



FIRST
Action Against
Violence

Co-funded by the Rights,
Equality and Citizenship (REC)
Programme of the European Union



Project FIRST – Capacity Building for First Points of Contact for Victims of Domestic and Gender-based Violence

Field Analysis and Overview



"This material has been produced with the financial support of the Rights, Equality and Citizenship (REC) Programme of the European Union. The contents of this publication are the sole responsibility of Project FIRST- Capacity Building for First Points of Contact for Victims of Domestic and Gender-based Violence and can in no way be taken to reflect the views of the European Commission."



DV First Project

Field Analysis and Overview

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Introduction

The FIRST Project – Capacity Building for First Points of Contact for Victims of Domestic and Gender-Based Violence – aims to increase the level of awareness of the general public regarding domestic and gender-based violence. Its main objective is to establish national networks of first point of contact for victims of domestic and gender-based violence through identifying the first layer of help for victims of violence. This will allow early discovery of domestic and gender-based violence incidents, and enable the provision of appropriate levels of support to victims of violence.

The first step in this project was to provide field overview and analysis. The AIRE (Advice on Individual Rights in Europe) Centre, as the leading partner of this work stream, compiled the present report whose aim is to cover the theoretical basis, and fundamental concepts, of the FIRST project over the next two years and to identify any potential problems. Several questions have arisen following the filed overview and analysis.

The first is what we mean by the terms ‘domestic’ and ‘gender-based’ violence. Assistance in their definition was found in the international and regional legal framework on domestic violence and gender-based violence, which is examined in the first chapter. Having defined these main terms, the second chapter of the report looks at the reasons behind such incidents of violence, given the most appropriate response to such acts is prefigured by their root causes.

As this project aims to empower DV and GBV victims to speak out, seeking and receiving appropriate assistance and support to recover from the experience of violence, their early identification is essential. Nevertheless, as the third chapter of this report highlights this is not without its challenges, and we therefore suggest some solutions.

Once the victims have been identified, it is important to ensure that their rights as victims of domestic violence are protected. The fourth chapter of this report undertakes a comparative analysis of the international and regional legal framework applicable, setting out the specific rights of victims.

The final chapter of this report looks at appropriate responses from a non-legal vantage point. General guidelines and principles on how to respond to domestic and gender-based violence when dealing with victims and perpetrators are explored, as well as good practice, in order to assist and respond to incidents of GBV and DV in the future.

Chapter 1: What is domestic and gender-based violence?

I. International Legislation – A Quick Overview

The UN Convention on the Elimination of Discrimination against Women (CEDAW) which came into force on 3 September 1981 has done much to bring issues of violence against women into the international legal arena. The Committee on the Elimination of Discrimination against Women ('the Committee') was set up under Article 17 of CEDAW to monitor State parties' implementation of and compliance with that Convention; its General Recommendation No.19 on violence against women was the first international document to provide a definition of gender-based violence, recognising that this was "*a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men*".¹

The Committee also made clear that "*[t]he definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty*".² The Committee commented that traditional attitudes under which women are regarded as subordinate to men perpetuated practices involving violence within the family and women and girls from rural areas were at particular risk of this.³ Importantly the Committee concluded that:

"Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds... Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality".⁴

The activity of the CEDAW Committee plays an essential role in the global effort to combat domestic violence and gender-based violence. In addition to being applied by the Committee, the provisions of CEDAW and the General Recommendations have also been used by the European Court of Human Rights ('ECtHR') when determining cases relating to domestic violence or discrimination against women.

¹ CEDAW Committee, *General Recommendation No. 19*, para 1-4, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (Accessed 5 May 2016)

² CEDAW Committee, *General Recommendation No.19*, para 6.

³ CEDAW Committee, *General Recommendation No. 19*, para 11 and 21.

⁴ CEDAW Committee, *General Recommendation No.19*, para 23.

The key ECtHR case which judiciously deals with domestic violence as a form of gender-based discrimination is the case of *Opuz v. Turkey*.⁵ This case is a clear example of the vulnerability of women who are part of a society in which they face discrimination based on both gender and culture. The Applicant in this case was married to H.O. who was the son of the Applicant's mother's second husband. The Applicant and her mother were subjected to severe violence and death threats by H.O. over a number of years, as a result of which both had suffered life threatening injuries. They had made complaints against H.O. but had subsequently withdrawn these following further threats from H.O. Both the Applicant and her mother had also informed the police that reason for withdrawing the complaints had been due to intimidation. On one occasion H.O. ran both women down with his car and on another the Applicant was stabbed seven times by H.O. as a result of which he was charged with knife assault and given a fine amounting to approximately 385 Euros. Finally in 2002 the Applicant and her mother decided to move away and were travelling in the removal van when H.O. forced the van to pull over and then shot the Applicant's mother who died instantly. H.O. was convicted for murder and sentenced to life imprisonment in 2008 but was released pending the appeal proceedings. The Applicant requested the authorities to take measures to protect her from her ex-husband who had started to threaten her again following his release. No measures were taken by the authorities and the Applicant filed a complaint to the ECtHR.

The Court found that the way the Applicant and her mother's complaints had been dealt with in this case was "manifestly inadequate" (§170). The authorities were at fault for discontinuing the proceedings considering them to be a "family matter" which they could not interfere in and they had ignored the reasons why the complaints had been withdrawn; there had therefore been a violation of Articles 2 (failure to protect the Applicant's mother's right to life) and Article 3 of the Convention (prohibition on torture and inhuman or degrading treatment or punishment). The most significant statements of the Court in this case however relate to Article 14 ECHR (prohibition on discrimination) as the Court found, for the first time in such a case, that there was a violation of Article 14 taken in conjunction with Articles 2 and 3 as the violence the Applicant and her mother had suffered had been gender-based. The ECtHR went on to state, having had regard to the CEDAW Committee's General Recommendation No.19, that gender-based violence was a form of discrimination against women (§200).

A few years later, the Strasbourg Court, in the case of *Eremia and Others v. Moldova*⁶, made a step forward in recognising the gender discriminatory aspect of domestic violence against women, and confirming the possibility of characterising domestic violence as inhuman treatment within the meaning of the Article 3 ECHR.

⁵ *Opuz v. Turkey*, App. No. 33401/02 (ECtHR, 9 June 2009).

⁶ *Eremia and Others v. Moldova*, App. No. 3564/11 (ECtHR, 28 May 2013)

This case is a milestone in domestic violence jurisprudence. The Court's treatment of discrimination under Article 14 ECHR has moved forward and further away from a "formal equality" approach. As for the *Opuz* case, the Court found that the State's failure to protect women from domestic violence breaches their right to equal protection of the law and that this failure did not need to be intentional (§ 191). The Court stated that the authorities' actions were not a simple failure or delay in dealing with the violence against the appellant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards her as a woman. It was clear from the facts of the case that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women.

A Human Rights and Equality Issue

CEDAW sets the tone for gender-based violence to be seen as a human rights violation, and an act of discrimination. This approach has since been echoed in other international and EU legislation.⁷ Defining the matter as a human rights issue is important as it provides a strong and coherent framework to governments and civil societies for cooperative efforts, encouraging a holistic and interdisciplinary response.⁸

Over time, several international and EU documents have offered similar definitions of gender-based violence. For the purpose of this project, we will use the definition provided by the Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention'). According to this Convention, 'violence against women' is

"...a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".⁹

'Domestic violence' means

"all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same

⁷ See e.g. Council of Europe, *Convention on preventing and combating violence against women and domestic violence*, CETS No.210, Istanbul, 11 May 2011; United Nations General Assembly, *Convention on the elimination of all forms of discrimination against women* (CEDAW), 18 December 1979.

⁸ UN Entity for Gender Equality and the Empowerment of Women, *Handbook For National Action Plans on Violence Against Women*, 2012, p. 11, available at: <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf> (Accessed 27 May 2016).

⁹Istanbul Convention, Article 3(b).

residence with the victim. It is a gender neutral definition that encompasses victims and perpetrators of both sexes”.¹⁰

‘Gender-based violence’ is

“violence directed against a person because of that person's gender (including gender identity/expression) or violence that affects persons of a particular gender disproportionately.”

Women and girls, of all ages and backgrounds, are most affected by gender-based violence, which can be physical, sexual and / or psychological. The Istanbul Convention specifically targets 'gender-based violence against women', defining this as "*violence that is directed against a woman because she is a woman or that affects women disproportionately*".¹¹ This type of violence is deeply rooted in the social and cultural structures, norms and values that govern society, and is often perpetuated by a culture of denial and silence.¹²

A gender-based approach

Gender is described in the Istanbul Convention as socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men (Article 3c).

II. National Legislation - A Quick Overview

The 1996 UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, presented a model framework for legislation on domestic violence matters, in which it recommended States to adopt the broadest definition of the violence and the relationships within which it occurs.¹³

It is also notable that EU surveys conducted in relation to gender-based violence addressed violence against women by intimate partners. Few address other forms of violence and, moreover, the relationships encompassed by intimate partner violence were defined in a number of ways.¹⁴ The

¹⁰ Istanbul Convention, Article 3(b) and Paragraph 40 of the Explanatory Report to that Convention.

¹¹, Istanbul Convention, Article 3(d)

¹² Definition of “gender-based violence against women” from Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series – No. 210, Istanbul, 11th May 2011, p. 8. para 44.

¹³ Ibid.

¹⁴ European Commission, *Attitudes Towards Violence Against Women in the EU*, 2015, available at: http://ec.europa.eu/justice/gender-equality/files/documents/151125_attitudes_eneg_report_en.pdf (Accessed 27 May 2016)

majority of surveys also failed to incorporate cross-sectional elements and to acknowledge particularly vulnerable groups of women.¹⁵ As a result, the existent data on the prevalence and attitudes towards gender-based violence is difficult to analyse and compare across member states. This serves to highlight the importance of utilising a unified definition across European Member States: especially given the existence of international framework definitions already.

The legislation of Member States also tends towards a definition of violence against women that is confined to intimate partner violence.¹⁶

The UK legislature has made several provisions regarding gender-based violence. Intimate partner violence is dealt with under the Domestic Violence (Crime and Victims) Act 2004, while emotional abuse is now criminalised under the Serious Crime Act 2015. Rape and sexual assault are criminalised under the Sexual Offences Act 2003.¹⁷ Sexual harassment is legislated for under s26(a) Equality Act 2010. Stalking is dealt with under the Protection from Harassment Act 1997 and s125(2) Serious Organised Crime and Police Act 2005. Numerous protection orders exist, including the Domestic Violence Protection Notice, Domestic Violence Prevention Order, Sexual Offences Prevention Order and Risk of Sexual Harm Order.

III. Misconceptions, misunderstandings and myths

There are several detrimental and pervasive misconceptions regarding gender-based violence (GBV). In light of the foregoing discussion, it is important to note that the definition of gender-based violence has been linked to how, and to what extent it is perceived, as a social problem, in determining attributions and attitudes.¹⁸

Myth: *the individual circumstances of the perpetrator and/or victim can account for GBV*

There are several tropes regarding the perpetrators of gender-based violence, in particular domestic violence. These range from alcohol and drug misuse, mental illness, growing up in a violent home to job-related and financial stress.¹⁹

Conversely, a recent meta-analysis²⁰ found that victim blaming across the EU was “widespread”, with surveys clearly indicating “a high prevalence of victim-blaming attitudes in those countries with available

¹⁵ Ibid.

¹⁶ UN Entity for Gender Equality and the Empowerment of Women, p.13 (no. 8)

¹⁷ See also Sexual Offences (Scotland) Act 2009 and the Sexual Offences (Northern Ireland) Order 2008.

¹⁸ European Commission (no. 14)

¹⁹ European Commission (no. 14)

²⁰ Definition of the meta-analysis: A subset of systematic reviews; a method for systematically combining pertinent qualitative and quantitative study data from several selected studies to develop a single conclusion that has greater statistical power.

data”.²¹ Factors include consumption of alcohol for victims of rape, provocative behaviour or dress of sexual violence victims, and even unconsciousness.²²

By attempting to explain the occurrence of violence on the basis of the perpetrator’s, or victim’s, individual circumstances and characteristics, the wider causes and effects of such violence, including its roots in institutionalised power inequity between genders are being undermined. In turn this risks undermining the community and State-based obligations to tackle gender-based violence.

Myth: *GBV is not gender-based*

In both the public and academic sphere, there are voices calling for the forms of violence encompassed by GBV and domestic violence to be viewed in gender-neutral terms.

One argument is that men, too, can suffer from domestic abuse, where women can be the perpetrators of violence. While this is true in a small percentage of cases, the fact remains that the majority of victims are female, and the majority of perpetrators are male. Moreover, defining violence as gender-based serves to focus on the roots of the violence with regard to institutionalised and community-wide patriarchal power structures; “[r]esearch shows that there is a direct relationship between levels of gender inequality, adherence to gender stereotypes and prevalence of violence against women”.²³ Seeing violence against women as part of a package of inequality is vital to tackling both of these phenomena.

In practice, moreover, a gender-blind approach often seems to be annexed to one that undermines the seriousness of GBV, for example, “domestic violence most commonly involves violent couples who engage in mutual acts of aggression”.²⁴ This harmful perspective is demonstrative of the need for a unified definition of gender-based violence when collecting data on victims and their circumstances. While situational couple violence, which is defined as the escalation of specific conflicts, is the most common form of violence in the home, it is ‘intimate terrorism’, or ‘violence enacted in the service of taking general control’, which is the prototype of domestic violence, and which is both rooted in and perpetrated on a gendered basis.²⁵

Myth: *GBV is a private matter*

²¹ European Commission (n 12)

²² Ibid

²³ UN Women (n 6)

²⁴ David Fergusson, John Horwood and Elizabeth Ridder, *Partner Violence and Mental Health Outcomes in a New Zealand Birth Cohort*, 2005, *Journal of Marriage and Family* 67(5), 1103-1110; for a convincing riposte, see Michael Johnson, ‘*Domestic Violence: It’s Not About Gender – Or is it?*’, 2005, *Journal of Marriage and Family* 67(5), 1126-1130.

²⁵ Michael Johnson, ‘*Domestic Violence: It’s Not About Gender – Or is it?*’, 2005, *Journal of Marriage and Family* 67(5), 1126-1130.

Surveys have found that third-party individuals often favour “non-intervention” in matters of GBV.²⁶ Reasons for non-intervention are often based on sentiments such as “it’s not my business”, or “it’s a private matter”.²⁷

Categorising gender-based violence as a private matter does several things. First, it perpetuates a narrow view of gender-based violence, with a tendency to confine it to something that happens within the remit of intimate relationships. Yet there are numerous forms of gender-based violence, many of which do not or do not necessarily take place within a domestic setting, and many of which are not merely partner-based conflict. It also leads to the consequence that victims are less likely to receive or seek help.²⁸ Moreover, it undermines the fact that gender-based violence is rooted in institutional inequality between the genders, and masks the responsibility of the public and the State to tackle the issue.

Finally, gender-based violence has direct economic costs for society, both directly from the costs of services to treat and support them, and indirectly, with regard to lost employment and productivity.²⁹ One UK study estimated the total annual costs of domestic violence at £23 billion.³⁰ Therefore, even from a cold, economic point of view, gender-based violence is very much a social problem.

IV. Human Trafficking and Gender-Based Violence

An estimated 2.5 million people are trafficked every year into prostitution, forced labour and servitude, with women and girls constituting approximately 80% of the victims.³¹ While human trafficking in and of itself is a form of gender-based violence, the victims’ status as a trafficked person renders them particularly vulnerable to further violence. For those who are trafficked for the purposes of domestic work, there will often be language and cultural barriers to access help, as well as general isolation from family, friends and acquaintances. Moreover, being placed in the ‘private’ setting of the home may make certain abuses easier to perpetrate without being caught. Victims can also be more vulnerable to deprivations of liberty within the home, again without the attendant risk of this being discovered. The UK uses a system of tied-visas. This gives an abusive employer the power to render the employee’s visa, and

²⁶ European Commission (no. 14)

²⁷ Ibid.

²⁸ Ibid; FRA European Union Agency for Fundamental Rights, *Violence Against Women: An EU-Wide Survey*, 2014, available at: <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report> (Accessed 27 May 2016).

²⁹ UNiTE to End Violence Against Women, *Violence Against Women: The Situation*, 2011, available at: http://endviolence.un.org/pdf/pressmaterials/unite_the_situation_en.pdf (Accessed 27 May 2016).

³⁰ Ibid.

³¹ Ibid.

right to work, invalid. Where a person has been trafficked and is working without a visa in the first place, complaining about the abuse could alert the police of their illegal status. Regarding this issue, new rules have been adopted in the Parliament. Kalayaan, a London-based charity that works to support the rights of migrant domestic workers, and the support organisation Justice 4 Domestic Workers, have issued a joint statement that sharply criticised changes to the immigration rules which they say severely disadvantages domestic workers fleeing abusive workers: “The changes to the immigration rules do nothing to prevent or to protect against abuse of migrant domestic workers who since April 2012 have been tied to the employer with whom they enter the UK”³². For those trafficked into the sex trade, the risk of sexual violence is obvious. Moreover, the status of a trafficked person renders the individual particularly exposed to the risk of economic dependence upon the perpetrator(s). As seen, economic exploitation and suffering is itself encompassed by the definition of gender-based violence.

In a few words: What is Domestic and Gender-Based Violence?

The key concepts analysed in this section (violence against women; domestic violence; gender-based violence) have been defined at an international level by different instruments. For the purpose of this project, we will use the definition provided by the Istanbul Convention. At a European level, it has been found that it is important to use a harmonised definition across European Member States. Notwithstanding several definitions and legal conventions with regard to DV and GBV, detrimental and pervasive misconceptions subsist; among others that GBV is not gender-based; the individual circumstances of the perpetrator and/or victim; GBV a private matter. This report attempts to bust these myths with statistics and information reflecting the reality. Finally, a comparison is made between DV and GBV on one hand and human trafficking on the other. It is found that even though they constitute different forms of victimisation, there are similarities and intersections between these types of violence. Since DV and GBV identification and care mechanisms can often detect also potential or actual victims of trafficking and vice versa, it is important that an interdisciplinary approach is adopted between professionals working in these two areas.

³² Kalayaan and J4DW, *Illusory rights: Changes to the immigration rules for migrant domestic workers*, Joint Statement of Kalayaan and J4DW, 17th September 2015, available at: <http://www.migrantsrights.org.uk/news/2015/kalayaan-and-j4dw-condemn-rule-changes-worsen-position-migrant-domestic-workers> (Accessed 27 May 2015).

Chapter 2: Causes of Domestic and Gender-Based Violence

I. Introduction

Domestic violence affects people from all social, racial and financial backgrounds. It affects women in majority but also men, old and young, heterosexual couples and homosexual couples alike. It may start almost immediately, or only after several years of being in a relationship. The EU-wide survey conducted in 2014 by FRA - European Union Agency for Fundamental Rights estimated that 13 million women in the EU have experienced physical violence in the course of 12 months prior to the survey interviews. This corresponds to 7% of women aged 18–74 years in the EU. An estimated 3.7 million women in the EU have experienced sexual violence in the course of the 12 months before the survey interviews. This corresponds to 2 % of women aged 18–74 years in the EU.³³ This chapter focuses on what is generally termed the ‘causes’ of domestic and gender based violence. However, it is important to note that there are no direct ‘causes’ as such of DV and GBV. Instead, there are contributing/risk factors which increase the likelihood of abuse and violence occurring. Similarly, there is no one factor which leads individuals to abuse their partners and/or family members, but rather this is likely to be a result of several factors playing out together, which interact on different levels of social ecology. There are several factors which are called ‘upstream determinants’³⁴, such as:

- Gender inequality and violence
- Poor livelihood options
- Alcohol availability and drinking norms
- Stigma and criminalization

Whilst none of these factors should be argued as being a ‘cause’ of domestic and gender based violence, we can, however, refer to certain frameworks to better understand so called reasons for DV and GBV.

³³ FRA – European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey* available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-factsheet_en.pdf (Accessed 25 May 2016)

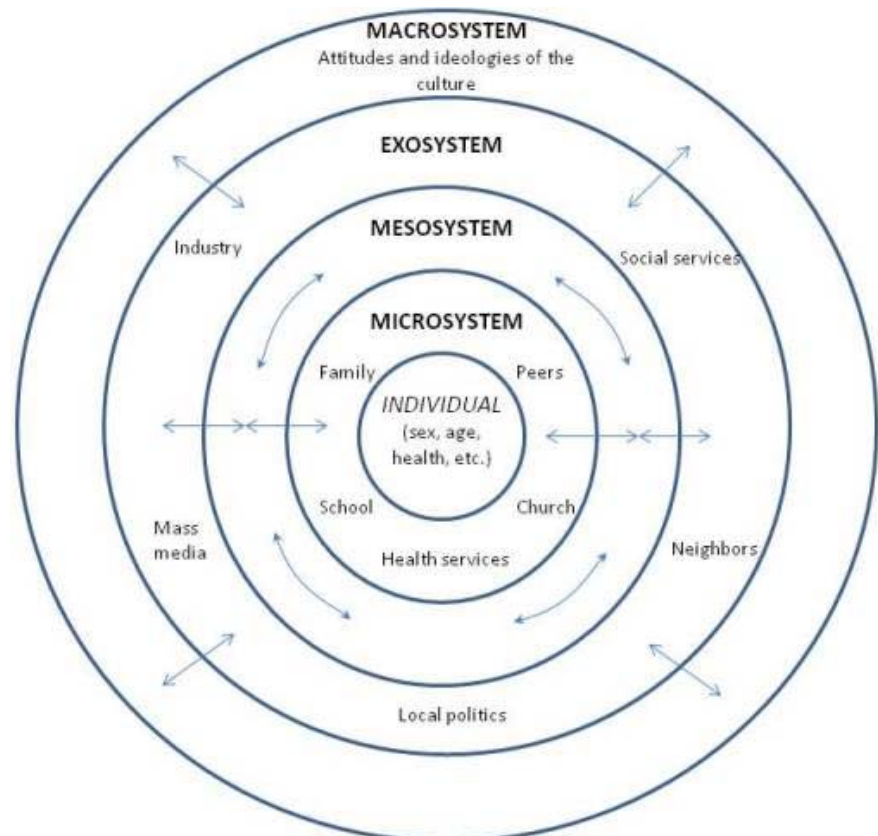
³⁴ Heise, L. L., *What works to Prevent Partner Violence? An evidence overview*, December 2011, London: STRIVE.

A. *Using the Ecological Framework and Power Control Wheel*

The original ecological model known as the *mesosystem* was proposed by Bronfenbrenner.³⁵ The entire system is embedded in a macro system³⁶ referring to the cultural, political and economic systems that inform and structure the organisation of behaviour lower in the social ecology. This framework sets out the different environmental and social issues which affect domestic and gender based violence and their interactions. Socio-ecological model is usually used for understanding violence against women and is used for primary prevention: stopping violence before it occurs. The model shows that no single factor is necessary in order for violence to occur, and those different factors and pathways may converge to cause abuse under different circumstances.³⁷

See Annex A for a revised ecological model setting out further factors influencing DV and GBV.

Figure 1: Bronfenbrenner's Ecological Model



³⁵ Urie Bronfenbrenner (1917 – 2005) was a developmental psychologist, most known for his work in child development. His influential research and theory was key in changing the perspective of developmental psychology through addressing environmental and social influences which influence child development. Bronfenbrenner's ecological model has been, and continues to be adapted, in the field of social sciences and psychology. The Ecological Framework for Human Development applies socioecological models to human development, taking into account all aspects of ecology to understand human development, including biological, genetic, environmental and social.

³⁶ The macrosystem is made up of customs, cultural values and norms and are used to describe the cultural or social context of societal groups.

³⁷ Lori L. Heise, *What Works to Prevent Partner Violence? An Evidence Overview*, December 2011, p. 7, London: STRIVE.

An interactive version of the ecological system was also developed through the multi-level Daphne Project funded by the European Commission.³⁸ At present, the Daphne Project is being updated and the toolkit is unfortunately currently unavailable.³⁹

Another useful model is the *Power Control Wheel* presented from the Domestic Abuse Intervention Project, seen in figure 1.2⁴⁰. This wheel derives from an American programme underwritten by feminist theory. According to this model, women and children are vulnerable to violence because of their unequal social, economic, and political status in society. Treatment of abusive men is focused on re-education, as male violence against women is seen as stemming from a socially reinforced sense of entitlement and gender norms. The programme works to change attitudes and has a history of success.⁴¹ While certain headings in the wheel may need to be replaced to be more inclusive, the model helps to breakdown the various forms of domestic abuse, without any direct analysis of the causes.



Figure 1.2: Power Control Wheel (Pence and Paymar (1993))

This model presupposes that domestic abuse is a matter of choice for the perpetrators

³⁸ *Factors at play in the perpetration of violence against women, violence against children and sexual orientation violence, A Multi-level Interactive Model, Developed for the European Commission as part of the Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on gender violence and violence against children; JLS/2009/D4/018.*

³⁹ Ibid. See European Commission website - <http://ec.europa.eu/justice/grants/results/daphne-toolkit/en/daphne-toolkit-%E2%80%93-active-resource-daphne-programme>

⁴⁰ Domestic Abuse Intervention Programmes (2011) The Power Control Wheel: <http://www.theduluthmodel.org/pdf/powerandcontrol.pdf>

⁴¹ Domestic Abuse Intervention Programmes (2011) The Power Control Wheel: <http://www.theduluthmodel.org/pdf/powerandcontrol.pdf>



as they choose to exert power and control over their victims, and that arguing ‘causes’ for domestic abuse is part of victim-blaming.⁴² Instead, the ecological model allows us to look at factors which may increase or decrease the likelihood of domestic abuse occurring.

B. Alcohol Abuse

Alcohol abuse does not directly cause abuse and violence, but it is often used as an excuse for violence. Not all alcoholics are violent, and not all abusers have a drinking problem.⁴³

The majority of abusers are not alcoholics, but use alcohol as part of wider abusive behaviour and abusers may consciously:

- Go out and get drunk to create an excuse to get violent
- Act more drunk than they really are
- Use alcohol consumption to punish their partner, e.g. for confronting or disagreeing with them
- Pretend they don't remember what they did when drunk.⁴⁴

Alcohol has also been linked to increasing instances of domestic violence when linked to other events such as the Football World Cup. For example, during the 2014 World Cup, UK police issued warnings to men and women with a record of domestic violence, acting on evidence that abuse against wives, girlfriends and partner’s spikes dramatically in the aftermath of matches – whether the team wins or loses. The research, by Lancaster University criminologist Dr Stuart Kirby, a former police officer, monitored police reports of domestic violence during the last three World Cups in 2002, 2006 and 2010. Separate national research examining the 2010 World Cup echoed the Kirby findings⁴⁵ – with domestic abuse reports up 27.7% when the England team won a game, and 31.5% when they lost.⁴⁶ They noted that many factors come together here including the effect of alcohol, the emotional stress of the game, competitiveness and testosterone levels.

C. Gender Inequality and Domestic and Gender-Based Violence

⁴² L. Pope and K. Ferraro, *The Duluth Power and Control Model*, 2006, p. 2. This model was developed by - Pence, E., Paymar, *Education Groups for men who Batter: The Duluth Model*, New York: Springer Publishing Company 1993.

⁴³ Hidden Hurt, *Alcohol and Domestic Violence*, p. 1, available at www.hiddenhurt.co.uk/alcohol_and_domestic_violence.html (Accessed 25 May 2016).

⁴⁴ Bancroft, L. *Why Does He Do That? Inside the Minds of Angry and Controlling Men*, Berkeley, Berkeley Books, 2003.

⁴⁵ Stuart Kirby, Brian Francis and Rosalie O’Flaherty, *Can the FIFA World Cup Football (Soccer) Tournament Be Associated with an Increase in Domestic Abuse?*, *Journal of Research in Crime and Delinquency*, 22 July 2013 (First Publication).

⁴⁶ The Guardian, *Police fear rise in domestic violence during World Cup*, 8th June 2014, Sandra Laville, available at: <http://www.theguardian.com/society/2014/jun/08/police-fear-rise-domestic-violence-world-cup> (Accessed 25 May 2016).

According to the World Health Organisation and several other academic and sociological studies, gender inequalities increase the risk of violence by men, as well as inhibiting those affected from seeking help and protection.⁴⁷ As evidenced in the ecological model above, challenging gender norms which condone intimate partner violence can drastically reduce the risk of individuals to domestic violence. However, in some contexts, increased gender equality (i.e. women working and earning more than male partners) can increase the risk of domestic abuse, and could be a 'patriarchal trigger'.⁴⁸

II. 'Causes' outside the mainstream

The following section examines other forms of domestic abuse that occur in some cases. These cases include all of the factors above, but may have a different prescriptions and contexts which mean they need to be treated as 'special cases'.

A. Violence against vulnerable groups

Especially at risk of domestic violence are vulnerable groups that include:

- Elderly: Domestic abuse can include abuse of the elderly. Most elderly victims are older women with a chronic illness or disability and typical abusers are partners, adult children, or family members⁴⁹.
- People with disabilities including mental health, sensory disabilities and physical disabilities: People with disabilities are more vulnerable to domestic violence and will often face additional difficulties in attempting to access support. Both women and men with a long-term disability are more likely to be victims of domestic abuse (11.3% and 7% respectively in 2014), compared with those without a long term illness or disability. For stalking, 7.5% of women with a long term illness or disability were estimated to be a victim of stalking compared with 3.4% of women without any form of illness or disability.⁵⁰

B. Men and Domestic and Gender-Based Violence

⁴⁷ World Health Organization, *Violence Prevention: The Evidence. Promoting Gender Equality to Prevent Violence Against Women*, 2010, p. 3, available at http://www.who.int/violence_injury_prevention/violence/4th_milestones_meeting/evidence_briefings_all.pdf (Accessed 27 May 2016).

⁴⁸ Ibid.

⁴⁹ What is domestic violence/Forms of domestic violence – Elder Abuse, Domestic Violence London, *A Resource for Health Professionals*, NHS: <http://www.domesticviolencelondon.nhs.uk/1-what-is-domestic-violence-/20-elder-abuse.html>.

⁵⁰ Office for National Statistics, *Chapter 4 – Intimate Personal Violence and Partner Abuse*, 13th February 2014, available at: http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776_352362.pdf.

Although women continue to form the majority of victims facing domestic violence, in some cases men can also be victims. Men who are in relationships with other men (gay or bisexual) are at increased risk. Men's experiences are largely similar to those of women, except sexual domestic violence, in which it is mostly women who are affected. Violence against men can include being forced or coerced into specific responsibilities and activities based on strict gender roles without any negotiation, and under fear of the consequences of not complying, and being told he is not a 'real man' if he does not do certain things in a certain way.⁵¹

C. Honour Based violence and abuse

Honour based violence (HBV) is a phenomenon associated with minority ethnic communities and is increasingly in the spotlight in the UK, and wider Europe.⁵²

The definition of honour based violence and or honour based crime is problematic as it is a 'fluid' definition, used to designate a wide variety of violent actions against the victim, usually a woman.⁵³ It can also differ across cultures. Honour based violence is predominantly regarded as both heavily gendered and a cultural religious problem, and secondly, while the government has taken significant steps to improve responses to specific types of honour based violence (including FGM and Forced Marriage), honour based domestic abuse has been situated within the context of mainstream domestic abuse legislation and policy.⁵⁴

Men can also be the victims of honour crimes, including if they come out as gay, bisexual or transgender. The case of Abbas Rezai who was killed in Sweden in 2005 by his girlfriend's parents because they did not approve of him dating their daughter is a stark illustration of this.⁵⁵

D. Trans people and Domestic and Gender Based Abuse

Trans people experience a unique form of domestic abuse,⁵⁶ combined with the factors appearing in the ecological model above. Furthermore, trans people may also be lesbian, gay or bisexual, creating multiple potential streams of discrimination and disadvantage.

⁵¹ Respect. (2013, February). Respect Toolkit for work with male victims of domestic violence. [<http://www.mensadvice.org.uk/pages/toolkit-for-work-with-male-victims-of-domestic-violence.html>], p. 8

⁵² Walker, S., *How is honour-based violence managed in England and Wales?* Journal of Criminology, 2012, p.1.

⁵³ Prpic, M., *Combating 'honour' crimes in the EU: Briefing*, European Union: EPRS (European Parliamentary Research), 2015, p. 2

⁵⁴ Walker, S., *How is honour-based violence managed in England and Wales?* Journal of Criminology, 2012, p.1.

⁵⁵ Prpic, M., *Combating 'honour' crimes in the EU: Briefing*, European Union: EPRS (European Parliamentary Research), 2015, p.3

Domestic abuse against trans people can include: threats to out or disclose someone's gender identity without consent, i.e. to an employer, family or community; criticising you for not being a real woman/man, if you have only recently come out or not undergone gender reassignment surgery; trying to convince them that they deserve abuse because hormones are influencing behaviour; withholding money for transition (medication, clothes or surgery); withholding medication (hormones); coercing victims to get gender reassignment surgery; targeting sexual or emotional abuse towards parts of the body which they may be ashamed or detached from; refusing to use their pronoun or name and ridiculing gender identity by criticising appearance, dress or voice quality, as well as many more.

In a few words: Causes of Domestic and Gender Based Violence

There are no direct 'causes' of domestic and gender-based violence but some contributing factors which increase the probability of abuse and violence. Moreover, it is not possible to detect a single factor leading to domestic and gender based violence. The most at risk are also vulnerable groups (Elderly, people with different disabilities). Instead, incidents of domestic violence occur usually due to several risk factors playing out together. The main risk factors identified by this study are alcohol abuse, gender inequality and poor livelihood options. Other factors leading to non-mainstream cases of domestic and gender based violence have incident-specific causes. Understanding and raising awareness on these risk factors is crucial in order to tackle the root causes of DV and GBV.

⁵⁶ NHS Barking and Dagenham,. *Domestic Violence: A resource for trans people*, London: Greater London Domestic Violence Project, 2009, pp. 13-14.

Chapter 3: Challenges in Identifying Potential Victims of Domestic and Gender-Based Violence

I. Early identification

Early identification of potential domestic violence / gender based violence victims, is vital in ensuring that the victims reach access to care as soon as possible, and so that early legal intervention is ensured and the perpetrators are punished according to the law. A list of indicators of domestic violence has been established to help health professionals in the UK identify domestic abuse and gender-based violence. An example of these indicators is set out in Annex B.⁵⁷ Given the fact that one of the main risks of domestic violence is the level of violence escalating, identifying victims early is key to protecting victims from serious subsequent harm. Indeed, studies have shown that routine enquiry in health services improves early identification and referral.⁵⁸

Other organisations in the UK have also developed lists of indicators / early warning signs to help identify victims or potential victims of violence⁵⁹ and also children who may have witnessed and been affected by domestic violence.⁶⁰ These tend to focus on the actions of the perpetrator, for example whether any controlling behaviour is displayed, in addition to relying on the presentation of the victim. A parallel list of “early indicators” for trafficking situations has been developed in the framework of the European Union funded *Upholding Rights! Early Legal Intervention project*.⁶¹ Whilst these tools are extremely useful, there remains a need for a comprehensive list setting out these various indicators together and which also covers particularly vulnerable groups and those at high risk of violence.

⁵⁷ How To Deal and Recognise Patients Who Are Victims of D.V./Identify, Domestic Violence London, *A Resource for Health Professionals*, NHS available at: <http://www.domesticviolencelondon.nhs.uk/5-how-to-deal-with-and-recognise-patients-who-are-victims-of-d-v/> (Accessed 27 May 2015)

⁵⁸ Domestic Violence Fact Sheet, Islington Evidence Hub, February 2014, available at: [http://www.islington.gov.uk/publicrecords/library/Public-health/Information/Factsheets/2014-2015/\(2014-04-07\)-Domestic-Violence-Fact-Sheet-2014.pdf](http://www.islington.gov.uk/publicrecords/library/Public-health/Information/Factsheets/2014-2015/(2014-04-07)-Domestic-Violence-Fact-Sheet-2014.pdf) (Accessed 27 May 2015).

⁵⁹ See Refuge website: <http://www.refuge.org.uk/what-we-do/campaigns/early-warning-signs/>

⁶⁰ See NSPCC website: <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/domestic-abuse/signs-symptoms-effects/>

⁶¹ Upholding Rights! Early Legal Intervention Project: <http://www.earlylegalintervention.eu/>

Identify the high-risk victims

It has been found that 100,000 people in the UK are at high and imminent risk of being murdered or seriously injured as a result of domestic abuse.⁶² In addition to this, eight women a month are killed by a current or former partner in England and Wales, and thirty men per year.⁶³ All of these murder victims were also victims of domestic violence. For this reason, once a victim of domestic violence is identified by an expert, the ongoing risk for domestic or gender based violence should be thoroughly evaluated. It should be noted that some of the victims may understate, in their account of the story, the level of violence which they endured. In case of doubt, ongoing risk of gender based violence or domestic violence should always be assumed to be serious rather than less serious.⁶⁴

Some additional vulnerability “risk factors” have been established to help the professionals identify high-risk victims. These are based on patterns that have been observed which seem to indicate that the individual is more vulnerable to serious injury and murder.⁶⁵

- Pregnancy: for almost 30% of women who suffer domestic violence, the first incidence occurs during pregnancy. Others will experience an increase in the extent of violence. For some pregnancy may be unwanted and a result of sexual abuse;
- Sexual abuse: victims of sexual abuse must be considered as at risk;
- Stalking: it can combine physical, emotional and sexual intimidation. Sometimes stalkers even extend to family and friends in order to control the victim’s life. This factor, even more when perpetrated by the ex or actual partner, is the most predictive of injury or murder, even sometimes with no history of physical violence;
- “Honour” based violence: when the notion of “honour” is disclosed by the victim, the perception of the risk of murder should be taken very seriously because escalation occurs very quickly. Sometimes this is planned by families and could be made to look like an accident/suicide;

⁶² SafeLives, *Getting it right first time: policy report*, Bristol: SafeLives, 2015.

⁶³ ONS,, *Crime Survey England and Wales 2013-14*. London: Office for National Statistics, 2015.

⁶⁴ How To Deal and Recognise Patients Who Are Victims of D.V./Risk Indicators, Domestic Violence London, *Resource for Health Professionals*, NHS, available at: <http://www.domesticviolencelondon.nhs.uk/5-how-to-deal-with-and-recognise-patients-who-are-victims-of-d-v-/45-risk-indicators.html> (Accessed 27 May 2015)

⁶⁵ How To Deal and Recognise Patients Who Are Victims of D.V./Risk Indicators, Domestic Violence London, *Resource for Health Professionals*, NHS, available at: <http://www.domesticviolencelondon.nhs.uk/5-how-to-deal-with-and-recognise-patients-who-are-victims-of-d-v-/45-risk-indicators.html> (Accessed 27 May 2015)

- People with disabilities and the elderly, are at specific risk to become victims of violence. They are usually abused by someone they know, such as a partner or family member. In addition, people with disabilities and the elderly face the risk of abuse by health care providers or caregivers.
- Separation: leaving a violent partner is extremely risky (in London, 76% of domestic abuse murder victims had recently ended the relationship); but this does not mean that victims are safer when staying in the relationship.
- Drug and Alcohol misuse: if there is a misuse, the risk to victims may escalate;
- Mental health: mental illness in the perpetrator is a risk factor. The victim's mental health may negatively affect her ability to access support.

In the United Kingdom, the Risk Identification Checklist (RIC) has been created by the Co-ordinated Action Against Domestic Abuse – Domestic Abuse, Stalking and “Honour”-Based Violence (CAADA-DASH). This is used by independent domestic violence advisors and other non-police agencies for Multi-Agency Risk Assessment Conference (MARAC) case identification. CAADA is a national charity, now called SafeLives, supporting a multi-agency and risk-led response to domestic abuse by providing practical help to support professionals and organisations working with domestic abuse victims.⁶⁶

The aim of the RIC is to help front line practitioners to identify the high-risk victims of DASH and decide which cases should be referred to the MARAC. This tool is widely used by all practitioners and professionals who provide practical and emotional support to survivors of domestic violence.⁶⁷ They are the first point of contact for high-risk victims of domestic abuse. Then, the high-risk cases are reported to a MARAC and a meeting takes place where information is shared on the highest risk domestic abuse cases between representatives of local police, probation, health, child protection, housing practitioners, independent domestic violence advisors (IDVAs) and other specialists from the statutory and volunteer sectors.⁶⁸ The information shared is used to create a risk management plan involving all agencies. The victims do not attend the meetings but they are represented by IDVAs.

⁶⁶ CAADA website: <http://caada.org.uk/about-us>.

⁶⁷ CAADA-DASH Risk-Identification Checklist (RIC).

⁶⁸ Safeguarding Children and Young People – The RGCP/NSPCC Safeguarding Children Toolkit for General Practice. MARAC Toolkit, available at <http://www.rcgp.org.uk/clinical-and-research/toolkits/~media/1AA4BA3B765048A2834BFD3DE26A037D.ashx> (Accessed 27 May 2015).

To ensure that the “identification” is efficient and high-risk cases are referred to MARAC, all agencies need to have protocols and coordinated systems.⁶⁹ At core of this system is the idea that victims may disclose their situation to agencies other than the Police; for this reason inter-agency cooperation and coordination is absolutely crucial. This system is designed to enhance existing tools and protocols, enabling these organisations to detect domestic violence as early as possible. It could thus be argued that the sophistication of this approach as well as the element of interdisciplinary collaboration make it an example of good practice amongst European member states.

II. The obstacles and barriers

As discussed above, identification is without doubt one of the most vital elements which could help prevent domestic and gender based violence and assist victims to access the protection to which they are entitled to under European and international law.

However, identification does not come without obstacles, some posed by the victims themselves who may be hesitant or unable to disclose their situation, or from the side of the front line professionals working with them. This section will examine briefly what these obstacles are and how they could be overcome in practice.

Victim related obstacles to identification

Victims of domestic and gender based violence are likely to be unable or unwilling to identify themselves as such.⁷⁰ From practice, it appears that even in cases where they do, they may try to understate the level of violence they went through and the risk of this recurring. There are several victim-related barriers to self-identification, mostly of psychological origin,⁷¹ examples of which can be seen below⁷¹:

- Individual:
 - o Not identifying their experience as being an abuse;

⁶⁹ Nerissa Steel, Laura Blakeborough and Sian Nicholas, *Supporting high-risk victims of domestic violence: a review of Multi-Agency Risk Assessment Conference (MARACs)*, Research Report 55, , p. 15.

⁷⁰ AVA Project, *Proposed procedures for safeguarding children affected by domestic violence*, Barriers to disclosure for survivors of domestic violence, p. 26, par. 6.1.1, available at:<http://www.avaproject.org.uk/media/15627/lscpprocedures.pdf> (Accessed 27 May 2016)

⁷¹ Domestic Violence Resource Centre Victoria, Barriers to Disclosure: <http://www.dvrcv.org.au/help-advice/older-people/barriers-disclosure>; AVA Project, *Proposed procedures for safeguarding children affected by domestic violence*, Barriers to disclosure for survivors of domestic violence, p. 26-27, par. 6.1, available at: <http://www.avaproject.org.uk/media/15627/lscpprocedures.pdf>(Accessed 27 May 2015)

- Guilt;
- Feeling ashamed and blaming themselves;
- Not being aware of services able to help them;
- A lack of financial resources;
- Fear related to their immigration status.
- Interpersonal:
 - Fear of further violence from the abuser;
 - Fear of repercussions: on the children who might be removed (30%), on the family, on the social situation;
- Socio-cultural:
 - Fear of being blamed by others for what happened to them;
 - Not trusting social services;
 - Lack of confidence or trust in the police (35%)⁷²;
 - Living within a community in which particular forms of violence, such as FGM, are tolerated;
 - Experiencing pressure within their religious or cultural group.

While these criteria apply to victims of domestic and gender based violence, some specific ones appear for specific groups. Some additional barriers have been reported in the case of Lesbian, Gay, Bisexual and Transgender (LGBT) people. For example, LGBT people may not be aware that domestic abuse can occur in same sex relationships.⁷³ Lesbian women also reported not knowing that they were protected by domestic abuse laws and were entitled to call the police when it occurred.⁷⁴ Further, gay men are reportedly reluctant to view their experience of non-consensual sexual activity as “rape”.⁷⁵ In the trans

⁷² HMIC, *Inspecting the Police in the Public Interest, Everyone’s Business: Improving the Police Response to Domestic Abuse*, p. 31.

⁷³ Rowlands, J. (2006) *Domestic Abuse Among Gay and Bisexual Men: An Exploratory Study in South Wales*. Monograph: School of Social Work and Psychosocial Studies, University of East Anglia.

⁷⁴ Hardesty, J. L., Oswald, R. F., Khaw, L. & Fonseca, C., “*Lesbian/Bisexual Mothers and Intimate Partner Violence: Help Seeking in the Context of Social and Legal Vulnerability*”, *Violence Against Women*, 17(1), 2011, pp. 28-46.

⁷⁵ Rumney, P. N. S., “*Gay male rape victims: law enforcement, social attitudes and barriers to recognition*”, *The International Journal of Human Rights*, 13(2-3), 2009, pp. 233-250

communities, sexual violence is particularly “hidden” and victims hardly disclose it⁷⁶. The abusers can also use the victims’ insecurity about their sexuality (shame, fear of being rejected of the community) in order to control them.⁷⁷

Other obstacles to identification - front line professionals

Research shows that amongst frontline responders, one of the main obstacles to identifying victims is the lack of violence-related education. Thus, it is often the case that front line professionals are not sufficiently trained to identify and register victims of domestic and gender based violence.⁷⁸ In light of the observations above that many victims will not self-identify, the need for adequate training of front line professionals becomes crucial. Unless a suitable professional is able to identify them, victims will not have access to the help and support they are entitled to.

The provision of thorough training is essential in order to identify the victims as early as possible; to assess their level of risk and vulnerability and to gain knowledge on which protection avenues are most suitable for them.

It has been reported that police services have also failed to appropriately respond to victims of domestic violence. An important step in combating such abuse is for victims to have the confidence and trust that when they call to make a claim or report the abuse, they will be taken seriously and will be treated with respect, dignity and confidentiality. In the United Kingdom for example, Her Majesty's Inspectorate of Constabulary (HMIC) conducted a study on the police response to domestic violence and listened to the calls received by victims. This study showed that some of the call handlers were really “abrupt” with the victims⁷⁹. The study further examined the victim’s assessment of the Police’s response to their call, where it was found that some of the victims felt that:

- They were not taken seriously on the first call;
- They experienced a lack of interest or awareness from the call handler;

⁷⁶ Hester et al., *Exploring the service and support needs of male, lesbian, gay, bi-sexual and transgendered and black and other minority ethnic victims of domestic and sexual violence*, Report prepared for Home-Office, 2012.

⁷⁷ Hester et al., *Exploring the service and support needs of male, lesbian, gay, bi-sexual and transgendered and black and other minority ethnic victims of domestic and sexual violence*, Report prepared for Home-Office, 2012.

⁷⁸ World Health Organization, Liverpool JMU, Centre for Public Health, *Violence Prevention the Evidence – Series on briefing on violence prevention*, available at:

http://www.who.int/violence_injury_prevention/violence/4th_milestones_meeting/evidence_briefings_all.pdf (Accessed 27 May 2016)

⁷⁹ HMIC, *Inspecting the Police in the Public Interest, Everyone’s Business: Improving the Police Response to Domestic Abuse*, p. 40.



- They felt little care or sympathy shown;

According to some victims' testimony, only some forms of abuse were recognised by the police services and generally if there was no physical abuse, they did not consider that the victim was facing any harm⁸⁰.

Front line responders may, in addition to the above lack of general training and awareness on domestic and gender based violence, face additional obstacles that prevent their identification of victims.⁸¹ These include:

- Time constraints;
- Stereotyping;
- DV not seen as a priority;
- Fear of offending the victim;
- Fear of accusing the perpetrator;
- Powerlessness;
- Feeling of hopelessness and frustration;
- Lack of perceived responsibility.

Specific obstacles relating to the LGBT community have also been identified. The lack of training of front line responders on the particular vulnerabilities of this group appears to be directly related to the lack of registered cases of domestic and gender based violence within this community.⁸²

There are further structural and cultural barriers to accessing appropriate support for the LGBT victims, the main four of which appear in the vast majority of relevant studies⁸³:

⁸⁰ Victim Testimony: "...I wanted to be safe and believed. I was essentially told to stop calling unless he physically assaulted me or the children. Been going on three and half years. Now much better. He used to turn furniture upside down. Freaked me out. I rang police and was told that nothing could be done as it was the marital home unless there was an immediate threat to mine or my children's life." In HMIC, *Inspecting the Police in the Public Interest, Everyone's Business: Improving the Police Response to Domestic Abuse*, p. 40.

⁸¹ World Health Organization, Liverpool JMU, Centre for Public Health, *Violence Prevention the Evidence – Series on briefing on violence prevention*, p. 114; Diana Rose, Kylee Trevillion, Anna Woodall, Craig Morgan, Gene Feder, Louise Howard, *Barriers and facilitators of disclosures of domestic violence by mental health service users: qualitative study*, ; *The British Journal of Psychiatry* Feb 2011.

⁸²Hester et al., *Exploring the service and support needs of male, lesbian, gay, bi-sexual and transgendered and black and other minority ethnic victims of domestic and sexual violence*, Report prepared for Home-Office, 2012, p. 64.

- Assumed heterosexuality;
- Gender-binary service provision;
- Inadequate level of staff diversity, knowledge and skills;
- Minimisation of LGBT people's experience of abuse.

Recommendations

The existing indicators on the identification of victims of domestic violence and gender based violence are an important contribution and a step in the right direction towards crime prevention and the protection of victims. However, the current lists of indicators are disjointed and although they overlap, are reproduced separately for various professions (health care professionals, support workers, police services). There is therefore a need for indicators which can be more widely used by all professionals as a starting point in order to identify a potential victim. This should encompass a so called list of "early indicators" which would comprise a list of "suspicious situations" that alert a person of a high risk of domestic violence / gender based violence.

In a few words:

Challenges in Identifying Potential Victims of Domestic and Gender-Based Violence

Early identification of potential DV and GBV victims is key. Given the fact that one of the main risks of DV is quick escalation of violence, it is essential to identify victims early. There is a need to use a gender-based approach to help women who make up the majority of victims of domestic and GBV violence. Many myths and prejudices still exist in this field and to make matters worse women victims of violence experience discrimination and secondary victimisation when reporting violence. Several lists of indicators have been developed to help identify victims or potential victims. Additional "risk factors" have been established to identify 'high risk' victims. Nevertheless from practice it appears that the use of existing indicators may come in handy too late, when the victim has already suffered some kind of abuse.

Identification of victims of DV and GBV is not an easy task as it often comes with many obstacles and barriers; some posed by the victims themselves and some on the side of the front line responders. One of the main obstacles on the latter side is the lack of violence-related education. Thus, there is a real need for training and education on the issue of DV and GBV as well as for the development and distribution of suitable 'early indicators'. With regard to LGBT people in particular, specialised training should be

⁸³ Shannon Harvey, Martin Mitchell, Jasmin Keeble, Carol McNaughton Nicholls and Nilufer Rahim, Welsh Government, Social Research, *Barriers Faced by Lesbian, Gay, Bisexual and Transgender People in Accessing Domestic Abuse, Stalking and Harassment, and Sexual Violence Services*, , p. 64, para. 4.3.



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provided to frontline responders, for instance by LGBT organisations, which can raise awareness on the particular vulnerabilities of this group.

Chapter 4: What are the Rights of the Victims?

I. International Framework

Chapter 1 of this report sets out the international legal framework on domestic and gender based violence. This chapter looks at the specific rights of victims of DV and GBV contained within those instruments and how these can be secured in practice.

CEDAW and General Recommendation No. 19

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the relevant monitoring Committee was adopted by the General Assembly of the United Nations in 1979. Although the main body of the Convention does not explicitly address the issue of violence, General Recommendation No. 19 of the Committee of CEDAW is dedicated to this. This Recommendation, however, does not set out specific provisions relating to the rights of victims; only the need to combat violence against women and domestic violence as this constitutes a form of discrimination against women.

As a result of General Recommendation No. 19, the CEDAW Committee frequently receives petitions from individuals⁸⁴ who are facing violations of their rights as victims of domestic or gender based violence. In deliberation of these cases, a body of case law has emerged which can be used to further the rights of victims. For example, on 16 July 2014 the Committee delivered its decision in the case *Carreño v Spain (Communication No. 47/2012)*. Ms Carreno, a Spanish national, married her husband in 1996 and their daughter was born that same year. Both before and during the marriage Ms Carreno was subjected to domestic abuse and in 1999 she finally left the marital home following an incident where her husband had threatened her with a knife in front of their three year old daughter. Following separation, a system of visits between the father and his daughter Angela was set up. Ms Carreno had made over 30 complaints about incidents of violence and threats she had received since their separation, and also raised that her daughter was afraid of her father and did not want to spend time with him. She continually argued for all visits to be supervised, however the court and social services gradually moved towards unsupervised visits. Following a court hearing on whether Ms Carreno would be allowed to remain in the marital home, the father told her that he would take away the thing that mattered most to

⁸⁴ Following the entry into force of the Optional Protocol to CEDAW, on 22 December 2000, individuals are not able to directly petition the Committee to hear their case

her. That same day during a scheduled unsupervised visit with his daughter, the father shot and killed the seven year old girl before committing suicide.

In its deliberations on this case, the Committee stated the following:

"The Committee recalls its general recommendation No. 19 (1992), according to which 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 article 1 of the Convention. This discrimination is not limited to acts committed by or on behalf of Governments. Thus, for example, under article 2 (e) of the Convention, States parties commit to taking all appropriate steps to eliminate discrimination against women practised by any person, organization or enterprise. On this basis, the Committee considers that States may also be responsible for acts of private persons if they do not act with due diligence to prevent violations of rights or to investigate and punish acts of violence and to compensate victims." (At paragraph 9.6)

"The Committee notes that the State party has adopted a broad model for dealing with domestic violence which includes legislation, awareness-raising, education and capacity-building. However, in order for a woman victim of domestic violence to see the practical realization of the principle of non-discrimination and substantive equality and enjoy her human rights and fundamental freedoms, the political will expressed by that model must have the support of public officials who respect the obligations of due diligence by the State party. These include the obligation to investigate the existence of failures, negligence or omissions on the part of public authorities which may have caused victims to be deprived of protection. The Committee considers that, in the present case, that obligation was not discharged." (At paragraph 9.9)

A further important step towards the recognition that violence against women is a human rights violation was the creation of the Office of the Special Rapporteur on Violence against Women, its Causes and Consequences in 1994. A year later, violence against women was one of the twelve critical areas of concern identified in the 1995 Beijing Declaration and Platform of Action described as 'the most progressive blueprint ever for advancing women's rights'.⁸⁵

⁸⁵ UN Women, *Beijing Declaration and Platform for Action*, 4th World Conference on Women , 4-15 September 1995, p. 76, available at:

http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf;

<http://beijing20.unwomen.org/en/about#sthash.lyLlvWpc.dpuf> (Accessed 27 May 2016).

Twenty years later, the Beijing Declaration remains a comprehensive roadmap for the worldwide realisation of women's rights. In 2015, the UN assessed the achievements and the obstacles to the implementation of these twelve critical areas.⁸⁶ In relation to violence against women, it is stressed that this form of violence is accepted as a human rights violation, the awareness is significantly higher than it was in the early 90's and Governments are systematically implementing policies towards tackling it. At the same time, it is recognised that women continue to be victims of various forms of violence. There is inadequate understanding of the root causes of all forms of violence against women as well as lack of comprehensive programmes dealing with the perpetrators.⁸⁷ However, the UN remains committed to the full implementation of Beijing Declaration and urges the states to continue working towards that goal.

II. Regional Framework

Although general guidelines exist on an international level, the most comprehensive set of rules and rights in relation to victims of domestic and gender-based violence is to be found on a regional level.

Council of Europe

The most notable regional instrument is the Council of Europe's Convention on preventing and combating violence against women and domestic violence, also known as 'the Istanbul Convention'. This was adopted by the Council in 2011 and entered into force in 2014. As of 25 February 2016, 20 States have ratified this landmark document including. Although, the UK has signed the Convention on the 8th June 2012, it has yet to ratify it and implement the provisions into national law.⁸⁸ Slovenia signed the Convention on the 8th of August 2011 and ratified it on the 5th of February 2015, the Convention entered into force on the 1st June 2015. Croatia signed on the 22nd of January 2013, but no ratification has been done yet. Bulgaria did not sign the Convention.

Chapter IV of the Convention on protection and support includes all the measures that parties are urged to adopt in order to ensure respect for the rights of the victims of violence. These include access to support services covering legal advice, psychological counselling, housing, financial assistance, education and training, access to healthcare and assistance in finding employment. These services should be

⁸⁶ UN Women, *Beijing Declaration and Platform for Action*, 4th World Conference on Women , 4-15 September 1995, p. 76, available at:

http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf;
<http://beijing20.unwomen.org/en/about#sthash.IyLlvWpc.dpuf> (Accessed 27 May 2016).

⁸⁷ Ibid..

⁸⁸ Chart of Signatures and Ratifications of Treaty 210, Istanbul Convention, Status as of 16/03/2016, available at: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures> (Accessed 27 May 2016).

adequately resourced, have trained professionals and be geographically widely accessible. Appropriate shelters should also be set up to provide safe accommodation to victims and State parties are under an obligation to ensure 24 hour free telephone helplines are established.⁸⁹ With regard to the legal rights of victims, in Article 29 the Convention stresses the need for adequate civil remedies against the perpetrator as well as the state's responsibility to take the necessary preventive or protective measures within the scope of their powers. Victims should also be entitled to compensation.

European Union

The Charter of Fundamental Rights of the European Union constitutes the core of the European Union's ('EU') human rights legal framework.⁹⁰

On 1st December 2009, with the entry into force of the Treaty of Lisbon, the Charter became legally binding on the EU institutions and on national governments, just like the EU Treaties themselves.

Equality between women and men is a core EU principle. This principle is recognised in the EU treaties and in the Charter. Although the Charter does not specifically address the issue of domestic and gender-based violence in a separate article, it can be linked to several Charter articles – such as human dignity (Article 1), the right to life (Article 2), integrity of the person (Article 3), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the right to liberty and security (Article 6) and non-discrimination (Article 21).⁹¹

Directive 2012/29/EU of the European Parliament and of the Council of 25th October 2012 establishing minimum standards on the rights, support and protection of victims of crime (Victim's Directive)

The European Commission took further steps towards the effective protection of victims in criminal proceedings in any Member state through the adoption on 25 October 2012 of Directive 2012/29/EU (Victims' Directive) which replaced the 2001 Framework Decision on the standing of victims in criminal proceedings. The EU Member States were instructed to transpose the provisions of the Directive into their national laws by 16 November 2015.

⁸⁹ Articles 18-25 Istanbul Convention.

⁹⁰ Charter of Fundamental Rights of the European Union, (2000/C 364/01), 18/12/2000, available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf (Accessed 27 May 2016)

⁹¹ European Union Agency for Fundamental Rights, *Gender-Based violence against Women: An EU-wide Survey*, available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance_en_0.pdf (Accessed 27 May 2016).

Directive 2012/29/EU establishes minimum standards in the rights, support and protection of victims of crime. Though it is not specifically targeted towards victims of domestic or gender-based violence, it encompasses them and is a valuable tool in the effort of providing support and relief to victims.

The preamble to the 2012 Directive specifically refers to domestic and gender-based violence in the following key ways:

- It makes special provision for female victims of gender-based violence, stating that female victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.⁹²
- It highlights the particular requirements that victims of domestic violence may have, stating that *"victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence."*⁹³
- It also considers the specialist support and legal protection that should be provided to victims of domestic and gender-based violence, stating that *"victims of crime who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence... should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment"*.⁹⁴

Furthermore, some provisions of the 2012 Directive are particularly relevant to victims of domestic and gender-based violence. For example:

- Article 9(2) states that member states should encourage victim support services to pay specific consideration to vulnerable victims, including victims of gender-based violence or violence in a close relationship, and make provision for specialist services such as shelters or other appropriate interim accommodation, trauma support and counselling;

⁹² European Parliament, Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of rights, and replacing Council Framework Decision 2001/220/JHA, The Preamble, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

⁹³ Preamble (18)

⁹⁴ Preamble (38)

- Article 23(2)(d) states that all interviews with victims of gender-based violence or violence in close relationships should be conducted by a person of the same sex as the victim, provided that this does not prejudice the course of criminal proceedings; and
- Article 26(2) which states that member states should take appropriate steps to raise awareness of the rights of specific victim target groups such as victims of gender-based violence and violence in close relationships.

The 2012 Directive also provides a comprehensive set of general procedural rights including:

- Right to understand and to be understood⁹⁵
- Right to information about the victims' rights⁹⁶
- Right to information about the case⁹⁷
- Right to interpretation and translation⁹⁸
- Right to participate in criminal proceedings⁹⁹
- Right to safeguards in the context of restorative justice¹⁰⁰
- Right to protection and to individual assessment¹⁰¹
- Right to protection of privacy¹⁰²
- Right to individual assessment of victims' protection needs.¹⁰³

Importantly, the Directive instructs the Member States to ensure that victims can access support services that would be free of charge and confidential, and these should also be available to victims that do not officially report the crime. Support services should be general and specialised such as shelters, trauma support and counselling.¹⁰⁴

Directive 2011/99/EU on the European Protection Order and Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters

⁹⁵ Article 3 of the Victims' Directive.

⁹⁶ Article 4 of the Victims' Directive.

⁹⁷ Article 6 of the Victim's Directive.

⁹⁸ Article 7 of the Victims' Directive.

⁹⁹ Chapter 3 of the Victims' Directive.

¹⁰⁰ Article 12 of the Victims' Directive.

¹⁰¹ Article 22 of the Victims' Directive.

¹⁰² Article 21 of the Victim's Directive.

¹⁰³ Article 23 of the Victim's Directive.

¹⁰⁴ Article 8 of the Victim's Directive.

The Commission improved the protection of victims by adopting Directive 2011/99/EU on the European Protection Order (EPO) and Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters.¹⁰⁵ Again, although not specifically constructed for domestic violence and gender based violence victims, this combined legislative mechanism encompasses crimes in these two focus areas and provides victims of such crimes with protection. In particular, this two-part mechanism offers a legal basis for the EU to recognise a victim protection order that was granted in another Member State in criminal (Directive) or civil (Regulation) procedures. In substance, this mechanism allows the expansion of protection afforded in one Member State to other Member States facilitating thus the safe cross-border movement of the victim.¹⁰⁶

III. Regional Case Law

The rights of the victims of violence have also been addressed in European case law both at a Council of Europe level (European Court of Human Rights, ECtHR) and at European Union level (Court of Justice of the European Union, CJEU)

A landmark decision of the European Court of Human Rights with regards to the issue of domestic violence is *Opuz v. Turkey*¹⁰⁷ a discussion of which is in Chapter 1.

A key point in this judgment was the Court's finding that withdrawal of the complaint by the victim does not release the authorities from their responsibility in cases where the latter did not investigate the reasons behind the withdrawal. According to the Court:

*'[the authorities] seem to have given exclusive weight to the need to refrain from interfering in what they perceived to be a "family matter". Moreover, there is no indication that the authorities considered the motives behind the withdrawal of the complaints. This is despite the applicant's mother's indication to the Diyarbakır Public Prosecutor that she and her daughter had withdrawn their complaints because of the death threats issued and pressure exerted on them by HO.'*¹⁰⁸

Since *Opuz* the ECtHR has delivered judgments in several other domestic violence cases including *Eremia v. Moldova*¹⁰⁹, *Rohlena v. The Czech Republic*¹¹⁰ and *Civek v Turkey*¹¹¹. The Court of Justice of the

¹⁰⁵ European Commission, 'Victims', available at: http://ec.europa.eu/justice/criminal/victims/index_en.htm (Accessed 27 May 2015).

¹⁰⁶ Suzan van der Aa, *Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here?* (2012 18 European Journal on Criminal Policy and Research 184-185

¹⁰⁷ *Opuz v. Turkey*, App. No. 33401/02 (ECtHR, 9 June 2009).

¹⁰⁸ *Ibid* [143]

¹⁰⁹ *Eremia v. Moldova*, App. No. 3564/11 (ECtHR, 28 May 2013).

European Union ('CJEU') had the opportunity to adjudicate on domestic violence victims in *Gueye (C-489/09)* and *Salmerón Sánchez (C-1/10)* but unfortunately missed the opportunity to provide a confident judgment of significant importance with regards to the rights of victims. The applicable law of this case is the Framework Decision that has now been replaced by the Victim's Directive, and the Court was asked whether a person who had committed domestic violence could be subjected to the mandatory imposition of an injunction to stay away for a minimum period even when the victim opposed that sanction.

This case has in its core a difficult reasoning. In the words of the AG:

'It becomes clear that a mandatory injunction to stay away from the victim lies in the area where the requirement to take effective State action against domestic violence on the one hand is in conflict with respect for private and family life and private autonomy on the other. The problem area, which is only briefly outlined here, requires a difficult balancing of the various legal interests'.¹¹²

However, instead of delving into the problem, the CJEU ruled that the questions related in substance to criminal law and any issues related to fundamental rights were outside the scope of the EU Fundamental Rights Charter. As a result, the issue was outside EU law.¹¹³

IV. International Case Law

On an international level, the United Nations Committee on the Elimination of Discrimination against Women (the 'CEDAW Committee') adopted in July 2015 its decision in the case of *X and Y v Georgia (Application No. 24/2009)*¹¹⁴ - a very important decision regarding domestic violence in Georgia (and the first ever from an international body).¹¹⁵

The case, which was brought by a mother and a daughter facing violence from their former husband and father respectively, concerned the State's failure to prevent and adequately respond to domestic

¹¹⁰ *Rohlena v. The Czech Republic*, App. No.59552/08 (ECtHR, 27 January 2015).

¹¹¹ *Civek v. Turkey*, App. No. 55354/11 (ECtHR, 23 May 2016).

¹¹² *Gueye (C-489/09) and Salmerón Sánchez (C 1/10)* [37].

¹¹³ *John Morijn, Gueye and Salmerón Sánchez: The ECJ side-stepping the Stockholm syndrome in domestic violence cases, and its implications*, Eutopia Law, 2012., available at:

<http://eutopialaw.com/2012/01/09/gueye-and-salmeron-sanchez-the-ecj-side-stepping-the-stockholm-syndrome-in-domestic-violence-cases-and-its-implications/> (Accessed 25 February 2016).

¹¹⁴ UN Committee for the Elimination of All Forms of Discrimination against Women, *Communication No. 24/2009*, 15 July 2015, UN Doc CEDAW/C/61/D/24/2009.

¹¹⁵ Kate Levine, *CEDAW Decision: X and Y v Georgia- Report*, 8 March 2016, available at: <http://ehrac.org.uk/resources/cedaw-decision-x-and-y-v-georgia/> (Accessed 14 March 2016).

violence. The Committee confirmed that the victims' rights under CEDAW had been violated and called on the Georgian Government to '*provide adequate financial compensation to the authors commensurate with the gravity of the violations of their rights.*'¹¹⁶ It also urged the state to:

- 1) Ensure that victims of domestic violence and their children are provided with prompt and adequate support, including shelter and psychological support;
- 2) Intensify awareness-raising campaigns and introduce a zero-tolerance policy in respect of violence against women and, more specifically, domestic violence;
- 3) Ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence;
- 4) Provide mandatory training for judges, lawyers and law enforcement personnel, including prosecutors, on the application of the Prevention of Domestic Violence Act, including on the definition of domestic violence and on gender stereotypes, as well as appropriate training on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendation No. 19.¹¹⁷

In a few words: What are the Rights of the Victims?

Although general guidelines exist on an international level (CEDAW and General Recommendation No. 19), the most comprehensive set of rules and rights in relation to victims of Domestic Violence and Gender-Based Violence is to be found on the regional level. In the Council of Europe (CoE) framework, the Chapter IV of the Istanbul Convention includes measures that parties are urged to adopt in order to ensure respect for the rights of the victims. On a European Union (EU) level, one can refer to the Charter of Fundamental Rights, a general instrument for human rights. However, the main legal instrument in the Victims' Directive of 2012 which establishes minimum standards in the rights, support and protection of the victims, although this is not an instrument targeted to DV victims specifically. Despite the fact existing legal mechanisms aim to protect women victims of DV and GBV there is still a lot to be done in order for their rights to be secured in practice. This is evident in the jurisprudence both at CoE level (ECtHR) and at EU level (CJEU). DV also affect men, boys and LGBT people, it is important that the complete lack of corresponding provisions is addressed.

¹¹⁶ UN Committee for the Elimination of All Forms of Discrimination against Women, *Communication No. 24/2009*, 15 July 2015, UN Doc CEDAW/C/61/D/24/2009 para 11.

¹¹⁷ Kate Levine, *CEDAW Decision: X and Y v Georgia- Report*, 8 March 2016, para 11, available at: <http://ehrac.org.uk/resources/cedaw-decision-x-and-y-v-georgia/> (Accessed 14 March 2016).

Chapter 5: How to Respond Appropriately

It is important that legislation dealing with gender-based violence is gender-sensitive. Gender-sensitive legislation identifies the inherent inequalities between women and men, as well as the specific needs of each gender. A gender-sensitive approach also recognises that the violence experienced by women and that experienced by men differ. This is primarily due to unequal power relations between women and men as well as discrimination against women¹¹⁸. However, despite evidence that violence against women and girls arises from their unequal societal position in relation to males, very few States (with the exception of Sweden and Spain) have developed gender-specific legislation to address violation against women, with most applying existing gender neutral laws to remedy these crimes.¹¹⁹

Therefore, in order to address this issue, it is necessary to have appropriate responses in place. In this Chapter, we will first consider the protections afforded to victims of gender-based violence and domestic violence in the UK. We will then turn to the general guidelines and principles on how to respond to GBV and domestic violence when dealing with victims and perpetrators, and proposals on how the response could be further improved at a European level.

I. Tackling gender-based violence in the UK

The UK is addressing the specific issues of gender-based violence through its 'Violence Against Women and Girls' (VAWG) strategy. According to the Crime Survey for England and Wales, as a result of VAWG, domestic violence and abuse has dropped since the scheme was first rolled out in 2010, and prosecutions for VAWG offences reached record levels in 2014/15.¹²⁰ In addition, the UK has developed new legislation that includes specific offences of stalking, forced marriage, failure to protect from Female Genital Mutilation (FGM), revenge pornography, as well as the new offence of coercive or controlling behaviour in an intimate or family relationship. This aside, the government has also introduced the Modern Slavery Act, Domestic Violence Protection Orders (DVPOs) and the Domestic Violence Disclosure Scheme (DVDS). FGM Protection Orders and an FGM Mandatory reporting duty have also been enforced, and measures have been introduced to manage sex offenders or those who pose a risk of sexual harm.

¹¹⁸ UN, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010, page 15, s 3.1.4.

¹¹⁹ The provisions of the criminal law in England and Wales prohibit much of the conduct that falls within the definition of domestic violence, as set out in "A Call to End Violence against Women and Girls". (CPS) Guidance on Prosecuting Cases of Domestic Violence (2011) provides a detailed guide to the types of behaviour that can occur in cases of domestic violence and the relevant criminal offences that should be considered by prosecutors.

¹²⁰ HM Government, *Ending Violence against Women and Girls*, Strategy 2016-2020. March 2016.

An important part of this strategy is the early identification and intervention to prevent abuse. The DVDS, for example, allows anyone with concerns about their partner to obtain information on previous violence committed by the partner. There have been over 1,900 disclosures under the scheme. As repeat offending by a perpetrator of domestic and sexual violence is a common phenomenon, this is crucial in allowing people to make informed choices.¹²¹ Furthermore, the DVPOs provide crucial breathing space for victims by restricting a perpetrator from returning to their home. The government is proposing to introduce a new civil Stalking Protection Order to tackle perpetrators of this crime at an early stage to prevent victims from becoming targets of abuse over prolonged periods.¹²²

In light of this, it would appear that the UK is well on-board to tackle GBV and DV but surprisingly, it is yet to ratify the Istanbul Convention.¹²³

II. What is an appropriate response to domestic and gender-based violence?

A report from the European Institute for Gender Equality (EIGE) sets out good practices in preventing domestic violence and gender-based violence. It lists European projects aiming to put an end to domestic abuse. Some of these projects focus on raising awareness within the general public (e.g. a travelling exhibition to challenge cultural perceptions in Austria; national campaigns in Croatia or France), other on providing trainings to people who might be in contact with victims of DV (e.g. health services in Austria; future members of police forces in Luxembourg) or providing recommendations and guidelines (e.g. standards for working with male perpetrators in Germany; coordination of agencies like the MARACs in the UK).¹²⁴

According to the UN Handbook for National Action Plans on Violence Against Women, it is important all agencies involved in responding to incidents of violence against women (such as services, police and courts) work together as an integrated system.¹²⁵ It further states that a collaborative and coherent response between such agencies is the most effective way of ensuring the safety of victims/survivors of violence against women and in turn creates a system that is stronger than the perpetrator. For instance, the safety of a victim following an incident is significantly increased when the response is supported by effective police practice, communication and collaboration between different agencies, and a strong

¹²¹ HM Government, *Ending Violence Against Women and Girls*, Strategy 2016-2020, March 2016.

¹²² Ibid.

¹²³ Available at: <http://www.unric.org/en/violence-against-women/27000-13-countries-sign-new-convention-in-istanbul>

¹²⁴ European Institute for Gender Equality (EIGE), *Preventing Domestic Violence – Good Practices*, prepared by IRS - Istituto per la Ricerca Sociale, with contribution of Barbara Limanowska, Santiago Moran Medina, Maurizio Mosca, Thérèse Murphy, and Jurgita Pecuriene on behalf of EIGE.

¹²⁵ UN, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010page 44, s 3.5.1

intervention order process with criminal sanctions for the perpetrator if breached¹²⁶. The UN proposes a *National Action Plan* for all States to implement and emphasises that every element of the system (services, police, and judiciary as well as non-formal elements) should be guided by the following principles:

- The system is accessible to all women
- The confidentiality and privacy of victims/survivors is maintained
- The safety, well-being and empowerment of women (and accompanying children) is paramount
- The accountability of perpetrators is emphasised and sought through all appropriate channels
- Victims/survivors have access to effective and just legal responses that acknowledge women's rights and access to appropriate legal support
- The system is available 24/7 and accessible to all women and accompanying children, throughout the country
- The power imbalance and gender inequality that authorises violence against women is recognised¹²⁷.

Specialised police and prosecutorial units

The police and prosecutors play a crucial role in ensuring that perpetrators are punished, especially with respect to investigating acts of violence against women, preserving evidence and issuing indictments. However, it has been the case in several countries that acts of violence against women are not investigated thoroughly. For instance in the UK, the HMIC report issued in 2014¹²⁸ very rightly sets out that while domestic violence is a priority on paper, this is not common practice. While there is State intent in tackling this heinous crime, this is not always the reality. This report identifies that the police fail to follow the 'positive action' policy of arresting the perpetrator. It states that many officers '*do not understand what is meant by positive action as a result of which perpetrators of domestic violence are not arrested even when there are grounds for their arrest*'.¹²⁹ It further states that several women

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ HMIC, Inspecting the Police in the Public Interest, *Everyone's Business: Improving the Police Response to Domestic Abuse*, p. 40, available at: <https://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf> (Accessed 27 May 2016)

¹²⁹ HMIC, Inspecting the Police in the Public Interest, *Everyone's Business: Improving the Police Response to Domestic Abuse*, p. 12: available at: <https://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf> (Accessed 27 May 2016).

explained how perpetrators manipulated the situation when police were involved. These include counter allegations being made against the victim. In the HMIC review of 600 cases involving actual bodily harm, a counter-allegation was made in 30 per cent of the cases.¹³⁰ In addition, it was found that women in domestic abuse incidents were arrested to a disproportionate degree, and were three times more likely to be arrested than men for a comparable offence.

As a result, it has been evidenced that specialised units are more responsive and effective in dealing with violence against women. The establishment of such units will facilitate the development of expertise, which in turn will lead to an increase in the number of cases being investigated as well as a more efficient process of investigation. This can be seen in the case of Italy where, special investigation services have been set up in police stations to respond more adequately to women who report sexual violence. Such services within the police force create an environment that encourages women complainants/survivors to report incidents immediately.¹³¹

The UN National Action Plan proposes the following measures to ensure that police:

- Respond promptly to every request for assistance and protection.
- Assign the same priority to calls concerning cases of violence against women as to calls concerning other acts of violence, and assign the same priority to calls concerning domestic violence as to calls relating to any other form of violence against women.
- Upon receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the victim/survivor.
- Apply a pro-arrest and pro-prosecution policy in cases where there is probable cause to believe that a crime has occurred.
- Co-operate and coordinate with other services in the integrated system, especially victim/survivor support services, using agreed protocols and procedures for communication, information-sharing and referral¹³².

Denmark's Action Plan to Stop Men's Domestic Violence against Women and Children (2005-2008) refers to legislation allowing the temporary removal of the perpetrator from the home, and requires the police to report the incident to social authorities. Furthermore, specialised police and prosecutor units trained

¹³⁰ HMIC, *Inspecting the Police in the Public Interest, Everyone's Business: Improving the Police Response to Domestic Abuse*, p. 40: available at: <https://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf> (Accessed 25 May 2016).

¹³¹ UN, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010, s 3.2.4.

¹³² Ibid.



and equipped to respond to all forms of violence against women have been found effective in a number of jurisdictions. In fact, Norway's Action Plan on Domestic Violence (2004-2007) places a domestic violence coordinator in each police district and commits to establishing specialist teams in the largest police districts which can be seconded to districts that do not have their own teams whenever necessary. It also mandates that every district domestic violence coordinator function will have at least one full-time equivalent.

Healthcare professionals

The role of health care professionals is extremely important. Abused women are more likely to use health care services and they identify health care workers as the professionals they would most likely to speak about their experience¹³³. It is therefore critical that primary health care providers are adequately equipped to identify and respond appropriately to disclosures, to recognise health outcomes of violence against women (including psychological impacts) and to conduct consultations and examinations so as to minimize secondary trauma. Health care professionals therefore have the opportunity to intervene early and direct victims to the most appropriate services.

According to the UN's National Action Plan, health care workers must do the following for effective operation:

- Establish clear protocols for responding to the immediate physical and mental health needs of women who have experienced domestic and sexual violence, including the prevention of HIV infection, STI infection and unwanted pregnancies following sexual assault
- Receive effective pre and in service training and clinical mentoring in protocols and education on violence against women
- Make available personnel trained in the collection of medical evidence for prosecution if requested by the victim/survivor
- Include data on physical and sexual violence by sex and age group in the routine data collection of the national health information system
- Establish referral pathways between health care services, violence against women services and non-formal community-level responders.¹³⁴

¹³³Department of Health, NHS, *Responding to domestic abuse: A handbook for healthcare professionals*, available at: http://www.domesticviolencelondon.nhs.uk/uploads/downloads/DH_4126619.pdf, (Accessed on 21 April 2016).

¹³⁴ Ibid.

In the UK, the Identification & Referral to Improve Safety (IRIS) model in healthcare practices is a domestic violence and abuse training, support and referral programme to support GPs in asking about and responding to such disclosures. This model is currently operating in 33 areas. Furthermore, Public Health England has funded free online training (through Against Violence and Abuse (AVA)) to improve awareness amongst healthcare professionals, based on the National Institute for Health and Care Excellence (NICE) guidance on domestic abuse.¹³⁵

Across the Channel, Denmark's Action Plan to Stop Men's Domestic Violence against Women and Children (2005-2008) includes the activities of the Centre for Victims of Sexual Assault at Copenhagen University Hospital which has undertaken work to develop standards, procedures and instructions seeking to improve multi-agency efforts to help rape victims. The Centre has standardised procedures for receiving rape victims in all of Denmark's emergency rooms by having in place guidelines for hospital staff's contact with rape victims, the securing of evidence, police reports and referrals.

It is important for healthcare professionals to be aware of support services available locally, keeping supplies of information to pass on. They must be able to create an environment in which women feel comfortable talking about abuse. It is also crucial for healthcare professionals to be able to pick up on signs that could indicate domestic abuse is taking place. This will mean they know how to ask the right questions to let the victim know she can talk about the abuse.¹³⁶

Training and capacity-building for public officials

It is imperative to ensure that those in charge of implementing legislation with respect to violence against women, such as the police, prosecutors and judges, have a strong understanding of such legislation and are able to enforce it appropriately and in a gender-sensitive manner. Lack of or inadequate training provision to public officials increases the risk of law not being implemented effectively. Furthermore, a poor quality response can have the opposite effect, discouraging complainants from coming forward, and potentially increasing the risk of further violence/survivors if the perpetrators learn of the complaint made. Victims/survivors of violence are often reluctant to call the police because they fear that they might not be believed or taken seriously, or because they have little faith in the justice system.¹³⁷

An example of good practice in Europe is evidenced in , Article 47 of the Spanish *Organic Act on Integrated Protection Measures against Gender Violence (2004)*¹³⁸ which requires the Government and

¹³⁵ HM Government, *Ending Violence Against Women and Girls*, Strategy 2016-2020, March 2016.

¹³⁶ Department of Health, NHS, *Responding to domestic abuse: A handbook for healthcare professionals*, available at: http://www.domesticviolencelondon.nhs.uk/uploads/downloads/DH_4126619.pdf, (Accessed on 21 April 2016).

¹³⁷ UN, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010, s3.5.4.1, p.53.

¹³⁸ Office of the Head of State, *Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence*, 29 December 2004, available at:

the General Council of the Judiciary to make sure that training courses for judges and magistrates, prosecutors, court clerks, national law enforcement and security agents and coroners include specific training on sexual equality, non-discrimination for reasons of sex, and issues of violence against women.¹³⁹

Furthermore, language barriers can be an obstacle to justice for victims/survivors of violence against women from refugee, immigrant or cultural/linguistic minority groups. Many States have introduced legislation to ensure victims/survivors have access to qualified and impartial interpreters and translations of legal documents.¹⁴⁰

Safe accommodation

There needs to be a provision for emergency accommodation options for women and accompanying children escaping violence against them, especially that occurring in the family. Where this is possible and safe, victims should be supported to remain in or be returned to their home with the perpetrator removed. This allows the victim to not only avoid the costs associated with leaving him but also allows her to retain contact with her support network and employment. If there are children involved, this prevents disruption to their schooling and lives in general. However, this is dependent on a strong protection and justice response to the perpetrator, including protection orders, effective police practice and comprehensive information sharing between services.¹⁴¹

An example of good practice in Europe can be found in Norway's Action Plan on Domestic Violence (2004-2007) which incorporates a statutory municipal duty to provide a 24-hour women's shelter service for victims/survivors of domestic violence along with counselling and other support. Sweden's Action Plan for Combating Men's Violence against Women, Violence and Oppression in the Name of Honour, and Violence in Same Sex Relationships (2007) allocated funding directly to municipalities to enable them to implement a higher standard for the provision of such accommodation, as required by the Social Service Support for Women Exposed to Violence Bill. France's Second Three-Year Inter-Ministerial Plan Combating Violence against Women (2008-2010) included new legislation strengthening women's access to safe accommodation in cases of intimate partner violence, whether inside or outside the home. In 2010, judges were given the power to issue immediate eviction orders from the family home to

http://www.isotita.gr/var/uploads/NOMOTHESIA/VIOLENCE/SPANISH%20LAW%20Organic%20Act%201_28-12-04%20on%20Violence.pdf (Accessed 27 May 2016).

¹³⁹ UN Women, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010, s3.5.3

¹⁴⁰ UN Women, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010,:

<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

¹⁴¹ UN Women, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010, 3.5.3.2 page 48.

perpetrators, or if the victim wished to leave the home, ensure her safe accommodation and the provision of care for accompanying children.

Counselling and support service¹⁴²

High quality counselling and support services are imperative for the immediate and longer term recovery of victims. It is hoped that counselling and support services will improve safety and identification of options to protect future safety, improved emotional and physical health, a better understanding of rights and entitlements and a decrease in the effects of trauma.

The provision of toll-free 24-hour telephone hotlines and online counselling can provide support to women who may be socially or geographically isolated, or who are unwilling, unable or afraid to access a physical service. France's Third Three-Year Inter-Ministerial Plan Combating Violence against Women, for instance, mandates the evaluation of existing phone services to victims/survivors (and witnesses) with the aim of creating a single number, and making it available to victims/survivors of all forms of violence against women.¹⁴³

Intervention Programmes for Perpetrators

Perpetrator behaviour-change programmes are being used by an increasing number of jurisdictions as part of sentencing, with courts mandating that a perpetrator attend an intervention/behaviour change programme in addition to other penalties. Such programmes are not appropriate in all cases, and when prescribed in sentencing should be approached with caution, provide for continuous monitoring, and not be used as an alternative to prosecution¹⁴⁴.

Charities such as Respect in the UK run community based group-work programmes, working directly with perpetrators with the aim of changing their behaviour and stopping further abuse and violence¹⁴⁵. This includes:

- Risk assessment and case management to protect victims and children

¹⁴² UN, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010,3.5.3.3 page 49.

¹⁴³ UN, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010,3.5.3.3 page 49.

¹⁴⁴ UN, *Handbook for Legislation on Violence Against Women*, Department of Economic and Social Affairs, New York, 2010,3.5 page 58

¹⁴⁵ Respect, *Domestic Violence Perpetrators – Working with the cause of the problem*, 2011, available at: http://www.respectphoneline.org.uk/data/files/lobbying/lobbying_tool_with_refs_20.7.11.pdf



- Delivering group work programmes of sufficient length and quality to ensure the best possible opportunities for change
- Monitoring on-going risk

In order to ensure accountability and post-violation safety for women and children, minimum standards for perpetrator programmes are critical. These standards include¹⁴⁶:

- Undertaking an appropriate suitability assessment of perpetrators prior to their acceptance on the programme, with on-going risk assessment
- A programme commitment to work within a gendered structural analysis of violence against women, as opposed to a simplistic or individualised anger management paradigm
- A commitment to not engage in any relationship counselling or mediation
- The prioritisation of the safety of women and children including limiting the perpetrator's confidentiality rights
- Formal agreements and information sharing protocols with victim/survivor service providers, which are located separately from the perpetrator programmes
- Delivery by appropriately trained staff

Studies have suggested that the majority of men who abuse their partners stop the violence if they attend a domestic violence perpetrator programme (DVPP).¹⁴⁷ As part of the programme, men attend weekly group sessions where their behaviour is discussed and challenged both by facilitators and other men within the group. They are also taught techniques to control their use of violence and abuse. Women partners and ex-partners are offered on-going support by a women's support worker and are kept informed about their partner's progress. This study has shown that most men are able to take steps towards positive change with the help of this programme and although there is work to be done, it seems to be headed in a positive direction¹⁴⁸.

In a few words: How to Respond Appropriately?

¹⁴⁶ Council of Europe, *Combating Violence against Women – Minimum Standards for Support Services*, Prof. Liz Kelly and Lorna Dubois, Directorate General of Human Rights and Legal Affairs, Strasbourg, September 2008.

¹⁴⁷ Durham University, *Rehabilitation programmes for domestic violence perpetrators can work*, 12th January 2015, available at: <https://www.dur.ac.uk/news/newsitem/?itemno=23319> (Accessed 27 May 2016).

¹⁴⁸ Durham University, *Rehabilitation programmes for domestic violence perpetrators can work*, 12th January 2015, available at: <https://www.dur.ac.uk/news/newsitem/?itemno=23319> (Accessed 27 May 2016).



According to the UN guidelines, it is important that all responders involved in DV and GBV cases work together as a team in a collaborative and coherent way. The UN has further provided a set of guidelines addressed to the police and prosecutorial units, healthcare professionals and public officials in order to help them respond appropriately to GBV and DV incidents. The case study of the UK has been selected in order to highlight a good practice as the adoption of the 'Violence Against Women and Girls' strategy and the development of new legislation for specific offences (stalking, forced marriage, failure to protect from FGM) constitute important steps in the right direction. Another crucial issue underlined in this case study is the vital role of early identification and intervention to prevent abuse of victims of DV and GBV. This section has stressed that victims should be provided with safe accommodation, counselling and support services. Last but not least, there are some initiatives aiming to change the perpetrator's behaviour, in addition to imposing penalties. Studies have shown that such programmes are helpful for men to change in a positive way.

Conclusion

This report has looked at the main issues surrounding the problem of DV and GBV.

The starting point of analysis was the international and European legal definitions of the phenomena. Despite concrete definitions existing, this report showed that there are still many myths and misconceptions. Therefore accurate and up to date information on DV and GBV are crucial in order to develop a clear and accurate picture of the problem in question. Women remain the most at risk of DV and GBV and form the majority of victims.

However definitions and myth-busting are not of themselves enough, in order to raise awareness and understanding of DV and GBV. Thus the report also looked at the root causes of these violence incidents. After establishing that it is difficult to talk about “causes” of DV and GBV but more relevant to talk about “contributing factors”, it was concluded that such violence cannot be attributed to a single factor but rather to a variety, which play a role cumulatively. These factors can be of general nature, or specific to a particular target group (i.e. particular contributing factors for violence against LGBT people) and can substantially impact on the how and at what level the violence occurs. For this reason, it is important for these factors are always be taken into consideration, especially for particular target groups, in order to gain a deeper insight into every incident.

The most essential step in the prevention of DV and GBV incidents is the identification of the victims, which is addressed at the third part of this report. An overview of existing indicators for DV and GBV showed that they are not fully suitable for purpose as they are disjointed and reproduced separately for various professions. It is therefore recommended that a joint list of “early” indicators is developed encompassing a list of suspicious situations which would serve as an early “alert mechanism” available to everyone likely to encounter an actual or potential DV or GBV victim. It was further identified that there is a real lack of DV and GBV related education for frontline responders, given the research shows a number of inappropriate responses amongst practitioners. It is argued that further improvements need to be made in order to ensure professionals who come in contact with actual or potential victims of DV and GBV are appropriately trained. It was highlighted that the level of awareness of professionals as well as the general public must also be increased.

Apart from timely identification, protection of the rights of the victims in the law as well as appropriate non legal avenues for assistance, were examined in the fourth and fifth chapters of the report respectively. An overview of the rights of the victims in the international and European legal realms is provided together with the relevant jurisprudence of the ECtHR and the CJEU. The report concludes that there is still some progress to be made before the rights guaranteed in law are effectively secured in practice.

Finally, as far as non-legal protection avenues are concerned, the importance of the relevant UN Guidelines in mainstreaming an appropriate response to DV and GBV issues was highlighted, from the moment of the victim’s identification until the prosecution of the perpetrator. The provision of safe



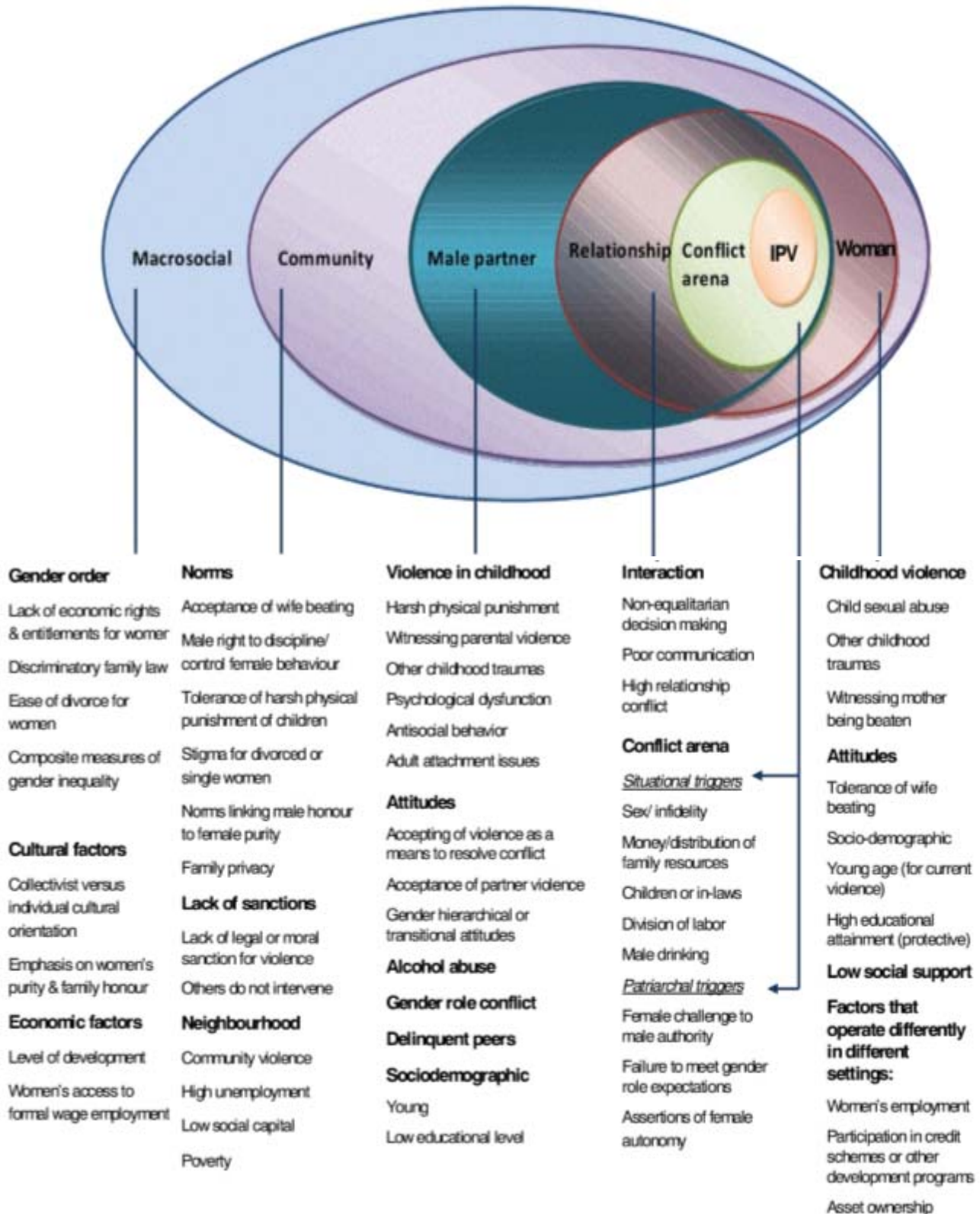
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Equality and Citizenship (REC)
Programme of the European Union



accommodation and counselling was found to be crucial for the safe recovery of the victim. Overall, it was underlined that the non-legal avenues could be improved too in order to empower the victims to speak up, seek and receive assistance and recover from the experience of violence.



Annex A: Revised Ecological Model - STRIVE



Annex B: List of Indicators used to identify cases of DV

Examples of the indicators used to identify cases of domestic violence by health professionals in the UK.

- Unexplained bruises, lacerations, burns, multiple sites of injury or multiple injuries in various ages of healing;
- Injuries to areas hidden by clothing (chest, breast and abdomen);
- Evidence of sexual abuse, e.g. injuries to genitals;
- Chronic pain problems (pelvic pain, back pain, neck pain, psychogenic pain or pain due to diffuse trauma without physical evidence);
- Explanation given by the service user, as to how her injuries have occurred, is inconsistent with those injuries;
- Delays between time of injury and presentation for treatment;
- 'Accident' described by the service user in a hesitant, ashamed, embarrassed, frightened or evasive manner;
- Denying or minimising injuries/violence;
- Repeated 'accidental' injuries from the medical records;
- Repeated visits to the surgery;
- Repeated vague complaints or symptoms for which no explanation can be found, e.g. abdominal pain, reduced foetal movements, etc.;
- Non-compliance with treatment regimes, missed appointments;
- Lack of access to finances and ability to communicate by telephone
- Accompanied by an 'overprotective' partner;
- Intense irrational jealousy or possessiveness expressed by partner or reported;
- Reluctance to speak or disagree in front of her partner;



- History of miscarriage, stillbirth, pre-term labour, intrauterine growth retardation, low birth weight babies and/or unplanned or unwanted pregnancies;
- Postpartum, removal of perineal sutures;
- Gynaecological complaints, e.g. pelvic pain, pain during intercourse, frequent urinary and/or vaginal infections;
- Failure to use condoms and other contraceptive methods;
- Psychiatric illness, alcohol or drug dependence in service user or partner;
- History of attempted suicide and/or self-harm.
- History of depression, anxiety, panic attacks, inability to cope, social withdrawal, feelings of isolation and/or a sense of helplessness;
- Physical symptoms related to stress, anxiety and depression.

Source: *How To Deal and Recognise Patients Who Are Victims of D.V./Identify, Domestic Violence London, A Resource for Health Professionals, NHS:*

<http://www.domesticviolencelondon.nhs.uk/5-how-to-deal-with-and-recognise-patients-who-are-victims-of-d-v/>