

Recommendations for Effective

BATTERER INTERVENTION PROGRAMS

in Central & Eastern Europe &
the Former Soviet Union



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Changing the world for good.

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Executive Summary

Domestic violence is a worldwide epidemic and a violation of fundamental human rights. Violence against women by their intimate partners has devastating effects not only on women, but also on their children and their communities. Governments and non-governmental organizations have developed a range of responses to the problem, including criminal and civil laws and social services to meet the needs of victims. Along with these responses, governments have examined ways to prevent violence and reduce offender recidivism. As enforcement of domestic violence laws has expanded, courts have increasingly sought alternatives to incarceration to change the behavior of batterers. Some of these efforts have evolved into formal programs, called batterer intervention programs (BIPs) or batterer programs, designed to end batterers' use of violence. Other responses have focused on treating batterers for psychological problems or working with both the batterer and the victim to address relationship dynamics.

The purpose of this report is to describe the essential elements of an effective government intervention program for batterers based on research and practical experience and make recommendations for countries in Central and Eastern Europe and the Former Soviet Union (CEE/FSU).¹ It considers not only models for batterer interventions but also theories of violence, underlying international and regional legal frameworks and the full scope of interventions to domestic violence. The report also suggests that some countries may not yet have the necessary foundation to adopt an effective batterer intervention program. The Advocates for Human Rights (The Advocates) prepared this report at the request of the Oak Foundation. In conducting our research, The Advocates reviewed and analyzed information, research, reports, and interviews with experts about batterer intervention models used in Australia, Canada, the United Kingdom, the Netherlands, and the United States.

This analysis of batterer intervention models is based on a human rights framework focusing on the safety of victims and accountability for perpetrators of domestic violence. For interventions, including batterer programs, to be effective they must be grounded in an understanding of the dynamics of domestic violence. International law and best practices for responding to domestic violence recognize that domestic violence is a gendered crime, most often perpetrated by men against their female partners in a conscious effort to establish and maintain power and control in the relationship. The United Nations Declaration on the Elimination of Violence against Women (DEVAW) recognizes that:

[V]iolence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial

¹ The recommendations set forth in this report would be applicable in other countries as well.

*social mechanisms by which women are forced into a subordinate position compared with men.*²

The Advocates focused on the two most common batterer intervention models: offender programs and counseling approaches. Offender programs are usually victim-centered, court-mandated programs. Offender programs are typically grounded in the understanding that domestic violence is a form of violence against women that stems from the historically unequal power relations between women and men. Maintaining victim safety is the programs' first priority. The goal of offender programs is to end the violence by encouraging batterers to accept responsibility for their behavior and modify their underlying beliefs of entitlement. Counseling approaches, on the other hand, typically focus on addressing a batterer's mental health, substance abuse, or relationship dynamics. Under the counseling approaches, ending the violence is an expected by-product of solving the underlying psychological or relationship problem. The specific counseling approaches addressed in this report are anger management, substance abuse treatment, family systems therapy, and therapy to address past trauma. While the report focuses on these two broad categories, The Advocates recognizes that the categories are not always distinct and that many batterer programs combine different models and approaches, including elements that are not described here.

Advocates, practitioners, and researchers debate many elements of batterer interventions including their structure, their implementation, and their overall effectiveness. At the core of much of this debate is disagreement about the cause of domestic violence. Despite the lack of consensus as to the best intervention, countries and jurisdictions around the world continue to explore various batterer intervention models in response to domestic violence.

From a human rights perspective, the primary goal of any batterer intervention program should be stopping the violence and keeping victims safe. The most successful existing batterer programs can be instructive in guiding new programs toward that goal. First and foremost, batterer programs should not exist in isolation. Instead they should be part of an existing system's overall response to domestic violence. At a minimum, that system should include criminal sanctions for batterers, civil remedies for victims, prevention strategies, and protective measures including shelters and other services for victims. All of the organizations that are part of the domestic violence response should coordinate their efforts to ensure the overall system is working effectively. These efforts are often called a coordinated community response (CCR). Every organization in the CCR should share a common theory of domestic violence grounded in a human rights analysis. The CCR should provide for information sharing and collaboration among the various stakeholders, as well as mechanisms to create systems change. In particular, the batterer program should have formal links to the criminal justice system and victim services through the CCR. The link to the criminal justice system ensures consequences for offenders'

² Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993), <http://www.un.org/documents/ga/res/48/a48r104.htm> (last visited January 7, 2016).

use of violence and failure to comply with the terms of the program. The batterer program's links to victim advocacy groups facilitates focusing on the victim's needs and providing her with necessary information to allow her to make decisions that improve her safety and the safety of her children.

This report also highlights the unintended consequences of adopting a batterer program without the necessary external support. An effectively functioning system response is critical to the success of a batterer program. If a country's overall response to domestic violence is not functioning effectively, a program for batterers will not only be less effective, it may put victims in greater danger. An ineffective batterer's intervention may divert scarce resources from legal responses and victim services, leaving victims even more vulnerable. The reality is that not every country has a functioning, coordinated system within which a batterer program can effectively operate. In countries where the response to domestic violence is relatively new, many barriers may exist to effectively implementing that response. If a country has limited resources to direct toward its domestic violence response, it should give priority to shelters and services for victims rather than batterer programs.

While counseling approaches can provide important services, they should not be a substitute for an offender program that is based on a gendered understanding of the power and control relationship between men and women, and adequately tied to the criminal justice system. Counseling approaches, used alone, do not hold batterers accountable and do not focus on changing their underlying beliefs that validate the use of violence in the first place. While some counseling approach techniques could serve as a supplement to an offender program, focusing solely on these techniques can be dangerous because they avoid addressing the real causes of battering and become another means for the batterer to control his partner. In addition, batterers may in fact retaliate with more violence in response to the counseling. Couples counseling, for example, is often ineffective in domestic violence cases, and it can be extremely harmful. Power cannot be redistributed in the relationship if the batterer is unwilling to give up control and the victim is afraid of retaliation if she speaks freely about relationship issues and the violence. In cases where batterers need mental health services or substance abuse treatment, they should receive referrals as a supplement – never a substitute – to an offender program. Importantly, care should be taken to ensure that the offender program and the counseling do not undermine each other.

Finally, effective risk assessment and risk management are important components of an effective batterer program, but they require well-trained practitioners. Accurate risk assessment can protect victims by identifying which batterers are most likely to reoffend and risk management techniques can apply increased accountability and supervision to the most dangerous offenders. However, accurate risk assessment or categorizing types of domestic violence can be very difficult, and incorrectly assessing risk can prove fatal for victims. Moreover, if risk management is not reliable and effective, victims may be lulled into a false sense of security, exposing them to greater risk. Facilitators of batterer programs as well as

system stakeholders at all levels should be well trained in conducting risk assessment and risk management.

Throughout this report, The Advocates has evaluated the offender program model and the counseling approach model according to human rights principles and identified best practices. No model is perfect and both interventions continue to evolve. Ongoing evaluation is essential to improving the effectiveness of batterer programs. Taking into account theories of violence, program effectiveness and best practices, The Advocates concludes that the offender program model of batterer intervention is preferable to the counseling approach model. Some counseling approaches may incorporate some human rights principles but a counseling approach generally focuses on the needs of the individual batterer or the batterer's relationship with the victim, rather than the safety of the victim. Furthermore, because the most effective CCR is a community response that applies a victim-centered strategy, its central concept is contrary to the individual focus of a counseling approach. Thus, for countries with the capacity to create an effective batterer intervention program, The Advocates recommends an offender program batterer intervention model that embodies the fundamental principles described above.

I. Introduction

Domestic violence is a violation of fundamental human rights. Governments and non-governmental organizations (NGOs) have adopted a variety of legal and advocacy strategies aimed at preventing and responding to domestic violence. These strategies include laws that criminalize domestic violence and protective measures and remedies to serve victims. Efforts to prevent and respond to domestic violence also include working with the perpetrators of domestic violence. Some of these efforts have evolved into formal programs for batterers as a way to hold them accountable and change their behavior to end their use of violence. These programs are usually referred to as batterer intervention programs or batterer programs.³

There is ongoing debate among advocates, practitioners and researchers about most elements of batterer programs – their structure, their implementation, as well as their overall effectiveness. At the core of much of this debate is disagreement about the fundamental dynamics of domestic violence and its causes. The theory of violence influences the model for the intervention, its implementation and its effectiveness. Despite the lack of consensus as to the most effective intervention, jurisdictions and countries around the world continue to explore the use of various forms of batterer programs in response to domestic violence. The purpose of this report is to analyze these models and recommend the elements that should be included in batterer programs in countries in Central and Eastern Europe and Former Soviet Union (CEE/FSU).⁴

Holding offenders accountable, keeping victims safe and providing adequate victim services are fundamental goals of a human rights-based response to domestic violence.⁵ Coordination among stakeholders involved in responding to domestic violence is a recognized best practice and is essential to achieving these goals. Programs for batterers should only be

³ A note about terminology. In the United States, programs for batterers are often referred to as Batterer Intervention Programs (BIPs). However, that term is not used throughout this report because its use is not as prevalent in Europe. This report uses the term “Batterer Interventions” to include both offender programs and counseling approaches. In addition, we use the terms “programs for batterers/perpetrators”, or “batterer/perpetrator programs.” The term “systems response” refers to all of the entities in a community that are relevant to domestic violence including police, prosecutors, courts, probation officers, and victim advocates, among others.

⁴ To this end, the Advocates for Human Rights (The Advocates) researched and analyzed batterer programs and assessed them from a victim-centered perspective that prioritizes victim safety and offender accountability. The Advocates conducted a desk review of research, reports, and to the extent possible, interviews on models used in established batterer programs in Australia, Canada, the Netherlands, the United Kingdom, and the United States.

⁵ Offender accountability can mean different things, including, but not limited to, civil or criminal consequences for the use of violence. At a minimum, holding offenders accountable requires governments to take pro-active steps to send a message that domestic violence is a crime and will not be tolerated. For more information on an international human rights-based response to domestic violence and model framework for legislation to support these goals, please see, UN Women, *Virtual Knowledge Centre to End Violence against Women and Girls*, www.endvawnow.org (last visited January 4, 2016); and United Nations, *UN Handbook for Legislation on Violence Against Women*, (2012), http://www.unwomen.it/Documents/UNW_Legislation-Handbook.pdf (last visited January 7, 2016).

created within a larger systems response to domestic violence. As programs for batterers have evolved, certain approaches or models have maintained these priorities more effectively than others.

Before a government or organization begins to develop a batterer program, it should consider the human rights principles that must underlie such programs. This report therefore first examines theories of violence, the international legal framework, and other interventions against domestic violence. This background also underscores the fact that effective batterer programs cannot exist in isolation, but rather must be part of a government's overall response to domestic violence.

In exploring the merits and drawbacks of the various batterer intervention models, this report focuses on the two main models that have evolved over the past forty years: offender programs and counseling approaches.⁶ Offender programs are usually victim-centered, court-mandated programs. They are based on the theory that domestic violence is a form of violence against women that stems from the historically unequal power relations between women and men. The goal of offender programs is for batterers to end their violence by accepting responsibility for their behavior and modifying their underlying beliefs of entitlement.⁷ Counseling approaches, on the other hand, typically focus on addressing a batterer's individual psychological well-being, substance abuse, or relationship dynamics as a means to ending the violence.

Many batterer programs include elements of both offender programs and counseling approaches. Thus, this report presents a general discussion of both models in order to compare how they implement the two core priorities of an effective domestic violence response: victim safety and offender accountability. The reality is that the categories are not clear-cut and many programs offer parts of different models and approaches, including elements that are not described here.

Based on this review and analysis, The Advocates recommends that any batterer intervention adopted by a CEE/FSU country be consistent with international human rights standards. It should be based on an understanding of the gender dynamics of domestic violence and the use of such violence to maintain power and control. Further, it should be integrated into an existing effective response to domestic violence.

⁶ This report is not intended to be a complete overview of every type of batterer program that exists nor does it include every type of program that exists in the selected countries we researched.

⁷ The Advocates is using the term "offender" to highlight the fact that most participants in offender programs have been adjudicated in either civil or criminal court. While all offenders have been adjudicated as batterers, not all batterers have been adjudicated and thereby officially recognized as offenders.

A. The Problem

Domestic violence directed against women by their intimate partners (current or former spouses, boyfriends, dating partners) is a global epidemic that has devastating effects on women, children, families, and communities around the world.⁸ In 2013, the World Health Organization (WHO) estimated that nearly one-third of all women worldwide had experienced physical or sexual violence by their intimate partners.⁹ In addition, the WHO estimates that 38 percent of female murder victims worldwide are killed by intimate partners.¹⁰ A recent study found that 90 percent of the victims of intimate partner violence in the European Union are women.¹¹ The European Institute for Gender Equality identifies domestic violence as “one of the most pervasive human rights violations of our time, and one of the biggest global problems.”¹² Furthermore, research shows that no social, economic, religious, or cultural group is immune to domestic violence and its consequences.¹³

As domestic violence has been increasingly recognized as a violation of human rights, governments and NGOs have increased their efforts to address the problem.¹⁴ There is evidence that such interventions have been effective in at least slowing the epidemic of domestic violence.¹⁵ Responses to domestic violence are influenced by the accepted theory of violence

⁸ As discussed below, The Advocates recognizes that domestic violence is a gendered crime in which men are most often the perpetrators and their female partners are most often the victims. While The Advocates recognizes that domestic violence also occurs in same-sex relationships, this report focuses primarily on programs that work with men who batter their female partners. Much of what is described and recommended in this report is relevant for all relationships and some specific issues relevant to LGBT relationships are briefly identified.

⁹ UN World Health Org., *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence*, WHO/RHP/HRP/13.06, 1 (2013), <http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/> (last visited January 7, 2016).

¹⁰ *Id.*

¹¹ European Institute for Gender Equality (EIGE), *Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women – Victim Support*, Publications Office of the European Union, 3 (2013), <http://eige.europa.eu/sites/default/files/Violence%20against%20women-Victim%20support-Main%20Findings.pdf> (last visited January 7, 2016).

¹² *Id.*

¹³ See e.g., The Advocates for Human Rights, “Prevalence of Domestic Violence,” (2013), http://www.stopvaw.org/Prevalence_of_Domestic_Violence.html (last visited January 7, 2016); The Advocates for Human Rights, “Effects of Domestic Violence,” (2013), http://www.stopvaw.org/Effects_of_Domestic_Violence.html (last visited January 7, 2016) (explaining that many people view domestic violence as exclusive to certain ethnic or racial communities, or as unique to certain classes, within their societies. In interviews that The Advocates for Human Rights conducted throughout CEE/FSU countries, for example, people often discussed domestic violence in terms of the race, ethnicity, class, education level or age of the batterer or victim. The group or community identified as the victims and perpetrators depended on the country and background of the person being interviewed).

¹⁴ Rhadhika Coomaraswamy, *Combating Domestic Violence: Obligations of the State*, 6 Innocenti Digest: Domestic Violence against Women and Girls, 10 (June 2000), <http://www.unicef-irc.org/publications/pdf/digest6e.pdf> (last visited January 7, 2016) (discussing the recognition of state responsibility under international law to respond to domestic violence); Charlotte Bunch & Samantha Frost, *Women’s Human Rights: An Introduction*, Routledge International Encyclopedia of Women: Global Women’s Issues and Knowledge (2000).

¹⁵ See e.g., Shannan Catalano, *Intimate Partner Violence 1993-2010*, Bureau of Justice Statistics, 1 (Nov. 2012), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf> (last visited January 7, 2016) (explaining that the United States has seen a 64% decline in domestic violence over the last two decades. From 1994–2000, domestic violence declined by

prevalent at a particular time or location. These theories of violence have evolved but continue to influence responses to domestic violence around the world. A common understanding of the causes of domestic violence can help communities develop more effective responses to the violence.

B. Theories of Violence

To be effective, intervention strategies for domestic violence must be based on a clearly articulated theory of violence. To the extent possible, all parts of the community should share this view of violence in order to effectively coordinate their responses to the problem. In the United States, theories about the cause and contributing factors of domestic violence have evolved over more than 40 years.¹⁶ It is useful to review the evolution of theories of violence in the United States because many countries in CEE/FSU are currently discussing and applying them in various forms.¹⁷

The battered women's movement gained traction in the United States in the 1970s. At the time, the leading theory of causation for battering was psychopathology, which holds that male batterers are mentally ill and in need of psychological remedies such as therapy or medication.¹⁸ This theory proved to be wrong. The number of relationships that involved violence was much greater than original theorists guessed¹⁹ and psychological tests did not support the theory that mental illness causes violence. One study showed that far fewer batterers have "clinical disorders" than previous studies supporting this theory of violence had indicated.²⁰ Furthermore, researchers found that batterers' behavior was inconsistent with profiles of mental illness.²¹ For example, batterers often only attack their intimate partners, whereas people who suffer from mental illnesses often do not limit their violence to their intimate partners.²²

The psychopathology theory of domestic violence has been revived in recent years as researchers look to the psychological disorders and individual characteristics of batterers as the cause of domestic violence. However, this theory continues to be criticized, in part because it serves as an excuse for batterers and ignores the role of gender in society.²³ Some researchers

48%, following a similar trend in overall violent crime. From 2001–2010, the rate of decline in domestic violence slowed or stabilized, while the overall violent crime rate continued to fall).

¹⁶ The Advocates for Human Rights, "Evolution of Theories of Violence," (2015),

http://www.stopvaw.org/Evolution_of_Theories_of_Violence (last visited January 7, 2016).

¹⁷ See e.g., *id.*

¹⁸ Margi Laird McCue, *Domestic Violence: A Reference Handbook*, 12 (2nd ed., ABC-CLIO 2008).

¹⁹ See, Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, Contemporary Economic Policy, Vol. 21 Iss. 2, 159 (Nov. 2003) (explaining that initial estimates of domestic violence were lower than the reality because the crime was significantly underreported).

²⁰ Edward W. Gondolf, *MCMI-III Results for Batterer Program Participants in Four Cities: Less "Pathological" Than Expected*, 14(1) Journal of Family Violence, 11-13 (March 1999).

²¹ *Id.* at 12.

²² See generally, Lundy Bancroft et. al., *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, 24 (SAGE Publications, 2011).

²³ Allison Cunningham et al., *Theory-Driven Explanations of Male Violence against Female Partners: Literature*

believe that batterers are over-diagnosed with psychological disorders, and treatments for these disorders have not consistently yielded successful results.²⁴

Early studies also characterized battered women as mentally ill.²⁵ The results of these studies were distorted because they only examined women who were in mental hospitals. Their batterers, who appeared calm and credible compared to their institutionalized wives, minimized and denied their partners' accounts of the abuse when they were asked about the cause of their partners' condition.²⁶ In reality, most battered women are not mentally ill. Many of those who were institutionalized were misdiagnosed because of society's failure to recognize or understand the physical and psychological effects of domestic violence.²⁷

Researchers have also adopted a social learning theory, which considers domestic violence to be a learned behavior that men adopt and women seek out after observing domestic violence as children.²⁸ Witnessing violence alone, however, is not enough to explain the perpetration of domestic violence. Research has failed to show that women who witnessed domestic violence during their childhood are more likely to be battered as adults.²⁹ In addition, many boys who witness domestic violence in childhood do not grow up to batter, and not all men who batter witnessed domestic violence as children.³⁰ Indeed, witnessing violence is just one of many sources of information that influence men who batter. Batterers also receive information from the broader society that reinforces patriarchal norms by telling them that they are entitled to control their wives or partners and to enforce their control through violence.³¹ Thus, as emphasized in some batterers' programs, boys who witness domestic violence and grow up to be batterers *learn more than just violence*. They learn – and thus can unlearn – lessons about the respective roles of men and women that contribute to their abusive behavior as adults.³² Batterers have learned that there are benefits to using violence against their partner, primarily, that it works to maintain their position of power and priority over their partners. “Violence against a female partner is used to enforce entitlements and to punish any suggested transgression on her

Update and Related Implications for Treatment and Evaluation, London Family Court Clinic, at ii (1998), <http://www.lfcc.on.ca/maleviolence.pdf> (last visited January 7, 2016); McCue, *supra* note 18, at 12-13.

²⁴ See, Cunningham et al., *supra* note 23.

²⁵ Joan Zorza, *Batterer Manipulation and Retaliation in the Courts: A Largely Unrecognized Phenomenon Sometimes Encouraged by Court Practices*, 3(5) Domestic Violence Report, 67 (June 1998), http://www.civresearchinstitute.com/online/article_abstract.php?pid=18&iid=1025&aid=6721 (subscription needed) (last visited January 7, 2016).

²⁶ *Id.*

²⁷ *Id.*

²⁸ McCue, *supra* note 18, at 13.

²⁹ *Id.*

³⁰ *Id.* at 14; Cunningham et al., *supra* note 23, at 19-20.

³¹ McCue, *supra* note 18, at 15.

³² Deborah Reitzel-Jaffe & David A. Wolfe, *Predictors of Relationship Abuse Among Young Men*, 16(2) Journal of Interpersonal Violence, 99-115 (Feb. 2001); see also Sandra A. Graham-Bermann & Victoria Brescoll, *Gender, Power and Violence: Assessing the Family Stereotypes of the Children of Batterers*, 14(4) Journal of Family Psychology, 600-612 (Dec. 2000).

part; these notions are grounded in male domination, entitlement, and control, which are, in turn, grounded in social norms of masculinities.”³³

Other theories describe violence as the result of loss of control. They explain men’s violence as the result of their inability to control their anger and frustration.³⁴ Some proponents of this theory believe that men are abusive when they drink because the alcohol causes them to lose control.³⁵ The “loss of control” theory, however, is contradicted by most batterers’ behavior. Batterers’ violence is usually carefully targeted to certain people at certain times and places. For example, most batterers “choose *not* to hit their bosses or police officers, no matter how angry or ‘out of control’ they are.”³⁶ Batterers follow their own “internal rules and regulations about their abusive behaviors.”³⁷ They often choose to abuse their partners only in private, or may take steps to ensure that they do not leave visible evidence of the abuse.³⁸ Batterers choose their tactics carefully – some destroy property, some rely on threats of abuse, and some threaten children.³⁹ Through these decisions, “perpetrators are making choices about what they will or will not do to the victim, even when they are claiming they were ‘out of control.’ Such decision-making indicates that they are actually in control of their abusive behaviors.”⁴⁰ In fact, studies have indicated that many batterers become more controlled and calm as their aggressiveness increases.⁴¹

Another theory holds that women stay in abusive relationships because of “learned helplessness.” According to this theory, the constant abuse strips women of the will to leave.⁴²

³³ Taylor, A. & Barker, G., *Programs for Men Who Have Used Violence with an Intimate Partner (PM-IPV): Recommendations for Action and Caution (Reviewing Global Practices and Effectiveness)*, Rio de Janeiro, Brazil, Washington, DC.: Promundo, Rutgers WPF, MenEngage, and MenCare+, 4 (2013), a collaborative briefing paper sponsored by Promundo, Rutgers WPF, MenEngage, and MenCare+ citing personal communication with Chuck Derry of The Gender Violence Institute (U.S.), 2013, <http://menengage.org/wp-content/uploads/2014/04/Final-Programs-for-Men-who-use-IPV-Briefing-Paper-1.pdf> (last visited January 7, 2016).

³⁴ See e.g., Neil S. Jacobson & John Gottman, *When Men Batter Women: New Insights Into Ending Abusive Relationships*, 42-43 (Simon and Schuster 1998).

³⁵ Larry W. Bennett, *Substance Abuse and Woman Abuse by Male Partners*, National Online Resource Center on Violence Against Women, 1 (Feb. 1998), http://www.vawnet.org/Assoc_Files_VAWnet/AR_substance.pdf (last visited January 7, 2016).

³⁶ Ethel Klein et al., *Ending Domestic Violence: Changing Public Perceptions/Halting the Epidemic*, 6 (Sage Publications 1997).

³⁷ Anne L. Ganley & Susan Schechter, *Domestic Violence: A National Curriculum for Family Preservation Practitioners*, Family Violence Prevention Fund, 19 (1995), reprinted in Anne L. Ganley, *Understanding Domestic Violence: Preparatory Reading for Participants*, Alaska Network on Domestic Violence and Sexual Assault, 71 (Feb. 2002), <http://www.andvsa.org/wp-content/uploads/2009/12/60-ganely-general-dv-article.pdf> (last visited January 7, 2016).

³⁸ Ganley, *Understanding Domestic Violence: Preparatory Reading for Participants*, supra note 37, at 71.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ John M. Gottman et al., *The Relationship Between Heart Rate Reactivity, Emotionally Aggressive Behavior, and General Violence in Batterers*, 9(3) *Journal of Family Psychology*, 227-248 (Apr. 1995), <http://www.johngottman.net/wp-content/uploads/2011/05/The-relationship-between-heart-rate-reactivity-emotionally-aggressive-behavior-and-general-violence-in-batterers.pdf> (last visited January 7, 2016).

⁴² Lenore E. Walker, *Battered Women and Learned Helplessness*, 2 *Victimology*, 525-534 (Aug. 1977).

The learned helplessness theory, however, does not account for the fact that there are many social, economic, and cultural reasons a woman might choose to stay in an abusive relationship. Women often have very rational reasons for staying. The process of leaving a batterer can be extremely dangerous for women, and they may fear retaliation against themselves or their children. Women may not be able to financially support themselves or their children, or their families and communities may ostracize them if they leave. Indeed, leaving a partner may not be the primary goal for a woman. Rather, a woman may focus on her safety and that of her children, ending the violence, and ideally, salvaging the relationship with the batterer.⁴³

Further, the “learned helplessness” theory is inconsistent with the experiences of many women surviving in abusive relationships. Women often actively attempt to secure their safety and that of their children in very conscious ways, such as leaving many times or otherwise trying to minimize the abuse.⁴⁴ Rather than surrendering to a life of “learned helplessness,” victims often engage in a process of “staying, leaving and returning.”⁴⁵

The “learned helplessness” theory was accompanied by a resurgence of the psychopathology rationale. Theorists argued that women stay in abusive relationships because they suffer from a personality disorder that causes them to seek out abusive relationships as a means of self-punishment or because they are addicted to abusive relationships.⁴⁶ Some theorists concluded that victims of domestic abuse are co-alcoholics with their spouses and thus could be “treated” through alcohol addiction programs.⁴⁷ These theories are inconsistent with the fact that women have rational reasons for staying in relationships. In addition, while battered women may be at increased risk of substance abuse, this is usually a consequence, not a cause, of the abuse.⁴⁸

The “cycle of violence” was the next theory to gain popularity in the United States. Similar to the “loss of control” theory, this theory is based on the belief that men do not express their frustration and anger because they have been taught not to show their feelings. The man's tension builds until he explodes and becomes violent. After the tension is released, the couple enjoys a “honeymoon” period during which the husband is apologetic and remorseful.⁴⁹

⁴³ See e.g., Taylor & Barker, *supra* note 33, at 10.

⁴⁴ R. Emerson Dobash & Russell P. Dobash, *Women, Violence and Social Change*, 232 (Routledge 1992). (“Women are usually persistent and often tenacious in their attempts to seek help, but pursue such help through channels that prove to be most useful and reject those that have been found to be unhelpful or condemning.”).

⁴⁵ *Id.* at 231.

⁴⁶ *Id.* at 221-223.

⁴⁷ *Id.* at 223.

⁴⁸ See e.g., U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment (SAMHSA/CSAT) Treatment Improvement Protocol (TIP), Series, No. 25, *Substance Abuse Treatment and Domestic Violence*, Ch. 1, <http://www.ncbi.nlm.nih.gov/books/NBK64441/> (last visited January 7, 2016), citing Downs, W.R.; Miller, B.A.; and Patek, D.D. *Differential patterns of partner-to-woman violence: A comparison of samples of community, alcohol-abusing, and battered women*, 8(2)Journal of Family Violence, 113-134, at 131 (1993).

⁴⁹ Lenore E. Walker, *The Battered Woman*, Ch. 3 (HarperCollins 1979).

The cycle of violence theory, however, is not consistent with women's experiences. Many women never experience a honeymoon period. Others have stated that there is no gradual buildup of tension, but rather unpredictable, almost random, episodes of battering. This theory also does not explain why men direct their explosions of rage only against their intimate partners.

[T]he conception of a cycle of violence is static rather than dynamic and changing, does not deal with intentionality, and the notion of the third phase as a "honeymoon" phase belies the experience of women who indicate that even the process of "making-up" or reconstructing the relationship is carried out against the background of a personal history of violence and coercion and in the context of few viable alternatives to the violent relationship.⁵⁰

The cycle of violence theory was often paired with the systems or family/relationship conflict model. According to this model, both the man and the woman contribute to violence in an intimate relationship because "[t]he behavior of one member and the probability of a reoccurrence of that behavior are affected by the responses and feedback of other members."⁵¹

The family/relationship conflict theory of violence assumes either that the relationship is characterized by mutual violence or that the victim provokes her husband or partner into using violence.⁵² The woman's behavior contributes to the buildup of tension in the man, until the man explodes in a violent rage. Theories based on "mutual" violence do not take into account the different ways that men and women use violence in intimate relationships.⁵³ Similar to the "loss of control" theory, this concept does not account for instances in which a husband explodes over trivial issues or starts beating his wife while she is sleeping.⁵⁴ Further, this theory blames the victim for provoking violence and, by so doing, reduces the batterer's responsibility for his actions.⁵⁵

These early theories evolved into the current understanding of why men batter women. What was missing from all of the previous theories was the recognition of batterers' intent to control their partners' actions, thoughts and feelings. The current understanding of abuse evolved out of many discussions with battered women and batterers through the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota, USA.⁵⁶ DAIP developed a visual representation of this theory called the "Power and Control Wheel" which describes the different tactics batterers use to maintain power and control over their partners.⁵⁷

⁵⁰ Dobash & Dobash, *supra* note 44, at 223.

⁵¹ Cunningham et al., *supra* note 23, at ii.

⁵² Michael Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), 269 (Turner Publishing Company, 2015).

⁵³ See, *infra* Section I(D).

⁵⁴ Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52.

⁵⁵ Cunningham et al., *supra* note 23, at ii.

⁵⁶ Domestic Abuse Intervention Programs, <http://www.theduluthmodel.org/> (last visited January 7, 2016).

⁵⁷ See, *infra* Appendix A. These tactics include coercion and threats, intimidation, emotional abuse, economic abuse,

When a man batters his intimate partner, he uses a pattern of tactics described in the Power and Control Wheel to reinforce his use of physical and sexual violence. Violent incidents are not isolated instances of a loss of control, or even cyclical expressions of anger and frustration. Rather, each instance is part of a larger pattern of behavior designed to exert and maintain power and control over the victim.⁵⁸ The elements that formed the basis of earlier theories – a boy witnessing battering as a child or substance abuse – may be contributing factors, but do not “cause” the violence. Rather, batterers consciously use violence to ensure the submissiveness of their partners.⁵⁹ The exercise of male violence through which women’s subordinate role and unequal power are enforced and maintained is, in turn, tolerated and reinforced by political and cultural institutions and economic arrangements.⁶⁰

Over time, however, DAIP began to realize that even this theory – that batterers use violence to gain and maintain control and power – does not sufficiently capture the phenomenon of violence. While the Power and Control Wheel describe women’s experiences, batterers in batterer intervention programs did not express a desire for power and control when they talked about their use of these behaviors. Consequently, DAIP began to conceptualize violence within the larger context of society. Under this expanded theory, violence is:

*[A] logical outcome of relationships of dominance and inequality—relationships shaped not simply by the personal choices or desires of some men to [dominate] their wives but by how we, as a society, construct social and economic relationships between men and women and within marriage (or intimate domestic relationships) and families. Our task is to understand how our response to violence creates a climate of intolerance or acceptance to the force used in intimate relationships.*⁶¹

Although there are no simple explanations, research indicates, and the United Nations and Council of Europe recognize, that domestic violence is rooted in the subordinate role women have traditionally held in private and public life in many societies.⁶² Although knowledge about the prevalence and dynamics of domestic violence has increased dramatically, the characterization of domestic violence as a private aberration continues to thwart efforts to obtain quality data.⁶³ Despite being disproven, many outdated theories of violence continue to influence

isolation, minimizing, denying and blaming, using children and using male privilege.

⁵⁸ See, Melanie F. Shepard & Ellen L. Pence, *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond*, 27-30 (Sage Publications 1999); see also, Domestic Abuse Intervention Programs, “What is the Duluth Model?,” <http://theduluthmodel.org/about/index.html> (last visited January 7, 2016); Ganley, *Understanding Domestic Violence: Preparatory Reading for Participants*, *supra* note 37, at 62.

⁵⁹ Ganley, *Understanding Domestic Violence: Preparatory Reading for Participants*, *supra* note 37, at 62; see also, Taylor, A. & Barker, G., citing Chuck Derry, *supra* note 33, at 4.

⁶⁰ See e.g., Shepard & Pence, *supra* note 54, at 32-33.

⁶¹ Shepard & Pence, *supra* note 54, at 30.

⁶² See, *infra* Section I(E).

⁶³ See e.g., United Nations Population Fund, *Dimensions of Violence against Women and Girls, and How to End It* (Mar. 8, 2013), <http://www.unfpa.org/news/dimensions-violence-against-women-and-girls-and-how-end-it> (last

interventions. The often misplaced understanding of the dynamics of domestic violence continues to impede efforts to protect women and hold batterers accountable for their criminal conduct.

C. Definition of Domestic Violence

For purposes of this report, The Advocates defines domestic violence as an act or pattern of abusive or threatening behaviors that may include physical, emotional, economic, and sexual violence as well as intimidation, isolation and coercion.⁶⁴ This definition incorporates the concept of *coercive control* defined as:

*An act or a pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish, or frighten a victim. This control includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior.*⁶⁵

This definition, grounded in international law, research, and experience, incorporates the understanding that domestic violence is a form of gender violence, perpetrated primarily by men against women. The purpose of domestic violence is to establish and exert power and control over another. Men most often use domestic violence against their intimate partners, such as current or former spouses, girlfriends, or dating partners.⁶⁶

D. Women's Use of Violence

Although women may use violence against their intimate partners, women's use of violence, especially in heterosexual relationships, is distinct from men's use of violence in many ways. Women's use of violence in heterosexual relationships is usually reactive or defensive, rarely to gain or maintain power and control over men.⁶⁷ Claims that men are battered as often as

visited January 7, 2016).

⁶⁴ The term "batterer" as used herein refers to someone, usually a man, who engages in any type of domestic violence. A batterer may or may not have been convicted of a crime of domestic violence. The term "offender" refers to a batterer who has been convicted of a domestic violence crime.

⁶⁵ UN Women, "Definition of Domestic Violence," <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html> (last visited January 7, 2016); see also, Evan Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty* (2012), http://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf (last visited January 7, 2016).

⁶⁶ See The Advocates for Human Rights, "What is Domestic Violence?" (2013), http://www.stopvaw.org/What_Is_Domestic_Violence2.html (last visited January 7, 2016). Domestic violence is also often referred to as intimate partner violence (IPV).

⁶⁷ See Shamita Das Dasgupta, *Towards an Understanding of Women's Use of Non-Lethal Violence in Intimate Heterosexual Relationship* (2001), http://www.vawnet.org/research/print-document.php?doc_id=410&find_type=web_desc_AR (last visited January 7, 2016).

women do not take into account the fact that, in a high percentage of cases, women's use of violence is preceded by severe acts of violence by their partners.⁶⁸

A study of female perpetrators of domestic violence in the United Kingdom found that female perpetrators were more likely to use verbal abuse and some physical violence rather than threats or harassment. Men, in contrast, used much more severe forms of violence and were more likely to use violence to invoke fear in and control over their partners. Although the women in the study exhibited aggressive and violent behaviors, they did not fit the profile of a “batterer” because their aim was not to control or invoke fear in their partners.⁶⁹

The researcher Marianne Hester noted that pro-arrest and pro-prosecution policies beginning in the 1990s led to an increase in the arrests of women as sole perpetrators as well as an increase in dual arrests. She observed that instead of viewing domestic violence as a pattern of abusive behavior, criminal justice systems in both the United Kingdom and the United States focused on individual incidents and failed to take the broader context into account.⁷⁰ The tendency of the police to focus on individual incidents led police to arrest women for high-level assaults—such as use of weapons—more often than men because they did not take into account the wider pattern of domestic violence in which women use weapons in self-defense rather than as the primary aggressors.⁷¹

When women were identified as the primary aggressors they were more likely to be arrested than men:

Women were arrested to a disproportionate degree given the fewer incidents in which they were perpetrators. Women were 3 times more likely than men to be arrested when they were identified as a primary aggressor in a particular incident, and the police appeared more ready to arrest women despite patterns of violent behavior that were less intense or severe than the patterns exhibited by men.⁷²

Thus, women's use of violence against their male partners is not only more likely to be in self-defense, to escape, or protect themselves, it is ironically also more likely to result in their arrest.

⁶⁸ Suzanne Swan et al., *An Empirical Examination of a Theory of Women's Use of Violence in Intimate Relationships* (Feb. 2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/208611.pdf> (last visited January 7, 2016) (Explaining that reports in the popular press have concluded that women are as violent as men. However, these conclusions are oversimplifications based on incidence rates that do not take into account the context in which women's violence against men occurs.).

⁶⁹ Marianne Hester, *Portrayal of Women as Intimate Partner Domestic Violence Perpetrators*, 18(9) *Violence Against Women* 1067, 1072 (Sept. 20, 2012), <http://vaw.sagepub.com/content/18/9/1067.full.pdf+html> (last visited January 7, 2016).

⁷⁰ *Id.* at 1070.

⁷¹ *Id.* at 1075.

⁷² *Id.*

E. International Law Framework

International law provides support for the currently accepted theory of domestic violence and guidance for the creation of effective responses to domestic violence. International law and regional human rights law recognize the right of women to be free from all forms of violence, including domestic violence. These legal frameworks also recognize that violence against women is rooted in the historically unequal power relations between men and women.

1. International Human Rights Legal Frameworks

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, provides that “Everyone has the right to life, liberty and security of person.”⁷³ It also provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁷⁴ These human rights principles were explicitly applied to women in the Declaration on the Elimination of Violence against Women (DEVAW), passed by the General Assembly in 1993. Not only does DEVAW require that human rights principles be applied to women, it also recognizes the following:

*Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.*⁷⁵

In addition to recognizing the historical roots of violence against women, DEVAW also requires States to condemn the violence. It does not permit them to “invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”⁷⁶ States are instructed to “pursue . . . a policy of eliminating violence against women,” including:

*Adopt[ing] all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.*⁷⁷

Many subsequent international and regional human rights instruments have adopted the language and underlying policies of DEVAW, including The Convention on the Elimination of

⁷³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 3 (Dec. 10, 1948), <http://www.un.org/en/documents/udhr> (last visited January 7, 2016).

⁷⁴ *Id.* at art. 5.

⁷⁵ Declaration on the Elimination of Violence against Women, *supra* note 2, at para. 6.

⁷⁶ *Id.* at art. 4.

⁷⁷ *Id.* at art. 4(j).

All Forms of Discrimination against Women (CEDAW).⁷⁸ CEDAW, which was adopted in 1979, is the only United Nations treaty that focuses on women’s rights. Unfortunately, CEDAW does not directly address violence against women. CEDAW’s monitoring body, the Committee on the Elimination of Discrimination Against Women (the Committee), however, took the important step of bringing violence against women to the forefront in 1992 when it declared that “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination” within the meaning of CEDAW.⁷⁹

The Committee has further elaborated by defining “gender-based violence” as “violence that is directed against a woman because she is a woman or violence that affects women disproportionately.”⁸⁰ Gender-based violence includes “the violence that occurs within the family or domestic unit or within any other interpersonal relationship.”⁸¹ The Committee recognized that “[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles . . . may [be used to] justify gender-based violence as a form of protection or control of women.”⁸² The Committee noted that “[f]amily violence . . . [is] perpetuated by traditional attitudes.”⁸³ The Committee specifically called on Member States to take “[e]ffective measures . . . to overcome th[e] attitudes and practices” that “perpetuate violence against women.”⁸⁴

In response to reports submitted by Member States, the Committee has criticized gender-neutral frameworks for combating domestic violence. In its Concluding Observations to a report submitted by the Netherlands, the committee noted that gender-neutral frameworks “undermin[e] the notion that such violence is a clear manifestation of discrimination against women.”⁸⁵ Such gender-neutral formulations of domestic violence mean that the Netherlands “misses the

⁷⁸ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (last visited January 7, 2016).

⁷⁹ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, para. 7 (1992), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last visited January 7, 2016).

⁸⁰ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/2010/47/GC.2, 5 para. 19, <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf> (last visited January 7, 2016).

⁸¹ *Id.*

⁸² *General Recommendation No. 19: Violence against Women*, *supra* note 79, at para. 11.

⁸³ *Id.* at para. 23.

⁸⁴ *Id.* at para. 24(e)-(f).

⁸⁵ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: The Netherlands*, U.N. Doc. CEDAW/C/NLD/CO/5, 6 para. 26 (Feb. 5, 2010), http://www.un.org/en/ga/search/view_doc.asp?symbol=cedaw/c/nld/co/5 (last visited January 7, 2016).

specificity of violence of men against women and neglects the root causes of violence suffered by women.”⁸⁶

In addition to CEDAW, other international human rights instruments and organizations have condemned violence against women as a result of the unequal power relations between men and women. For example, the Platform for Action issued at the end of the Fourth World Conference on Women’s Rights in Beijing in 1995 echoed DEVAW, stating, “[v]iolence against women is a manifestation of the historically unequal power relations between men and women.”⁸⁷ In 2013, the Commission on the Status of Women reiterated that “violence against women and girls is rooted in historical and structural inequality in power relations between women and men.”⁸⁸

2. Regional Human Rights Legal Frameworks

Like the international human rights legal frameworks, regional instruments and entities have also echoed DEVAW by identifying the gendered nature of violence against women and formulated a response based on this understanding. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Convention of Belém do Pará, recognizes that “violence against women is . . . a manifestation of the historically unequal power relations between women and men.”⁸⁹ Similarly, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, known as the Maputo Protocol, recognizes that certain “elements in traditional and cultural beliefs,” as well as

⁸⁶ Committee on the Elimination of Discrimination against Women, *List of Issues and Questions with Regard to the Consideration of Periodic Reports: The Netherlands*, U.N. Doc. CEDAW/C/NLD/Q/5, 3 para. 10 (Mar. 13, 2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/266/16/PDF/N0926616.pdf?OpenElement> (last visited January 7, 2016); see also Special Rapporteur on Violence against Women, *Mission to the Netherlands*, Human Rights Council, U.N. Doc. A/HRC/4/34/Add.4, 10 paras. 27-28 (Feb. 7, 2007), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/4/34/Add.4 (last visited January 7, 2016):

27. *Women in the Netherlands face various types of gender-based violence. While the Government is committed to combating the problem, in practice, it seems to have identified it mainly as an integration problem to be addressed within a law and order framework. Such an approach fails to recognize the gendered nature of the problem. This not only hampers the overall effectiveness of the State response to violence against women (VAW), but it also results in a selective response whereby some forms of violence become normalized and others are essentialized within a cultural explanation.*

28. *VAW, in order to avoid a fragmented and gender-neutralized perception, must be viewed as a continuum of acts emanating from unequal gender hierarchies that intersect with other hierarchical systems, creating multiple and diverse manifestations of violence.*

⁸⁷ Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20, para. 118 (Sept. 4–15, 1995), <http://www.un.org/documents/ga/conf177/aconf177-20en.htm> (last visited January 7, 2016).

⁸⁸ Commission on the Status of Women, *Report on the Fifty-Seventh Session*, U.N. Doc. E/2013/27/E/CN.6/2013/11, 2 para. 10 (Mar. 4–15, 2013), http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/27 (last visited January 7, 2016).

⁸⁹ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), preamble (June 9, 1994), 27 U.S.T. 3301, <http://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf> (last visited January 7, 2016).

“practices and stereotypes . . . legitimize and exacerbate the persistence and tolerance of violence against women.”⁹⁰ The South African Development Community has recognized that violence against women “[r]eflects the unequal relations of power between women and men, resulting in the domination and discrimination of women by men.”⁹¹

Like CEDAW, the European Convention on Human Rights, which was drafted by the Council of Europe in 1950, does not expressly address violence against women, domestic violence, or gender-based violence. Nonetheless, like the CEDAW Committee, the European Court of Human Rights has recognized that violence against women, including domestic violence, is a form of discrimination against women.⁹² In a concurring opinion, one of the judges of the court stated:

*[T]he full effet utile of the European Convention on Human Rights (the Convention) can only be achieved with a gender-sensitive interpretation and application of its provisions which takes into account the factual inequalities between women and men and the way they impact on women’s lives. In that light, it is self-evident that the very act of domestic violence has an inherent humiliating and debasing character for the victim, which is exactly what the offender aims at. Physical pain is but one of the intended effects. A kick, a slap or a spit is also aimed at belittling the dignity of the partner, conveying a message of humiliation and degradation.*⁹³

In 2002, the Council of Europe Committee of Ministers issued Recommendation Rec(2002)5 to Member States on the Protection of Women against Violence.⁹⁴ The preamble to the recommendation reaffirmed “that violence towards women is the result of an imbalance of power between men and women and is leading to serious discrimination against the female sex.”⁹⁵ The document recommends that governments of Member States “[r]ecognize that male

⁹⁰ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), art. 4, para. 2(d) (July 11, 2003), http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf (last visited January 7, 2016).

⁹¹ Prevention and Eradication of Violence against Women and Children (Addendum to the 1997 SADC Declaration on Gender and Development), para. 3 (Sept. 14, 1998), <http://www.achpr.org/instruments/eradication-violence-woman-sadc-addendum/> (last visited January 7, 2016).

⁹² *Opuz v. Turkey*, App. No. 33401/02, Council of Europe: European Court of Human Rights, paras. 184–191 (June 9, 2009), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92945> (last visited January 7, 2016); *see also A v. Croatia*, App. No. 55164/08, Council of Europe: European Court of Human Rights, para. 95 (Oct. 14, 2010), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101152> (last visited January 7, 2016).

⁹³ *Valiuliene v. Lithuania*, App. No. 33234/07, Council of Europe: European Court of Human Rights, 28 (Mar. 26, 2013) (Pinto de Albuquerque, J., concurring) (quoting Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Art. 18(3)) (footnotes omitted), <http://hudoc.echr.coe.int/eng?i=001-117636> (last visited January 7, 2016).

⁹⁴ Council of Europe: Committee of Ministers, *Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the Protection of Women against Violence* (April 30, 2002), <https://wcd.coe.int/ViewDoc.jsp?id=280915&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> (last visited January 7, 2016).

⁹⁵ *Id.*

violence against women is a major structural and societal problem, based on the unequal power relations between women and men and therefore encourage the active participation of men in actions aiming at combating violence against women.”⁹⁶ One analysis of Recommendation Rec(2002)5 reiterates that it “takes its prime reference to the imbalance of power that makes violence against women a widespread problem.”⁹⁷

Like the Council of Europe, the European Union (EU) has also recognized the gendered nature of violence against women. Both legislative bodies of the EU, the European Parliament, and the Council of the European Union, have adopted statements recognizing the gendered nature of violence against women. In its “New EU policy framework to fight violence against women,” adopted in 2011, the European Parliament recognized that “gender-based violence is preponderantly inflicted by men on women and girls, and both reflects and reinforces inequalities between men and women.”⁹⁸ The Parliament repeated this principle in a 2013 resolution, stating that “violence against women and girls . . . is both a consequence and a cause of inequality between women and men.”⁹⁹

Similarly, the Council of the European Union has echoed DEVAW in recognizing that “[v]iolence against women is a manifestation of the historically unequal power relations between men and women and a cause and consequence of gender inequality,” and that “[d]iscriminatory social, traditional and cultural norms and gender stereotypes contribute to violence against women.”¹⁰⁰ It has further stated that “in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence” and that “[t]he Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.”¹⁰¹ To this end, the European

⁹⁶ *Id.*

⁹⁷ Dr. Carol Hagemann-White & Sabine Bohn, *Protecting Women against Violence: Analytical Study on the Effective Implementation of Recommendation Rec(2002)5 on the Protection of Women against Violence in Council of Europe Member States*, Council of Europe Directorate General of Human Rights and Legal Affairs, §4.2, 32 (2007), http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG%282007%293_en.pdf (last visited January 7, 2016).

⁹⁸ European Parliament, *Resolution on Priorities and Outline of a New EU Policy Framework to Fight Violence against Women (2010/2209(INI))*, Eur. Parl. Doc. P7_TA(2011)0127, para. C (Apr. 5, 2011), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2011-0127+0+DOC+PDF+V0//EN> (last visited January 7, 2016).

⁹⁹ Mikael Gustafsson, *Motion for a Resolution on the 57th Session on UN CSW: Elimination and Prevention of All Forms of Violence against Women and Girls*, EU Committee on Women’s Rights and Gender Equality, Eur. Parl. Doc. B7-0049/2013, para. A (Jan. 30, 2013), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B7-2013-0049+0+DOC+PDF+V0//EN> (last visited January 7, 2016).

¹⁰⁰ Council of the European Union, *Council Conclusions on Combating Violence against Women, and the Provision of Support Services for Victims of Domestic Violence*, paras. 5–6 (Dec. 6, 2012), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/134081.pdf (last visited January 7, 2016); see also Council of the European Union, *Council Conclusions on the Eradication of Violence against Women in the European Union*, para. 23 (Mar. 8, 2010), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/113226.pdf (last visited January 7, 2016)

(“Violence against women is a manifestation of the historically unequal power relations between men and women and adversely affects not only women but society as a whole, and therefore urgent action is required.”)

¹⁰¹ European Union, *Declaration on Article 8 of the Treaty on the Functioning of the European Union*, 2012 O.J. (C

Parliament and the Council established a European Institute for Gender Equality which has done considerable research to identify good practices to prevent domestic violence, including specific elements for perpetrator programs.¹⁰²

The most detailed response to violence against women in Europe is the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force on August 1, 2014.¹⁰³ The Istanbul Convention recognizes “that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men.”¹⁰⁴ The Convention further identifies “the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position to men.”¹⁰⁵ Like the CEDAW Committee and the European Court of Human Rights, the Istanbul Convention recognizes that violence against women is “a form of discrimination against women.”¹⁰⁶

The Istanbul Convention requires that Member States “undertake to include a gender perspective” in implementing the provisions of the convention “and to promote and effectively implement policies of equality between women and men and the empowerment of women.”¹⁰⁷ One of those provisions requires Member States to:

*[T]ake the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behavior in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.*¹⁰⁸

In taking these measures, Member States must “ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.”¹⁰⁹

326) 347 para. 19 (Oct. 26, 2012), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF> (last visited January 7, 2016).

¹⁰² Official Journal of the European Union, *Regulation (EC) No 1922/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a European Institute for Gender Equality*, L 403/9 (Dec. 30, 2006), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:403:0009:0017:EN:PDF> (last visited January 7, 2016); see also European Institute for Gender Equality (EIGE), *Preventing domestic violence – Good practices*, Publications Office of the European Union (2015), http://eige.europa.eu/sites/default/files/documents/MH0114678ENN_WEB.PDF (last visited January 7, 2016).

¹⁰³ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, (hereinafter Istanbul Convention), CETS No. 201, (May 11, 2011), <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210> (last visited January 7, 2016).

¹⁰⁴ Istanbul Convention, preamble.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at art. 3(a).

¹⁰⁷ *Id.* at art. 6.

¹⁰⁸ *Id.* at art. 16(1).

¹⁰⁹ *Id.* at art. 16(3).

Commentary on Article 16 emphasizes that such programs should be evidence-based and should be selected based on their effectiveness.¹¹⁰

3. The Obligation of Due Diligence

Along with the increased international recognition that all forms of violence against women are human rights violations came the recognition that States are responsible both for their actions in committing violence against women as well as their inaction in preventing violence perpetrated by private actors. According to this due diligence principle, the state can be responsible for private acts if it fails to protect victims and punish perpetrators.¹¹¹ The due diligence standard is generally recognized to include a State's obligation to prevent violence against women; protect women and girls who are victims or at risk of violence from further harm;¹¹² properly and effectively investigate crimes of violence against women; fairly and effectively punish or prosecute offenders; and ensure that victims have access to civil and criminal remedies.¹¹³ These due diligence obligations apply at both the individual and systems levels. In other words, States have due diligence obligations both to protect individual victims and to create effective systems and structures to target the causes of violence against women.

To date, only the Istanbul Convention creates an affirmative obligation to create programs to teach batterers to become nonviolent in their intimate relationships. However, the general obligations created by other international and regional instruments require States to protect women against violence, including domestic violence, and could be interpreted to include batterer interventions. Furthermore, the international and regional instruments' recognition of the gendered nature of violence against women supports the recommendation that these interventions be grounded in a gendered understanding of domestic violence.

¹¹⁰ Council of Europe, *Explanatory Report on the Convention on Preventing and Combating Violence Against Women and Domestic Violence*, para. 104 (Apr. 12, 2011), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a> (last visited January 7, 2016).

¹¹¹ U.N. Secretary-General, *In-Depth Study on All Forms of Violence against Women*, U.N. Doc. A/61/122/Add.1, 73-74 paras. 255-257 (July 6, 2006), <http://www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm> (last visited January 7, 2016).

¹¹² *Id.*

¹¹³ *Id.*; see also Special Rapporteur on Violence against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, Commission on Human Rights, U.N. Doc. E/CN.4/2006/61, paras. 38-55, 84 (Jan. 20, 2006), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf> (last visited January 7, 2016).

II. Interventions to Domestic Violence

In recognition of their due diligence obligation under international human rights law and consistent with generally accepted best practices, many countries have developed interventions that acknowledge the gendered nature of domestic violence. These programs focus on the principles of victim safety and offender accountability. In 1992, when the CEDAW Committee confirmed that violence against women and domestic violence are violations of human rights, it also made recommendations on measures that States should take to protect women against violence. The Special Rapporteur on Violence against Women summarized some of the Committee's recommendations as follows:

1. *Effective legal remedies, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the workplace;*
2. *Prevention measures, including public information and education programs to change attitudes concerning the role and status of men and women; and*
3. *Protective measures, including refuges, counseling, rehabilitation action and support services for women who are experiencing violence or who are at risk for violence.*¹¹⁴

These recommendations are fundamental components of a State's response to domestic violence. States have carried them out to greater or lesser degrees with varying levels of effectiveness. In addition to the recommendations described above, the development of a coordinated community response to domestic violence is recognized as a best practice for supporting systems' responses to domestic violence.¹¹⁵ Furthermore, programs for batterers are continuing to receive attention as an intervention to domestic violence. Each of these interventions is described below.

A. Legal Remedies

To meet their due diligence obligations under international and regional human rights law, States must adopt and implement national laws to protect victims and hold offenders accountable for domestic violence. They carry out these obligations through criminal sanctions

¹¹⁴ Coomaraswamy, *supra* note 14.

¹¹⁵ See e.g., Istanbul Convention, Chapter II – Integrated policies and data collection, Article 7 – Comprehensive and co-ordinated policies, *supra* note 103; The Duluth Model Coordinated Community Response received The World Future Council's Future Policy Gold Award for 2014 representing one of the world's best laws and policies on ending violence against women and girls. For more information visit http://www.worldfuturecouncil.org/fpa_2014.html (last visited January 7, 2016).

that effectively address the unique nature of domestic violence. States also adopt civil measures such as protection orders, which are an effective means of protecting victims of domestic violence.¹¹⁶

1. Criminal Sanctions

It is important for States to recognize domestic violence as a crime. They should do so not only because violence against women is a violation of human rights but also because domestic violence violates public safety and creates significant costs to the community.¹¹⁷ If domestic violence is not criminalized, the conduct will likely be ignored or treated less seriously than other criminal conduct. Domestic violence should not be treated less seriously than the same conduct committed against a stranger.¹¹⁸ In fact, individuals are entitled to a greater expectation of safety in their homes than on the streets, and the legal system should support that expectation.

Although domestic violence may be prohibited by general criminal provisions such as laws against assault and murder, general laws may be insufficient to keep victims of domestic violence safe.¹¹⁹ To protect domestic violence victims effectively, the law should account for the unique nature of domestic violence.¹²⁰ While assault laws are generally aimed at punishing the most serious harm, domestic violence is often characterized by repeated low-level injuries.¹²¹ In cases of stranger assaults, the risk of harm usually ends with the incident. By contrast, the ongoing relationship between victims of domestic violence and their batterers means that victims continue to be at risk of future assaults, increasing the need for legal protection.

Domestic violence can also be criminalized by creating specific domestic violence crimes such as domestic assault. Domestic assault is commonly defined as an act committed against a family member or intimate partner that intentionally inflicts or attempts to inflict bodily harm; or

¹¹⁶ United Nations, *UN Handbook for Legislation on Violence Against Women*, sec. 3.10 (2012), http://www.unwomen.it/Documents/UNW_Legislation-Handbook.pdf (last visited January 7, 2016).

¹¹⁷ See, UN Women, *Virtual Knowledge Center to End Violence Against Women and Girls*, [hereinafter *Virtual Knowledge Center*], “Program Essentials, Monitoring & Evaluation, Overview of Violence against Women and Girls, Consequences and costs,” <http://www.endvawnow.org/en/articles/301-consequences-and-costs-.html?next=302> (last visited January 7, 2016); The Advocates for Human Rights, “Community Costs of Domestic Violence,” http://www.stopvaw.org/community_costs_of_domestic_violence (last visited January 7, 2016).

¹¹⁸ *UN Handbook for Legislation on Violence Against Women*, sec. 3.11, *supra* note 116. The Handbook recommends that sentences should be commensurate with the gravity of crimes of violence against women.

¹¹⁹ See *UN Handbook for Legislation on Violence against Women*, *supra* note 116. The Handbook urges States to adopt specific legislation, including legislation on domestic violence, to keep women safe from violence. Others express concern that specific legislation will be ignored or given inadequate resources to be implemented effectively and victims will remain marginalized. If specific legislation does not exist, general assault laws can be used to prosecute offenders. Some believe that the goal of protecting women from violence can be achieved by enhancing penalties for generic crimes.

¹²⁰ UN Women, *Virtual Knowledge Center*, “Specific Legislation on Domestic Violence,” <http://www.endvawnow.org/en/articles/395-specific-legislation-on-domestic-violence.html?next=1676> (last visited January 7, 2016).

¹²¹ *UN Handbook for Legislation on Violence Against Women*, sec. 3.11.3, *supra* note 116. The Handbook acknowledges that repeated incidents are common in domestic violence and recommends enhanced sanctions for repeated/aggravated offenses of domestic violence, regardless of the level of injury.

is intended to cause fear of immediate bodily harm.¹²² Other common forms of violence used by batterers including strangulation,¹²³ stalking and harassment,¹²⁴ and marital rape may not be considered assault but should be accounted for.¹²⁵ General criminal laws may or may not cover other forms of domestic violence, such as enforced isolation, economic abuse, threats and intimidation.¹²⁶

In addition to criminalizing specific acts of domestic violence, violation of a civil protection order should also be made a crime.¹²⁷ As discussed below, civil protection order remedies are an effective way to keep victims safe from their batterers. The effectiveness of protection orders, however, is dependent on strong enforcement. Therefore, the consequences of violating a protection order should be significant.

2. Civil Remedies

Among the most important remedies for victims of domestic violence is the civil protection order.¹²⁸ Protection orders may take the form of emergency or *ex parte* orders, temporary orders issued without notice to the defendant,¹²⁹ which generally last a short time. Longer-term protection orders usually require a full hearing before a judge with the respondent present.¹³⁰ Civil protection orders should be available only on the application of the victim or with her informed consent.¹³¹ Because often the most dangerous time for a victim is when she leaves her batterer,¹³² authorizing third parties to apply for the order may compromise her

¹²² See e.g., Minn. Stat. § 609.2242.

¹²³ See e.g., UN Women, “Felony Strangulation and Other Provisions,” <http://www.endvawnow.org/en/articles/834-felony-strangulation-and-other-provisions.html> (last visited January 7, 2016).

¹²⁴ See e.g., U.S. Dep’t of Justice, *Stalking and Domestic Violence: The Third Annual Report to Congress under the Violence against Women Act*, ch. 2 (July 1998), <https://www.ncjrs.gov/pdffiles1/ovw/172204.pdf> (last visited January 7, 2016); National Institute of Justice, *Domestic Violence, Stalking, and Antistalking Legislation: An Annual Report to Congress under the Violence against Women Act*, appendix A (1996), <https://www.ncjrs.gov/pdffiles/stlkbook.pdf> (last visited January 7, 2016).

¹²⁵ See e.g., National Online Research Center on Violence against Women, *Spousal Rape Laws*, (2000), http://www.vawnet.org/Assoc_Files_VAWnet/SpousalRape.pdf (last visited January 4, 2016).

¹²⁶ See e.g., U.K. Government, “Guidance: Domestic Violence and Abuse,” <https://www.gov.uk/domestic-violence-and-abuse> (last visited January 7, 2016) (The UK has broadened its definition of domestic violence and abuse to include coercive control).

¹²⁷ *UN Handbook for Legislation on Violence against Women*, sec. 3.10.9, *supra* note 116.

¹²⁸ *Id.* at sec. 3.10. Some protection orders are grounded in misdemeanor or administrative laws. Best practices, however, call for protection orders to be provided as a civil remedy.

¹²⁹ *Id.* at sec. 3.10.4.

¹³⁰ The Advocates for Human Rights, “Civil Remedies on Domestic Violence,” (2015), http://www.stopvaw.org/civil_remedies_on_domestic_violence (last visited January 7, 2016).

¹³¹ UN Women, “Emergency or Ex Parte Order for Protection Remedy,” <http://www.endvawnow.org/en/articles/411-emergency-or-ex-parte-order-for-protection-remedy.html?next=412> (last visited January 7, 2016); see also, *UN Handbook for Legislation on Violence against Women*, sec. 3.10.5. *supra* note 116.

¹³² The Advocates for Human Rights, “Lethal and Extremely Dangerous Behavior,” (2006), http://www.stopvaw.org/lethal_and_extremely_dangerous_behavior (last visited January 7, 2016).

interests and safety.¹³³ The victim is in the best position to gauge the risk of danger resulting from an intervention with her batterer at a particular time. Protection orders may contain a variety of measures to keep victims safe including ordering the batterer to stay a specific distance from the victim and her children, removing the batterer from the family residence, and providing financial assistance to the victim.¹³⁴

In addition to the civil protection order, family law should provide remedies for victims of domestic violence. In divorce cases, victims should be assured of adequate alimony and child support, the right to stay in the family dwelling, exemption from mediation processes, social insurance and pension rights, and expedited distribution of property.¹³⁵ The law should also take a history of domestic violence into account when awarding child custody and visitation rights.¹³⁶ Victims should not lose custody of their children because the children witnessed the violence, as this penalty will likely result in women being reluctant or unwilling to seek legal protection when they are threatened.

B. Prevention Measures

Along with victim safety and offender accountability, preventing domestic violence is a core element of a human rights approach to domestic violence. According to the Istanbul Convention, effective prevention of domestic violence requires promoting “changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.”¹³⁷ The obligation to prevent domestic violence includes:

- Encouraging all members of society, especially men and boys, to contribute actively to preventing all forms of violence;
- Ensuring that culture, tradition and so-called “honor” are not used to justify acts of violence; and
- Promoting programs and activities for the empowerment of women.¹³⁸

The Istanbul Convention further calls for awareness-raising campaigns; education on “issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity;” training of relevant professionals; and participation of the private sector and the media.¹³⁹ Other human rights instruments, such as CEDAW General

¹³³ *UN Handbook for Legislation on Violence against Women*, sec. 3.10.5. *supra* note 116.

¹³⁴ *Id.* at sec. 3.10.3.

¹³⁵ *Id.* at sec. 3.13.

¹³⁶ *Id.*

¹³⁷ Istanbul Convention, *supra* note 103, at art. 12(1).

¹³⁸ *Id.* at arts. 12(4)-(6).

¹³⁹ *Id.* at arts. 13-15, 17.

Recommendation No. 19, contain similar recommendations for preventing violence against women and, by extension, domestic violence.

C. Protective Measures/ Victim Support Services

Victim services are a necessary element of domestic violence response. For example, DEVAW calls for specialized assistance for women who are subjected to violence and their children.¹⁴⁰ The Istanbul Convention similarly recognizes the importance of victim services and calls for a broad array of victim services.¹⁴¹

Shelters are one of the most vital and common forms of assistance for domestic violence victims and their children.¹⁴² European instruments call for one space or family space in a shelter per 7,500 to 10,000 people.¹⁴³ In addition, according to the UN Secretary General, “the operation of at least one 24-hour national emergency telephone line providing information, advocacy, support and crisis counseling would constitute good practice.”¹⁴⁴ Other important services include healthcare services, legal assistance, financial assistance, counseling, and transitional housing.¹⁴⁵

Adequate funding and efficient allocation of resources are essential to ensuring that victim services are effective.¹⁴⁶ Many countries place a low priority on matters related to violence against women and women’s rights generally,¹⁴⁷ and as a result, do not adequately fund victim services. Even in the United States, where significant federal funds are allocated for services for domestic violence victims, including shelters, hotlines, and social services,¹⁴⁸

¹⁴⁰ Declaration on the Elimination of Violence against Women, *supra* note 2, at art. 4(g):

Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

¹⁴¹ Istanbul Convention, *supra* note 103, at arts. 20-25.

¹⁴² Council of Europe, *Combating Violence against Women: Minimum Standards for Support Services*, 12 (2008), http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG-VAW-CONF%282007%29Studyrev_en.pdf (last visited January 7, 2016).

¹⁴³ *Id.* at 18 (citing within this document to further sources including, but not limited to, reports, conferences, and resolutions).

¹⁴⁴ UN Secretary-General, *In-Depth Study on All Forms of Violence against Women*, *supra* note 111, at paras. 324-325.

¹⁴⁵ Istanbul Convention, *supra* note 103, at art. 20; *see also*, Violence against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, §§ 501, 601-603 (2013), <https://www.congress.gov/113/plaws/publ4/PLAW-113publ4.pdf> (last visited January 7, 2016).

¹⁴⁶ UN Women, “Main Challenges,” <http://www.endvawnow.org/en/articles/303-main-challenges.html> (last visited January 7, 2016).

¹⁴⁷ *Id.*

¹⁴⁸ U.S. Office of Management and Budget, *Fiscal Year 2015 Budget of the U.S. Government*, 83 (2014), <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/budget.pdf> (last visited January 5, 2016); Campaign for Funding to End Domestic and Sexual Violence, *VAWA and Other Related Programs Appropriations for Fiscal Years '13, '14, '15, '16* (2015), http://www.ncdsv.org/images/AppropsChart2016_VAWA-and-Other-

national domestic violence programs in the United States report that funding is still the largest obstacle to providing effective victim services.¹⁴⁹

In some instances, victim services are underutilized by women in their respective countries.¹⁵⁰ Underutilization may be due to a combination of reasons including stigma and discrimination from service providers, inaccessibility of service facilities, and limited knowledge of available resources.¹⁵¹ Thus, victim services should offer a variety of programs designed to be accessible to both rural and urban women of all income levels and cultural backgrounds.¹⁵² While shelters are the most widely recognized service offered to victims of domestic violence, service programs should seek to address the many-faceted challenges that victims of domestic violence face when trying to leave abusive situations.

D. Importance of a Coordinated Community Response

National practices throughout the world have demonstrated that “collaboration and coordination between governments, NGOs, and civil society organizations continue to be vital in the development of effective practices to eliminate violence against women.”¹⁵³ Interagency collaboration and communication helps ensure that the system works faster and better for victims, that they are protected and receive effective services, and that offenders are held accountable and cease their abusive behavior.¹⁵⁴ These should be the ultimate goals for any systemic response to domestic violence.

A coordinated community response (CCR) to domestic violence is a formally established system of information sharing and coordination that connects relevant stakeholders in a unified approach to domestic violence.¹⁵⁵ Typically, a CCR for domestic violence will include a “system of networks, agreements, processes and applied principles created by the local shelter movement,

[Related-Programs-Appropriations-FY13-16_updated%202-15.pdf](#) (last visited January 7, 2016).

¹⁴⁹ National Network to End Domestic Violence, *2014 Budget Restores & Increases Funding for Victims* (Jan. 14, 2014), <http://nnedv.org/news/4183-2014-budget-restores-increases-resources-for-victims.html> (last visited January 7, 2016).

¹⁵⁰ UN Women, “Main challenges,” *supra* note 146.

¹⁵¹ *Id.*

¹⁵² See e.g., Violence against Women Reauthorization Act of 2013, *supra* note 145, at Title VIII (Protection of Battered Immigrants) & Title IX (Safety for Indian Women).

¹⁵³ UN Secretary-General, *In-Depth Study on All Forms of Violence against Women*, *supra* note 111, at para. 289; see also, EUCPN (European Crime Prevention Network), *EUCPN Toolbox Series No. 4: Tackling Domestic Violence in the EU Policies and Practices*, 31-33 (2013), <http://www.bukstipri.lt/uploads/1112.pdf> (last visited January 7, 2016).

¹⁵⁴ UN Division for the Advancement of Women & Office on Drugs and Crime, *Good Practices in Legislation on Violence against Women: Expert Group Meeting*, 7-8 (2008), [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf) (last visited January 7, 2016).

¹⁵⁵ Jacobson & Gottman, *supra* note 34, at 231-232; European Crime Prevention Network, *supra* note 153, at 37 (The European Crime Prevention Network (EUCPN) emphasized that advantages can come from the relevant stakeholders cooperating, but that cooperation can be challenging, and therefore the cooperation must be more formally established than an informal exchange of ideas).

criminal justice agencies, and human service programs”¹⁵⁶ Representatives of police, prosecutors, probation, courts, shelters, advocacy groups and social service agencies meet regularly and work together to improve the overall government and community intervention in domestic violence cases on both a systemic and individual level. It should be noted, however, that an effective CCR to domestic violence involves more than just regular meetings:

*Components of a coordinated community response often include the following: pro-arrest or mandatory arrest policies, follow-up support and advocacy for victims, aggressive and prompt prosecution, active monitoring of offender compliance with probation conditions, court-managed participation in batterer intervention programs, strengthening of civil remedies, and monitoring of the system-wide response to domestic violence cases.*¹⁵⁷

The most well-known and widely accepted model for inter-agency collaboration and communication in domestic violence cases was developed in 1980 by the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota, USA. The CCR developed in Duluth, often referred to as the Duluth Model,¹⁵⁸ has been adapted and utilized around the world as a domestic violence intervention strategy. The Duluth Model CCR is grounded in a theory of violence based on power and control and applies a gendered, victim-centered strategy.¹⁵⁹

As discussed in Section I, the most effective coordinated response to violence operates according to a common theory of violence. This understanding establishes a common foundation to ensure that all agency responses are consistent with the primary goal of protecting the victim. According to Ellen Pence, the original architect of CCR:

¹⁵⁶ Ellen Pence & Martha McMahon, *A Coordinated Community Response to Domestic Violence*, 1 (1997), <http://files.praxisinternational.org/ccrdv.pdf> (last visited January 7, 2016).

¹⁵⁷ Melanie Shepard et al., *Enhancing Coordinated Community Responses to Reduce Recidivism in Cases of Domestic Violence*, 17(5) *Journal of Interpersonal Violence* 551, 551-552 (May 2002).

¹⁵⁸ The term “Duluth Model” refers to the larger coordinated community response (CCR) to domestic violence developed in Duluth, Minnesota. The term “Duluth Model offender program” is used throughout this report to refer to the model of batterer programs also developed in Duluth, Minnesota. As emphasized by Michael Paymar, an expert on batterer programs and the Duluth Model, the “Duluth Curriculum” or, the “Duluth Model offender program” is one part of a larger response to domestic violence known as the Duluth Model. Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 280, citing Michael Paymar & Graham Barnes, *Countering Confusion About the Duluth Model*, Battered Women’s Justice Project, (2008), <http://www.bwjp.org/resource-center/resource-results/countering-confusion-about-the-duluth-model.html> (last visited January 7, 2016).

¹⁵⁹ CCRs in other countries follow a similar model. For example, Queensland, Australia has implemented a pilot project for a CCR based on principles that also set forth a common understanding of domestic violence among the different disciplines. Its principles state that domestic violence must be understood in the “political, social, cultural and economic structures and conditions that create unequal power between men and women;” that domestic violence is about power and control; and that violence is the perpetrator’s choice and responsibility. It also states unequivocally that victim safety is “essential in all procedures.” Pauline Eglington, *Coordinated Community Response to Domestic Violence (CCR): Wynnum Pilot Project*, presentation by Pauline Eglington on the Wynnum Pilot Project, at slide 5, <http://slideplayer.com/slide/6279802/> (last visited January 7, 2016).

*Negotiating common understandings among agencies lessens the negative impact of fragmented philosophies and responses on the victims of domestic violence. These understandings make central the victims' experience of violence and coercion and ongoing threats to her safety. The shared framework for community intervention is guided by practical questions: Who is doing harm to whom? How dangerous is this situation? Who needs protection?*¹⁶⁰

In the Duluth Model CCR, DAIP works as a lead agency to organize, promote, and monitor collaboration and cooperation in domestic violence cases among different actors and agencies.¹⁶¹ DAIP has the following objectives:

- to shift the burden of responsibility from the victim to the offender;
- place victims' experiences foremost in the development of policies and procedures;
- promote sharing of policies and procedures that hold offenders accountable and protect victim safety;
- operate on a shared understanding of domestic violence;
- provide court-ordered batterers' intervention programs; and
- foster dialogue among criminal justice and civil sectors, the community, and victims.¹⁶²

In addition to creating a system that holds batterers accountable, the Duluth Model CCR also creates a process for holding all of the individual stakeholders in the system accountable. The lead agency not only coordinates information sharing between the agencies, but also independently ensures that they carry out their designated responses to domestic violence. In a well-functioning CCR, the lead agency is able to identify the gaps and weaknesses in the domestic violence response.

Going beyond the criminal justice system, the Duluth Model CCR has been praised for incorporating the social context of battering into the intervention.¹⁶³ Unlike the criminal justice system alone, CCR is an intervention strategy that responds to all aspects of domestic violence and addresses the social norms that contribute to domestic violence. The programs that are part of a CCR should be available to serve all victims of domestic violence, including those who are not involved with the criminal justice system.¹⁶⁴ For example, in a community that only criminalizes high-level assaults, victim services and enforcement of civil protection orders are still valuable parts of a CCR that can help keep a victim safe.

¹⁶⁰ Ellen Pence, *Domestic Abuse Intervention Project: An Overview*, 1, an excerpt from the manual *Coordinated Community Response to Domestic Assault Cases: A Guide for Policy Development* (Domestic Abuse Intervention Project, 1996).

¹⁶¹ *Id.*

¹⁶² Domestic Abuse Intervention Program, "What is the Duluth Model?," *supra* note 58.

¹⁶³ Jacobson & Gottman, *supra* note 34, at 231.

¹⁶⁴ The Advocates for Human Rights, "Coordinated Community Response", http://www.stopvaw.org/coordinated_community_response (last visited January 7, 2016).

E. Batterer Interventions

As governments improved their response to domestic violence and more batterers were brought into the criminal justice system, the demand for court-sanctioned programs for offenders grew.¹⁶⁵ Batterers were overwhelming the court system and programs for offenders offered victim-centered sentencing option that holds offenders accountable for their use of violence as an alternative to an immediate jail sentence or a monetary penalty.¹⁶⁶ Rather than being a diversionary program where batterers avoid criminal consequences for their violence, offender programs offer batterers an opportunity for suspended sentences as long as they complete the requirements of the program and do not commit further violence.

Programs working with domestic violence offenders are varied.¹⁶⁷ This variety makes them difficult to describe, evaluate, and compare.¹⁶⁸ The majority of responses, however, fall into two predominant categories: offender programs and counseling approaches. While there are many manifestations of and nuances within each model and even overlap between the models, their fundamental difference lies in the theory of violence upon which each is based. These models are described in more detail in Section III.

¹⁶⁵ Lucy S. Carter, *Batterer Intervention: Doing the Work and Measuring the Progress, A Report on the December 2009 Experts Roundtable*, Family Violence Prevention Fund & National Institute of Justice, 5 (2010), http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Batterer%20Intervention%20Meeting%20Report.pdf (last visited January 7, 2016).

¹⁶⁶ See, Edward W. Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, 114 (Northeastern University Press 2012); see also, David Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, 1-2, (adapted from *Treatment Programs for Batterers*, 5(1) Clinics in Family Practice 171 (May 2003)), http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Certified%20Batterer%20Intervention%20Programs.pdf (last visited January 7, 2016).

¹⁶⁷ The models described here are discussed primarily in the context of court-ordered interventions. However, some of the offender programs and many of the counseling approaches described herein also work with batterers on a voluntary basis.

¹⁶⁸ See e.g., Taylor & Barker, *supra* note 33, at 9. A collaborative briefing paper sponsored by Promundo, Rutgers WPF, MenEngage, and MenCare+, conducted a literature review of existing research evaluating the effectiveness of batterer programs. The authors stated that the variety of formats and missions of batterer programs creates a methodological challenge for high-quality, reliable evaluations and comparisons. The briefing paper also sets forth recommendations as well as cautions for implementing programs, many of which are consistent with those set forth in this report and are cited throughout.

III. History and Description of Batterer Intervention Models

A. Early Approaches to Batterer Intervention

Historically, the purpose of batterer intervention was to provide an alternative or supplement to court sanctions for domestic violence as well as a tool to change the beliefs and behavior of batterers. As with any intervention to domestic violence, the development, structure, and implementation of programs for men who batter are influenced by the theories of violence.

Consistent with the early psychopathology theory of domestic violence, the first intervention for batterers was known as the insight model. Like many counseling approaches still in use today, the insight model blamed the batterer's violence on psychological problems. A common assumption of the various approaches of the insight model was that the batterer's "impaired ego functioning (e.g., poor self-concept, emotional dependency) leads him to overreact to real or imagined threats in a violent manner."¹⁶⁹ The insight model assumes that when the batterer resolves his past injuries through therapy, his feelings about himself will improve and he will no longer feel the need to be violent.¹⁷⁰ This approach, however, was ineffective and in fact created more danger for victims. Batterers used the knowledge they gained from therapy to blame the victim and escape individual responsibility by claiming to be drunk or out of control. Batterers also used the skills they learned through therapy to enhance their ability to control their partners, using the counselor's words against the victims or otherwise finding excuses for their behaviors.¹⁷¹

As it became apparent that the psychological approach of the insight method was not working, the concept of power and control was developed and new offender programs arose based on that concept. The first offender program in the United States based on the concept of power and control was Emerge, which was established in Boston in 1977. Emerge was created at the request of women who were working in battered women's programs. In addition to Emerge, RAVEN in St. Louis, AMEND in Denver, Manalive in Marin County California, the Domestic Assault Program in Tacoma Washington, and Men Stopping Violence in Atlanta were established in the late 1970s. These early programs were developed before authorities began

¹⁶⁹ David Adams, "Treatment Models of Men Who Batter: A Profeminist Analysis," in *Feminist Perspectives on Wife Abuse*, 178-79 (Sage Focus Ed. 1988).

¹⁷⁰ *Id.* at 179.

¹⁷¹ Telephone interview with Chuck Derry, Co-Founder, Gender Violence Institute & Minnesota Men's Action Network (June 10, 2014).

arresting significant numbers of batterers and mandating that they participate in batterer programs.¹⁷²

In the early 1980s, a new generation of batterer programs appeared in response to pro-arrest and pro-prosecution policies. These policies were the result of new laws and more robust enforcement of existing laws. In most cases, the goals of the new policies were to protect victims and increase offender accountability. Consequently, the increased arrests and prosecutions spurred an increased demand for batterer interventions that gave priority to these same goals.¹⁷³ One of the programs that emerged in the early 1980s came from DAIP. Experts consider The Duluth Model Men's Nonviolence Program, and the resulting curriculum for batterer programs "Creating a Process of Change for Men Who Batter: The Duluth Curriculum,"¹⁷⁴ the standard for offender programs.¹⁷⁵ This report refers to offender programs that follow this curriculum as Duluth Model offender programs.¹⁷⁶

The increase in arrests and interest in programs for batterers also resulted in more programs offered by mental health facilities or substance abuse centers.¹⁷⁷ These service providers often have little experience working with the criminal justice system or working with batterers.¹⁷⁸ Instead they adopt service models that have been used with mental health clients, relationship therapy, and substance abuse treatment.¹⁷⁹ Through these programs, there has been a rebirth of programs that adopt theories of violence that focus on the individual characteristics of the batterer or the relationship between the victim and the batterer.

B. Current Batterer Intervention Models

Most current batterer interventions follow one of two models: offender programs and counseling approaches. While the interventions described below are examples of the two models,

¹⁷² See, Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 1.

¹⁷³ *Id.* at 2.

¹⁷⁴ Ellen Pence & Michael Paymar, *Creating a Process of Change for Men Who Batter: The Duluth Curriculum*, (5th Ed. 2011) [hereinafter *The Duluth Curriculum*].

¹⁷⁵ See e.g., Taylor & Barker, *supra* note 33, at 6, stating that the Duluth Model offender program has been replicated in all 50 U.S. states and 17 countries; see also, Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 3, stating that the Duluth offender program is one of "the most widely emulated program models" along with the Emerge program; see also, Michael P. Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (Northeastern University Press 2008), at 79, n. 21, referring to the Duluth Model offender programs as the primary example of the feminist psycho-educational batterer intervention model, citing Ellen Pence and Michael Paymar, *Education Groups for Men Who Batter: The Duluth Model* (Springer 1993).

¹⁷⁶ See, *supra* note 158, explaining that the term "Duluth Model" refers to the larger coordinated response to domestic violence developed in Duluth, Minnesota. The term "Duluth Model offender program" is used throughout this report to refer to the model of batterer programs also developed in Duluth, Minnesota. The "Duluth Model offender program" is one part of a larger response to domestic violence known as the Duluth Model.

¹⁷⁷ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 2.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

not all interventions can be clearly categorized as belonging to one model or the other. In fact, many interventions contain elements of both offender programs and counseling approaches.

1. Offender Program Model

While there are many varieties of offender programs, the predominant programs have a similar structure.¹⁸⁰ Most offender programs are for men who use violence against their female partners. The men are court mandated to participate in an offender program as a suspension of a jail sentence or a fine on the condition that they satisfactorily complete the program and do not engage in further violence. Probation officers supervise participation in and completion of the program, and the court may impose sanctions for non-compliance.

Most offender programs occur in small group meetings or classes of eight to twelve men.¹⁸¹ The meetings are often co-facilitated by trained male and female leaders “to model a healthy, respectful, and egalitarian working relationship between a man and a woman,”¹⁸² and to help maintain focus on the experience of the victim. Most programs in the United States require attendance at 24 to 36 weekly meetings.¹⁸³ Some programs are open-ended, allowing participants to enter the program at any time.¹⁸⁴ In other programs, participants join and move through the program at the same time as a cohort.¹⁸⁵ Offender programs share several other characteristics to a greater or lesser extent.

a) *The primary goal of offender programs is victim safety*

Offender programs are accountable to the victim and promoting her safety, rather than to the batterer and promoting his needs. One of the most important ways that this foundational commitment affects the operation of offender programs is a mandatory waiver of confidentiality. In contrast to counseling approaches in which the counselor or program has a duty of confidentiality to the batterer except in extraordinary cases, participants in an offender program

¹⁸⁰ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 3.

¹⁸¹ Jeffrey L. Edleson, *Groupwork with Men Who Batter: What the Research Literature Indicates*, National Research Center on Domestic Violence, 2 (Feb. 2012),

http://www.vawnet.org/Assoc_Files_VAWnet/AR_GroupworkMenWhoBatter.pdf (last visited January 7, 2016); Chuck Derry, an expert in facilitating batterer programs, states that if a program is successful, group size can significantly increase and range from 12-35. However, the larger the group becomes the facilitator may need to adjust their methods of addressing the same issues. Telephone interview with Chuck Derry, *supra* note 171.

¹⁸² Sarah Elinoff Acker, *Batterer Intervention Programs: Getting to the Root of Domestic Violence*, Utne Reader (Oct. 2013), as reprinted from *Unclenching Our Fists: Abusive Men on the Journey to Nonviolence* (Vanderbilt University Press 2013), <http://www.utne.com/community/batterer-intervention-programs-zeOz1310zpit.aspx#axzz33anKkDCv> (last visited January 7, 2016); *see also*, Thea Brown & Ralph Hampton, *An Evaluation of Interventions with Domestic Violence Perpetrators*, The Family Violence Prevention Foundation of Australia, 42 (2009), https://www.lifeworks.com.au/files/ResearchReport_FV.pdf (last visited January 7, 2016). Victoria, Australia LifeWorks Men’s Behavior Change Program groups are led by one male and one female counselor, whose job, in part is to model male-female collaboration.

¹⁸³ Edleson, *supra* note 181, at 2.

¹⁸⁴ The Duluth Curriculum, *supra* note 174, at 34.

¹⁸⁵ Edleson, *supra* note 181, at 2.

forgo the right to confidentiality. For example, when a participant signs a contract with DAIP, he acknowledges that “the program will contact his partner to obtain a history of abuse, that she will also be given the name of counselor/facilitator with whom he is working, and she will be notified of any pending court hearings regarding his involvement in the program.”¹⁸⁶ DAIP imposes the same requirement on both court-mandated and voluntary participants.¹⁸⁷ By requiring participants to waive confidentiality, offender programs both emphasize that their primary accountability is to the victim and open a conduit for sharing information with the victim to allow her to make informed decisions about her own safety throughout the process.

b) Offender programs seek to change batterers’ underlying beliefs

Offender programs operate on the premise that batterers are capable of change; they can change both their actions and their beliefs. To that end, offender programs “focus on exposing the thought patterns related to abuse and violence, restructuring those patterns, and developing alternative behaviors.”¹⁸⁸ Programs help batterers recognize their active role in the use of violence, explore the consequences of their abusive behavior, and increase their empathy, accountability, and motivation to change.¹⁸⁹ They attempt to deconstruct batterers’ historical and socially-constructed entitlement to use violence to exert and maintain power and control over women. They provide guidance for creating more equal relationships. The reference point of an offender program for understanding battering is the experience of women who have been battered.¹⁹⁰

A teaching technique known as critical thinking and dialogue is used in some offender programs, including Duluth Model offender programs. The technique was developed by Paulo Freire, a Brazilian writer and activist. Freire’s teaching method uses dialogue and critical thinking to develop an awareness of the world that can lead an individual to personal transformation. Freire’s method teaches students to distinguish between what is created by nature and what is created by culture and the effects of socialization. By understanding that power and control are not innate qualities but learned through culture and socialization, batterers are challenged to learn a different way of relating to their female partners.¹⁹¹ Through this process batterers are encouraged to “genuinely struggle with their beliefs about men, women,

¹⁸⁶ The Duluth Curriculum, *supra* note 174, at 38.

¹⁸⁷ *Id.*

¹⁸⁸ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 3.

¹⁸⁹ Hester, M. & Lilley, S., *Domestic and Sexual Violence Perpetrator Programmes: Article 16 of the Istanbul Convention – A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence*, 12 (2014),

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046e1f2> (last visited January 7, 2016).

¹⁹⁰ The Duluth Curriculum, *supra* note 174, at 32.

¹⁹¹ Michael Paymar, *Violent No More: Helping Men End Domestic Abuse* (2nd ed.), 235 (Hunter House, 2000).

relationships, and entitlement.”¹⁹² The goal is for batterers to take full responsibility for their violence.

Based on the core concept of power and control, one of the primary teaching tools of a Duluth Model offender program is the Power and Control Wheel. The Power and Control Wheel is paired with the Equality Wheel which describes the changes men who batter need to make in order to move from being abusive to engaging in a non-violent partnership.¹⁹³ “For example, the ‘emotional abuse’ segment on the Power and Control Wheel is contrasted with the ‘respect’” segment on the Equality Wheel. The wheels can be used together as a way to identify and explore abuse, then encourage non-violent change.”¹⁹⁴

c) Most offender programs incorporate Cognitive Behavioral Therapy

Cognitive Behavioral Therapy (CBT) is a core element of many offender programs. This theory recognizes that violence is a learned behavior and therefore, non-violence can also be learned. In other words, “CBT attempts to change the behavior by identifying the thought processes and beliefs that contribute to offenders’ violence.”¹⁹⁵ According to Edward Gondolf, an expert on batterer programs:

*There is some compelling support for the idea that a substantial portion of violent perpetrators share certain characteristics – or commonalities – that are most appropriately addressed by the prevailing cognitive-behavioral approaches for men who batter The popularity of cognitive-behavioral approaches for many kinds of criminal offenses rests on the role of “cognitive scripts,” which are the assumptions one carries about how the world works or should work. Evaluations of drug and alcohol treatments, as well as other criminal justice programs, have similarly shown that cognitive-behavioral approaches are at least as effective as, or more effective than, other approaches.*¹⁹⁶

The Duluth Model offender program incorporates CBT into its educational approach in a number of ways. The Duluth Model uses vignettes, role playing, and discussions, which are practices common to CBT.

Men are put in hypothetical situations or respond to videos that depict a conflict, and asked to act out or describe their behavioral response. The men in this way are not given avoidance strategies by rote, but have to apply and practice these

¹⁹² Paymar & Barnes, *supra* note 158, at 14.

¹⁹³ See, *infra* Appendices A & B.

¹⁹⁴ Domestic Abuse Intervention Programs, “Wheel Gallery,” <http://www.theduluthmodel.org/training/wheels.html> (last visited January 7, 2016).

¹⁹⁵ National Institute of Justice, “Interventions for Domestic Violence Offenders: Cognitive Behavioral Therapy,” <http://www.crimesolutions.gov/PracticeDetails.aspx?ID=16> (last visited January 7, 2016).

¹⁹⁶ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 5.

*alternative behaviors. Another basic part of CBT, of course, is the cognitive restructuring that exposes thought patterns associated with the behavior of concern and develops replacements for them. CBT addresses excuses, rationalization, and justifications that are often tied to one's attitudes, belief system, or cognitive scripts.*¹⁹⁷

The Power and Control Wheel is also used as a tool of CBT to “counter denial and help individuals take responsibility for their behavior.”¹⁹⁸ The Equality Wheel provides a model for the cognitive re-structuring of participants' attitudes and beliefs. Participants may also keep a control log and an equality log to identify thoughts and beliefs that underlie their use of violence and learn strategies for changing their behavior. Some of the tools of offender programs, such as the control log and equality log, are similar to techniques taught in anger management counseling.¹⁹⁹ An important distinction, however, is that when these techniques are taught in anger management counseling, they are an end in themselves. When the techniques are applied in an offender program they are used as tools to change a batterer's behavior and beliefs about his entitlement to use violence to exercise power and control over his partner.

Every offender program integrates educational techniques with CBT in its own way. For example, DAIP relies on educational techniques to a greater extent than some other offender programs. Emerge and AMEND emphasize CBT to a greater extent.²⁰⁰ Conversely, the New York Model, which follows the educational aspects of offender programs, is purely educational and employs less CBT.²⁰¹

d) Offender programs are part of a Coordinated Community Response

Offender programs are part of a coordinated community response (CCR) to facilitate their twin goals of ensuring offender accountability and promoting victim safety. Participation in a well-functioning CCR is essential to an effective offender program. The Duluth Model program describes the role of the state in the response:

[T]he state must impose controls on the offender to stop the violence, . . . the coercive power of the state should be restricted to the illegal activity of the

¹⁹⁷ Edward Gondolf, *Theoretical and Research Support for the Duluth Model: A Reply to Dutton and Corvo*, 4 (Feb. 14, 2007), <http://www.theduluthmodel.org/pdf/Theoretical%20and%20Research%20Support.pdf> (last visited January 7, 2016).

¹⁹⁸ *Id.*

¹⁹⁹ See, Kerry Healey et al., *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, U.S. Dep't of Justice, 46-47 (Feb. 1998), <https://www.ncjrs.gov/pdffiles/168638.pdf> (last visited January 7, 2016).

²⁰⁰ *Id.* at 46-53; Kerry Healey et al., “Batterer Programs: What Criminal Justice Agencies Need to Know” in *National Institute of Justice: Research in Action*, U.S. Dep't of Justice, 6 (July 1998), <https://www.ncjrs.gov/pdffiles/171683.pdf> (last visited January 7, 2016).

²⁰¹ See, VCS Inc., “The New York Model for Batterer Programs,” <http://www.nymbp.org> (last visited January 7, 2016); see also, California Evidence-Based Clearinghouse for Child Welfare, “NY Model for Batterer Programs,” <http://www.cebc4cw.org/program/ny-model-for-batterer-programs/detailed> (last visited January 7, 2016).

*offender, . . . victims are limited in their ability to hold offenders accountable, and . . . battering creates power differences that need to be accounted for in every intervention.*²⁰²

The primary connection of an offender program to the state is through the court system.²⁰³ Most batterers enter offender programs following a criminal adjudication with probation agreements establishing the expectations for offenders.²⁰⁴ For example, in Duluth, probation agreements typically require an offender to contact DAIP within five working days of his sentencing hearing, attend the next scheduled orientation, and complete the 27-week program. If he does not complete the program, the offender is referred back to his probation officer for possible revocation of his probation for failing to comply with the court's order.²⁰⁵ Similarly, if a batterer is ordered by the court to participate in an offender program as a term of a civil protection order, the consequences of failing to comply with the requirements of the program may be a criminal violation of the order. In cases where the batterer is ordered to participate in an offender program by either a criminal or civil court order, the potential court sanctions for failing to complete the program create a powerful incentive to comply.

In addition to the direct link between the offender program and the courts, a CCR also holds offenders accountable by including the victim's advocate. If an offender fails to comply with program requirements, the victim's advocate can add an important perspective as to what sanction is appropriate. The advocate can also provide important information about the batterer to the victim so the victim can take the necessary safety precautions.

An offender program's participation in a CCR further promotes victim safety by facilitating relationships between offender programs and advocates. Through these relationships, offender programs can better understand the experience of women who live with battering, which allows the programs to improve their curricula and the process for working with batterers.²⁰⁶

e) Offender programs respond to batterers' issues without changing the focus of the program

Some batterers who are mandated to participate in offender programs have problems that make them inappropriate for the program. If the group facilitators determine that a batterer has substance abuse or psychological problems that make him an unsuitable candidate for the program, he may be referred for individual treatment.²⁰⁷ In some cases, batterers are required to

²⁰² The Duluth Curriculum, *supra* note 175, at 33.

²⁰³ Offender programs can connect with courts in the absence of a CCR. However, this connection is strengthened when the connection is formalized through the CCR and the other relevant agencies.

²⁰⁴ Some offender programs allow participants to attend voluntarily. However, the role of the criminal justice system in mandating attendance and overseeing compliance is essential to achieving the goal of offender accountability.

²⁰⁵ The Duluth Curriculum, *supra* note 175, at 34.

²⁰⁶ *Id.* at 32.

²⁰⁷ Paymar, *Violent No More: Helping Men End Domestic Abuse* (2nd ed.) *supra* note 191, at 246-247.

undergo substance abuse treatment before entering the offender program. Other batterers are able to participate in the program in conjunction with additional resources. For instance, an individual may attend the offender program and simultaneously engage in outpatient substance abuse treatment or psychotherapy.²⁰⁸ Others are able to participate in the program with additional resources.

Even when an offender program refers a batterer to substance abuse treatment or psychotherapy, it is not because it considers his psychological problems to be the cause of his violence. Instead, the purpose of referring him for other services is to help him reach a point where he is capable of participating productively in the offender program so that he is more likely to undergo the necessary change in beliefs and behavior. The primary goal of the offender program is always to promote the safety of victims, not to help batterers solve their own problems. When batterers are referred for substance abuse or mental health treatment at the same time they are participating in an offender program, it is important for the program to coordinate with the mental health professional so that the focus of the offender program and the treatment do not undermine each other.²⁰⁹

f) Offender programs have been adapted and modified while maintaining their basic human rights principles

Offender programs are continuously evolving in response to their own experiences and to changes in the communities they serve. They have also been modified as a result of changes in the laws and policies that regulate them. Even as they have evolved, offender programs continue to be based on human rights principles. The Duluth Model offender program has been adapted by programs around the world to meet the needs of communities or participants.²¹⁰ According to the curriculum created for the Duluth Model offender program (Duluth Curriculum):

The Duluth Model is an ever-evolving approach to addressing the needs of women who are battered and holding offenders accountable for their actions. We are continually incorporating new ideas and activities that may increase the safety and well-being of women who are battered, children, and their families. We try new activities that may engage participants more effectively, address culturally-specific needs, make the programs more accountable, or define and measure “success” in meaningful ways.²¹¹

While Duluth Model offender programs recognize the need for change and adaptation for various communities and cultures, it is important to note that these adaptations are done without compromising their core principles.

²⁰⁸ The Duluth Curriculum, *supra* note 174, at 36.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 41; *see also*, Paymar & Barnes, *supra* note 158, at 14.

²¹¹ The Duluth Curriculum, *supra* note 174, at 41.

(1) Adaptations

Countries outside of the United States have adapted the Duluth Model offender program in various ways. Thirty-seven Council of Europe Member States have intervention programs for perpetrators, and many are based on the Duluth Model offender program.²¹² For example, in the United Kingdom, the Ministry of Justice has created offender programs that operate not only through the probation system but in prisons as well.²¹³ In Queensland, Australia, courts issue voluntary intervention orders that require the agreement of the offender to a variety of interventions. These include programs based on the Duluth Model offender program and hybrids that include Duluth Model offender program elements plus other therapeutic models, such as strength-based therapy or acceptance and commitment therapy.²¹⁴

The New Leaf Men's Intervention Program in Nova Scotia, Canada follows a Duluth Model offender program approach and is part of a CCR. "The priority of New Leaf is to address safety concerns for women and children by providing support services to men who are abusive and violent towards their partner/ex-partner and/or children."²¹⁵ In addition to its group work with batterers, New Leaf also carries out educational programs in the community including public and school-based presentations, media outreach and participation in committees on family violence.²¹⁶

Another variation on the Duluth Model offender program is the Community Restoration Program of Men Stopping Violence in Atlanta, Georgia, USA. The Community Restoration Program offers men who have finished a 24-week educational program an ongoing connection, support and the opportunity to volunteer with Men Stopping Violence. The group has done community education, legislative advocacy and now performs orientations for all incoming participants to the Men's Educational Program.²¹⁷

²¹² Council of Europe, *Focusing on the perpetrators to prevent violence against women*, 6 (2014), <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21155&Lang=EN> (last visited January 7, 2016).

²¹³ Karen Bullock et al., *The Delivery of Domestic Abuse Programmes: An Implementation Study of Delivery of Domestic Abuse Programmes in Probation Areas and Her Majesty's Prison Service*, U.K. Ministry of Justice, 1 (July 2010), <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/delivery-domestic-abuse-programmes.pdf> (last visited January 7, 2016).

²¹⁴ Katrina Finn, *Voluntary Intervention Orders and Currently Approved Interventions*, 11(3) CDF Re@der 11-14 (March 2013), <http://www.noviolence.com.au/sites/default/files/ReaderPDFs/readermar2013.pdf> (last visited January 7, 2016).

²¹⁵ Pictou County Opportunity for Men, "New Leaf Men's Intervention Program: History," <http://www.newleafpictoucounty.ca/history.html> (last visited January 7, 2016).

²¹⁶ *Id.*

²¹⁷ Men Stopping Violence, "Community Restoration Program," <http://www.menstoppingviolence.org/programs/community-restoration-2> (last visited January 7, 2016).

(2) Cultural adaptations

Offender programs have also been adapted for culturally specific populations.²¹⁸ One such adaptation of the Duluth Model offender program has been the custom tailoring of the program to meet the needs of the Native American community.²¹⁹ Known as “Mending the Sacred Hoop,” the program addresses patterns of domestic abuse through the lens of Native American culture.²²⁰ Developed and utilized by Native Americans in the same city where the Duluth Model offender program originated,²²¹ the Mending the Sacred Hoop program has been utilized by Native American communities across the United States.²²² Other programs in the U.S. have found that a “non-confrontational, Socratic approach” is effective with some immigrant groups.²²³ Experts emphasize the need to be culturally relevant but ensure that culture is not used to justify the violent behavior.²²⁴ “Ultimately caution must be taken not to excuse, skirt, or diminish the seriousness of violence, but to communicate in ways that lead to the desired attitude and behavior changes that are meaningful and relevant to men.”²²⁵

(3) LGBT adaptations

Offender programs have also been adapted for LGBT batterers. The concept of power and control and other elements of the Duluth Model offender program can serve as the basis for an offender program for batterers in same sex or gender-varied relationships. The abusive partner in a same sex relationship can use threats of “outing” the victim as an additional means of control. Homophobic attitudes in society may make it more difficult for LGBT victims to seek assistance from police, battered women’s shelters, and other protective services.²²⁶ Due to the same negative attitudes towards LGBT individuals, it can be problematic and ineffective to order a gay man who batters his male partner into a traditional offender program with heterosexual men.²²⁷

²¹⁸ Offender programs have been adapted for cultural groups including Latino, Native American, and African American men. See, Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 14.

²¹⁹ Mending the Sacred Hoop, “History,” <http://mshoop.org/about-us/history/> (last visited January 7, 2016).

²²⁰ *Id.*

²²¹ Duluth, Minnesota.

²²² Mending the Sacred Hoop, *supra* note 219.

²²³ Taylor & Barker, *supra* note 33, at 6, referencing the practices used by the Emerge Model.

²²⁴ *Id.* at 13.

²²⁵ *Id.* at 6.

²²⁶ See, Elaine Leeder, “Treatment of Battering in Couples: Heterosexual, Lesbian, and Gay,” in *Treating Abuse in Families: A Feminist and Community Approach* (Springer Publishing Co. 1994); Janice L. Ristock, “The Cultural Politics of Abuse in Lesbian Relationships: Challenges for Community Action,” in *Subtle Sexism: Current Practice and Prospects for Change*, 279-96 (Nijole V. Benodraitis ed., Sage Publications 1997); Carolyn M. West, “Leaving a Second Closet: Outing Partner Violence in Same-Sex Couples,” in *Partner Violence: A Comprehensive Review of 20 years of Research*, 163-83 (Jana L. Jasinski & Linda M. Williams eds., Sage Publications 1998).

²²⁷ Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 286.

(4) Adaptations for women who use violence in heterosexual relationships

The Duluth Model offender program model has also been adapted to create a non-violence curriculum for women who use violence in heterosexual relationships.²²⁸ As previously discussed, women do use violence but the dynamics and effects of that violence are significantly different from men's use of violence.²²⁹ The curriculum was written to help women who are being abused and are struggling with ongoing violence and intimidation, who then use violence to cope. The goals of the curriculum are to help women understand the violence in their lives and to help them take steps to end both the violence they experience and the violence they use.²³⁰

The curriculum recognizes that victims may fight back when being attacked and, as a result, they may be arrested.²³¹ When arrested, women may also be court ordered to attend a batterer group. The authors of the curriculum emphasize the need to differentiate between a participant who uses violence to maintain control in the relationship and one who uses violence to cope with a violent partner.²³²

The authors of the non-violence curriculum for women, point out several differences between men's and women's batterer groups:

1. *In a men's group, facilitators have to break through the men's denial. Women usually admit what they have done and because they feel justified in having used violence, will describe the act and take responsibility for it.*
2. *Men in groups typically do not have injuries. Women often do. Many women are still experiencing a high level of abuse while in the group. Men are not. It is necessary to regularly check in with women regarding their safety.*
3. *Challenging women's violence on a moral basis is not effective. Instead, facilitators challenge the behavior as counter-productive and point out that it may embolden the batterer by giving him something to hold over her head.*
4. *A woman may not see herself as battered if she is fighting back and not just cowering in a corner. Her self-image does not match that of a battered woman. She does not see herself as weak, she pushes back, she does resist.*²³³

²²⁸ Ellen Pence et al., *Turning Points: A Nonviolence Curriculum for Women*, Domestic Violence Turning Points (2011).

²²⁹ *See, supra* Section I(D).

²³⁰ Pence et al., *Turning Points: A Nonviolence Curriculum for Women*, *supra* note 228.

²³¹ *Id.* at 1.

²³² *Id.* at 11.

²³³ *Id.* at 15-16.

2. Counseling Approaches to Batterer Treatment

In contrast to the theory underlying offender programs that domestic violence is a cultural phenomenon, counseling approaches are based on a constellation of psychodynamic theories that aim to uncover the batterer's unconscious problem, assign a psychiatric diagnosis to the batterer, and resolve the violence through talk therapy. Instead of treating domestic violence as a historical and community problem, counseling approaches grounded in a psychodynamic theory treat domestic violence as the result of individual psychological problems, stress,²³⁴ lack of skills, or a dysfunctional relationship. Some counseling approaches have a gendered understanding of domestic violence while others adopt a gender neutral approach and consider men and women to be equal perpetrators.

In offender programs, psychological disorders are considered to be contributing factors rather than causes of domestic violence. In contrast, counseling approaches focus on “the distinctive individual factors and couple dynamics that contribute to violence.”²³⁵ These factors include personality type, psychological syndromes and disorders, trauma history, motivation, and relationship issues.²³⁶

One popular theory underlying counseling approaches is that parental abuse, rejection, and failure to meet a child's dependence needs can be the psychological source of battering. According to this theory, people with these underlying problems may choose partners with whom they can reenact the dysfunctional relationship they had with their parents.²³⁷ Some of the specific disorders that have been associated with perpetrators of domestic violence include post-traumatic stress disorder (probably due to childhood trauma), depression, low self-esteem, antisocial personality disorder, narcissism, and borderline personality disorder. Passive-aggression, paranoia, obsessive-compulsive disorder, and intermittent explosive disorder have also been identified as causes of aggression.²³⁸

A variety of counseling approaches attempt to address the batterer's psychological problems, stresses, or lack of skills. Often applied in combination, these approaches include anger management, substance abuse treatment, family systems counseling and psychotherapy to address past trauma. Just as offender programs may also include psychodynamic aspects such as CBT, some counseling approaches may include characteristics of offender programs. For

²³⁴ Jeff Grabmeier, *Domestic Violence Often Comes From Men Who Repress Emotions, Feel Threatened, Study Finds*, Ohio State University Research (Dec. 9, 2002), <http://researchnews.osu.edu/archive/violstres.htm> (last visited January 7, 2016) (“feelings of stress build up and are released in bursts of violence”).

²³⁵ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 92.

²³⁶ *Id.*

²³⁷ Kerry Healey et al., *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, *supra* note 199, at 21.

²³⁸ *Id.* at 29 n. 19.

example, an Australian program, Breathing Space, focuses on the therapeutic needs of the batterer but ensuring victim safety is an integral part of the program.²³⁹

Counseling approaches to batterers' intervention differ significantly from offender models in that they evolve out of a traditional psychotherapy relationship. This relationship assumes accountability to the client and focuses on addressing his needs and problems. It typically requires that the counselor maintain confidentiality of all information that the client shares with the counselor. Counseling approaches are also more likely to include partners in therapy. The aim is to improve the couple's interpersonal skills and equip the partners with tools to change the dynamics of the relationship that are seen as promoting the violence. Some of the most popular counseling approaches are discussed below.

a) *Anger Management*

The anger management counseling approach attributes the cause of domestic violence to uncontrolled – rather than uncontrollable – anger.²⁴⁰ Anger management counseling teaches batterers to recognize physiological and emotional signs of anger and relaxation techniques to defuse their anger. They may also teach stress management and communication skills.²⁴¹

One of the key techniques taught in anger management programs is the “time-out.” Participants in anger management counseling learn that when they feel angry they should walk away instead of using violence.²⁴² Anger management, including the “time-out” technique, is a standardized tool of the Netherlands' therapeutic approach to domestic violence.²⁴³ According to the Netherlands' protocol, participants' partners are expected to allow and encourage them to take a time-out rather than attempting to continue the conflict.²⁴⁴ Similarly, MensLine in Australia recommends various anger management techniques including the time-out.²⁴⁵ The

²³⁹ Communicare Family and Employment Services, “Communicare Breathing Space,” <http://www.communicare.org.au/Accommodation-Services/communicare-breathing-space.html> (last visited January 7, 2016).

²⁴⁰ In contrast to proponents of anger management who base their techniques on the belief that offenders are able to control their anger, another group believes that domestic violence is the result of uncontrollable anger. Dr. David Adams estimates that only five to seven percent of batterers are unable to control their anger. Even batterers who claim that they are unable to control their anger belie this claim by carefully planning their assaults on their partners. See New Hampshire Coalition against Domestic and Sexual Violence, “Information about Batterers,” http://www.nhcadsv.org/About_Batterers.cfm (last visited January 7, 2016).

²⁴¹ Kerry Healey et al., *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, *supra* note 199, at 24.

²⁴² See e.g., Daniel Sonkin, “Recognizing Your Anger,” <http://www.daniel-sonkin.com/articles/anger.html> (last visited January 7, 2016); Kathryn Robinson, *Seeing Red? How to Cool Off When You're Angry*, The National Domestic Violence Hotline (Jan. 30, 2014), <http://www.thehotline.org/2014/01/seeing-red-how-to-cool-off-when-youre-angry/> (last visited January 7, 2016).

²⁴³ Justine van Lawick and Martine Groen developed a time-out module for the Netherlands' systemic approach to domestic violence in 2003. See Ministerie van Volksgezondheid, Welzijn en Sport [Netherlands Ministry of Health, Welfare and Sport], “Intieme Oorlog [Intimate War],”

<http://www.huiselijkgeweld.nl/interventies/hulpverlening/intiemeoorlog> (last visited January 7, 2016).

²⁴⁴ *Id.*

²⁴⁵ MensLine Australia, “Anger Management: Safe Steps When You Are Angry – Time Out,”

LifeWorks Men's Behavior Change Program in Victoria, Australia incorporates anger management techniques into a program that also includes elements of the Duluth Model offender program and other psychodynamic techniques.²⁴⁶

Some offender programs may also incorporate anger management techniques. When offender programs implement anger management tools, however, the purpose is to assist the batterer in changing his behavior by changing beliefs about his entitlement to use violence to exercise power and control over his partner.

b) Substance Abuse Treatment

Substance abuse treatment is sometimes considered a substitute for, rather than a supplement to, a program that directly addresses a batterer's domestic violence. For example, there is a widespread belief in Mongolia that alcohol abuse causes domestic violence. As a result, its legal system's response to domestic violence has typically been to address alcoholism rather than the violence.²⁴⁷

The reality is that many batterers use excessive amounts of alcohol and/or drugs.²⁴⁸ For example, 34 of 38 participants in the Gold Coast Domestic Violence Integrated Response, a Queensland, Australia batterers' program, had prior substance-related offenses.²⁴⁹ Court systems typically screen for substance abuse in determining offenders' terms of probation. Substance abuse or addiction may make them eligible for certain programs or exclude them from others. Courts in the United Kingdom may order violent offenders to an Alcohol Related Violence Programme (ARVP). An ARVP challenges participants' thinking about alcohol and violence, and examines lifestyles and decision-making.²⁵⁰

c) Family Systems Therapy

The family systems approach to domestic violence views "individual problem behaviors as a manifestation of a dysfunctional family unit, with each family member contributing to the problem."²⁵¹ In contrast to offender programs that focus accountability solely on the batterer, the family systems approach distributes responsibility for the violence to both the batterer and the victim, on the theory that domestic violence is caused by interactions. Even if only one member

http://www.mensline.org.au/Uploads/MLA_safe_steps.pdf (last visited January 7, 2016).

²⁴⁶ Brown & Hampton, *supra* note 182, at 27.

²⁴⁷ The Advocates for Human Rights & the Mongolia National Center Against Violence, *Implementation of Mongolia's Domestic Violence Legislation*, 30 (Jan. 2014),

http://www.theadvocatesforhumanrights.org/uploads/mongolia_report_final.pdf (last visited January 7, 2016).

²⁴⁸ The Duluth Curriculum, *supra* note 174, at 35-36.

²⁴⁹ Andrew Day et al., *Integrated Responses to Domestic Violence: Legally Mandated Intervention Programs for Male Perpetrators*, 404 *Trends & Issues in Criminal Justice* 4, Austl. Inst. of Criminology (Dec. 2010),

http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi404.pdf (last visited January 7, 2016).

²⁵⁰ U.K. Ministry of Justice, "Offender Behaviour Programmes (OBPs),"

<http://www.justice.gov.uk/offenders/before-after-release/obp> (last visited January 7, 2016).

²⁵¹ Kerry Healey et al., *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, *supra* note 199, at 20.

of a couple is physically violent, neither is considered to be the victim or the perpetrator.²⁵² As a result, this approach has been criticized for blaming the victim for the perpetrator's use of violence.²⁵³

The family systems counseling approach focuses on developing healthy communication and conflict resolution skills with a goal of family preservation. A primary technique of the family systems approach is couples counseling.²⁵⁴ Couples are taught communication and conflict resolution skills through “solution-focused brief therapy” that:

- *locates the problem in the interaction rather than in the pathology of one individual;*
- *focuses on solving the problem, rather than looking for causes; and*
- *Accentuates the positive—for example, examining occasions when the couple avoided violence.*²⁵⁵

Couples counseling is also sometimes used after a batterer has completed an offender program, but only if the violence has ended. In those cases, couples counseling is only provided when the following requirements are met:

- *A practitioner is convinced that the battering (violence, coercion, threats, and intimidation) has ended.*
- *The offender has completed a reputable domestic abuse program that focuses on changing sexist beliefs and attitudes about his right to control women.*
- *The battered woman has worked with a victim advocate and has a safety plan.*
- *The battered woman feels safe.*
- *The practitioner has discussed safety issues with [the woman].*²⁵⁶

For example, the Couples Project in Canada provides couples counseling for a victim of domestic violence and her partner only after the batterer has completed an initial offender program and the violence in the relationship has ended. The Couples Project has a strong commitment to non-violence. It only accepts men into the program if they have taken full

²⁵² *Id.*

²⁵³ Taylor & Barker, *supra* note 33, at 7, citing, Saunders, D.G., *Group Interventions for Men Who Batter: A Summary of Program Descriptions and Research*, *Violence and Victims*, 23, 2: 156-172, (2008).

²⁵⁴ Kerry Healey et al., *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, *supra* note 199, at 25.

²⁵⁵ *Id.* at 20.

²⁵⁶ The Duluth Curriculum, *supra* note 174, at 36-37.

responsibility for the violence they perpetrated in the past and will not accept men who have outstanding violence charges against them.²⁵⁷

The Netherlands' systemic approach requires that persons who are directly affected by the batterer's behavior – including but not limited to the batterer's partner – take part in the treatment. The intervention does not distinguish between the victim and the batterer but focuses instead on partners who want to stop the violence.²⁵⁸ It addresses both the behavior of the batterer and the behavior of the victim and her purported role in causing the violence.

The Netherlands family systems approach also categorizes domestic violence, which it refers to as intimate partner violence, in terms of the typologies developed by Michael Johnson.²⁵⁹ The family systems approach to intimate partner violence focuses on two of the types described by Johnson: intimate terrorism and situational couple violence. Intimate terrorism is characterized as using violence to gain and maintain control. Situational couple violence is characterized as violence that may or may not be mutual but is not used to exert or maintain control.^{260, 261}

Proponents of the Netherlands family system state that it is only used in cases of situational couple violence,²⁶² which according to Dutch experts constitutes 80 percent of domestic violence in the Netherlands.²⁶³ Based on this assessment, the majority of victims of intimate partner violence are subject to the family system approach.

The Netherlands' family system counseling approach begins with an assessment of the batterer and victim to create an individual treatment plan. The formulation takes into account the preexisting education, history, unique ideas, emotions and behavior of the individuals and the factors that led to the violent behavior. According to Sander van Arum, Chief Clinical Director at

²⁵⁷ Nova Scotia Dep't of Justice Victim Services Division, *A Review of the Effectiveness and Viability of Domestic Violence Interventions as an Adjunct to the Formal Criminal Justice System*, 24 (June 2001), <http://novascotia.ca/just/publications/docs/Adjunctive.2.pdf> (last visited January 7, 2016).

²⁵⁸ Telephone interview with Nico van Oosten, Senior Advisor on Domestic and Sexual Violence, Movisie (Oct. 31, 2013) (Maintaining the role of victim and perpetrator does not help the ultimate goal of the intervention when partners want to stay together. Rather it strengthens the past differences and will not help to restore the balance and equality in the relationship.) (Notes on file with authors.).

²⁵⁹ Johnson, *supra* note 175. For a more detailed discussion of Michael Johnson's typologies of violence, *see infra* Section III(D).

²⁶⁰ Johnson, *supra* note 175, at 5.

²⁶¹ The Netherlands family system approach uses the typologies proposed by Johnson despite his warning that such theories have not been tested and may be extremely dangerous or lethal when applied in "real life." *See, Id.*, at 72; *see also, infra* Section III (D).

²⁶² Telephone interview with Birgit de Cnodder, Psychotherapist & Clinical Psychologist and Supervisor, AFPN – a forensic outpatient psychiatry clinic in Groningen, Netherlands (Nov. 12, 2013) (A summary of the conversation is available on request.) (Notes on file with authors.).

²⁶³ *Id.*; Telephone interview with Marloes van der Sande, Senior Advisor of Public Affairs, Federatie Vrouwenopvang (Dec. 12, 2013) (Notes on file with authors.); *Cf. Special Rapporteur on Violence against Women, Mission to the Netherlands, supra* note 86, at para. 29 (Three quarters of domestic violence victims are women. Male victims tend to be boys, teenagers and the elderly.).

De Waag psychiatric clinic in the Netherlands, the systematic therapy involving both partners is divided into three phases:

1. The partners learn to improve short-term safety by using different strategies and refraining from risky situations. Most of this phase involves psycho-education. When it has been determined that the partners' safety has reached an acceptable level they move to the second phase.
2. The partners learn relationship skills to improve their long-term safety. These skills focus on listening and learning how to negotiate and compromise. During this phase, the partners are supposed to gain insight on their own weaknesses and patterns that lead to violence.
3. The partners focus on independent improvement with less involvement by the therapist. They are supposed to develop a plan for handling conflict. Meetings with the therapist become less frequent.²⁶⁴

According to the tenets of the Netherlands family system approach, if a participant's safety cannot be guaranteed at any time during the treatment, the partners will move back to phase one or repeat the intake assessment. Participants are taught to use the time-out to prevent violence and improve their safety.²⁶⁵ They are taught that when the individual who normally uses violence feels angry, he should take a time-out and his partner should allow him to do so rather than attempting to continue the conflict.

d) Therapy to Address Past Trauma

Another counseling approach to domestic violence is based on the theory that the batterer's violence is the result of negative and perhaps traumatic experiences in childhood. Some studies of male batterers have shown that witnessing domestic violence or being a victim of abuse as a child is linked to inability to trust and regulate one's emotions. According to these studies, the result is hostile, dependent, insecure adults who are unable to form healthy adult relationships.²⁶⁶ One response to these findings is to address the violence through individual psychotherapy.

²⁶⁴ Telephone interview with Sander van Arum, Chief Clinical Director at De Waag – a center for outpatient forensic psychiatry in the Netherlands (Jan. 14, 2014) (Notes on file with authors).

²⁶⁵ Justine van Lawick and Martine Groen developed the time-out module in 2003; *see also*, Ministerie van Volksgezondheid, Welzijn en Sport [Netherlands Ministry of Health, Welfare and Sport], *supra* note 243.

²⁶⁶ David A. Wolfe & Peter G. Jaffe, *Emerging Strategies in the Prevention of Domestic Violence*, 9(3) *Domestic Violence & Children* 134, *The Future of Children* (Winter 1999), https://www.princeton.edu/futureofchildren/publications/docs/09_03_9.pdf (last visited January 7, 2016) (citing Donald G. Dutton, *Male Abusiveness in Intimate Relationships*, 15 *Clinical Psychology Review* 567-81 (1995); *see also*, Amy Holtzworth-Munroe et al., *Violent versus Nonviolent Husbands: Differences in Attachment Patterns, Dependency, and Jealousy*, 11(3) *Journal of Family Psychology* 314-31 (Sept. 1997)).

One type of psychotherapy recommended for domestic violence batterers is based on attachment theory. Attachment psychotherapy is premised on the belief that men who use violence predominantly or exclusively in intimate relationships likely have an attachment disorder.²⁶⁷ The attachment disorder is the result of early childhood fear of abandonment or trauma:

*In many cases, domestic violence perpetrators present with unresolved trauma, loss, and other emotionally laden relationship experiences that must be worked through cognitively, emotionally and physically. Victims of physical, sexual, and psychological maltreatment will experience a range of emotional reactions to this exploration process from depression to rage.*²⁶⁸

Attachment psychotherapy begins with creating a safe place for the client to explore “thoughts, feelings and experiences.”²⁶⁹ The therapist should respond to the client with “empathy and attunement,” “as a surrogate mother” who, in effect, replaces the client’s negative childhood experiences with a positive therapeutic relationship. The therapeutic goals are “learning emotional self-regulation or resolving childhood trauma.”²⁷⁰

C. Effectiveness of Batterer Programs

Research suggests that “batterer intervention contributes to the eventual cessation of violence for the vast majority of men referred to batterer programs, and the reduction of other forms of abuse over time.”²⁷¹ The debate continues, however, over the effectiveness of different types of batterer programs. Some critics argue that current models are ineffective because they rely excessively on the criminal justice system and group programs for men.²⁷² Most critics of offender programs argue in favor of counseling approaches and some experts suggest that different intervention models should be used based on the typology of the batterer’s violence.²⁷³

²⁶⁷ Daniel Sonkin & Donald G. Dutton, *Treating Assaultive Men from an Attachment Perspective* (2003), <http://www.danielsonkin.com/articles/attachment.html> (last visited January 7, 2016).

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 6; *see also*, Taylor & Barker, *supra* note 33, at 8.

²⁷² *See*, Edleson, *supra* note 181, at 3, referencing criticism by other researchers.

²⁷³ *See, infra* Section III(D); *see also*, Lori L. Heise, *What Works to Prevent Partner Violence: An Evidence Overview*, Strive (Dec. 2011),

<http://strive.lshtm.ac.uk/system/files/attachments/What%20works%20to%20prevent%20partner%20violence.pdf>

(last visited January 7, 2016) (Heise applies an ecological framework (a public health approach) to domestic violence. She advocates an integrated response that gives equal weight to social and historical factors, psychodynamic factors and other elements. Heise asserts that evidence has shown that criminal justice response and CCR, key elements of offender programs, have been unsuccessful in reducing domestic violence. However, the studies Heise relies upon do not focus specifically on batterer programs and are subject to the same flaws discussed in this section.).

Proponents of Duluth Model offender programs have responded that “the Duluth Model, in its true form, provides an effective, ethical framework to address battering given scarce resources.”²⁷⁴ Michael Paymar, an expert on the Duluth Model and Duluth Model offender programs, has further clarified that “many critics erroneously consider the Duluth curriculum to be the same thing as the Duluth Model; the curriculum is only one piece of the Duluth Model, an overall community intervention approach that, when implemented properly, unquestionably enhances the safety of victims.”²⁷⁵

Researchers Donald Dutton and Kenneth Corvo have been among the most outspoken critics of the Duluth Model offender program. They disagree with its underlying philosophy of gender-based power and control, assert that mandatory arrest for batterers is counterproductive, claim that violence by women is as frequent and severe as that of men, and that CCR drains resources that should be used for other forms of treatment, including couples counseling. They assert that the Duluth Curriculum shames men and is ineffective at stopping violence. They propose that counseling approaches be pursued in place of Duluth Model offender programs.²⁷⁶

Experts Michael Paymar and Graham Barnes analyzed research and criticism of the Duluth Model offender program from various sources, pointing out significant flaws in Dutton and Corvo’s methodology, analysis, and characterization of the Duluth Model offender program.²⁷⁷ In addition to consistently misrepresenting the Duluth Model offender program, Dutton and Corvo expose their own biases when they state, “according to the Duluth Model, all [men] must be treated as patriarchal terrorists regardless of differences in how the violence developed.”²⁷⁸

Empirical studies have also been critical of offender programs. In 2003, the National Institute of Justice (NIJ) presented the results of two studies and concluded that “there is little evidence that [batterer programs] work,” while also acknowledging many shortcomings of the studies upon which it relied.²⁷⁹ Indeed, the studies reported by NIJ were flawed in a number of ways that relate to core elements of offender programs. Most significantly, the studies did not indicate whether the programs studied were part of a CCR, and in many cases, swift, consistent

²⁷⁴ Paymar & Barnes, *supra* note 158, at 1.

²⁷⁵ Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), citing Paymar & Barnes, *supra* note 52 at 280; *see also, supra* note 158, explaining that the term Duluth Model refers to the larger coordinated response to domestic violence developed in Duluth, Minnesota. The term “Duluth Model offender program” is used throughout this report to refer to the model of batterer programs also developed in Duluth, Minnesota. As emphasized by Michael Paymar, the “Duluth Curriculum” or, as referred to in this report, the “Duluth Model offender program” is one part of a larger response to domestic violence known as the Duluth Model.

²⁷⁶ Donald G. Dutton & Kenneth Corvo, *Transforming a Flawed Policy: A Call to Revive Psychology and Science in Domestic Violence Research and Practice*, 11 *Aggression & Violent Behavior* 457-83 (2006), <http://domestic-violence.martinsewell.com/DuttonCorvo2006.pdf> (last visited January 7, 2016).

²⁷⁷ Paymar & Barnes, *supra* note 158.

²⁷⁸ Dutton & Corvo, *supra* note 276, at 464.

²⁷⁹ Shelly Jackson et al., *Batterer Intervention Programs: Where Do We Go from Here*, U.S. Dep’t of Justice, at 23-26, (June 2003), <https://www.ncjrs.gov/pdffiles1/nij/195079.pdf> (last visited January 7, 2016).

consequences did not occur in response to violations of court-ordered conditions or program requirements.²⁸⁰

It is precisely because practitioners of offender programs recognize their limitations that the programs continue to evolve and adapt as needs are identified.²⁸¹ Gondolf, an expert on batterer programs, suggests that the reason empirical studies have shown a lack of effectiveness in reducing recidivism is because of “a subgroup of unresponsive batterers who appear to account for the experimental lack of effect.”²⁸² He explains that some batterers, because of the severity of their use of violence and high-risk of repeated violence, are either outside the reach of most programs or “warrant enhanced supervision, containment, and treatment.”²⁸³ Gondolf proposes that instead of abandoning the offender programs, the risk of highly dangerous offenders be managed within the programs by better containing these men and protecting their partners through an enhanced CCR.²⁸⁴

Most of the studies on the effectiveness of batterer programs focus on the United States. There is increased effort to evaluate and create minimum standards for batterer programs in Europe as well. The expert group Work with Perpetrators European Network (WWP-EN) oversaw the “Daphne III Impact: Evaluation of European Perpetrator Programmes” project that ran from 2013-2014. The project was a multi-phase endeavor to examine existing monitoring methods of batterer programs and provide guidance for evaluating future programs in Europe.²⁸⁵ WWP-EN’s initial survey research found “great diversity in outcome monitoring among programmes” and a need to improve and harmonize these methods of evaluating programs in Europe.²⁸⁶

In addition to Working Papers documenting the project’s progress and findings,²⁸⁷ the project created a “WWP-EN Programme Database” to gather knowledge on existing batterer programs in Europe and registering with the database grants programs access to additional resources.²⁸⁸ As a final product, the project published an “Impact Monitoring Toolkit” for programs to use in monitoring the effect of their work with batterers.²⁸⁹ The Toolkit also

²⁸⁰ Paymar & Barnes, *supra* note 158, at 3.

²⁸¹ *See, supra* Section III(B)(1).

²⁸² Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166 at 71-72.

²⁸³ *Id.* at 5, 169-170.

²⁸⁴ *Id.* at ch. 5.

²⁸⁵ Work with Perpetrators European Network (WWP-EN), “The Impact Project,” <http://www.impact.work-with-perpetrators.eu/index.php?id=13> (last visited January 7, 2016).

²⁸⁶ Heinrich Geldschläger et al., *Outcome Measurement in European Perpetrator Programmes: A Survey*, Work with Perpetrators European Network (WWP-EN), 3 (Jan. 2014), http://www.impact.work-with-perpetrators.eu/fileadmin/WWP_Network/redakteure/IMPACT/Daphne_III_Impact_-_Working_paper_1_-_Outcome_Measurement_in_European_Perpetrator_Programmes_-_A_Survey.pdf (last visited January 7, 2016).

²⁸⁷ Work with Perpetrators European Network (WWP-EN), “Working Papers,” <http://www.impact.work-with-perpetrators.eu/index.php?id=14> (last visited January 7, 2016).

²⁸⁸ *Id.* at “WWP-EN Programme Database,” <http://www.work-with-perpetrators.eu/index.php?id=62> (last visited January 7, 2016).

²⁸⁹ *Id.* at “Impact Monitoring Toolkit,” <http://www.impact.work-with-perpetrators.eu/index.php?id=16> (last visited

provides programs with a structure to report outcome, and facilitates the accumulation of data on programs throughout Europe for future analysis and evaluation by the WWP-EN network.²⁹⁰

Project Mirabal, akin to the Impact Project, provides a potentially new direction for batterer program evaluation in Europe. Project Mirabal conducted significant data collection and analysis of domestic violence perpetrator programs in the UK and, in its final report, suggested more nuanced program success measures that go beyond the traditional focus of whether the violence has stopped.²⁹¹ In addition to re-defining program success, experts highlight the importance of creating minimum standards for program practice and accreditation to ensure quality batterer programs.²⁹²

D. Domestic Violence Typologies and Their Program Implications

Academics and practitioners have developed alternative theories of domestic violence including those based on identifying different typologies of batterers.²⁹³ One typology approach that has received significant attention was developed by Michael P. Johnson, who identified four types of domestic violence: intimate terrorism, violent resistance, situational couple violence, and mutual violent control.²⁹⁴ According to Johnson, intimate terrorism is the result of a power and control dynamic.²⁹⁵ Intimate terrorism is the most recognized form of domestic violence and the most likely to trigger system interventions, including batterer programs.²⁹⁶

Johnson emphasizes, however, that not all types of intimate partner violence are based on the need to exercise ongoing control over a partner or the relationship. He posits that situational

January 7, 2016).

²⁹⁰ *Id.* at “Impact toolkit guidelines,” http://www.impact.work-with-perpetrators.eu/fileadmin/WWP_Network/redakteure/IMPACT/PDF_Toolkit_rev_2015/English/IMPACT%20toolkit%20guidelines.pdf (last visited January 7, 2016).

²⁹¹ Kelly, L. and Westmarland N., *Domestic Violence Perpetrator Programmes: Steps Towards Change*, Project Mirabal Final Report. London and Durham: London Metropolitan University and Durham University (2015), <https://www.dur.ac.uk/resources/criva/ProjectMirabalfinalreport.pdf> (last visited January 7, 2016); *see also*, Respect, *Respect briefing paper: evidence base for intervention with domestic violence perpetrators*, (updated January 2015), <http://respect.uk.net/wp-content/uploads/2015/03/Respect-FULL-briefing-paper-Evidence-base-for-interventions-with-domestic-violence-perpetrators-Jan-2015.pdf> (last visited January 7, 2016);

²⁹² Hester & Lilley, *supra* 189, at 15; *see also* European Institute for Gender Equality (EIGE), *Preventing domestic violence - Good practices*, Publications Office of the European Union (2015), http://eige.europa.eu/sites/default/files/documents/MH0114678ENN_WEB.PDF (last visited January 7, 2016) highlighting as good practices program standards and accreditation for work with perpetrators in Germany and the United Kingdom.

²⁹³ *See e.g.*, Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116(3) *Psychological Bulletin* 476-97 (1994), http://psych.indiana.edu/tradition/Holtzworth-Munroe_and_Stuart_1994.pdf (last visited January 7, 2016); *see also* Johnson, *supra* note 175.

²⁹⁴ Johnson, *supra* note 175.

²⁹⁵ *Id.*, at 25. Johnson also acknowledges that the majority of intimate terrorism is perpetrated by men against their female partners.

²⁹⁶ *See, Id.*, at 25, 79-80.

couple violence is the most prevalent form of intimate partner violence and is the result of situation-specific conflicts, not a desire to maintain control in a relationship.²⁹⁷

Johnson suggests that the distinctions between types of intimate partner violence may have implications for interventions, including batterer programs. He states that distinctions already exist and points to the two primary models, which are consistent with the offender program and counseling approach models described above. According to Johnson, the “feminist psycho-educational model” may be more effective for intimate terrorists, while the model that focuses on interpersonal skills and anger management may be more effective for situational couple violence.²⁹⁸

Creating typologies for domestic violence is not a new phenomenon and Johnson’s categories of domestic violence have some relevance to an overall understanding of domestic violence. There is, however, enormous risk in creating domestic violence policy and intervention based on theoretical distinctions that rely on practitioners’ ability to accurately categorize domestic violence. Research may eventually confirm whether the typologies developed by Johnson and others are appropriate to influence interventions. Until they do, the risk, borne by the lives and bodies of victims, is that violence will be mischaracterized, needs of victims will be ignored, and offenders will not be held accountable. This risk is especially pronounced in countries where a gender-based understanding of domestic violence is not widely recognized.

Johnson himself acknowledges that there is very little research validating the typologies for their practical implications and that there is harm in applying them before their accuracy is verified:

[R]esearch that makes explicit distinctions among types of intimate partner violence is still in its infancy. We still do not have definitive answers to many of the questions to which we need answers in order to make decisions about policy and practice with regard to intimate partner violence.

We can live with that sort of ambiguity in the world of social research. Science is, after all, a continuous process that is constantly involved in the correction of its errors and in the refinement and verification of its theories. The use of those theories in “real life” is a much more risky proposition. In the area of intimate partner violence, people’s lives are at stake, quite literally. So, as we consider the possibility of different interventions for different types of intimate partner violence, one theme must be central: safety first.²⁹⁹

²⁹⁷ *Id.*, at 5, 11.

²⁹⁸ *Id.* at 79-80 (at 79 n. 21 cites the Duluth Model offender program as the primary example of the feminist psycho-educational model).

²⁹⁹ *Id.* at 72.

Johnson warns that while there may be different types of violence, any type can result in severe injury or death.³⁰⁰ He also acknowledges that there is a history within the criminal justice system of minimizing the severity of domestic violence and often mischaracterizing it as situational couple violence.³⁰¹ Furthermore, services often offered for situational couple violence, such as couples counseling, can be extremely dangerous for victims of intimate terrorism.³⁰² As such, Johnson emphasizes that all domestic violence should be assumed to be intimate terrorism until it is clear that it is something else.³⁰³

The harm caused by mischaracterizing domestic violence is so severe that it warrants an approach that will protect those most vulnerable and most at risk. The history of minimizing the severity of domestic violence is common around the world. Implementing any typology of violence theory assumes a trained system that will accurately identify and respond to the different types of violence. The reality is that systems are often not ready to accurately make such important distinctions and regularly mischaracterize both the type and severity of violence being used.

Furthermore, because resources for domestic violence responses are extremely limited in many places around the world, supporting even one model of a batterer program may be extremely difficult; adopting a model that requires numerous versions of such programs may be completely unsustainable. Recognizing this difficulty, Johnson suggests that if only one model can be implemented, the feminist psycho-educational model (with the Duluth Model offender program as the example) is the most appropriate because the type of violence most likely to engage the criminal justice system is intimate terrorism.³⁰⁴ What Johnson describes as the feminist psycho-educational model is consistent with the offender program model recommended in this report.

E. Conclusion of Program Model Descriptions

Many experts believe that counseling approaches to working with batterers have “diverted attention to the batterers’ psychological well-being and away from victim’s safety.”³⁰⁵ The Advocates agrees with this analysis and believes that the offender program model embedded within a coordinated response to domestic violence is more effective in protecting victims and holding offenders accountable for their criminal conduct. These goals are the original goals of the offender program model and are grounded in human rights principles. In contrast, counseling

³⁰⁰ *Id.* at 74.

³⁰¹ *Id.* at 55.

³⁰² *Id.* at 75, stating “For example, couples counseling (often recommended as a remedy for communication skills deficits) would place a victim of intimate terrorism in the position of going into counseling sessions with a man who may kill her for telling the truth.”

³⁰³ *Id.* at 75.

³⁰⁴ *Id.* at 25, 79-80.

³⁰⁵ See e.g., Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at xii.

approaches, by focusing predominantly on the individual psychological well-being of the batterer or the victim's role in the violence, are less conducive to working within a CCR. Counseling approaches, if practiced alone, can leave victims vulnerable to continued violence and do little to change the underlying beliefs of entitlement that allow for the use of violence in the first place. By placing the psychological health of the perpetrator above the safety of the victim or the perpetrator's own accountability for the violence, the counseling approach is not consistent with international human rights standards.

IV. Recommendations

Batterer programs have the potential to create change in both batterers and society at large.³⁰⁶ They can play a unique role in holding offenders accountable for their use of violence and protecting victims during this process. It is important to be realistic, however, about the role that batterer programs can play in ending domestic violence and not rely on batterer programs as a stand-alone cure to domestic violence.³⁰⁷ While not a cure, batterer programs can play an important role within a coordinated systems response to domestic violence.

As with any intervention, care must be taken when creating batterer programs to avoid unintended consequences that cause further harm to victims and fail to hold offenders accountable. Not every system is ready to incorporate a program for batterers that prioritizes victims' needs. Batterer programs continue to evolve as evidence becomes available as to the effectiveness of individual models. As the countries in CEE/FSU continue to develop their responses to domestic violence and consider including batterer programs as a form of intervention, The Advocates recommends that the decision to adopt or promote any model be guided by human rights principles and incorporate best practices.

While no batterer program model is perfect, guidance exists regarding factors to consider when creating a batterer program. In 2009, a group of domestic violence and batterer intervention experts from the United States identified the ideal components of a batterer intervention program. A model program should involve:

1. *Partnering with individuals and organizations to enhance accountability and offer a range of services;*
2. *Working closely with the court and probation to monitor court-ordered referrals;*
3. *Creating a solid program infrastructure, which includes ongoing training and supervision of staff and implementing policies that are consistent with best practices;*
4. *Developing coordinated community responses that go beyond legal sanctions;*
5. *Shaping interventions and programs based on input from adult survivors and children;*

³⁰⁶ Carter, *supra* note 165, at 12. Report from 2009 expert group found “BIPs continue to have a significant role to play in ending violence against women.”

³⁰⁷ The Duluth Curriculum, *supra* note 174, at 15.

6. *Using risk assessment and risk management to provide more effective interventions for individual men who batter; and*
7. *Engaging men early in their roles as parents and partners.*³⁰⁸

Many of these key elements have been echoed in international law guiding domestic violence interventions.³⁰⁹ An Explanatory Report to the Istanbul Convention states:

*Domestic violence intervention programmes should be based on best practice and what research reveals about the most effective ways of working with perpetrators. Programmes should encourage perpetrators to take responsibility for their actions and examine their attitudes and beliefs towards women. This type of intervention requires skilled and trained facilitators. Beyond training in psychology and the nature of domestic violence, they need to possess the necessary cultural and linguistic skills to enable them to work with a wide diversity of men attending such programmes. Moreover, it is essential that these programmes are not set up in isolation but closely co-operate with women's support services, law enforcement agencies, the judiciary, probation services and child protection or child welfare offices where appropriate. Participation in these programmes may be court-ordered or voluntary. In either case, it may influence a victim's decision to stay with or leave the abuser or provide the victim with a false sense of security. As a result, priority consideration must be given to the needs and safety of victims, including their human rights.*³¹⁰

The Work with Perpetrators European Network (WWP-EN) has also created guidelines for programs seeking to create batterer programs.³¹¹ These guidelines draw from and are consistent with international law and best practices. Similar to the principles mentioned above, the WWP-EN guidelines emphasize a gendered understanding of domestic violence, prioritizing victim safety, and collaborating with victim services and intervention systems as preconditions to working with batterers.³¹² In addition, the WWP-EN guidelines provide direction for working with batterers including ways to contact partners, instructions for and qualifications of facilitators, and the importance of risk assessment.³¹³

³⁰⁸ Carter, *supra* note 165, at 7.

³⁰⁹ Council of Europe, *Explanatory Report on the Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 110, at art. 16 paras. 102-105.

³¹⁰ *Id.* at art. 16 para. 104.

³¹¹ Work with Perpetrators European Network (WWP-EN), *Guidelines to Develop Standards for Programmes Working with Male Perpetrators of Domestic Violence*, Daphne II Project (2006–2008), http://www.work-with-perpetrators.eu/fileadmin/WWP_Network/redakteure/2006_-_2012/guidelines/wwp_standards_2008_vers_1_1.pdf (last visited January 7, 2016). The guidelines are available in 17 languages and can be easily downloaded via their website.

³¹² *Id.*

³¹³ *Id.*

The collaborative briefing paper sponsored by Promundo, Rutgers WPF, MenEngage, and MenCare+, includes recommendations as well as cautions for implementing batterer programs.³¹⁴ Foremost amongst these is a list of six “preconditions” affirmed by MenEngage that must exist for the implementation of batterer programs.³¹⁵ The experts insist that “if these components are not in place, programs should not proceed.”³¹⁶ The list endorses the key elements mentioned by other experts:

1. *Position and implement PM-IPV [Programs for Men who have used Intimate Partner Violence] as part of an integrated approach, and develop a community coordinated response.*
2. *Prioritize ethical standards and the safety and well-being of women and children;*
3. *Conduct risk assessments and develop risk management plan.*
4. *Develop a model and train staff in the principle of holding men accountable for having used IPV, for completing programs, and for ending their use of violence while also believing in their potential to change.*
5. *Use gender transformative approaches to train staff in addressing men’s childhood experiences and personal background, issues of societal tolerance of violence, and norms around masculinity, including men’s justifications for violence.*
6. *Know the IPV situation in your country.*³¹⁷

Additional experts provide similar guidance for batterer programs and group facilitators.³¹⁸

Considering all the information available on the theories of violence, program effectiveness and best practices, The Advocates recommends the offender program model of batterer intervention. Some of the counseling approaches discussed in Section III(B)(2) may have value when applied as a supplement to an offender program. As the sole or primary approach of a batterer program, however, they can be extremely dangerous and potentially lethal. Counseling approaches may incorporate human rights principles to a greater or lesser extent; but

³¹⁴ Taylor & Barker, *supra* note 33.

³¹⁵ *Id.* at 3 – 5.

³¹⁶ *Id.* at 3.

³¹⁷ *Id.* at 3 – 5. The six items listed are the titles of the preconditions. The briefing paper includes commentary for each item.

³¹⁸ See e.g., Paymar, *Violent No More: Helping Men end Domestic Abuse* (2nd ed.), *supra* note 191; Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52; Hester & Lilley, *supra* 189. This paper reviews perpetrator programs in Europe, identifies key principles for perpetrator programs, and provides a checklist for perpetrator programs, with the aim of providing policymakers guidance on fulfilling Article 16 of the Istanbul Contention.

because the focus of a counseling approach is on the individual batterer or relationship needs, the human rights of the victim are secondary or incidental. Furthermore, because the concept of coordinated community response (CCR) is a community response that applies a victim-centered strategy, the very concept of CCR is contrary to the individual focus of a counseling approach. Consistent with these guiding principles and the domestic violence intervention strategies discussed in Section II, The Advocates recommends the following considerations for batterer programs in CEE/FSU countries:

1. Prioritize victim safety and offender accountability;
2. Be part of a system's comprehensive response to domestic violence;
3. Share a common philosophy of domestic violence that recognizes it as a gendered phenomenon; and
4. Be part of a coordinated community response that links individuals and agencies, especially the criminal justice system and victim advocates.

A. Prioritize Victim Safety and Offender Accountability

The first goal of any intervention to domestic violence, including working with batterers, is to stop the violence and keep victims safe.³¹⁹ To accomplish this goal, domestic violence must be recognized as a crime and batterers must be held accountable for their violence. The criminal justice system plays a critical role in holding offenders accountable and motivating them to change.³²⁰ Since their inception, offender programs have been closely linked to the criminal justice system, using the threat of jail or fines to encourage offenders to participate in programs and deter further acts of violence.³²¹ The counseling approaches discussed in Section III(B)(2) are typically less connected with the criminal justice system response to domestic violence and do not focus on working with domestic violence as a criminal offense.³²²

Batterer programs, the criminal justice system, and all other interventions must reinforce the message of accountability in every interaction with a batterer. Batterers should receive a consistent message that domestic violence is a crime that will not be tolerated and that those who use violence will be held accountable.³²³ Batterer programs can further support victims by reinforcing the message that women have the right not to be beaten.³²⁴ Programs that fail to

³¹⁹ See e.g., *supra* Section II.

³²⁰ Johnson, *supra* note 175, at 81.

³²¹ The Duluth Curriculum, *supra* note 174, at 14.

³²² Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 2.

³²³ Coomaraswamy, *supra* note 14, at 11.

³²⁴ Jacobson & Gottman, *supra* note 34, at 140.

prioritize these twin messages risk colluding with offenders and minimizing their responsibility for their criminal conduct.³²⁵ In addition, programs that do not prioritize victim safety may cause further harm to the victims:

*For example, one practitioner stated that their programme ‘communicates with the victim through the abuser’, which may place victims at increased risk for further abuse by increasing their isolation, masking the true behaviours of the abuser, or revealing safety plans to the abuser.*³²⁶

The offender program model maintains a link to the criminal justice system, and thereby carries the goals and messages of domestic violence intervention throughout its operations. The primary purpose of the offender program model is to protect victims from their batterers; any benefit to the participants is intended to serve the long-term safety of their current and future partners. An offender program “recognizes and responds to the advocacy, safety and empowerment needs of the women whose partners are in the program.”³²⁷

An offender program holds itself accountable to the victims of domestic violence rather than to the participants. This understanding frames the structure and elements of the program. As discussed previously, one of the signature ways that an offender program protects victims is through its approach to communications and confidentiality. In the Duluth Model offender program, all participants must waive their right to confidentiality so that program facilitators may share information with the criminal justice system and victim advocates regarding threats to the safety of victims or other failures to comply with program requirements.³²⁸ At the same time, offender programs preserve the confidentiality of victims’ communications with the program.³²⁹

Counseling approaches, on the other hand, focus primarily on the batterer’s needs, family unity, and the victim’s role in the violence. Removed from the criminal justice system, counseling approaches fail to serve as a deterrent or adequate alternative to probation or jail. The professional obligation to maintain the confidentiality to the batterer as their client is a barrier to sharing important information about threats, progress, and safety with the victim and/or her advocate and the criminal justice system. Accordingly, the focus on the batterer’s needs may sacrifice victim safety.

B. Be Part of a System’s Response to Domestic Violence

Batterer programs should be viewed as one piece of a system’s comprehensive response to domestic violence. They should not be considered or expected to be a stand-alone cure for

³²⁵ The Duluth Curriculum, *supra* note 174, at 15.

³²⁶ UN World Health Org., *Intervening with Perpetrators of Intimate Partner Violence: A Global Perspective*, 17 (Emily F. Rothman et. al, ed., 2003).

³²⁷ The Duluth Curriculum, *supra* note 174, at 33.

³²⁸ *Id.* at 26.

³²⁹ *Id.* at 25.

domestic violence. If a system's overall response to domestic violence is not functioning effectively, a program for batterers will also be less effective and potentially dangerous. As Gondolf states, "[u]ltimately, to improve batterer programs the system of which they are a part needs to function better. Making that happen requires the collaboration of all players involved in intervention."³³⁰

At a minimum, a country must first have an established legal framework that criminalizes domestic violence and provides criminal and civil protections for victims before it can implement an effective batterer program. In addition, if the individual elements of a system's response to domestic violence do not function well, they will be unable to interact effectively in a coordinated response. As discussed below, a functioning CCR involving all stakeholders in the system's domestic violence response is critical to an effective domestic violence response and, in turn, to an effective offender program. In addition, if sufficient resources are unavailable to address domestic violence, not only will an offender program be ineffective, but it can cause harm by reducing the funds available for essential victim services such as shelters and hotlines.

The reality is that not every country or jurisdiction has a system that functions at a level in which an effective offender program can be implemented. A study on behalf of the Council of Europe points out the pitfalls of attempting to implement batterer programs without the support of a system that responds effectively to domestic violence:

*Court-mandated participation is thus only effective if there is legal follow-up when the man fails to attend, and in the different legal systems this can be difficult to organize. If the case is dismissed on condition of the perpetrator agreeing to attend a programme, it usually cannot be recalled to the courtroom when he drops out. Even when a suspended sentence is conditional on attendance, there may in fact be no follow-up There may be too few referrals to form a training group Courts are unwilling to require more than a brief course, inadequate to bring about change. If the perpetrator program is seen as an alternative to punishment, the end result may be that neither takes place. For the future, it is clearly vital to challenge and reduce violent behaviour of men, but the difficulties are considerable and the programmes do not substitute for protecting women.*³³¹

The responses to domestic violence in many countries in CEE/FSU are relatively new and still face many barriers to effective implementation. If a country decides to pursue programs for batterers, it must also continue to focus on the effective functioning of the system of which the program will be a part.

³³⁰ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 10.

³³¹ Hagemann-White & Bohn, *supra* note 97, at 29.

C. Share a Common Philosophy of Domestic Violence

As discussed, a systems response to domestic violence, and the interventions within that response, will be more effective if they operate according to a common theory of violence. Domestic violence should be understood as a distinctly gendered phenomenon. Interventions based on this understanding have a common foundation to ensure that agency responses are consistent with one another and share the common goal of protecting the victim.

International and regional law recognize that violence against women, including domestic violence, is a manifestation of the historically unequal power relationships between men and women and that violence is used by batterers as a way to establish and maintain power and control over their partners. A long history of cultural and legal practices have allowed and supported men's abuse and domination of women. Those practices have only begun to change in the last 40 years.³³² This understanding is further supported through research exposing the overrepresentation of women as victims and men as perpetrators of domestic violence.³³³

The continued oppression of women contributes to the challenges to ending violence against women and domestic violence.³³⁴ As a result, long-term sustainable change requires individuals and systems to redefine gender roles and the belief that men have the right to dominate women. Interventions that fail to adopt a gendered response to domestic violence will fail to address systems of discrimination against women that are the root cause of domestic violence and will, therefore, be ineffective in stopping domestic violence.

Research has shown that an individual man's attitude towards women impacts the likelihood that he will be involved in domestic violence.³³⁵ Therefore, for a batterer to change, he must accept full responsibility for his violence and abandon deeply engrained beliefs of entitlement.³³⁶ To accomplish this goal, facilitators of batterer program groups must be trained in the human rights-based understanding of the dynamics of domestic violence.³³⁷ This is especially true for facilitators originally trained in traditional therapy, mental health, or substance abuse treatment.³³⁸

³³² Lundy Bancroft, *Why Does He Do That? Inside the Minds of Angry and Controlling Men*, 321 (The Berkeley Publishing Group, 2002).

³³³ The U.S. Department of Justice reports that from 1994–2010, four in five victims of domestic violence were women. Catalano, *supra* note 15; The European Institute for Gender Equality found that 90 percent of the victims of intimate partner violence in the European Union are women, European Institute for Gender Equality, *supra* note 11, at 18.

³³⁴ Jacobson & Gottman, *supra* note 34, at 55.

³³⁵ Johnson, *supra* note 175, at 106.

³³⁶ See, Bancroft, *supra* note 332, at 345; Council of Europe, *Explanatory Report on the Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 110, at para. 104.

³³⁷ Council of Europe, *Explanatory Report on the Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 110, at art. 18 para. 115; Carter, *supra* note 165, at 7.

³³⁸ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 6, 15; The Duluth Curriculum, *supra* note 174, at 41–42; *see also*,

The most well-known and widely-tested offender programs are grounded in a theory of violence based on power and control and apply a gendered, victim-centered strategy. They also require participants to take full responsibility for their behavior as a condition of program participation.³³⁹ Batterer interventions that apply a gender neutral approach to domestic violence, such as the family systems therapy approach, fall outside this well-established human rights framework of best practices for domestic violence interventions and have been criticized for doing so.³⁴⁰ Even when counseling approaches recognize the gender dynamics of domestic violence, when used alone, they operate on the theory that violence is caused by something other than the batterers' conscious decision to use violence to maintain power and control. Instead, these counseling approaches are based on the theory that something else, such as substance abuse, past trauma, anger issues, poor communication, or even the victim herself, caused the violence. As a result, the batterer is provided an excuse and is not required to take responsibility for his use of violence. The goal of such approaches is to work with batterers to control their anger, stay sober, communicate better, or resolve past trauma rather than deconstructing the underlying beliefs of superiority or entitlement that promote the use of violence in the first place.³⁴¹

D. Be Part of a Coordinated Community Response

In addition to the fundamental components of system intervention, the systems response must be coordinated and multidisciplinary. As discussed in Section II(D), CCRs facilitate the effectiveness of a system's multiple interventions to domestic violence. Batterer programs should be a part of that coordinated response and work with other individuals and agencies to increase their effectiveness.³⁴²

Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 268. While acknowledging the value of the mental health field, Paymar warns that many mental health practitioners are not sufficiently knowledgeable of the dynamics of domestic violence and, as a result, perpetuate beliefs and continue practices that are not effective responses to domestic violence and might be harmful for victims.

Many mental health practitioners are well-informed about domestic abuse issues. Unfortunately others still have little contact with battered women's advocates, they are insufficiently trained in the dynamics of battering, they provide marriage counseling at inappropriate times, and their agencies have weak policies regarding offenders who use violence while in the program.

³³⁹ Paymar, *Violent No More: Helping Men End Domestic Abuse*, (2nd ed.), *supra* note 191, at 243; Bullock et al., *supra* note 213, at 6.

³⁴⁰ See e.g., Committee on the Elimination of Discrimination against Women, *List of Issues and Questions with Regard to the Consideration of Periodic Reports: The Netherlands*, *supra* note 86; Special Rapporteur on Violence against Women, *Mission to the Netherlands*, *supra* note 86; Taylor & Barker, *supra* note 33, at 7.

³⁴¹ See, Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 268, stating that "Focusing on the individual psychological problems of an offender at the expense of challenging his beliefs and attitudes about women and male entitlement will not produce significant changes in his behavior."

³⁴² Carter, *supra* note 165, at 7; European Crime Prevention Network, *supra* note 292, at 5; Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 117; Taylor & Barker, *supra* note 33, at 3 and 7, "Research shows that PM-IPV (and interventions such as mandatory arrest and prosecution policies) reduce return to prison most effectively when they are part of a coordinated community and criminal justice system response that monitors compliance of men who have used IPV with terms of probation and with attendance in PM-IPV."

Building batterer programs within a functioning CCR involves linking agencies and stakeholders together for increased oversight of offender compliance, combined trainings and protocols, and increased information sharing for referral services and for victim needs.³⁴³ When a batterer program functions within a CCR, the entire system works together to assess risk, determine a response, and manage the response.³⁴⁴ Experts have gone so far as to recommend that batterer programs that are not built into a CCR system be terminated.³⁴⁵

1. Links with the Criminal Justice System

Coordination with the criminal justice system is a vital component of a batterer program.³⁴⁶ Batterer program involvement in a CCR increases offender accountability because the program links the offenders to the criminal justice system including law enforcement, judges, and probation services. When batterers are court mandated to participate in batterer programs, they are forced to acknowledge criminal responsibility for their use of violence. The criminal justice system plays a fundamental role in responding to the initial abuse and recommending the appropriate response to a given case, including jail, probation, or participation in a batterer program as an alternative to jail or part of probation. If the batterer program exists within a CCR, program staff is able to share information with other systems actors on the men's behavior, facilitate monitoring, and report problems.³⁴⁷ A batterer program should work “closely with the court and probation to monitor court-ordered referrals.”³⁴⁸

Linking to the criminal justice system ensures that the offender receives the appropriate consequences for failing to complete the program or comply with its terms.³⁴⁹ Indeed, dropping out of a batterer program has been linked to recidivism.³⁵⁰ As a result, if batterers are mandated to participate in the program by the court, there must be sanctions for non-completion of the program.³⁵¹ If the program is voluntary, there are no official sanctions imposed for non-

³⁴³ Carter, *supra* note 165, at 8-9; Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 117; *see also*, Taylor & Barker, *supra* note 33, at 3 and 14. Specifically, MenEngage and its partners recommend establishing partnerships and networks with the following four sectors for a coordinated community response: 1. Increase awareness among judges, judicial system, and police; 2. Engage health care and social workers (for making referrals); 3. Groups for women and children working with the same goal; and 4. Staff of similar PM-IPV and violence prevention groups.

³⁴⁴ *See*, Taylor & Barker, *supra* note 33, at 7.

³⁴⁵ Jacobson & Gottman, *supra* note 34, at 233.

³⁴⁶ Carter, *supra* note 165, at 7.

³⁴⁷ *See e.g.*, Taylor & Barker, *supra* note 33, at 13, stating that attendance-checking by partners or social services or legal personnel can increase attrition.

³⁴⁸ Carter, *supra* note 165, at 7.

³⁴⁹ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 13; Edward W. Gondolf, *Batterer Intervention Systems, Issues, Outcomes, and Recommendations*, 136-137 (Sage 2002).

³⁵⁰ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 11.

³⁵¹ “[E]ven the best court-mandated treatment programs are likely to be ineffective in the absence of a strong legal response in initial sentencing and in sanctioning offenders who fail to comply with treatment.” Taylor & Barker, *supra* note 33, at 11, citing, Babcock, J.C., Green, C.E., & Robie, C. (2004). Does Batterers’ treatment work? A

completion. In this case, Gondolf recommends following up with batterers who leave the program even if their participation is voluntary.³⁵²

2. Links with Victim Advocates

The benefits of including a batterer program in a functioning CCR goes beyond increased accountability for offenders. As the Council of Europe recognized, whether a batterer is court mandated to a program or attends a program voluntarily, his participation in the program alone:

*may influence a victim's decision to stay with or leave the abuser or provide the victim with a false sense of security. As a result, priority consideration must be given to the needs and safety of victims, including their human rights.*³⁵³

It is vital that a batterer program involve interagency collaboration and coordination that goes beyond the criminal justice system and includes programs that provide services to victims. The batterer program's connections to victim advocacy groups help facilitate the necessary focus on victims' needs.³⁵⁴

Domestic violence interventions, including batterer programs, should be based on the experience of and input from survivors of domestic violence.³⁵⁵ In turn, victim advocacy groups can use the information they receive from batterer programs to inform victims about the program and thus avoid the batterer controlling or manipulating the information he receives in the program. In addition, advocates can mitigate victims' expectations of change. Programs can avoid giving victims a false sense of security by emphasizing that a batterer has only *completed* the program rather than saying that he *successfully completed* the program. The Abuser Education program at Emerge warns that "abusers are very good at manipulation, and may show signs of change or make it seem like they have changed without actually having changed."³⁵⁶ Most importantly, the information batterer programs share with the victims can help them with safety planning and making decisions about their own lives.³⁵⁷

meta-analytic review of domestic violence treatment outcome research, *Clinical Psychology Review*, 23, 1049.

³⁵² Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 10.

³⁵³ Council of Europe, *Explanatory Report on the Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 110, at para. 104.

³⁵⁴ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 11.

³⁵⁵ Carter, *supra* note 165, at 7.

³⁵⁶ Emerge, "Signs of Change," <http://www.emergedv.com/index.php/dv-resources/signs-of-change/> (last visited January 7, 2016). The Emerge website provides a list of indicators that may show the batterer is changing with the caveat that the victim is the best judge of whether her partner is in fact changing. They also provide a list of indicators that show that a batterer has not changed his attitude about violence: *see* Emerge, "Signs of NOT Changing," <http://www.emergedv.com/index.php/dv-resources/signs-of-not-changing/> (last visited January 7, 2016).

³⁵⁷ Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 263.

Effective domestic abuse programs provide advocacy to the men's partners so they know what is being covered in groups. Women can talk with a victim advocate or with other women in similar situations about the progress – or the lack of progress – their partners are making. As a result some

Batterer programs, however, should only connect with victims and advocacy groups for limited purposes and in ways that will promote the safety of victims. As discussed below, victims should not be required to participate in program sessions or counseling. Mandatory participation exposes victims to potential violence and promotes the misconception that they share responsibility for the offender's use of violence. Additionally, the information victims share should be kept confidential to avoid retribution from angry batterers.

3. Capacity for Coordinated Community Response

Although the importance of a CCR and the inclusion of a batterer program within a CCR is widely recognized, not all batterer programs are equally conducive to being included in a functioning CCR. As discussed in Section III(B)(1), the offender program model recognizes that domestic violence is a problem that affects the entire community and therefore requires a community response. Most offender program participants are court mandated, and communication with the criminal justice system continues throughout the batterer's participation in the program. Offender program staff members interact and communicate with other agency representatives within a CCR, including victim advocacy groups. Beyond sharing information, offender program staff members establish rapport and trusting relationships with those agency representatives. These relationships lead to increased awareness of warning signs of risky situations and collaboration on solutions to avoid additional violence.³⁵⁸

Batterer interventions that are predominantly based on counseling approaches are not conducive to operating within a CCR. Even though some batterers may be court mandated to counseling, these interventions do not intrinsically share a CCR's grounding in a theory of violence based in power and control or a commitment to a victim-centered response. Because their focus is on the batterer, counseling approaches have no duty to build relationships with or provide support to victims or communicate with other community representatives.

Counseling approaches, such as attachment disorder psychotherapy or substance abuse treatment, give little consideration to victim safety or the system's response to domestic violence, because their sole focus is on "empathy and attunement" with the batterer or the batterer's sobriety. Because psychotherapy aimed at addressing past trauma does not recognize a social or historical basis for domestic violence and does not recognize the need for a community response, there is no basis for connecting with a CCR. To the extent that some counseling

women lower their expectations that their abusive partners will change, and they choose to reevaluate their relationships.

³⁵⁸ See, *Id.* at 260. Recounting his own experiences as a facilitator of batterer groups, Michael Paymar warns that it is difficult, even for a program facilitator, to assess whether a participant in a batterer program is undergoing real change. As a result, coordination with other professionals in the system is vital.

Throughout my years of facilitating domestic groups, I have had many likeable and articulate participants who have done horrific things to their partners. Without accurate information from the partner, victim advocates, or the criminal justice system, it's easy for practitioners to get conned.

approaches, such as family systems therapy, reach out to victims, the purpose of doing so is not to provide information to help the system or victims make decisions to improve their safety. Instead, these communications are designed to identify the victim's role in the violence and to involve her in practices that may be dangerous to her, such as couples counseling.³⁵⁹ Without accountability to victims, counseling approaches cannot prioritize victim safety and are therefore unsuited for inclusion in a CCR.

E. Make Referrals

The reality is that many batterers use excessive amounts of alcohol and/or drugs and some – but not all, and certainly not the majority – of batterers suffer from mental illness or past trauma.³⁶⁰ But just as substance abuse or mental illness does not cause domestic violence, substance abuse or mental health treatment does not cure it. Accordingly, batterers may continue to batter even when they are sober or have addressed their mental health issues.³⁶¹ As David Adams, a founder of Emerge, asks, “Are you waiting until you’re healthy to stop battering?”³⁶² It is harmful and irresponsible to take the position that batterers must be healthy before they can be expected to stop battering their partners. Victims have a right to be free from violence regardless of the condition of the batterer. These issues should be understood and treated as problems separate from domestic violence.³⁶³

Instead of focusing solely on substance abuse, mental illness, or past trauma, as counseling approaches do, a batterer should receive referrals prior to, during or after participating in an offender program. Whereas some counseling approaches, such as substance abuse treatment, may supplement an offender program, family systems therapy should never be used in conjunction with an offender program. It is only appropriate after successful completion of a program and only when there is confirmation with some level of certainty that the violence has ended so the victim's safety can be ensured.³⁶⁴

³⁵⁹ See, *supra* Section III(B)(2).

³⁶⁰ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166 at 6.

³⁶¹ Paymar, *Violent No More: Helping Men End Domestic Abuse* (2nd ed.), *supra* note 191, at 106.

³⁶² The Duluth Curriculum, *supra* note 174, at 43 (quoting David Adams, founder and co-director of Emerge).

³⁶³ Paymar, *Violent No More: Helping Men End Domestic Abuse* (2nd ed.), *supra* note 191, at 106.

The [second] problem with accepting alcohol and drug abuse as an excuse for violence is that society, friends, and family – and often the mental health community – may view alcohol or drugs as the primary problem. Many people assume that if a substance abuse problem is resolved, the abuse and violent behavior will end. This is a dangerous assumption for the partner of an abusive man. People who abuse alcohol or drugs and act violently have two problems – not one. They need to address both.

³⁶⁴ See, *supra* Section III(B)(2)(c) and *supra* notes 250 and 251.

F. Avoid Harmful Practices

1. Couples Counseling

It is widely accepted that couples counseling is a dangerous and ineffective approach to domestic violence. According to Michael Paymar, a leading expert on batterer programs:

*Marriage counseling, quite simply, can be dangerous to a victim of spousal abuse. If a woman freely discusses relationship issues before important criteria are met, she risks physical and emotional retribution by the man who abused her. Victims speak of [having] been beaten in the parking lot of a therapist's office, in the car, or later at home after a counseling session.*³⁶⁵

Similarly, Michael Johnson states that:

*[C]ouples counseling (often recommended as a remedy for communication skills deficits) would place a victim of intimate terrorism in the position of going into counseling sessions with a man who may kill her for telling the truth.*³⁶⁶

Existing perpetrator programs also express concern with couples counseling and resist using it as a response to domestic violence in their work with perpetrators.³⁶⁷

Paymar further explains that “the very nature of counseling implies that something is going to change.”³⁶⁸ The reality, however, is that many batterers do not think they have done anything wrong, do not want to change, and would likely batter again under similar circumstances.³⁶⁹ Paymar also warns that practitioners are not always able to tell if there is ongoing violence in a relationship or if one partner is intimidated. Paymar states, “[f]or survival purposes victims must be very good at hiding what’s actually happening in their relationships.”³⁷⁰ Moreover, from a practical standpoint, a counselor cannot work effectively with a couple while violence continues. The counselor cannot help the couple learn to listen to each other when the batterer is unwilling to compromise, power cannot be redistributed in the

³⁶⁵ See e.g., Paymar, *Violent No More: Helping Men End Domestic Abuse* (2nd ed.), *supra* note 191, at 226.

³⁶⁶ Johnson, *supra* note 175, at 75).

³⁶⁷ See e.g., Respect, *Respect briefing paper: evidence base for intervention with domestic violence perpetrators*, *supra* note 291; see also, Emerge, “Couple Counseling?,” <http://www.emergedv.com/index.php/dv-resources/couples-counseling/> (last visited January 7, 2016).

Couples counseling may allow abusers to stay focused on their criticisms of you, instead of dealing with their own problems. They may even retaliate against you physically or verbally for what you say to the counselor. You may also be put under pressure to give up certain things that are important to you in return for their giving up their violence. Abuse is a problem with the abuser, not a problem in the relationship.

³⁶⁸ Paymar, *Violent No More: Helping Men End Domestic Abuse* (2nd ed.), *supra* note 191, at 221.

³⁶⁹ *Id.* at 221 – 222.

³⁷⁰ Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 23.

relationship if the batterer is unwilling to give up control, and the victim will be afraid to speak freely about relationship issues and the violence if she is afraid of retaliation.³⁷¹

The reality is that some couples stay together after domestic violence has occurred and may benefit from counseling only if certain safety criteria are met first.³⁷² However, like other alternatives to offender programs, there are many inherent risks to couples counseling. These risks include diversion of scarce resources from victim services and more effective batterer interventions, a false sense of security for victims as well as the criminal justice system, and giving the wrong message to batterers and victims about the cause of and their responsibility for the battering.³⁷³ Therefore, couples counseling is not a recommended response to domestic violence and should only be available in limited circumstances.³⁷⁴

2. Use Skills Training Techniques with Caution

Counseling approaches often focus on teaching skills to manage anger, reduce stress, and improve communication as techniques to stop violent behavior. Most offender programs object to providing these skills training techniques as a single focus but may incorporate them or refer batterers to them as supplementary therapy. For example, the Emerge program in Cambridge, Massachusetts, USA offers a separate anger management program but explicitly rejects participation by batterers.³⁷⁵ Emerge does, however, incorporate some of these elements in its offender program.³⁷⁶

Whether these techniques are integrated into an offender program or whether batterers are referred to a separate program for training, these skills training techniques must be recognized as supplemental and not the primary focus of a batterer intervention. As previously discussed, offender programs are based on the understanding that domestic violence stems from the historically unequal power relations between women and men, and require that batterers accept responsibility and modify their underlying beliefs of entitlement. Addressing other issues alone

³⁷¹ The Duluth Curriculum, *supra* note 174, at 36-37.

³⁷² See list of factors to consider before using couples counseling above in Section III(B)(2)(c). The Duluth Curriculum, *supra* note 174, at 36-37; *see also*, Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 270.

³⁷³ *See e.g.*, Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 270-271; *see also*, Respect, *Respect briefing paper: evidence base for intervention with domestic violence perpetrators*, *supra* note 291.

³⁷⁴ *See, supra* note 372; *see also*, Taylor & Barker, *supra* note 33, at 12, stating “[m]ediation and anger management were not well recommended in the evaluation literature, nor was couples counseling, unless safeguards are in place that ensure women feel safe and have not suffered severe violence.”

³⁷⁵ Emerge, “Anger Management,” <http://www.emergedv.com/index.php/anger-management/> (last visited January 7, 2016):

The Anger Management program is not suitable for people who are abusive in intimate partner relationships. Abuse in a relationship can include the use of anger. People enrolled in the Abuser Education group may also participate in the Anger Management program if they have anger issues outside of their intimate partner relationships.

³⁷⁶ Healey et al., “Batterer Programs: What Criminal Justice Agencies Need to Know,” *supra* note 200, at 6.

does nothing to change the underlying beliefs that promote the batterers' use of violence in the first place:

Anger management alone usually won't stop a man who batters from using violence; it may provide an intermittent respite when religiously practiced, but fundamental behavioral change will occur only when the offender begins to change his beliefs and attitudes about men, women and entitlement. Time-outs, if used effectively, will calm a tense situation, but they won't resolve the issue.³⁷⁷

While techniques, such as "time-outs," can be useful, especially as a temporary measure in the early stages of an intervention, they can also be dangerous and counter-productive if the techniques are used to avoid addressing the real causes of battering.³⁷⁸ The "time-out" technique can allow batterers to evade responsibility and become another means for the batterer to control his victim.³⁷⁹

Batterers may feel angry if they are unable to control their partners but anger is not the cause of battering. Accordingly, anger management and skills training are not suitable primary responses to domestic violence:

- Batterers' lack of violence outside of the home shows that they are able to control their anger.
- Batterers may assault their partners when they are angry, but they can also be controlling, threatening, and physically, sexually, and emotionally violent when they are not angry.
- Although batterers may appear out of control, they often strategically use anger to keep their victims in line.
- Many batterers believe their feelings are more important than those of their partners. They control their partners with expressions of other emotions in addition to anger. For example, a person who does not batter might tell his partner he is feeling jealous, while a batterer who feels jealous may engage in battering behavior, such as stalking, to control his partner.³⁸⁰

Anger management and other skills training as stand-alone approaches "typically don't challenge [batterers'] underlying belief that they have the *right* to use their anger to manage their

³⁷⁷ Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 272.

³⁷⁸ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges*, *supra* note 166, at 8-9; *see also*, R.M. Tolman & D. G. Saunders, *The Case for the Cautious Use of Anger Control with Men Who Batter*, 11(2) *Response* 15-20, (1988).

³⁷⁹ *See*, Healey et al., *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, *supra* note 199, at 24, 46-47; *see also*, Respect, *Respect briefing paper: evidence base for intervention with domestic violence perpetrators*, *supra* note 291.

³⁸⁰ New York State, "What Do Professionals Need to Know: Understanding Domestic Abusers," <http://www.opdv.ny.gov/professionals/abusers/excuse1.html> (last visited January 7, 2016).

partner. They don't teach them to take responsibility for how they hurt others with their anger."³⁸¹ In fact, these techniques may actually teach batterers new methods of control. For example, a batterer may take "time-outs" to avoid responding to his partner's concerns. He may simply walk away if he does not want to listen or feels that his partner may be winning an argument. He may turn the information he has gained in anger management classes against his partner. When she gets angry for legitimate reasons, he may accuse her of having anger issues and ignore the underlying reasons for her anger.³⁸² Furthermore, stand-alone anger management programs are not typically linked to a CCR and have been shown to be ineffective at changing abusive behavior in batterers.³⁸³

When these counseling approaches are integrated into or used as a supplemental referral to an offender program, therapists should teach the techniques in a way that acknowledges and incorporates an understanding of the fundamental power and control dynamic. Many therapists, however, may not have the necessary training to identify and address the underlying social/historical issues. The Duluth Curriculum recommends that mental health practitioners who work with batterers incorporate the following approaches into their practices:

- *Seeing social problems and inequalities, as well as male entitlement to control, as a significant part of the reason why men abuse women.*
- *Having a strong commitment to a coordinated community response and system change beyond their immediate service provision role.*
- *Providing services and advocacy to victims in-house with a strong focus on confidentiality for victims and accountability for offenders.*
- *Actively challenging the practice of other mental health professionals who do not prioritize victim safety or offender accountability in their work.*
- *Employing staff because of their experience in the field and then offering training to complement that.*
- *Using supervisors who are familiar with the issues and connected with either advocates or staff who are providing direct services to women who are battered. The perspectives of women who are battered are routinely sought for guiding the work.*
- *Employing therapists who also work on systems change.*³⁸⁴

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ Respect, *Respect briefing paper: evidence base for intervention with domestic violence perpetrators*, *supra* note 291.

³⁸⁴ The Duluth Curriculum, *supra* note 174, at 43.

Skills and techniques to control anger, reduce stress, and improve communications may be valuable additions to batterer programs but they should not be adopted as an alternative, and they should be applied with a gender-based understanding of domestic violence.³⁸⁵

G. Incorporate Risk Assessment and Management

Effective risk assessment and risk management can increase the effectiveness of batterer programs.³⁸⁶ Accurate risk assessment is necessary to protect victims and to determine the best ways to monitor batterers.³⁸⁷ Accurately assessing risk levels can protect victims by identifying which batterers are likely to re-offend and when the severity of violence may increase.³⁸⁸ This information can be used by victims to make decisions in safety planning. Additionally, accurate risk assessment may improve the effectiveness of offender programs by identifying offenders who need increased monitoring and filtering out batterers whose use of violence is so severe and risk of continued violence so high that they are beyond the reach of an offender program.³⁸⁹

Incorrectly assessing risk can prove to be dangerous and even fatal for victims. Conducting accurate risk assessment requires significant training for system stakeholders at all levels including facilitators of batterer programs.³⁹⁰ Historically, domestic violence has been minimized by the criminal justice system and continues to be difficult to categorize.³⁹¹ Domestic violence may be miscategorized because of a failure to recognize a predominant aggressor and properly identify the victim's use of violence in self-defense.³⁹² Miscategorization may also occur because of the belief that a country has obtained full gender equality and women have equal power.³⁹³

³⁸⁵ Similarly, parenting/fatherhood programs may have value when incorporated into a coordinated community response to domestic violence, but they are not a substitute to a batterer program. Importantly, care must be taken to adjust traditional parenting programs to the dynamics of domestic violence. *See, Respect, Respect briefing paper: evidence base for intervention with domestic violence perpetrators, supra note 291.*

³⁸⁶ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice, supra note 166, at 3-4, see also, 189-197; Carter, supra note 165, at 7.*

³⁸⁷ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges, supra note 166, at 15-16; see also, Gondolf, The Future of Batterer Programs: Reassessing Evidence-Based Practice, supra note 166, at 189-197.*

³⁸⁸ Adams, *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations and Challenges, supra note 166, at 15-16.*

³⁸⁹ *See e.g., Gondolf, The Future of Batterer Programs: Reassessing Evidence-Based Practice, supra note 166, at 3-4; 191-192.*

³⁹⁰ *Id.* at 195; *see e.g., Respect, Respect briefing paper: evidence base for intervention with domestic violence perpetrators, supra note 291.*

³⁹¹ Johnson, *supra note 175, at 76.*

³⁹² The Advocates for Human Rights, "Determining the Predominant Aggressor," (2010), http://www.stopvaw.org/determining_the_predominant_aggressor (last visited January 7, 2016) (explaining that in order to identify the predominant aggressor, the police must understand the dynamics of domestic violence. Police must identify which injuries are due to self-defense and which are offensive injuries. The police must also look beyond the visual evidence and consider the context of the act of violence by identifying controlling behavior in the predominant aggressor and fear in the victim. Police must be able to recognize the tactics of power and control).

³⁹³ Special Rapporteur on Violence against Women, *Mission to the Netherlands, supra note 86, at para. 23:*

Conducting a risk assessment should not be an isolated event at the start of an intervention. Risk management should be ongoing and a risk assessment should be conducted at various times throughout the monitoring of cases.³⁹⁴ Circumstances change and while the risk of severe violence may initially appear low, domestic violence often increases in severity over time. For instance, when a victim initially decides to stay with a batterer, she may not appear to be in grave danger. If she subsequently decides to leave, however, her risk of significant harm will likely increase and the system may not respond appropriately if the risk assessment is only conducted at the initial intervention.

Offender programs continue to evolve and adapt to meet emerging needs, as discussed in Section III(B)(1)(f). One opportunity for improvement is through increased accountability and containment of the most dangerous batterers through “heightened court oversight,” “more extensive probation supervision,” and “additional protections and resources for battered women.”³⁹⁵ A more active approach to risk management can be accomplished in a number of ways. It may involve “specialized probation officers,”³⁹⁶ “longer batterer program attendance,” and additional services.³⁹⁷ Sanctions for violating terms of probation, including failure to comply with requirements of batterer programs, may be more severe for higher risk and repeat offenders.³⁹⁸

Effective risk management is highly dependent on an effective CCR. According to Gondolf, “[t]he components in orchestrating risk management might be summarized as monitoring, treating, supervising, and planning for potential victims’ safety.”³⁹⁹ Monitoring includes: 1) review and surveillance of cases through an advocate’s contact with the victim; 2) a probation officer’s monitoring of compliance with treatment; and 3) a batterer program’s reporting of the offender’s compliance with program requirements and his behavior in group sessions.⁴⁰⁰ Supervision may be more intensive than monitoring. It could include restricting contact with the victim and limiting possession of weapons, as well as electronic monitoring or

23. *The weaknesses in the institutional framework for the promotion of gender equality may to some extent be a reflection of a widespread yet erroneous perception that the emancipation of native Dutch women has been successfully completed and is now self-sustainable. Many of the authorities assume that remaining challenges concern only women belonging to immigrant communities. This is not the case.*

³⁹⁴ See, Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 3-4; 189-190; 193-194; see also, Taylor & Barker, *supra* note 33, at 4, recommending the use of several periodic assessment tools, including other things, “a safety plan, a client assessment, an aggression questionnaire, a substance dependency assessment, and a behavior-monitoring box.”

³⁹⁵ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, *supra* note 166, at 1.

³⁹⁶ *Id.* at 186.

³⁹⁷ *Id.* at 187.

³⁹⁸ *Id.* at 188.

³⁹⁹ *Id.* at 190.

⁴⁰⁰ *Id.*

additional probation visits.⁴⁰¹ Safety planning with the victim includes developing strategies for “escape, support and protection.”⁴⁰²

All of these initiatives require the effective collaboration of a high-functioning CCR.⁴⁰³ An example of such an effort is The Blueprint for Safety, an interagency response to domestic violence crimes developed by Praxis International with participation from criminal justice practitioners. Under The Blueprint, victim safety is prioritized and risk assessment is built into every stage of a domestic violence response. To facilitate ongoing assessment of danger, The Blueprint includes specific protocols for all systems actors at all levels of intervention that include risk-related questions and guidance for interpreting danger levels. The Blueprint for Safety was first implemented in 2010 in St. Paul, Minnesota, USA and has since been adapted for other communities in the United States.⁴⁰⁴

As mentioned, an offender program will be more effective in assessing risk if it is connected to such a system approach. Furthermore, it is vital that facilitators of any batterer intervention model, offender program or counseling approach, are trained in the dynamics of domestic violence so they can adequately assess risk to victims.⁴⁰⁵

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.* at 190-91; 194; 196-197.

⁴⁰⁴ Paymar, *Violent No More: Helping Men End Domestic Abuse* (3rd ed.), *supra* note 52, at 296, referencing The Blueprint for Safety, Praxis International, www.praxisinternational.org (last visited January 7, 2016).

⁴⁰⁵ See e.g., Respect, *Respect briefing paper: evidence base for intervention with domestic violence perpetrators*, *supra* note.

V. Conclusion

Interventions focused on batterers have received increased attention around the world. Whether such interventions are effective is the topic of much debate, and reviews are mixed. Programs that work with batterers have become diverse in their theoretical underpinnings, methods, and approaches making evaluation and comparison difficult. Ongoing evaluation is essential to improving the effectiveness of batterer programs.

Countries considering batterer programs should look to international law and best practices that guide domestic violence interventions generally. Countries may also look to programs that have evolved over the past 40 years and guiding principles that can provide the framework for new programs. Before creating a batterer program, a country should determine whether their domestic violence intervention system is prepared to incorporate a batterer program. Continued attention to a comprehensive systems response to domestic violence is necessary to ensure that all interventions, including batterer programs, are effective.

The most effective batterer interventions acknowledge the gender dynamics of domestic violence and work towards eliminating individual and societal beliefs that perpetuate men's use of violence to maintain control of their partners. In addition, an emerging batterer program should identify and promote victim safety as its fundamental goal. As new programs are created, care should be taken to avoid practices that can harm victims and undermine offenders' responsibility for their violent behavior. Continuing efforts should be made to improve a system's ability to accurately assess the level of risk a batterer presents and increase oversight and continued accountability of offenders in programs as necessary to protect victims.

Existing programs differ in their success in achieving these goals, and no program model has proven to be perfect. Based on available information, however, if a country decides that it is appropriate to devote resources to creating a batterer program, The Advocates recommends that countries follow the offender program model rather than the counseling approach model because it better meets the goals and guidelines set forth in international law and recognized best practices.

APPENDICES

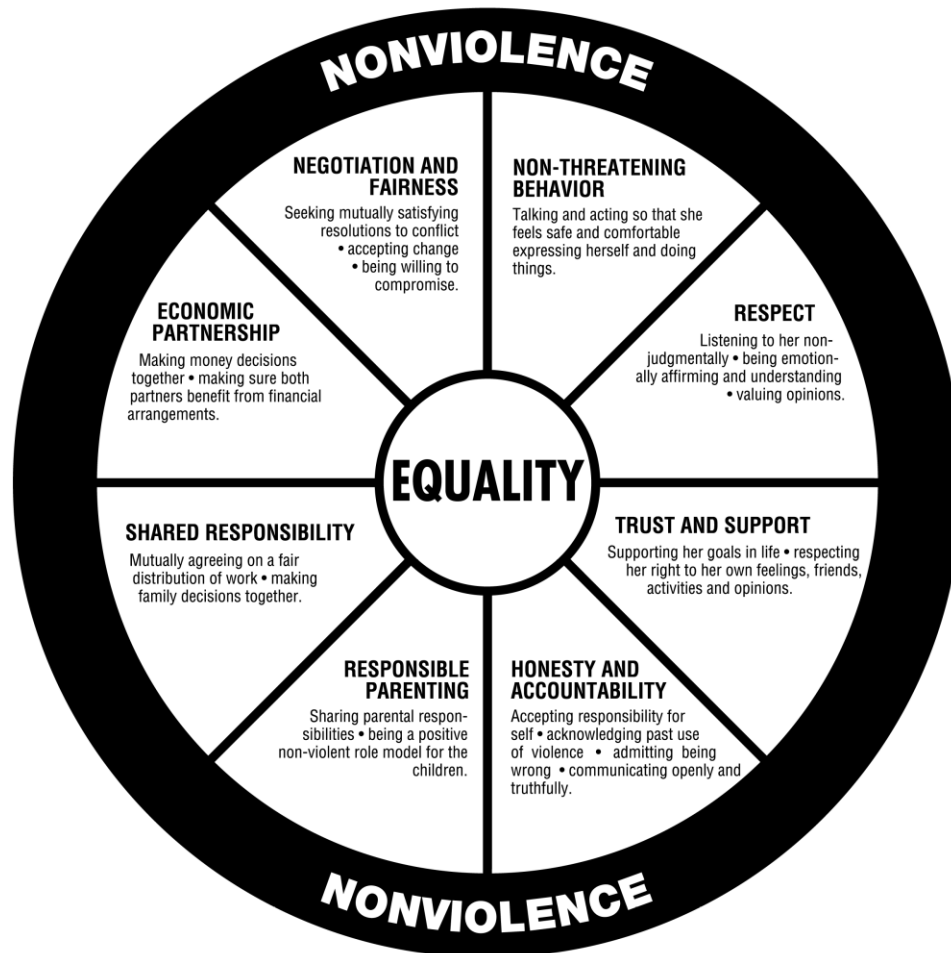
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