTLER & O'LEARY, *supra* note 132, at 9 (discussing restrictions on land sales).

221. Housing Program, *supra* note 6, § 1, art. 2.

222. Housing Program, *supra* note 6, § 3, art. 7.

223. Housing Program, *supra* note 6, § 3, art. 7.

224. Housing Program, *supra* note 6, § 2, art. 8. The Fundamentals states that citizens who default on their rental or utility payments for six months may be evicted from their housing and relocated to hostel-like accommodations. *Id.* The Housing Code has no such provision. RSFSR HOUSING CODE, *supra* note 6.

Program), a policy document outlining the direction of housing reform to the year 2000.²²⁵ The Housing Program offers a brief assessment of the current housing crisis²²⁶ and outlines specific measures for the government to alleviate the housing crisis. These measures include the adoption of a new Housing Code in accord with the passage in December 1992 of the Housing Principles,²²⁷ a provision of incentives for individual and cooperative housing construction,²²⁸ an increase of rental and utility payments in state housing,²²⁹ and improvement of the technical capabilities of the construction industry.²³⁰

The Russian government is pursuing policies to privatize state housing stock while also improving the remaining stock.²³¹ For years, Russian and foreign economists have called upon the Russian government to increase rents to pay the maintenance and improve the quality of the housing stock.²³² Both the 1992 Housing Principles and Program Housing recognize the need to increase revenue from rent and authorize the implementation of a program of rent increases and housing allowances (income based subsidies to low-income families to help them pay rent).²³³ The 1992 Housing Principles stipulate that rents be raised to full operating cost within five years, supplemented by housing allowances for state housing.²³⁴ Introduction of incremental increases in rents and maintenance fees is scheduled to take place in the spring of 1994 in Moscow²³⁵ in coordination with a housing allowance program which

225. Housing Program, *supra* note 6.

226. Housing Program, *supra* note 6, § 1 (overviewing the causes of the housing crisis in the Russian Federation and outlining specific measures the government should pursue to solve the problem).

227. Housing Program, *supra* note 6, § 2, art. 1.

228. Housing Program, *supra* note 6, § 3, art. 4.

229. Housing Program, *supra* note 6, § 3, art. 7.

230. Housing Program, *supra* note 6, § 6, arts. 2-5.

231. See *infra* notes 233-38 and accompanying text (describing the plans of the Russian government to increase revenue and improve services for repair and maintenance in state housing units).

232. Andrusz, HOUSING AND URBAN DEVELOPMENT, *supra* note 5; Kosareva et al., *supra* note 7; STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7.

233. See 1992 Housing Principles, *supra* note 8, art. 7 (stating that under the contract between the government housing provider and tenant (naym), the amount of rent to be paid should cover maintenance and repair expenses).

234. 1992 Housing Principles, *supra* note 8, art. 7.

235. Moscow Government Resolution On Transition to a New System of Payments for Housing and Communal Services and On Housing Subsidies Provision Regulation

will continue government subsidies for those households that cannot afford the higher rents.²³⁶

A recent federal law on housing privatization states that, after privatization, unit owners are responsible for maintaining their own units²³⁷ as well as the common areas in and around the building.²³⁸ The law notes that where the unit owners do not hire a private property management firm to maintain the common areas, the government maintenance and repair entity will retain responsibility for maintaining the building but will assess payments for services from the unit owners.²³⁹ The law contemplates that groups of owners will set up housing associations to oversee maintenance and repair of the buildings, though it does not provide specific regulations on how these associations will be organized and operated.²⁴⁰ The issue is addressed in the recently enacted "Provisional Regulations on Condominiums," which requires the establishment of condominium associations in buildings where at least one unit is privatized.²⁴¹ The regulations provide procedures on how groups of owners may register as a condominium association,²⁴² stipulate the responsibilities of the condominium association (most importantly the maintenance of common areas),²⁴³ and detail how the condominium should be organized and how owners should delegate responsibilities to appropriate entities to ensure that the building is well-maintained and that the condominium association operates efficiently.²⁴⁴

Local government maintenance and repair offices currently confront numerous health and safety problems when attempting to adequately maintain the housing within their jurisdiction.²⁴⁵ In Moscow, the gov-

(Moscow) (1993) (unofficial translation on file with author).

236. See STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 23-39 (explaining the general structure for introducing housing allowances into Russian housing policy).

237. *Tentative Regulations on Free Privatization*, *supra* note 8, art. 4.1.

238. *Tentative Regulations on Free Privatization*, *supra* note 8, art. 4.4.

239. *Tentative Regulations on Free Privatization*, *supra* note 8, art. 4.4. The law does not specify how these expenses will be collected from the unit owners. *Id.*

240. *Tentative Regulations on Free Privatization*, *supra* note 8, art. 4.1 (stating that "to this end [maintaining the building], housing unit partnerships and other associations of individual flat owners may be set up").

241. Condominium Law, *supra* note 8, art. 8.

242. Condominium Law, *supra* note 8, art. 8.

243. Condominium Law, *supra* note 8, arts. 9-17.

244. Condominium Law, *supra* note 8, arts. 18-27.

245. See OLSON, *supra* note 103, at 11-12 (describing the hazardous health and safety conditions of Moscow's municipal housing).

ernment, with the assistance of American advisors, is conducting a pilot demonstration project to provide private management and maintenance to municipally-owned housing.²⁴⁶ The goals of the program are to demonstrate the feasibility of providing competitively-selected private management and maintenance services to municipal housing while reducing the operating costs for the municipality and enhancing the quality of life for tenants through improved maintenance.²⁴⁷ The Moscow pilot began with 2,000 units in the demonstration. As a testament to the pilot's success, the mayor of Moscow aims to increase the total volume of privately maintained units to 250,000 by the end of 1994.²⁴⁸ While privatization of maintenance services cannot overcome the problems of supply shortages, increasingly costly construction materials, and corruption in state maintenance and repair firms,²⁴⁹ it nonetheless represents a creative and affirmative step that one city is taking to improve the quality of the municipal housing stock.

The government's policies of *perestroika* and privatization brought tremendous changes in housing legislation, politics, and policy. Unfortunately, much of the underlying law and administration that for decades defined the ineffective housing system in Russia still persists.²⁵⁰ The planning and financial problems in the construction industry, corruption in the system of housing allocation, and static rents for sixty-five years, resulting in minimal revenues for maintenance and repair of the existing housing stock, present the most obvious problems in the housing crisis. The Russian government acknowledges these problems and is attempting to privatize the housing market,²⁵¹ institute judicial review of bureaucratic decision making of housing allocation,²⁵² raise rents, and institute housing subsidies. Although these efforts are indications of a new

246. See OLSON, *supra* note 103, at 13-17 (describing the design of the program).

247. OLSON, *supra* note 103, at iv.

248. RAYMOND J. STRUYK & JEFFREY P. TELGARSKY, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, SHELTER SECTOR REFORM PROJECT RUSSIAN FEDERATION/CITY OF MOSCOW: WORKPLAN APRIL 1994-MARCH 1995 34 (1994).

249. See *supra* notes 122-25 and accompanying text (discussing the services delivery and cost problems associated with state maintenance and repair firms).

250. See *supra* notes 32-39 and accompanying text (explaining the current legislative framework of the right to housing).

251. See *supra* notes 194-95, 208-17 and accompanying text (describing efforts of the Gorbachev and Yeltsin regimes to privatize state housing).

252. See *supra* notes 186-90 (discussing the effects of the Constitutional Supervisory Committee and the Law On Appeals on the judiciary).

thinking toward housing policy and reform, the absence of fundamental changes in the law underlying these policy and attitude changes may jeopardize the success and public support of some of these programs.

III. RECOMMENDATIONS

This Comment recommends several legal and policy changes to reform the system of providing housing in the Russian Federation. Changes to the legal framework affecting housing should include (1) adoption of an amendment to the existing article 40 to reflect a more market-oriented vision of housing provision; (2) passage of new implementing regulations in the form of a Housing Code²⁵³ to accompany the Housing Principles Law passed in December 1992;²⁵⁴ and (3) passage of a mortgage law to provide an adequate legal basis for long-term housing lending.

Housing policies and legislative acts which appear to be in conflict with the current article 40 already exist.²⁵⁵ To comport with the Russian government's goal of a state under the rule of law,²⁵⁶ housing

253. See LEGISLATIVE ACTS OF THE USSR, BOOK 5, at 103 (L.N. Smirnov ed., 1986) (explaining that the Housing Code is the primary document that implements the provisions of the primary law on housing, that is, the Housing Principles Law).

254. 1992 *Housing Principles*, *supra* note 8 and accompanying text.

255. See STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7 and accompanying text (outlining plans of the Russian Federation and the City of Moscow to increase rents for state-owned housing); see also 1992 *Housing Principles*, *supra* note 8, art. 15 (stating that it is the federal housing policy of the Russian Federation to gradually increase rents over the next five years, beginning in 1993). These plans to increase rents for state housing potentially conflict with the constitutionally-guaranteed right to maintain low rents. KONST. RF art. 40.

The 1992 Principles of Federal Housing Policy define the right to housing in language different from the language of the Russian Federation Constitution. 1992 *Housing Principles*, *supra* note 8, art. 2. Article 2 of the Principles of Federal Housing Policy states:

Citizens of the Russian Federation have the right to housing. This right is exercised through providing residential units in state and municipal housing stock . . . within the social norm of residential floor space, as well as through rent, purchase or construction of housing at one's own expense without any limit to floor space.

To citizens who are not provided with housing according to the established norms, the state renders assistance through developing construction of buildings of state and municipal stock intended for providing residential premises under [lease], as well as through the system of compensations (subsidies) and privileges on payment of construction, maintenance, and repair of housing.

Id.

256. See *supra* notes 188-190 and accompanying text (discussing Russian govern-

laws and policies should reflect, not contradict, the fundamental law of the constitution. A revised article 40 should eliminate the unconditional guarantee of a right to housing. The constitution should instead state that housing for all citizens is a fundamental policy goal of the Russian Federation and state that it is the role of the legislature to devise and implement housing policy to meet that goal. Arguably, the language of the 1992 Housing Principles Law articulates this interpretation of the right to housing.²⁵⁷ This Comment recommends that the Russian government take action to amend the Constitution to be in accordance with existing housing policy as reflected in the 1992 Housing Principles Law.

New implementing regulations to accompany the 1992 Housing Principles Law are necessary for it to have a real effect.²⁵⁸ The Housing Principles Law outlines housing policy, while the Housing Code contains specific implementing regulations to carry out the policies of the Housing Principles Law.²⁵⁹ At present, the 1992 Housing Principles Law²⁶⁰ and the 1986 Housing Code comprise the principle documents in the field of Russian housing law.²⁶¹ A variety of conflicts exist between these two documents.²⁶² To eliminate contradictions and modernize the

ment reform efforts to increase institutional and public respect for the rule of law by holding government officials accountable in a court of law for their administrative decisions).

257. See *1992 Housing Principles*, *supra* note 8 and accompanying text (summarizing the contents of the law and describing the more market-oriented approach toward housing provision that the law embodies).

258. See LEGISLATIVE ACTS OF THE USSR, BOOK 5, *supra* note 253, at 103 (stating that the Housing Code is the legal document which implements the policies outlined in the Housing Principles Law).

259. See KONST. RF arts. 104-08 (1988) (describing the legislative process that requires a code of implementing regulations to accompany certain normative legislative acts); see also *Digest of Laws*, *supra* note 12, at 949 (explaining the process of codification).

260. *1992 Housing Principles*, *supra* note 8 and accompanying text.

261. RSFSR HOUSING CODE, *supra* note 6 and accompanying text.

262. Compare *1992 Housing Principles*, *supra* note 8, art. 5 (allowing participation of the private sector in the maintenance of state housing) with RSFSR HOUSING CODE, *supra* note 6, art. 16 (stating that the government is solely responsible for the maintenance and upkeep of state housing). Compare *1992 Housing Principles*, *supra* note 8, art. 15 (providing that where the government evicts a tenant in state housing for nonpayment of rent or utilities, the government must provide the tenant with alternative living accommodations within the hostel norm, that is, less than the social norm) with RSFSR HOUSING CODE, *supra* note 6, art. 96 (mandating that if the government evicts a tenant from state housing, the government is obligated to provide the

housing law, a new Housing Code should be passed.²⁶³

Finally, the government should adopt the real estate mortgage law currently circulating through the Government for comment.²⁶⁴ As evidenced by the slowed pace of privatization, transferring state housing into private hands alone is not the answer to reform the housing sector. Households may not want to privatize their unit because of its poor quality or undesirable location. Instead, they may want to purchase a new unit or move out of an urban area to one of the newly-emerging suburban developments. With few exceptions, most households do not have the financial resources to pursue these options without the assistance of bank credits.²⁶⁵ Until recently, no adequate legal and regulatory framework existed for mortgage lending.²⁶⁶ In any event, a growing network of mortgage banks,²⁶⁷ a mortgage bankers trade association in the nascent stages of development,²⁶⁸ and Western technical assistance projects to assist banks in developing the institutional capacity to engage in lending and underwriting activities necessary for the functioning of an effective housing finance system,²⁶⁹ are all indications

tenant with alternative living accommodations within the social norm of twelve square meters per person).

263. BUTLER & O'LEARY, *supra* note 66, at 7. Developing a new Housing Code is a priority for the Russian Government's 1994 legislative agenda, however, bureaucratic conflicts are causing delays in finalizing a draft Code. *Id.*

264. BUTLER & O'LEARY, *supra* note 66, at 3.

265. *Sociological Commentary*, MOSCOW NEWS, June 9, 1993, available in LEXIS, World Library, Moscow News File. According to official figures, nearly half of all families with children live below the state-established minimum subsistence levels. *Id.* In May 1993, the average income for a family of three (husband, wife, one child) with one employed adult was between 35,000 and 36,000 rubles. *Id.* This balances on the brink of poverty. *Id.* The government established that subsistence levels during the same period were 15,300 rubles for able-bodied men and women; 10,700 for children ages 1.5 to 6; and 15,100 for children ages 6 to 13. *Id.* The official exchange rate as of March 1994 was \$1 to 1,668 rubles. *Russia: Central Bank of Russia Reports—Foreign Exchange Rates*, Reuter Textline, Mar. 2, 1994, available in LEXIS, World Library, Txtee File.

266. See *supra* note 136 and accompanying text (describing the problems with the current system of mortgage lending).

267. See STRUYK & KOSAREVA, *TRANSITION*, *supra* note 117, at 56 (describing the establishment of several mortgage banks in St. Petersburg and Moscow).

268. Raymond J. Struyck and Jeffrey Telgarey, Office of Housing and Urban Programs, USAID, Shelter Sector Reform Project RF/City of Moscow, Workplan April 1994-March 1995 (discussing technical assistance plans to assist the Russian Federation in developing a mortgage bankers' trade association).

269. *Id.* at 7-11 (detailing a technical assistance strategy to improve the Russian

that a workable housing finance system is being developed in the Russian Federation. These measures should be supplemented by adequate legal protections establishing the rights and duties of borrowers and lenders.

In the area of policy, the future of housing reform is less clear because of the complicated economic and political issues involved.²⁷⁰ What does seem clear is that the expense of managing the housing stock in Russia must be spread between public and private actors.²⁷¹ Many of the current problems in the housing sector are a result of the government's inability to meet the cost of providing housing for all citizens.²⁷² Relieving the government of the financial burden of providing universal housing through the programs of privatizing the housing stock,²⁷³ encouraging private investment in housing,²⁷⁴ and raising rents,²⁷⁵ should continue. The government, however, should maintain a sizable publicly-owned housing stock and provide housing allowances for those who cannot afford to privatize or to meet the cost of increased rents or who belong to certain "protected" classes.²⁷⁶ While there is

Federation housing finance system).

270. See STEPHEN B. BUTLER, OFFICE OF HOUSING AND URBAN PROGRAMS, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, LEGAL ASSISTANCE TO THE RUSSIAN FEDERATION FOR THE HOUSING SECTOR, TRIP REPORT, OCTOBER 2-24, 1992 2-4 (1992) (giving examples of the disarray and contradictions which exist between laws governing the same area of the law).

271. See *supra* notes 119-125 and accompanying text (demonstrating that the government possesses inadequate resources to solve the housing problem).

272. See *supra* notes 119-125 and accompanying text (demonstrating that the government does not possess the revenue and technical infrastructure necessary to adequately maintain the vast state housing stock).

273. See *supra* notes 211-232 and accompanying text (discussing government efforts to privatize the housing stock).

274. See *supra* notes 217-226 and accompanying text (describing legislative and policy acts designed to encourage private investment in housing).

275. See *supra* note 168 and accompanying text (noting the plans of the Russian Federation and City of Moscow to institute mass rental increases in 1993).

276. RSFSR HOUSING CODE, *supra* note 6, art. 36. These "privileged" categories are protected in Russian law. *Id.* Russian economists discussing housing policy reform, often refer to reform as "market principles based on social guarantees." Kosareva et al., *supra* note 6, at 72. This suggests the importance in Russian society of maintaining a social safety net in the housing sphere for the most vulnerable and for certain privileged categories of citizens. See RSFSR HOUSING CODE, *supra* note 6, art. 36 (providing housing priority for war veterans and for the vulnerable); Kosareva, *supra* note 6, at 74 (recognizing the special needs of these members of society and suggest-

growing public acceptance of the social inequities which result from a market-oriented housing system,²⁷⁷ strong public sentiment that the government should provide a housing social safety net for the most vulnerable citizens still exists.²⁷⁸

Finally, the government needs to initiate a new way of thinking about the "right to housing" in Russia. A widespread public perception exists that housing is "free."²⁷⁹ Considering the minimal rents paid by tenants in state and socially owned housing,²⁸⁰ along with the requirement that the state provide alternative housing for tenants,²⁸¹ it is not difficult to understand why this perception exists. If the government hopes to encourage public participation in the purchase and maintenance of the housing stock, it should initiate a public education campaign about the process of privatization, including the government's strategy and information on how individuals may participate for their own gain. Particular emphasis should be placed on encouraging the formation of condominium associations and the advantages of condominium ownership: namely,

ing that the government is required to make provisions for them).

277. Gurevich, *supra* note 206, at 1. A recent poll indicates that Russian citizens are anticipating and are prepared to tolerate the increase in crime and unemployment that is expected to accompany the transition to a market economy. *Id.*

278. See Kosareva et al., *supra* note 6, at 74 (calling for the maintenance of a certain amount of government supported housing); see also Gurevich, *supra* note 206, at 1 (reporting that the majority of Russian citizens advocate a public/private combination of ownership of the housing stock); ALEXANDRE YAKOVLEV, THE BEAR THAT WOULDN'T DANCE: FAILED ATTEMPTS TO REFORM THE CONSTITUTION OF THE FORMER SOVIET UNION 191 (1992) (stating that the government must always provide the indigent free housing).

279. Housing Program, *supra* note 6, § III, art. 1 (acknowledging that it will take time to overcome the deep-rooted view that free housing is a government guaranteed entitlement). "The conscious of already several generations has been dominated by the attitude to the housing as to a social wealth granted by the government free of charge, and overcoming of this stereotype will require a long time." Perevendentsev, *supra* note 6, at 63. This perception is further supported by government payments of three-fourths of the expense for maintenance of state-owned housing stock. *Id.* But see Perevendentsev, *supra* note 6, at 63 (stating that figures demonstrate that this perception is not entirely well-founded and depends on which segment of the population is concerned). According to 1988 USSR government statistics, at the end of 1988, there was 22% private ownership of the urban housing stock, as compared with 70% private ownership of housing stock in rural areas. *Id.* at 64.

280. See STRUYK ET AL., IMPLEMENTING HOUSING ALLOWANCES, *supra* note 7, at 14-15 (stating that current rents in Russia remain static at 1928 levels and tenants typically pay one to three percent of their income for rent and utilities).

281. RSFSR HOUSING CODE, *supra* note 6, arts. 90-99.

control over the maintenance of their building and the potential for return on their investment through the sale of the condominium unit. Advocating formation of condominium units makes economic sense for municipalities because it relieves the government of the expense of maintaining the building by placing that cost on the unit owners. Thus, government funds are free for other projects.²⁸²

Future legislative and policy changes should attempt to balance sound economic policy with the public desire for a social safety net in the area of housing. Despite the public's willingness to accept changes in the housing system, reformers must remain mindful that for many years the public accepted housing as an entitlement and will not immediately embrace radical reform in this arena. At the same time, the government must not respond slowly in devising a strategy to comprehensively enact changes.

CONCLUSION

The stated rationale for the government's centralization of housing production and allocation was to control the means of production and management in order to eliminate exploitation and ensure social justice in the housing sector.²⁸³ Confident in its ability to do this, the Soviet government constitutionally guaranteed the right to housing and offered dependable guarantees of the government's promise.²⁸⁴ In reality, unresponsiveness, inefficiency, corruption in housing legislation, policy, and allocation have led to extreme social injustice and economic difficulties in the housing sector. The Russian Federation government, as evidenced through promulgation of recent legislation and housing policy, accepts its inability to provide the constitutional guarantee of housing for all.²⁸⁵

282. Condominium Law, *supra* note 8, art. 4.2.

283. Reiner, *supra* note 9, at 683. The government carried out these goals through its monopoly of public ownership of capital, and by control over the means of production and allocation. *Id.* Meeting these goals in the current housing sector clearly requires a different approach. Strong and enforceable housing laws along with comprehensive and realistic social policy will hopefully meet the goal of social justice in housing where the previous policies of communist regimes failed.

284. See *supra* notes 97-172 and accompanying text (analyzing the performance of the government in each of the areas labelled by the government as evidence of its commitment to provide adequate housing for all citizens).

285. See *supra* notes 218-232 and accompanying text (detailing recent federal government legislative and policy initiatives to encourage private participation in the housing sector).

Now that the Russian government is seeking popular support for the rule of law and economic reforms, the time is ripe and the need imperative to modify the right to housing so that it conforms with political and economic reality. If the Russian populace is to respect the rule of law, then social guarantees must be real, nondiscriminatory, and enforceable. The current right to housing, in law and in practice, is illusory, inequitably observed, and unenforceable in many circumstances. The government's task now is to devise workable laws and policies which provide an economically viable alternative to the present systems, but which still remain true to the original spirit of the right to housing.²⁸⁶

286. Kosareva et al., *supra* note 6, at 72. Kosareva succinctly states this idea: The development of market relations based on social guarantees should become the principal content of housing reform. Only after setting the limits to free housing, after developing a proprietary attitude toward housing, and after giving all families the right to buy and build, is it possible to overcome social dependency and to coordinate people's claims to better housing conditions with real possibilities of satisfying them.

Id.