

2017

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## Recommended Citation

Chamusco, Bianca, "'If He Beats You, It Means He Loves You" : Domestic Violence and Women's Rights in Russia" (2017).  
*International Immersion Program Papers*. 44.  
[http://chicagounbound.uchicago.edu/international\\_immersion\\_program\\_papers/44](http://chicagounbound.uchicago.edu/international_immersion_program_papers/44)

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**“If He Beats You, It Means He Loves You”:  
Domestic Violence and Women’s Human Rights in Russia**

Bianca Chamusco

## INTRODUCTION

In August 2015, Oleg Belov killed and dismembered his pregnant wife and six children with an axe in their home in Nizhny Novgorod, then stuffed their remains into plastic garbage bags.<sup>1</sup> The authorities later revealed that Belov’s wife had reported her husband’s violent behavior to the police six times in the year preceding the murders.<sup>2</sup> She had filed her last complaint mere days before the attack, but the police had declined to press criminal charges, deeming the violent episodes a private family matter.<sup>3</sup> After all—in the words of the Moscow Helsinki Group, a leading human rights organization in the country—the Russian police “try to not interfere with family scandals” that regularly occur between husbands and wives.<sup>4</sup>

“Marina” tells a story of abuse that is no less harrowing. Her husband beat her almost every day for more than a year before finally throwing her out the window of their second-story apartment.<sup>5</sup> With broken ribs and smashed feet, she was confined to a wheelchair for three months. Even then, the daily physical abuse continued. “My face was puffed up and my lip was split. But even then they didn’t detain him,”<sup>6</sup> she claims. “I was in the police station in tears saying I couldn’t go home because he’d beat me if he knew where I’d been. But the police said ‘this isn’t a hotel, we can’t keep you here,’ and that was that.”<sup>7</sup>

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<sup>1</sup> ANNA NAT’L CENTRE FOR THE PREVENTION OF VIOLENCE, DOMESTIC VIOLENCE AGAINST WOMEN IN THE RUSSIAN FEDERATION: ALTERNATIVE REPORT TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN 6 (Oct. 2015) [hereinafter ANNA CENTRE ALTERNATIVE REPORT 2015]; *Gruesome Family Killing Highlights Domestic Abuse Problem*, MOSCOW TIMES (Aug. 6, 2015), <http://themoscowtimes.com/news/gruesome-family-killing-highlights-russian-domestic-abuse-problem-48793> [<http://perma.cc/3BQ7-3VLS>].

<sup>2</sup> ANNA CENTRE ALTERNATIVE REPORT 2015, *supra* note 1 at 6; *Gruesome Family Killing Highlights Domestic Abuse Problem*, *supra* note 1.

<sup>3</sup> ANNA CENTRE ALTERNATIVE REPORT 2015, *supra* note 1 at 6.

<sup>4</sup> Moscow Helsinki Grp., *Domestic Violence*, <http://www.mhg.ru/english/1EBEA6A> [<http://perma.cc/PN77-G32R>].

<sup>5</sup> Sarah Rainsford, *Domestic Abuse: Why Russia Believes the First Time is Not a Crime*, BBC NEWS (Jan. 31, 2017), <http://www.bbc.com/news/world-europe-38794677> [<http://perma.cc/U843-S68W>].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Sadly, the situations of Yulia Belova and Marina are hardly unique. Domestic violence is an endemic problem in Russia. Official numbers from the Interior Ministry show that violence occurs regularly in roughly one in four Russian families.<sup>8</sup> State-run media outlets report that forty percent of all violent crimes in the country take place within a family setting,<sup>9</sup> as do more than one-third of all homicides.<sup>10</sup> Meanwhile, human rights watchdog organizations paint a similarly alarming picture, estimating that as many as 36,000 women and 26,000 children face violence in the home every day.<sup>11</sup> According to an independent survey of 2,200 women across 50 Russian cities and towns, 70% have experienced least one form of gender-based violence in the home—physical, psychological, economic, or sexual—with 36% percent reporting both physical and psychological abuse at the hands of an intimate partner.<sup>12</sup>

Despite these troubling statistics, the Russian government has consistently failed to recognize violence against women as a serious, systemic issue. Victims of domestic violence report “extreme difficulty” in obtaining help from the police,<sup>13</sup> as officers routinely ignore domestic disturbance calls.<sup>14</sup> Even when the police do respond to victims’ complaints, Russian law’s reliance on private prosecutions instead of criminal proceedings for domestic abuse

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<sup>8</sup> See Joy Ziegewied, *Justice for Russian Women? Russia Begins to Face Its Domestic Violence Problem*, HUMAN RIGHTS BRIEF (Nov 2, 2014), <http://hrbrief.org/2014/11/justice-for-russian-women-russia-begins-to-face-its-domestic-violence-problem/> [<http://perma.cc/LPC9-EUZ6>]. As the Russian government does not gather comprehensive data on the prevalence of domestic violence, it is likely that the official numbers are not entirely accurate. See *id.*; IMMIGRATION & REFUGEE BOARD OF CAN., *RUSSIA: DOMESTIC VIOLENCE; RECOURSE AND PROTECTION AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE; SUPPORT SERVICES AND AVAILABILITY OF SHELTERS (2007-2009)* (Dec. 18, 2009), <http://www.refworld.org/docid/4b7cee88c.html>.

<sup>9</sup> See, e.g., Galina Bryntseva, *Ia bog, ia tsar’—ia muzh*, ROS. GAZ. (Oct. 23, 2012), <http://rg.ru/2012/10/23/nasilie.html> [<http://perma.cc/5U2E-QJQ7>]. See also *Gruesome Family Killing Highlights Domestic Abuse Problem*, *supra* note 1.

<sup>10</sup> Christina Misner-Pollard, *Domestic Violence in Russia: Is Current Law Meeting the Needs of Victims and the Obligations of Human Rights Instruments?*, 3 COLUM. J. E. EUR. L. 145, 151 (2009).

<sup>11</sup> Human Rights Watch, *Russia: Bill to Decriminalize Domestic Violence* (Jan. 23, 2017), <https://www.hrw.org/news/2017/01/23/russia-bill-decriminalize-domestic-violence> [<http://perma.cc/Y6XG-PHBZ>].

<sup>12</sup> *Id.*

<sup>13</sup> Ziegewied, *supra* note 8; ANNA NAT’L CENTRE FOR THE PREVENTION OF VIOLENCE, *VIOLENCE AGAINST WOMEN IN THE RUSSIAN FEDERATION* 7 (July 2010) [hereinafter ANNA CENTRE REPORT 2010].

<sup>14</sup> Caitlin Mahserjian, *We’re All in This Together: A Global Comparison on Domestic Violence and the Means Necessary to Combat It*, 79 ALB. L. REV. 297, 308 (2016).

allegations diminishes the number of cases that end up in court.<sup>15</sup> And the problem only seems to be getting worse: in January 2017, Russian lawmakers voted 380-3 to decriminalize certain forms of domestic violence,<sup>16</sup> a stunning reversal in policy from just a few years prior. Under the new law, first-time offenses that do not result in “serious bodily harm” carry a maximum fine of 30,000 rubles (about \$507), up to 15 days’ administrative arrest, or up to 120 hours of community service<sup>17</sup>—a marked reduction from the previous two-year prison sentence.<sup>18</sup>

This paper argues that the Russian government’s failure to adequately protect its citizens from domestic violence is a violation of Russia’s international human rights obligations. The Russian Federation is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), which characterizes violence against women as a form of gender discrimination and imposes affirmative obligations on member states to eliminate discrimination perpetrated by private individuals as well as government actors.<sup>19</sup> Russia is also a party to the European Convention on Human Rights (the “European Convention”), which guarantees the right to life; the right not to be subject to torture or cruel, inhumane or degrading treatment; and the right to be free from discrimination.<sup>20</sup> Like CEDAW, the language of the European Convention would seem to indicate that signatory states have a positive obligation to

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<sup>15</sup> See, e.g., ANNA CENTRE ALTERNATIVE REPORT 2015 at 5, *supra* note 1 (identifying the reliance on private prosecutions to bring charges against domestic abusers as “[t]he main obstacle to obtaining justice for victims”).

<sup>16</sup> Lucian Kim, *Russian President Signs Law to Decriminalize Domestic Violence*, NPR (Feb. 16, 2017), <http://www.npr.org/2017/02/16/515642501/russian-president-signs-law-to-decriminalize-domestic-violence>.

<sup>17</sup> See Clare Sebastian & Antonia Mortensen, *Putin Signs Law Reducing Punishment for Domestic Battery*, CNN (Feb. 7, 2017), <http://www.cnn.com/2017/02/07/europe/russia-domestic-violence-bill-putin/> [<http://perma.cc/JH5T-ELTX>]; Laura Mills, *Russian Lawmakers Vote to Decriminalize Domestic Violence*, WALL ST. J. (Jan. 27, 2017) <https://www.wsj.com/articles/russian-lawmakers-vote-to-decriminalize-domestic-violence-1485522699?mg=id-wsj&mg=id-wsj> [<http://perma.cc/J8K2-D95U>].

<sup>18</sup> See Anna Nemtsova, *In Russia, Activists Push to Enact More Protections Against Domestic Violence*, KERA NEWS (Mar. 9, 2017), <http://keranews.org/post/russia-activists-push-enact-more-protections-against-domestic-violence> [<http://perma.cc/HS66-3MNT>].

<sup>19</sup> See Ziegeweid, *supra* note 8; Convention on the Elimination of All Forms of Discrimination Against Women, Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW]; CEDAW, General Recommendation 19: Violence Against Women, 11th Sess., ¶ 6, U.N. Doc. A/47/8 [hereinafter CEDAW General Recommendation No. 19].

<sup>20</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 2, 3, 14, Nov. 4, 1950 213 U.N.T.S. 222 [hereinafter European Convention].

effectuate a “real remedy for private violence” that extends beyond a base guarantee of equal protection under domestic laws.<sup>21</sup> The Russian government’s systematic, discriminatory non-prosecution of domestic violence can thus be understood as a breach of its responsibilities under these international agreements. With Russia’s human rights obligations under CEDAW and the European Convention in mind, then, this paper surveys potential legislative and policy strategies for bringing an end to the country’s domestic violence problem.

## I. RUSSIA’S DOMESTIC VIOLENCE PROBLEM

Domestic violence victims in Russia face several barriers to justice. These include the general unresponsiveness of the police force to domestic violence complaints, the legal system’s reliance on private prosecutions to bring these cases to court, and—with the recent decriminalization of first-time domestic violence offenses that do not cause serious bodily injury—a constellation of laws that fail to recognize domestic violence as a distinct and serious offense. This Section surveys the legal and practical challenges facing domestic violence victims—challenges that, it will later be argued, amount to a human rights violation.<sup>22</sup>

### A. The Russian Police Do Not Adequately Respond to Domestic Violence Complaints

It is a common complaint of domestic violence victims that the Russian police do not adequately respond to domestic violence allegations.<sup>23</sup> Victims allege that the police routinely fail to show up at the scene of the disturbance when they are called to break up domestic violence incidents.<sup>24</sup> “Liliana’s” experience is typical: Liliana and her neighbors called the police sixteen times in one night after her ex-partner broke into her room, beat her, and tried to rape her. Despite the apartment’s location less than 200 meters from a police station, no one ever came to

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<sup>21</sup> Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 15 HUM. RTS. Q. 36, 50 (1993).

<sup>22</sup> See Part II, *infra*.

<sup>23</sup> Ziegewied, *supra* note 8; ANNA CENTRE REPORT 2010, *supra* note 13, at 7.

<sup>24</sup> Mahserjian, *supra* note 14, at 308.

investigate.<sup>25</sup> A common refrain from the police is the advice, “Come see us after he’s killed you.”<sup>26</sup>

Even when the police respond to disturbance calls, however, police inaction is a common theme. Some police officers respond to domestic abuse allegations by blaming the victim or accusing her outright of fabricating the charges.<sup>27</sup> Refusal to write up a report of the incident is widespread.<sup>28</sup> Russia’s premiere women’s rights advocacy center, the ANNA National Centre for the Prevention of Violence, attributes police inaction in part to the belief that domestic violence is a private family matter that is best handled without state intervention.<sup>29</sup> The belief that physical confrontations within the home are personal matters best kept within the family in turn leads official government actors to treat allegations of abuse less seriously than the facts of the complaints warrant—a situation that can signal to women that their abuse “isn’t a big deal” even as it endangers their lives.<sup>30</sup> There can also be intense overt pressure for a victim to reconcile with her abuser. As all cases of reconciliation—whether fully voluntary or otherwise—must be dropped, the police have been known compel victims to reach an uneasy truce with their

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<sup>25</sup> Amnesty Int’l, *Russian Federation: Nowhere to Turn To—Violence against Women in the Family*, AI Index EUR 46/056/2005 (Dec. 14, 2005).

<sup>26</sup> VALERIE SPERLING, SEX, POLITICS, AND PUTIN: POLITICAL LEGITIMACY IN RUSSIA 182 (2014), quoting Irina Fetkulova.

<sup>27</sup> *Id.* Sperling notes that one estimate from the Syostri women’s shelter in Moscow places the number of reported rapes that were subsequently acted on by police in a timely manner at fewer than fifty percent.

<sup>28</sup> Amnesty Int’l, *supra* note 25, at 33–35. *See also* Andrew Stickley et al., *Attitudes Toward Intimate Partner Violence Against Women in Moscow, Russia*, 23 J. FAM. VIOLENCE 447, 448 (2008).

<sup>29</sup> *See* ANNA CENTRE ALTERNATIVE REPORT 2015, *supra* note 1, at 5. *See also* Mahserjian, *supra* note 14, at 308; ANNA CENTRE REPORT 2010, *supra* note 13, at 6; Amnesty Int’l, *supra* note 25, at 33–35.

<sup>30</sup> In one case in St. Petersburg, police officers allegedly told a woman that she had “better take some pills and forget about [filing a complaint]” after making her wait for three and a half hours in the hopes that she would leave. Josephine Huetlin, *Russia Finally Passed a Law Banning Domestic Violence, But the Police Haven’t Earned Women’s Trust*, SLATE (Jul. 29, 2016), [http://www.slate.com/blogs/xx\\_factor/2016/07/29/russia\\_finally\\_passed\\_a\\_law\\_banning\\_domestic\\_violence\\_but\\_the\\_police\\_haven.html](http://www.slate.com/blogs/xx_factor/2016/07/29/russia_finally_passed_a_law_banning_domestic_violence_but_the_police_haven.html) [<http://perma.cc/Y3XE-AGEX>].

attackers in order to save time and effort.<sup>31</sup> The United Nations Committee Against Torture has documented many such instances of coercive reconciliation.<sup>32</sup>

B. The Reliance on a System of Private Prosecution for Domestic Violence Offenses Raises Procedural Barriers to Justice for Victims

In addition to the problems posed by police inaction and coercive reconciliation, the procedural structure of the laws pertaining to domestic violence is disadvantageous for victims seeking justice. For one thing, because violence against women is still regarded as an “interpersonal” problem rather than a societal one, the vast majority of domestic violence complaints are filed as private prosecutions instead of as criminal cases.<sup>33</sup> This means that the victim must initiate the proceedings herself, collect and preserve all of the evidence, present all of the evidence in court, and continue pursuing the case on her own, often in the face of police apathy or, in some cases, outright hostility and derision.<sup>34</sup> Notably, she most likely must do all of this while continuing to live with her abuser, as there is no such thing as a restraining order in the Russian legal system.<sup>35</sup>

C. The Russian Legal System Does Not Recognize Domestic Violence As a Criminal Offense

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<sup>31</sup> See Ziegewied, *supra* note 8 (discussing the UN’s findings).

<sup>32</sup> See *id.* Coercive reconciliation creates a vicious cycle. Women often do not want to report their abuse to the police because the police do not take them seriously; the police, seeing that women either do not report their abuse or, if they do, later reconcile with their abusers and withdraw their complaints, do not consider the abuse to be a serious issue and continue to discourage women from reporting it. Amnesty Int’l, *supra* note 25, at 33–35.

<sup>33</sup> SPERLING, *supra* note 26, at 180–81. This was the case even before the passage of the 2017 law decriminalizing first-time domestic violence offenses.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 182; Amnesty Int’l, *supra* note 25, at 36.

Russia is one of three countries in Europe and Central Asia that do not recognize domestic violence as such as a discrete offense.<sup>36</sup> Instead, domestic abuse in Russia is generally treated the same as any other form of assault—without regard for the relationship between perpetrator and victim.<sup>37</sup> As recently as last year, however, there had been promising signs that the State Duma was beginning to recognize domestic violence as a concern distinct from one-off forms of physical violence.<sup>38</sup>

In a reversal from that recent trend toward greater protections for victims of family violence, Russian lawmakers made a stunning announcement in January 2017: they had voted 380-3 to decriminalize certain forms of domestic violence.<sup>39</sup> The new law removed battery against a family member from the Criminal Code and added it to the Administrative Code, subject to much lower sanctions.<sup>40</sup> Under the new law, first-time offenses within one year that do not result in serious bodily injury will result in up to a 30,000 ruble fine, a period of up to 15 days' administrative arrest, or up to 120 hours of community service.<sup>41</sup> Repeated assaults on family members—more than one a year—and attacks that result in serious bodily harm remain codified in the Criminal Code, however.<sup>42</sup>

Interestingly, 2017's decriminalization effort had been framed as an antidiscrimination measure. In June 2016, Russian lawmakers had decriminalized *poboi*, or simple battery—the

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<sup>36</sup> *The Duma's War on Women: Why Russia Is About to Decriminalise Wife-Beating*, THE ECONOMIST (Jan. 28, 2017), <http://www.economist.com/news/europe/21715726-it-fits-traditional-values-lawmakers-say-why-russia-about-decriminalise-wife-beating> [<http://perma.cc/EV4Q-W86S>].

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

<sup>38</sup> *See, e.g., id.* In June 2016, the Duma exempted domestic abuse from the decriminalization of other types of simple battery, allowing domestic violence to retain the same punishment as racially motivated offenses. *See* text accompanying note 43, *infra*.

<sup>39</sup> Kim, *supra* note 16.

<sup>40</sup> Sebastian & Mortensen, *supra* note 17.

<sup>41</sup> *See id.*

<sup>42</sup> *Domestic Violence Bill: Senator Says NGOs Distort Statistics in Bid for Grants*, RT (Feb. 1, 2017), <http://www.rt.com/politics/375943-senator-blames-feminist-lobby-for/> [<http://perma.cc/9RRH-CJDF>]. The punishment for these more serious acts remain unchanged and include a fine of up to three months' salary, community service for up to 360 hours, or a prison sentence of up to two years.

least violent category of assault in Russian law.<sup>43</sup> Attacks in which the perpetrator and victim were related, however, remained codified in the Criminal Code.<sup>44</sup> Conservative Russian politicians were quick to point out this disparity, noting the supposed unfairness of punishing family members more harshly than a stranger committing the same act;<sup>45</sup> Yelena Mizulina, the ultraconservative politician behind both the domestic violence decriminalization bill and 2013's controversial "gay propaganda" law, argued that "[b]attery carried out toward family members should be an administrative offence," since "[y]ou don't want people to be imprisoned for two years and labelled a criminal for the rest of their lives for a slap."<sup>46</sup> State-run media outlets worried that the law would destroy families and subject well-meaning parents to jail time.<sup>47</sup> The 2017 bill was born amidst this backlash and portrayed in the media as a family-protection mechanism.<sup>48</sup>

Regardless of how the state media portrayed the new law decriminalizing domestic abuse, its discriminatory impact on women—who tend to make up most of the victims of domestic violence in Russia—is clear. "Above all, I am very concerned about the signal this is sending," said Dr. Olga Khazova, a professor of family law at Moscow's Institute of State and Law within the Russian Academy of Sciences.<sup>49</sup> "Men will think that beating is no longer prohibited, so it is fine to do it. My fear is that the police will classify every time as the first time, so in effect nobody will be prosecuted for this offense." The fear that the police will take the side of the abuser and fail to classify a second offense as anything other than a first offense is a

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<sup>43</sup> *The Duma's War on Women*, *supra* note 36.

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

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

<sup>46</sup> Daria Litvinova, *Russian MP Seeks to Decriminalise Domestic Violence*, *The Guardian* (Aug. 18, 2016), <http://www.theguardian.com/world/2016/aug/18/russian-mp-seeks-to-decriminalise-domestic-violence> [<https://perma.cc/XU8R-EZ6G>].

<sup>47</sup> *See, e.g., Domestic Violence Bill: Senator Says NGOs Distort Statistics in Bid for Grants*, *supra* note 42.

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

<sup>49</sup> Interview with Olga Khazova, Professor of Family Law, Institute of State and Law, in Moscow, Russia (Mar. 14, 2017).

realistic one, especially in light of the blame-the-victim attitude that persists in some strains of Russian culture with regard to domestic violence. The notion that a beaten woman must have done something to deserve the beating “is still there in many ways. Women face many barriers here.”<sup>50</sup>

## II. THE RUSSIAN FEDERATION’S OBLIGATIONS UNDER DOMESTIC AND INTERNATIONAL LAW: LITIGATION STRATEGIES

On the surface, the Constitution of the Russian Federation guarantees the equal protection of the laws for “all people,” regardless of sex.<sup>51</sup> Article 19 of the instrument further states that “[m]an and woman shall enjoy equal rights and freedoms and have equal possibilities to exercise them.”<sup>52</sup> It would seem, then, that the Constitution should uphold women’s human rights and prohibit gender-based discrimination. But the reality is not quite so simple: while Russia has one of the best-worded constitutions in the world, implementation remains a serious issue.<sup>53</sup> Grigory Vaypan of the Institute for Law and Public Policy in Moscow characterizes the Russian Constitution as more aspirational than rigorously applied, going so far as to suggest that any litigation strategy aimed at battling the country’s domestic violence problem would be better suited to adjudication abroad than in the country’s own Constitutional Court.<sup>54</sup>

To that end, the Russian Constitution expressly incorporates international law into the domestic legal system. Article 17 of the Constitution guarantees all persons within its jurisdiction all rights and freedoms “in accordance with generally respected principles and norms of international law.”<sup>55</sup> In fact, the Constitution prioritizes international treaty norms over domestic

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

<sup>51</sup> KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF] [CONSTITUTION], art. 19 (Russ.)

<sup>52</sup> *Id.*

<sup>53</sup> Interview with Grigory Vaypan, Head of the Litigation Unit, Institute for Law and Public Policy, in Moscow, Russia (Mar. 15, 2017).

<sup>54</sup> *Id.*

<sup>55</sup> KONST. RF, art. 17, *supra* note 51.

laws: in cases of conflict between the two, international law must prevail.<sup>56</sup> In addition, the Russian legal system does not require implementing legislation for an international treaty to become binding on domestic courts.<sup>57</sup>

Two international human rights instruments are of particular interest for a litigation strategy aimed at combating domestic violence in Russia. The first is CEDAW. The Russian Federation is a state party to both CEDAW and its Optional Protocol. CEDAW requires state parties to “adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.”<sup>58</sup> While violence against women is not specifically mentioned in the text of the Convention itself, General Recommendation No. 19 of CEDAW makes clear that the “definition of discrimination” in Article I “includes gender-based violence”—that is, “violence directed against a woman because she is a woman or that affects women disproportionately.”<sup>59</sup> State parties are thus legally obligated not only to *refrain* from discriminating against women on the basis of gender, but also to adopt *affirmative* protections for victims of gender-based violence; it is a violation of the Convention to allow acts of discrimination against women to continue unabated.

This legal duty to prevent, investigate, and punish discrimination against women inheres whether the perpetrator of the violence is a state actor or a private individual.<sup>60</sup> While traditional

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<sup>56</sup> *Id.*, art. 15; Misner-Pollard, *supra* note 10, at 162.

<sup>57</sup> Misner-Pollard, *supra* note 10, at 162.

<sup>58</sup> CEDAW, *supra* note 19, art. 2(b).

<sup>59</sup> CEDAW General Recommendation No. 19, *supra* note 19. It is important to note that the general recommendations are considered “soft law.” Because they were not part of the Convention, they cannot be legally binding. The CEDAW Committee, however, expects state parties to “accept them than implement them in good faith.” Jackie Shapiro, *CEDAW As a Tool for Promoting Substantive Gender Equality*, <http://www.cedaw.org.tw/en/upload/media/Capacity%20Building/1-The%20Mechanism%20of%20CEDAW%20Committee.pdf>.

<sup>60</sup> Thomas & Beasley, *supra* note 21, at 43 (describing the expansion of state responsibility to include accountability for some acts of private individuals where there is systematic, discriminatory nonenforcement of the domestic law pertaining to those acts); Lisa Gormley, *Violence Against Women by Non-State Actors, a Responsibility for the State under Human Rights Law: Amnesty International’s Work on Domestic Violence*, in *DUE DILIGENCE AND ITS APPLICATION TO PROTECT WOMEN FROM VIOLENCE* 174–76 (Carin Benninger-Budel ed., 2008).

human rights law imposes responsibility on member states only for that conduct that they do “directly or through an agent,”<sup>61</sup> modern human rights law has expanded to encompass accountability for states’ “systemic failure to prosecute acts committed either by low-level state agents or by private actors.”<sup>62</sup> Thus, a state may be held accountable for private violent acts when the state “fails to work toward eliminating widespread violence by granting remedies to victims, bringing the perpetrators to justice and outlawing the underlying causes of such crimes.”<sup>63</sup> As Professor Christina Misner-Pollard further notes, in instances where “criminal violations such as domestic violence continually occur unchecked by a state’s government and legal system, a state may be considered ‘complicit’ in the commission of the private crime.”<sup>64</sup>

The systematic nonprosecution of crimes committed by private actors will not always raise human rights concerns, however. Nonprosecution of the crimes of private individuals “becomes a human rights issue . . . *only* if the reason for the reason for the state’s failure to prosecute can be shown to be rooted in discrimination along prohibited lines.”<sup>65</sup> To establish state complicity, then, a plaintiff must show not only a systematic failure to prosecute private acts of violence but also a pattern of discrimination against women victims that amounts to a failure to guarantee equal protection of the law across gender lines.<sup>66</sup> A plaintiff can establish this by demonstrating, for example, that the police take the complaints of male victims more seriously and prosecute violent crimes against men at a higher rate than they do crimes against women.

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<sup>61</sup> Thomas & Beasley, *supra* note 21, at 41.

<sup>62</sup> *Id.* at 43.

<sup>63</sup> Misner-Pollard, *supra* note 10, at 172–73.

<sup>64</sup> *Id.* at 173; Thomas & Beasley, *supra* note 21, at 43.

<sup>65</sup> Thomas & Beasley, *supra* note 21, at 42.

<sup>66</sup> *Id.* at 43, 46.

Based on the modern conception of states' international human rights responsibilities, a plaintiff could make a strong argument that the failure of the Russian police force to take complaints by women victims seriously and the government's failure to impose criminal liability for acts of private violence together establish state complicity in domestic abuse. Following CEDAW's General Recommendation No. 19, this systematic non-prosecution of domestic violence and the lack of state support for victims—both of which disproportionately impact women—can be understood as a form of gender-based discrimination. On these facts, the CEDAW Committee would be very likely to find that the Russian Federation is violating its affirmative legal obligations under CEDAW to eliminate discrimination against women.

CEDAW is but one tool that a plaintiff could employ in a human rights case against the Russian Federation. In addition to CEDAW, the Russian Federation is a member of the Council of Europe and a state party to the European Convention on Human Rights and its five protocols.<sup>67</sup> The European Convention contains four articles that are especially relevant to member states' obligations to provide a "real remedy"<sup>68</sup> for victims of domestic violence. Article 2 guarantees that "[e]veryone's right to life shall be protected by law."<sup>69</sup> Article 3 specifies that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment."<sup>70</sup> Article 4 promises that "[e]veryone has the right to liberty and security of person."<sup>71</sup> And Article 14 states that the rights and freedoms outlined in the Convention must be afforded to everyone equally, without discrimination on the basis of sex or any other prohibited category.<sup>72</sup>

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<sup>67</sup> European Convention, *supra* note 20.

<sup>68</sup> Thomas & Beasley, *supra* note 21, at 50.

<sup>69</sup> European Convention, art. 2, *supra* note 20.

<sup>70</sup> *Id.*, art. 3.

<sup>71</sup> *Id.*, art. 4.

<sup>72</sup> *Id.*, art. 14.

Like CEDAW, the European Convention contemplates the possibility that states may be held accountable for acts of violence carried out by private individuals.<sup>73</sup> In *Osman v. United Kingdom*,<sup>74</sup> for example, the European Court of Human Rights (“ECHR”) acknowledged that a state’s obligation “extends *beyond* its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offenses against the person backed up by law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions.”<sup>75</sup> The ECHR held that if the government knows or ought to know of the existence of a “real and immediate risk” to life and it fails to “take measures within the scope of [its] powers” to reasonably avoid that risk, the state will be in breach of Article 2 of the Convention even if the real and immediate risk to life is brought about by a non-state party.<sup>76</sup>

The ECHR’s landmark case of *Opuz v. Turkey*<sup>77</sup> further clarified the scope of state responsibility for private acts of domestic violence. While the case is not binding on countries other than Turkey, it nevertheless provides a useful blueprint for adjudicating domestic violence claims in the ECHR. In *Opuz*, the applicant, Nahide Opuz, and her mother had endured years of physical assaults and threatening behavior from H.O., Nahide Opuz’s husband. While Nahide and her mother filed criminal complaints on a number of occasions, in each case they withdrew the complaints. Eventually H.O. killed the mother, and Nahide brought the case to Strasbourg.

On these facts—facts very similar to many similar stories taking place in Russia every day—the ECHR found that there had been violations of Articles 2, 3, and 14 of the European Convention. With respect to the Article 2 violation, the Court reiterated that the state’s duty to

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<sup>73</sup> Lee Hasselbacher, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection*, 8 NW J. INT’L HUM. RTS. 190, 200 (2010).

<sup>74</sup> *Osman v. United Kingdom*, App. No. 23452/94, 29 Eur. H.R. Rep. 245 (1998).

<sup>75</sup> *Id.* at ¶ 115 (emphasis added).

<sup>76</sup> Hasselbacher, *supra* note 73, at 200, quoting *id.* at ¶ 116.

<sup>77</sup> *Opuz v. Turkey*, App. No. 33401/2, Eur. Ct. H.R. (2009).

uphold the right to life extends to ensuring that even non-state actors do not abridge it. In that case, the ECHR found that the Turkish authorities knew or should have known, based on past domestic abuse allegations, that Nahide Opuz’s mother was facing a real and imminent threat to her life. In failing to take measures to avoid that risk, the authorities had failed to exercise due diligence. The Court also concluded that despite the withdrawal of the victims’ complaints, the legislative framework should have allowed the prosecuting authorities to continue with criminal investigations against H.O. State authorities should have regarded his continued prosecution as a matter of public interest, not as a private vindication. By failing to continue to investigate him, the authorities had failed to establish and a system in which all forms of domestic violence could be punished.

With respect to Article 3, the ECHR agreed that domestic violence could rise to the level of “torture” within the meaning of the Convention. After all, domestic violence involves the four elements that international bodies have found to characterize torture: (a) severe physical and/or mental pain that is (b) intentionally inflicted (c) for specified purposes and (d) with some form of official involvement, whether active or passive.<sup>78</sup> And finally, with respect to Article 14, the ECHR reiterated the standard that a state’s failure to protect women against domestic violence, even if that failure is unintentional, violates women’s right to the equal protection of the law. Given the similarity between the facts of *Opuz v. Turkey* and the many parallel stories from Russia, it should not be difficult for a plaintiff to present a convincing case while relying on the above arguments for imposing state responsibility.

### III. LEGISLATIVE AND POLICY RECOMMENDATIONS

The previous Part detailed the Russian Federation’s human rights obligations under CEDAW and the European Convention and gestured at potential litigation strategies under both

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<sup>78</sup> See, e.g., Hasselbacher, *supra* note 73, at 208 n. 155, quoting Special Rapporteur Radhika Coomaraswamy.

instruments. This Part takes a different tack and makes four concrete recommendations that, if incorporated into the Russian legal system, would help the country achieve compliance with its obligations under international human rights law.

A. Russia Should Recognize Domestic Violence as a Criminal Offense

Russia should reverse the 2017 law that decriminalized domestic violence at once; the country will not be in compliance with CEDAW until domestic violence is recognized as a crime. Article 2 of CEDAW, after all, directs state parties to “*adopt appropriate legislative and other measures*, including sanctions where appropriate, prohibiting all discrimination against women.”<sup>79</sup> As CEDAW’s General Recommendation No. 19 explicitly recognizes domestic violence as a form of discrimination against women,<sup>80</sup> Russia is bound by CEDAW to adopt legislation that will go as far as possible to eliminate it.

B. Russia Should Adopt a Victim-Centered Prosecutorial Policy

One strategy for overcoming the police inaction described above would entail the adoption of a system of mandatory prosecution. Sometimes called “evidence-based prosecution” or “victimless prosecution,” this prosecutorial design allows prosecutors in domestic violence cases to convict abusers without the participation of the victim.<sup>81</sup> Evidence-based prosecution sends a powerful message: domestic violence is not a private matter to be resolved within the family, but a “social, economic, and public health concern” that affects society as a whole.<sup>82</sup> As the victim is not only the abused woman herself but also society, evidence-based prosecution typically involves a “no-drop” policy wherein prosecutors refuse to dismiss cases at the victim’s

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<sup>79</sup> CEDAW, *supra* note 19, art. 2(b) (emphasis added).

<sup>80</sup> See CEDAW General Recommendation No. 19, *supra* note 19.

<sup>81</sup> Krista R. Flannigan, *The Importance of Prosecution Policies in Domestic Violence Cases*, 12 CRIMINOLOGY & PUB. POL’Y 481, 482 (2013).

<sup>82</sup> NAT’L DISTRICT ATT’YS ASS’N, NAT’L DOMESTIC VIOLENCE PROSECUTION BEST PRACTICES GUIDE 4 (2017).

request.<sup>83</sup> No-drop policies can be especially helpful in domestic violence cases where victims are prone to withdraw their testimony.<sup>84</sup>

Given the reluctance of Russian women to report domestic abuse, however, a no-drop prosecutorial system may not be a good fit for Russia, at least not at first. Russian prisons are notoriously dangerous and brutal places. Domestic violence victims may thus be reluctant to report abuse in the first place if they know that their complaints will have a good chance of landing a husband or partner in prison—the natural result of widespread reliance on a no-drop policy. Amnesty International has raised this concern before, noting that one of the major impediments to full reporting on domestic abuse in Russia is that women are hesitant to report abuse lest they be seen as responsible for imprisoning a family member.<sup>85</sup> In Russia, “destroying” family unity is often seen as the height of dishonor.<sup>86</sup> The perverse and unintended consequence of a no-drop policy may therefore be even fewer reported cases of domestic abuse.

Of course, the current system of private prosecutions only is not a viable solution either, especially in light of *Opuz v. Turkey*'s recognition that the government must pursue prosecution as a matter of public interest in sufficiently serious cases even when the victim withdraws her complaint.<sup>87</sup> A middle ground might be possible, however. Professor Krista Flannigan has described one appealing system where victims have a mandatory right to be “heard” at each stage of the prosecution process.<sup>88</sup> While it is not up to the victim alone whether to drop or to pursue the case, she retains some say in how the case is handled by the prosecutor.<sup>89</sup> Under such

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<sup>83</sup> Flannigan, *supra* note 81, at 482.

<sup>84</sup> *Id.* This is an especially common phenomenon in Russia, where 75% to 90% of complaints filed by women are later withdrawn without any action being taken. See Amnesty Int'l, *supra* note 25, at 33.

<sup>85</sup> See Amnesty Int'l, *supra* note 25, at 37–38 (observing that the family and friends of abusers often exert pressure on victims to drop their complaints).

<sup>86</sup> See *id.*

<sup>87</sup> Hasselbacher, *supra* note 73, at 213 (discussing the due diligence standard).

<sup>88</sup> See Flannigan, *supra* note 81, at 485.

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

a system, victims of domestic violence would be able to remain involved in the prosecution of the case while not having to navigate the procedural barriers to justice that exist in the current private prosecution system.

C. Russia Should Implement a Mandatory Domestic Violence Training Program for the Police

The police officer arriving at the scene of a domestic disturbance call is likely to be the first person that a victim sees after the incident. As such, the responding officer's response to the incident is especially important. The victim of the offense is likely to be in an unsettled emotional state; she may have substantial physical injuries as well. A proper state response is necessary at this stage to ensure that justice is carried out.

As discussed in Part I.A, *supra*, however, police refusal to investigate claims of domestic violence is a widespread phenomenon. Police officers may blame the victim or make her feel that domestic abuse is not a matter for the police at all, but rather a private familial dispute that she should resolve with her husband or partner without state intervention. She may be told that she is overreacting. Even if she is allowed to lodge an official complaint, she may be "encouraged" to reconcile with her abuser at a later time in circumstances that may amount to less than full consent.

This biased treatment of female victims of domestic violence must change. One mechanism for doing so would be a mandatory training program for police officers that would educate them on the root causes of domestic violence and the best strategies for responding to agitated victims. A common theme running through the literature on police non-response has been the idea that the female victims either like the abuse (because they keep returning to their spouses) or that there is no point to taking a victim's statement at the scene because she will just

recant her testimony later.<sup>90</sup> In order to combat these harmful and discriminatory attitudes, the police force should be trained to recognize battered women's syndrome (BWS) and the cycles of abusive relationships. Only when the police begin to take victims seriously will victims feel comfortable reporting abuse and following through on their complaints.

#### D. Russia Should Incorporate Restraining Orders into Its Legal System

Finally, the lack of restraining orders in the Russian legal system is a major structural impediment for victims attempting either to bring cases to court or to free themselves from violent relationships. As it stands, there is no available legal procedure to ensure that the abuser and the victim may not contact each other. This in turn can lead to unsafe situations that might be preventable if Russia were to incorporate restraining orders and no-contact orders into its legal system. As such, Russia should adopt these measures into its legal system, and they should be made freely available to victims of domestic violence upon request.

### CONCLUSION

This paper has summarized the politico-cultural origins of domestic violence in the Russian Federation and gestured at a strategy for the future—a strategy based on the recognition that domestic violence, even when perpetrated by non-state actors, is a human rights issue for which governments may be held accountable under international law. As a state party of both CEDAW and the European Convention, Russia is bound to uphold the positive duties enshrined therein: duties to protect women from (and eliminate where possible) all forms of gender discrimination, of which domestic violence is a particularly pernicious example. Currently, however, the Russian government is violating these positive obligations. The pattern of police non-response, the reliance on a system of private prosecution, and the recent decriminalization of first-time domestic offenses that do not cause serious bodily harm all violate the human rights of

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<sup>90</sup> See, e.g., Amnesty Int'l, *supra* note 25, at 31.

women victims. To achieve compliance, Russia should criminalize all forms of domestic violence, adopt a victim-centric prosecutorial system that is sensitive to the emotional and psychological needs of battered women, adopt a mandatory domestic violence training program for police officers, and incorporate restraining orders into the Russian legal system.