

Fordham International Law Journal

Volume 35, Issue 2

2012

Article 4

Confronting the Challenges of Domestic Violence Sentencing Policy: A Review of the Increasingly Global Use of Batterer Intervention Programs

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NOTE

CONFRONTING THE CHALLENGES OF DOMESTIC VIOLENCE SENTENCING POLICY: A REVIEW OF THE INCREASINGLY GLOBAL USE OF BATTERER INTERVENTION PROGRAMS

*Ashleigh Owens**

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INTRODUCTION

On January 17, 2010, in West Haven, Connecticut, Selami Ozdemir murdered his wife, Shengyl Rasim, in front of their two children.¹ Ozdemir then used the same gun to take his own life.² Although undoubtedly a tragedy in its own right, the devastation of this murder-suicide is compounded by the larger failure of the criminal justice system in preventing these and similar deaths from ever occurring.³

This was not the first time that Ozdemir's violent behavior had been brought to the attention of the Connecticut criminal justice system.⁴ In September 2009, the police were called to

1. See Arielle Levin Becker, *Should Abusers Get a Second Chance?; Handling of Offenders at Issue After Killings*, HARTFORD COURANT, June 6, 2010, at A1 (reporting the murder of twenty-five year old Shengyl Rasim by her husband, Selami Ozdemir); see also Rob Varnon, *Man Kills Wife, Self After Posting Bond*, GREENWICH TIME, Jan. 17, 2010, available at 2010 WL 1055350 (detailing the domestic-violence-related murder of Rasim by her spouse, Ozdemir, following his release from police custody for a separate domestic-violence-related incident).

2. See Becker, *supra* note 1, at A1 (noting that Ozdemir took his own life after murdering his wife Rasim); see also Amanda Pinto & James Tinley, *West Haven Officials Mum on Murder, Suicide Report: Domestic Violence Mishandled at Every Level*, NEW HAVEN REG., May 26, 2010, <http://www.nhregister.com/articles/2010/05/26/news/metro/doc4bfc95e57b5e9278986614.txt> (describing how the criminal justice system failed to prevent the murder of Rasim and suicide of Ozdemir).

3. See Becker, *supra* note 1, at A1 (reporting that Ozdemir's sentence requiring his attendance at a batterer's treatment program equated to a second chance that allowed him to murder his wife and take his own life); see also Pinto & Tinley, *supra* note 2 (recognizing that the criminal justice system had mishandled Ozdemir's repeated acts of violence towards his wife).

4. See Becker, *supra* note 1, at A1 (stating that Ozdemir had previously been brought to the attention of Connecticut police for domestic violence); see also James Tinley, *Key Breakdowns Led to Murder-Suicide*, NEW HAVEN REG., May 25, 2010, <http://www.nhregister.com/articles/2010/05/25/news/metro/doc4bfb26c22e0e5880064660.txt> (noting that although Ozdemir had previously been called to the attention

Ozdemir's house where they found Rasim lying beaten against the crib where their three-month-old daughter slept.⁵ Rasim's mouth was bloodied and her cheek welted.⁶ Ozdemir was arrested and, as part of his sentence, was ordered to attend a family violence education program.⁷ Throughout the world, family violence education programs, also referred to as batterer intervention programs, vary in the way they are structured or implemented; however, one common feature of these programs is that they are typically offered as a sentencing alternative to incarceration for domestic violence offenders.⁸ Generally, they seek to reform batterer behavior through psycho-education, cognitive-behavioral intervention, couples counseling, or an assessment of individual needs and batterer typology.⁹

Although Ozdemir was sentenced to participate in one of these programs in November 2009, he never attended.¹⁰ Due to a backlog created by a lack of funding and resources, Ozdemir

of the police for abusing his wife, police were still unable to provide her protection from subsequent abuse).

5. See Becker, *supra* note 1, at A1 (describing a previous domestic attack, which had been brought to the attention of the Connecticut police); see also Tinley, *supra* note 4 (showing that the police and courts were aware of Ozdemir's history of domestic violence and highlighting his ability to post bond after assaulting Rasim on April 16, 2010, even after he was first arrested for beating his wife in September 2009).

6. See Becker, *supra* note 1, at A1 (detailing the injuries sustained by Rasim from her husband Ozdemir after an attack); see also Tinley, *supra* note 4 (noting that Rasim was abused in September 2009 by her spouse Ozdemir).

7. See Becker, *supra* note 1, at A1 (reporting that Ozdemir was sentenced to a batterer's intervention program in Connecticut, the Family Violence Education Program). Connecticut's Family Violence Education Program is an example of just one of the many batterer intervention programs employed by court systems all over the world. See *Batterers' Intervention Programs*, ADVOCS. FOR HUM. RTS., http://stopvaw.org/Batterers_Intervention_Programs.html (last updated Oct. 9, 2008) [hereinafter STOPVAW] (providing a brief explanation of batterer intervention programs and their use throughout the United States, as well as in other countries such as Albania, Bulgaria, and Georgia).

8. See NAT'L INST. OF JUST., U.S. DEP'T OF JUST., NCJ 195079, BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE?, at iii, 1 (2003) [hereinafter BATTERER INTERVENTION PROGRAMS] (proffering a general description of intervention programs).

9. See *id.* at 1-2.

10. See Becker, *supra* note 1, at A1 (reporting that Ozdemir never attended a batterer intervention program because his attendance was delayed by a shortage of spots); see also Tinley, *supra* note 4 (stating that Ozdemir did not attend the batterer intervention program he was sentenced to in the months prior to murdering his wife).

was not scheduled to begin the program until February 2010, one month after he murdered Rasim and took his own life.¹¹

In the same jurisdiction the year before, Jose Lacouture also murdered his wife.¹² Unlike Ozdemir, however, at the time of the murder, Lacouture had already completed a batterer intervention program in Rhode Island, and was currently enrolled in a related program in Connecticut.¹³

Unfortunately, these examples are not anomalies.¹⁴ Montgomery County, Ohio recently released a review of the domestic violence fatalities in the county from 1995–2009.¹⁵ In twenty-two percent of the domestic-violence-related deaths in which there had been a documented history of domestic violence, the perpetrator had previously been ordered to attend a batterer intervention program.¹⁶

11. See Becker, *supra* note 1, at A1 (reporting that Ozdemir's attendance at the batterer treatment program was delayed); see also Pinto & Tinley, *supra* note 2 (explaining the effects of funding shortages on batterer intervention programs).

12. See Becker, *supra* note 1, at A1 (describing how Jose Lacouture murdered his wife following repeated incidents of domestic violence); see also David Owens, *Suspect: 'I Killed My Wife'; Victim Had Protective Order Against Husband Accused in Her Slaying*, HARTFORD COURANT, Aug. 18, 2009, at A1 (stating that Lacouture murdered his wife after having been brought to the attention of the court system for abuse on numerous occasions).

13. See Becker, *supra* note 1, at A1 (noting that Lacouture had admitted to previously attending a batterer intervention program in Rhode Island before receiving a new sentence to a different batterer intervention program in Connecticut).

14. See *infra* notes 147–57 and accompanying text (providing further evidence of the ineffectiveness of batterer intervention programs); see also NAT'L OFFENDER MGMT. SERV., MINISTRY OF JUST., WHAT WORKS WITH DOMESTIC VIOLENCE OFFENDERS? (2010) (U.K.), available at http://www.rapt.org.uk/core/core_picker/download.asp?id=215&filetitle=NOMS+study+-+domestic+violence+offenders [hereinafter MINISTRY OF JUST., WHAT WORKS WITH DOMESTIC VIOLENCE OFFENDERS?] ("The results of a 2009 review of seven [domestic violence] perpetrator treatment studies suggested that perpetrator interventions have limited effect on repeat violence, with most studies demonstrating minimal or no benefit above the no-treatment control group. Overall, approximately one in three cases, regardless of intervention, had a new episode of [domestic violence] within 6 months, according to victim reports." (footnote omitted)).

15. MONTGOMERY CNTY. DOMESTIC VIOLENCE DEATH REVIEW COMM., REPORT NO. 6, DATA SUMMARY AND RECOMMENDATIONS (2009), available at http://www.mcoho.org/Montgomery/home/docs/Domestic_Violence_Death_Review_Report.pdf.

16. See *id.* at 29 (stating that of the thirty-six cases in which there was a documented history of domestic violence, eight perpetrators had been ordered into batterer intervention programs). Almost seventeen percent of the total fatalities were

Discouraging cases and statistics like these exist even though the United States was one of the earliest countries to implement the use of batterer intervention programs, which have been used in localities throughout the country for decades.¹⁷ Despite setbacks in the United States, a country considered to be at the forefront of domestic violence awareness, international governmental bodies and national governments throughout the world increasingly promulgate public policies that advocate for the use of batterer intervention programs.¹⁸ These continued policy endorsements reflect the optimism of the programs' proponents who point to successful cases and the benefits of abuser rehabilitation to justify a widespread use of such programs.¹⁹ Given the evidence to the contrary, a debate has emerged as to whether batterer intervention programs are sound policy.²⁰ Adding to this debate is the complicating factor that the success of batterer intervention programs hinges on the manner and thoroughness of their implementation on the ground level in coordination with community and criminal justice services.²¹

committed by perpetrators who had fully completed a batterer intervention program. *See id.*

17. *See* BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 1 (noting that the first batterer intervention program models were psycho-educational programs that are now referred to as the Duluth model); *see, e.g., id.* (reporting results of batterer intervention programs in Brooklyn, New York and Broward County, Florida); STOPVAW, *supra* note 7 (noting, as one example, the use of batterer intervention programs in Pittsburgh, Pennsylvania).

18. The United Nations ("UN") and Council of Europe ("COE") have both encouraged member states to employ the use of batterer intervention programs. *See infra* Part I.C. These endorsements, in addition to the widespread use and emergence of batterer intervention programs in the United States and the United Kingdom ("UK"), have led to many countries around the world adopting similar policies. *See infra* Part I.C–D. This Note discusses the policies of Brazil, the COE, India, England, the UN, and the United States. *See infra* Part I.C–D. Other countries, however, also utilize batterer intervention programs, such as: Austria, Belgium, Belize, Bulgaria, Chile, Cyprus, Iceland, Lithuania, Mexico, Netherlands, Portugal, Republic of Korea, Russian Federation, Samoa, Spain, Sweden, and Switzerland. *See* U.N. Secretary-General, *Intensification of Efforts to Eliminate All Forms of Violence Against Women*, ¶ 23, U.N. Doc. A/65/208 (Aug. 2, 2010).

19. *See infra* notes 136–46 and accompanying text (relaying the position of supporters in favor of using batterer intervention programs in court sentencing).

20. *See infra* Part II.A–B (discussing the arguments both for and against batterer intervention programs).

21. *See infra* notes 136–39 and accompanying text (discussing increased success with batterer intervention programs when used in conjunction with coordinated

In its exploration of batterer intervention programs as a sentencing option, this Note analyzes whether it is appropriate for international and national governmental bodies to advocate for their implementation. Part I discusses the historical antecedents of the movement to end domestic violence, including the rise of batterer intervention programs as a sentencing option. It next details the promotion of batterer intervention programs by the United Nations (“UN”) and the Council of Europe (“COE”) to their member states, and finally the policies implemented domestically by Brazil, England, India, and the United States.²² Part II reviews studies and reports and discusses the arguments for and against batterer intervention programs. Part II also presents problems and complications in a top-down approach to the implementation of batterer intervention programs when the burden and effort of these programs is a function of local government. Lastly, Part III concludes that while local governments responsible for implementing sentencing policy may decide that batterer intervention programs are appropriate for their jurisdiction, supranational and national governmental bodies should refrain from advocating or endorsing such policy.

I. *HISTORICAL ANTECEDENTS AND POLICY OBJECTIVES*

The effective response of the criminal justice system to domestic violence has become increasingly important because of the continued prevalence of such violence.²³ Therefore, a broad and global overview of criminal justice systems, and their response to such incidents, is necessary to understand the impact of and need for batterer intervention programs. It is also important to understand how criminal justice systems have

community responses); *see also infra* Part II.C (discussing the challenges in implementing problem-solving justice initiatives from the top down).

22. The selection of these countries is reflective of the author’s intent to represent a range of policies from countries that are culturally and geographically diverse. These countries also differ significantly in the relative age of their domestic violence laws and the sentencing practices adopted in their justice systems. *See infra* Part I.D. The inclusion of these countries is by no means intended to be an exhaustive list of national policies concerning batterer intervention programs. *See* U.N. Secretary-General, *supra* note 18, ¶ 23 (listing the growing number of states that have implemented batterer intervention programs).

23. *See infra* notes 28, 91, 102, 115, 125 and accompanying text.

responded to domestic violence both over time and across the globe. This Part examines the characteristics of domestic violence and the factors that initially gave rise to the use of batterer intervention programs as a sentencing option. Specifically, Section A describes domestic violence and its effects on victims and society as a whole, while Section B discusses the historic origins of the movement to end domestic violence and its development, leading to the rise of batterer intervention programs as a sentencing option. Next, Section C provides background on the endorsement of batterer intervention programs by international governing bodies, which in turn has provided credibility to national domestic programs. Finally, Section D compares the approaches of various national domestic policies to batterer intervention programs, beginning with the United States and England and followed by a comparison of Brazil and India.

A. *What is Domestic Violence?*

While there are a number of criminal acts that can lead a court to sentence an offender to a batterer intervention program, collectively, these offenses fall into the catchall category of “domestic violence.”²⁴ For the purposes of this Note, domestic violence is defined as “a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults or adolescents use against their intimate partners.”²⁵

24. See SENTENCING GUIDELINES COUNCIL, OVERARCHING PRINCIPLES: DOMESTIC VIOLENCE, DEFINITIVE GUIDELINE 3 (2006) (U.K.) (“There is no specific offence [sic] of domestic violence and conduct amounting to domestic violence is covered by a number of statutory provisions.”); see also SUMAN KAKAR, DOMESTIC ABUSE: PUBLIC POLICY/CRIMINAL JUSTICE APPROACHES TOWARDS CHILD, SPOUSAL AND ELDERLY ABUSE 44–47 (1997) (describing the many manifestations and forms of domestic violence).

25. Anne L. Ganley, *Understanding Domestic Violence*, in IMPROVING THE HEALTH CARE RESPONSE TO DOMESTIC VIOLENCE: A RESOURCE MANUAL FOR HEALTH CARE PROVIDERS 15, 16 (1998) (providing a definition of domestic violence); see also KERRY HEALEY, CHRISTINE SMITH & CHRIS O’SULLIVAN, NAT’L INST. OF JUST., U.S. DEP’T OF JUST. NCJ 168638, BATTERER INTERVENTION: PROGRAM APPROACHES AND CRIMINAL JUSTICE STRATEGIES 3 (1998) (citing Anne Ganley’s definition of domestic violence). This definition is one of many that is used and has been accepted by domestic violence advocates. In the UK, “domestic violence” has been defined by the government’s Sentencing Council as “any incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial or emotional] between adults who are or have

Domestic violence has a deep and lasting effect not only on its victims but on the community as well.²⁶ Victims are more likely to abuse alcohol and drugs, report sexual dysfunction, attempt suicide, and suffer from post-traumatic stress disorder, central nervous system disorders, depression, anxiety, and eating and personality disorders.²⁷ In 1993, the World Bank released a study that estimated that nine million Disability-Adjusted Life Years (“DALYs”) are lost annually due to intimate partner violence.²⁸ DALYs are the metric used to express the overall disease burden measured by the number of years lost by persons on average as a result of ill health, disability, or early death.²⁹ In 2002, the World Bank released another study indicating that domestic violence and rape ranked higher than cancer, motor vehicle accidents, war, and malaria in the global estimates of selected risk factors for increased morbidity, disability, and mortality, accounting for an estimated five to sixteen percent of healthy years of life lost by females aged fifteen to forty-four years of age.³⁰

been intimate partners or family members, regardless of gender or sexuality.” See SENTENCING GUIDELINES COUNCIL, *supra* note 24, at 3.

26. See EVE BUZAWA & CARL BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 11 (2d ed. 1996) (describing the impact of domestic violence beyond the individual acts); see also *Violence Against Women “Severe, Pervasive” Worldwide*, U.N. Report Says, MED. NEWS TODAY (Oct. 16, 2006), <http://www.news-medical.net/news/2006/10/16/20533.aspx> (detailing the worldwide impact of domestic violence).

27. See BUZAWA & BUZAWA, *supra* note 26, at 11–12; Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victims of Domestic Violence*, 5 GEO. J. FIGHTING POVERTY 3, 6, 10 (1997).

28. See WORLD BANK, GENDER-BASED VIOLENCE, HEALTH AND THE ROLE OF THE HEALTH SECTOR 3–4 (2009), available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTHEALTHNUTRITIONANDPOPULATION/EXTPHAAG/0,,contentMDK:22421973~pagePK:64229817~piPK:64229743~theSitePK:672263,00.htm#PDF> [hereinafter WORLD BANK, GENDER-BASED VIOLENCE] (reporting the physical and economic impact of domestic violence); see also WORLD HEALTH ORGANIZATION, PREVENTING INTIMATE PARTNER AND SEXUAL VIOLENCE AGAINST WOMEN: TAKING ACTION AND GENERATING EVIDENCE 5 (2010), available at http://whqlibdoc.who.int/publications/2010/9789241564007_eng.pdf (“Intimate partner violence also has a significant adverse economic impact. For example, in the United Kingdom, one analysis estimated that its annual cost to the economy in England and Wales was approximately £22.9 billion . . .”).

29. *Global Burden of Disease*, WORLD HEALTH ORG., http://www.who.int/topics/global_burden_of_disease/en/ (last visited Jan. 6, 2012) (defining Disability-Adjusted Life Years).

30. See WORLD BANK, GENDER-BASED VIOLENCE, *supra* note 28, at 3 (releasing findings that domestic violence and rape are leading causes of increased morbidity,

B. *The Movement to End Domestic Violence*

In the United States and some Western European countries, the movement to end domestic violence dates back to the nineteenth century.³¹ Its development has paralleled the feminist movement in these countries.³² Consequently, in the early twentieth century, the attention to domestic violence waned as the focus of the feminist movement in the United States and England was more directed towards suffrage and temperance.³³ Until the 1960s, the judicial and criminal justice responses to domestic violence in these countries diminished.³⁴ The courts and criminal justice system systematically de-emphasized the criminal nature of domestic abuse by categorizing it as a private family matter.³⁵ Arrests for domestic violence were uncommon, and prosecutions and convictions were even rarer.³⁶ The typical police, prosecutor, and judicial

disability, and mortality); WORLD HEALTH ORGANIZATION, THE WORLD HEALTH REPORT 2002: REDUCING RISKS, PROMOTING HEALTHY LIFE 80, 82–83 fig.4.9 (2002), available at http://www.who.int/whr/2002/en/whr02_en.pdf.

31. See Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1289–90 (2000) (tracing the movement to end domestic violence in the United States); see also JEFFREY FAGAN, NAT'L INST. OF JUST., U.S. DEP'T OF JUST., NCJ 157641, THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 6–9 (1996) (noting the historical development of the movement against domestic violence).

32. See Tsai, *supra* note 31, at 1290 (drawing parallels between the involvement of the feminist movement and the developments in the movement to end domestic violence); see also FAGAN, *supra* note 31, at 7–9 (describing the historical development of the movement to end domestic violence by noting the role of feminist theory and activism).

33. See Tsai, *supra* note 31, at 1289–90 (noting that the feminist movement at the turn of the century was focused on suffrage and temperance, which caused decreased attention toward domestic violence); see also FAGAN, *supra* note 31, at 6–9 (relating the disparate attention paid to domestic violence in the first half of the 20th century by the feminist movement to a similar response by the criminal justice system).

34. See Tsai, *supra* note 31, at 1289–90 (noting that the criminal justice response to domestic violence was subdued prior to the 1960s); see also FAGAN, *supra* note 31, at 6–7 (describing how the courts had a hands-off approach to domestic violence prior to the 1960s).

35. See Tsai, *supra* note 31, at 1289–90 (noting that the criminal justice response to domestic violence historically was to treat domestic violence cases as less serious than other types of violence); see also FAGAN, *supra* note 31, at 6–7 (describing how the courts had a removed approach to domestic violence prior to the 1960s).

36. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 4 (1999) (“It has long been common practice for police to refuse to arrest, for prosecutors to decline to press charges, and for judges to be reluctant to issue civil protection orders

response was to treat domestic violence as a “private matter” that required compromise and reconciliation within the family.³⁷ Remnants of this attitude persist even today.³⁸

In the 1960s and 1970s, however, the feminist movement renewed its attention toward violence against women and began creating rape crisis centers, battered women’s shelters, and programming for victims of abuse.³⁹ In the United States, local governments and the federal and state criminal justice systems responded in tandem by establishing government programs to combat domestic violence.⁴⁰ These new efforts included state-funded shelters, specialized prosecution teams, funding for published studies on domestic violence, and batterer intervention programs.⁴¹

In the 1980s, violence against women remained in the public eye and many jurisdictions in the United States started to implement pro-arrest policies for domestic violence.⁴² These

or impose meaningful sentences on batterers. In contrast to the remarkable progress made by legislators, those responsible for applying and enforcing the law—prosecutors, judges, and the court system—have lagged far behind.”); *see also* Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 *WM. & MARY L. REV.* 1505, 1520–21 (1998) (noting that most domestic violence cases end either in arrest or alternatively with a deal being reached with the prosecutor).

37. *See* Tsai, *supra* note 31, at 1289–90 (describing the traditional view of domestic violence as a private family matter outside the purview of the criminal justice system); *see also* FAGAN, *supra* note 31, at 7–8 (noting the difficulty in overcoming traditional perceptions of domestic violence as private family business).

38. *See* Hanna, *supra* note 36, at 1538–39 (denoting the traditional perception of domestic violence as a private family matter); *see also* Epstein, *supra* note 36, at 4 (“It has long been common practice for police to refuse to arrest, for prosecutors to decline to press charges, and for judges to be reluctant to issue civil protection orders or impose meaningful sentences on batterers.”).

39. *See* Tsai, *supra* note 31, at 1290 (describing renewed attention to domestic violence by the feminist movement in the 1960s and 1970s); *see also* FAGAN, *supra* note 31, at 7–9 (noting that the progress within the domestic violence movement was spurred by feminist activism in the 1960s and 1970s).

40. *See* Tsai, *supra* note 31, at 1290 (noting the initial government responses in the United States to domestic violence beginning in the 1960s); *see also* FAGAN, *supra* note 31, at 7–8 (describing the initial local and national government efforts to combat domestic violence in the United States).

41. *See* Tsai, *supra* note 31, at 1290 (providing a list of early government efforts and involvement in the movement to end domestic violence); *see also* FAGAN, *supra* note 31, at 7 (describing the initial responses of governments in combating domestic violence, on both local and national levels, in the United States).

42. *See* BUZAWA & BUZAWA, *supra* note 26, at 140–41 (“As discussed earlier, the consensus on the historically limited role of arrest had been shattered by the early 1980s A new pro-arrest consensus began to emerge when crisis intervention lost

policies increased batterer interaction with the court system, leading to the incarceration of many batterers.⁴³ Consequently, courts began to hear from victims who did not want their abusers incarcerated; they simply wanted the violence to stop.⁴⁴ Presented with the challenge that domestic violence was already under-reported to the criminal justice system and opinions that the current approach to sentencing was re-victimizing victims, courts increasingly began to turn to batterer intervention programs as a sentencing alternative.⁴⁵

adherents.”); BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 1 (“With the establishment of proarrest policies in the 1980s, increasing numbers of batterers were seen in criminal courts across the country.”).

43. See BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 1. *But see* RICHARD R. PETERSON, N.Y.C. CRIM. JUST. AGENCY, COMBATING DOMESTIC VIOLENCE IN NEW YORK CITY: A STUDY OF DV CASES IN THE CRIMINAL COURTS 2 (2003), <http://www.nycja.org/research/reports/ressum43.pdf> (“During the 1980’s, police departments began to shift from a mediation strategy (talking to, but rarely arresting, the offender) to a pro-arrest policy in domestic incidents. . . . These changes in police practices sought to increase the likelihood of arrest for DV offenders. Interestingly, at the time that pro-arrest policies were initially implemented, many domestic violence cases were not prosecuted; most domestic violence cases that were prosecuted ended with a dismissal.”).

44. See BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 1 (“Some victims, however, began to say that although they wanted the battering to stop, they did not want their partners incarcerated.”); see also Epstein, *supra* note 36, at 17–18; PETERSON, *supra* note 43, at 2 (“Prosecutors viewed [domestic violence] cases as difficult to win because many victims were unwilling to cooperate. Victims often refused to press charges or to testify against the batterer because of fear of retaliation, a desire to continue the relationship, concerns about losing the economic support provided by the batterer, or the hope that the battering would stop.”). There are a number of reasons why some victims of domestic violence are opposed to their partner’s incarceration. “A substantial number of women express fear that their batterer will retaliate with more violence if they continue with prosecution. In one study, participants rated ‘fear of the batterer’ as the number one reason they were unwilling to cooperate with the government.” Deborah Epstein, Margaret E. Bell & Lisa A. Goodman, *Transforming Aggressive Prosecution Policies: Prioritizing Victims’ Long Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL’Y & L. 465, 476 (2003) (citation omitted). In addition, victims may be dependent on their abuser for money, healthcare, childcare, transportation, or housing. If they have immigrant status, their residency may depend on their batterer. Many battered victims fear that by contacting the court system or ending their relationships, they may also lose their children or community and family support. See Epstein, Bell & Goodman, *supra* at 477–82.

45. See BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 1 (noting that previously-used sentencing options were at odds with victims’ well-being and wishes and that batterer intervention programs were developed to respond to these concerns); see also HEALEY, SMITH & O’SULLIVAN, *supra* note 25, at 1 (observing that, by 1998, studies in the United States showed that eighty percent of clients in batterer programs had been referred by probation officers or by court mandate).

In the 1990s, legislation in the United States (the Violence Against Women Act) and the United Kingdom (the Family Law Act) pushed for domestic violence to be treated increasingly as a crime and provided a greater variety of remedies and sanctions.⁴⁶ Behind these policies lay the theory that domestic violence could be reduced if abusers feared reprisal for continuing their behavior.⁴⁷ The justification underlying this system is that close monitoring and severe consequences for domestic violence offenders will ideally result in decreased violence.⁴⁸ Batterer intervention programs are one of the many mechanisms utilized in this effort.⁴⁹

Today, many different types of batterer intervention programs have been implemented in jurisdictions around the world.⁵⁰ These programs are designed to focus on changing the

46. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 16, 18, and 42 U.S.C. (2006)); Family Law Act, 1996, c. 27 (Eng.); see Tsai, *supra* note 31, at 1291 (“In the 1990s, legislation strengthened the advances made in the 1980s, further acknowledging the need to classify domestic violence as a crime and providing a greater variety of remedies and sanctions.”); see also FAGAN, *supra* note 31, at 10 (“By 1990, many States had developed sweeping and strong legislation that corrected historical wrongs such as warrantless arrests in misdemeanor cases or requiring women to file for divorce before receiving protective orders. . . . These efforts were institutionalized in law and policy with significant changes achieved in statutes, the organization of investigative and prosecutorial agencies, and the allocation of court services and resources.” (citation omitted)).

47. See Tsai, *supra* note 31, at 1291 (“The notion is that if an assault in a domestic situation goes unpunished by the criminal courts, society will not consider such behavior criminal and individuals may engage in family violence without fear of reprisal.”); see also FAGAN, *supra* note 31, at 11 (“Underlying these reforms was the theory that family violence could be stopped through legal sanctions and that legal sanctions were effective in reducing violence.”).

48. See Tsai, *supra* note 31, at 1291 (“Many of these reforms were based on the theory that paying close attention to domestic violence cases by imposing legal sanctions on batterers would be sufficient to decrease the incidence of domestic violence.”); see also FAGAN, *supra* note 31, at 11 (“Underlying these reforms was the theory that family violence could be stopped through legal sanctions and that legal sanctions were effective in reducing violence.”).

49. See Richard M. Tolman & Jeffrey L. Edleson, *Intervention for Men Who Batter: A Review of Research*, in UNDERSTANDING PARTNER VIOLENCE: PREVALENCE, CAUSES, CONSEQUENCES AND SOLUTIONS 262, 263–66 (S.R. Stith & M.A. Straus eds., 1995) (offering that batterer intervention programs are one tool out of many used in combating domestic violence); see also Tsai, *supra* note 31 at 1318–20 (describing the use of batterer intervention programs as a tool in maintaining accountability for domestic violence abusers and lessening instances of violence).

50. See Hanna, *supra* note 36, at n.102 (“Note that extreme variance remains in program design.”); see also Amanda Dekki, *Punishment or Rehabilitation? The Case for*

batterers' behavior by altering their attitudes toward violence and women.⁵¹ Batterer intervention programs typically take the form of group counseling sessions designed specifically for batterers, but may also include individual or couples counseling.⁵² Initially, batterer groups provided educational counseling that promoted an anti-sexist message, which focused on changing offender attitudes regarding the subordination of women.⁵³ As these programs have developed over time, some programs have also incorporated cognitive-behavioral therapeutic techniques, anger management, and alternative conflict resolution behavior skills.⁵⁴ Regardless of the type, batterer intervention programs impact domestic violence cases because the court will often defer trial, conviction, or sentencing pending the abuser's participation in such programs.⁵⁵

State-Mandated Guidelines for Batterer Intervention Programs in Domestic Violence Cases, 18 ST. JOHN'S J. LEGAL COMMENT. 549, 566–67 (2004) (describing the different forms of batterer intervention programs); KERRY MURPHY HEALEY & CHRISTINE SMITH, NAT'L INST. OF JUST., U.S. DEP'T OF JUST., NCJ 171683, BATTERER PROGRAMS: WHAT CRIMINAL JUSTICE AGENCIES NEED TO KNOW I (1998).

51. See Dekki, *supra* note 50, at 566 (“Batterer Intervention Programs focus on changing the perpetrators' behavior towards, and attitudes about, women.”); see also HEALEY & SMITH, *supra* note 50 (noting the progress in the movement against domestic violence).

52. See MELISSA LABRIOLA ET AL., CTR. FOR CT. INNOVATION, TESTING THE EFFECTIVENESS OF BATTERER PROGRAMS AND JUDICIAL MONITORING 6 (2005) (discussing the fact that group counseling batterer intervention programs were the most common, but that individual and couples counseling were alternative methods); Johnna Rizza, Comment, *Beyond Duluth: A Broad Spectrum of Treatment for a Broad Spectrum of Domestic Violence*, 70 MONT. L. REV. 125, 143–44 (2009) (noting the appropriate use of other forms of batterer intervention programs such as couples counseling); see also *supra* notes 8–9 and accompanying text (generalizing the kinds of batterer intervention programs by method).

53. See LABRIOLA ET AL., *supra* note 52, at 6 (noting that batterer intervention programs were originally designed as educational programs to promote an anti-sexist message); Dekki, *supra* note 50, at 567–68 (noting that the feminist approach to batterer intervention programs is one of the most common approaches used today).

54. See LABRIOLA ET AL., *supra* note 52, at 6 (describing the development of programs with an increased scope beyond educational curriculum); David L. Myers, *Eliminating the Battering of Women by Men: Some Considerations for Behavior Analysis*, 28 J. APPLIED BEHAV. ANALYSIS 493, 500 (1995) (describing the various types of treatment programs implemented by various jurisdictions today, including models based on anger expression, psycho-educational programs, or pro-feminist theories of battering).

55. See *Developments in the Law—Legal Responses to Domestic Violence: III. New State and Federal Responses to Domestic Violence*, 106 HARV. L. REV. 1528, 1541–42 (1993) (noting that the successful completion of such programs can lead to dismissal of charges); Dekki, *supra* note 50, at 566 (“Such counseling programs usually ‘defer trial,

Although many domestic and international policies, such as batterer intervention programs, have increased awareness about domestic violence, it remains one of the most serious problems facing criminal justice systems around the world.⁵⁶ In 2006, the World Health Organization and the UN issued a report declaring that violence against women is “severe,” “pervasive,” and common “throughout the world.”⁵⁷ According to the report, at least one out of every three women will be subjected to intimate partner violence in the course of her lifetime.⁵⁸

C. International Policy on Batterer Intervention Programs

Given the seriousness of domestic violence, the impact it has on families, and its economic consequences, several international and regional governing bodies have provided directives to their member states regarding domestic violence.

1. United Nations

The United Nations has increasingly worked to address global domestic violence and, to this effect, has released a number of official reports recommending the adoption of legislative initiatives to prevent domestic violence to its member

conviction or sentencing of a criminal defendant pending his voluntary participation in a treatment program designed to prevent further violence.”).

56. See Tsai, *supra* note 31, at 1309 (noting the seriousness of the problems of domestic violence); see also *Violence Against Women “Severe, Pervasive” Worldwide, U.N. Report Says*, *supra* note 26 (summarizing a UN Report that described the problem of domestic violence as “severe and pervasive” worldwide).

57. U.N. Secretary-General, *In-Depth Study on All Forms of Violence Against Women*, ¶ 183, U.N. Doc. A/61/122/Add.1 (July 6, 2006) (“The results have provided compelling evidence that violence against women is a severe and pervasive human rights violation throughout the world, with devastating effects on the health and well-being of women and children.”).

58. See *Violence Against Women “Severe, Pervasive” Worldwide, U.N. Report Says*, *supra* note 26 (“[A]t least one in three women [experiences] abuse by an intimate partner at some point in their lives . . .”). Other global studies have indicated the severity of domestic violence as well. In a report released in 2000, the United Nations Children’s Fund (“UNICEF”) asserted that anywhere from twenty to fifty percent of women from country to country had experienced domestic violence. Innocenti Research Ctr., United Nations Children’s Fund, *Domestic Violence Against Women and Girls*, 6 INNOCENTI DIGEST 1, 4 (2000).

states.⁵⁹ Among these recommendations, the UN has advocated that states utilize batterer intervention programs:

Legislation should: Provide that intervention programmes for perpetrators may be prescribed in sentencing and mandate that the operators of such programmes work in close cooperation with complainant/survivor service providers; [c]larify that the use of alternative sentencing, including sentences in which the perpetrator is mandated to attend an intervention programme for perpetrators and no other penalty is imposed, are to be approached with serious caution and only handed down in instances where there will be continuous monitoring of the sentence by justice officials and women's non-governmental organizations⁶⁰

In an updated release of recommendations, the UN Department of Economic and Social Affairs qualified its earlier recommendation by noting that where funding is limited, services for survivors should be prioritized over programs for offenders.⁶¹

Although recommendations such as these are not binding mandates on UN member states, the UN may compare a member state's action to end domestic violence with these recommendations when determining a state's treaty compliance

59. See *The International Legal Framework*, STOP VIOLENCE AGAINST WOMEN, <http://www1.umn.edu/humanrts/svaw/domestic/laws/international.htm> (last visited Jan. 6, 2012) ("International law and policy on domestic violence has developed in the [UN] and in regional organizations such as the [COE], and is in the process of being developed in the European Union. The recognition that domestic violence is a human rights violation under international law required decades of work by activists around the world. Now, international legal instruments and policy statements make clear that states have a duty under international law to prevent domestic violence and punish domestic violence offenders."); see, e.g., U.N. Secretary-General, *Intensification of Efforts to Eliminate All Forms of Violence Against Women*, ¶ 35, U.N. Doc. A/65/208 (Aug. 2, 2010); U.N. Dep't for Econ. & Soc. Affairs, Div. for the Advancement of Women, *Handbook for Legislation on Violence Against Women*, ¶¶ 3.1.1–3.1.5, ST/ESA/329 (2010) [hereinafter *Handbook for Legislation on Violence Against Women*]; U.N. Secretary-General, *In-Depth Study on All Forms of Violence Against Women*, *supra* note 57, ¶¶ 55–56. See generally U.N. Group of Experts, Rep., *Good Practices in Legislation on "Harmful Practices" Against Women* (May 26–29, 2009); U.N. Group of Experts, Rep., *Good Practices in Legislation on Violence Against Women* (May 26–28, 2008).

60. *Handbook for Legislation on Violence Against Women*, *supra* note 59, ¶ 3.11.6.

61. See *id.* ("Where limited funding is available, services for survivors should be prioritized over programmes for perpetrators . . .").

and responsibility for human rights violations.⁶² These types of recommendations influence state action, particularly in the area of human rights law.⁶³

In addition, states who adhere to the International Bill of Human Rights or who have signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) are obligated to prevent international human rights violations.⁶⁴ The International Bill of Human Rights includes the Universal Declaration of Human Rights and its implementing covenants, the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).⁶⁵ Although the International Bill of Human Rights does not explicitly mention domestic violence, it does, along with the Optional Protocol to the ICCPR, stipulate a state’s duty to protect fundamental human rights, rights that are typically violated in domestic violence cases.⁶⁶ Specifically, these rights

62. See *The International Legal Framework*, *supra* note 59 (noting how legislative recommendations by the UN influence and affect state action).

63. See *id.* (quoting Rebecca J. Cook, who stated that recommendations from the UN are “signposts of the direction in which international human rights law is developing and should influence states that have accepted a commitment of progressive development toward enhanced respect for human rights in their international conduct and domestic law.”).

64. See *id.* (stating that governments have a responsibility under the UN framework to protect individuals from offenses by private actors in the domestic violence context); Andrew Byrnes, *Women, Feminism and International Human Rights Law—Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation?: Some Current Issues*, 12 *AUSTL. Y.B. INT’L L.* 205, 227–28 (1992) (“Under the general human rights treaties (as well as other treaties), the State is considered to be under an obligation not only to refrain from taking direct action which infringes individual rights but also to take positive steps to ensure that individuals actually enjoy those rights. This latter aspect of the obligation includes in certain circumstances a duty to take appropriate measures to protect individuals against violation of those rights by private persons.”).

65. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/Res/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; see *The International Legal Framework*, *supra* note 59 (defining the contents of the International Bill of Human Rights); see also U.N. High Comm’r for Human Rts., *The International Bill of Human Rights*, Fact Sheet No. 2 (Rev. 1) (June 1996), <http://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf> [hereinafter *International Bill of Human Rights Fact Sheet*].

66. See *The International Legal Framework*, *supra* note 59 (noting that domestic violence is not specifically mentioned in the International Bill of Human Rights, but

may include: the right to life, the right to physical and mental integrity, the right to equal protection of the laws, and the right to be free from discrimination.⁶⁷ Likewise, CEDAW prohibits violence against women and binds countries that have ratified it to provide protection against such violence.⁶⁸ CEDAW has been ratified by 187 countries, including Brazil, India, and the United Kingdom.⁶⁹ The treaty encourages states to combat domestic violence, in part by requiring parties to “agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.”⁷⁰ While the UN has qualified the appropriate use of batterer intervention programs, its general legislative recommendations for such programs remain at the discretion of the states.⁷¹

that rights protected by the Bill are commonly violated in domestic violence cases); *see also* International Bill of Human Rights Fact Sheet, *supra* note 65.

67. *See The International Legal Framework*, *supra* note 59 (listing the rights covered by the International Bill of Human Rights that are commonly called into question in domestic violence cases); *see also* International Bill of Human Rights Fact Sheet, *supra* note 65.

68. *See* Jodie G. Roure, *Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform*, 41 COLUM. HUM. RTS. L. REV. 67, 70 (2009) (“[The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)] prohibits most forms of violence against women, and those countries that ratify or accede to it are legally bound to provide women protection against such violence.”); *see also* *Convention on the Elimination of All Forms of Discrimination Against Women: Overview of the Convention*, U.N. DIV. FOR THE ADVANCEMENT OF WOMEN, <http://www.un.org/womenwatch/daw/cedaw> (last visited Jan. 6, 2012) (specifying the terms of CEDAW and the obligations of signatories).

69. *Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13, *signatories and ratifications available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Jan. 6, 2012).

70. *See* *Convention on the Elimination of All Forms of Discrimination Against Women: Overview of the Convention*, *supra* note 68; *see also* U.N. Dep’t of Econ. & Soc. Affairs, Div. for the Advancement of Women, *CEDAW General Recommendation No. 19: Violence Against Women*, ¶¶ 9, 24, U.N. Doc A/47/38 (1992) (describing the state obligations under CEDAW to protect and ensure that women enjoy their fundamental freedoms).

71. *See* *supra* notes 60–62 (regarding the influence of UN recommendations on member states); *see also* *infra* notes 117–18, 126–28 and accompanying text (noting the influence of international law on domestic state action working to end domestic violence).

2. Council of Europe

The COE is an international organization comprised of forty-seven European member states whose purpose is to develop common standards of human rights and economic and social progress.⁷² Its principles are drawn from the Convention for the Protection of Human Rights and Fundamental Freedoms (known more commonly as the European Convention on Human Rights) and other reference texts related to the protection of individuals.⁷³ Similar to the UN, the COE has issued legislative recommendations for its member states that endorse batterer intervention programs.⁷⁴

The COE's recommendation articulates that states should organize intervention programs designed to "encourage perpetrators of violence to adopt a violence-free pattern of behaviour," not as an alternative to sentencing but as an additional measure.⁷⁵ The recommendation also says that states

72. See *Council of Europe in Brief: Who We Are*, COUNCIL OF EUROPE, <http://www.coe.int/aboutcoe/index.asp?page=quiSommesNous> (last visited Jan. 6, 2012) (defining the role of the COE); Statute of the Council of Europe, Europ. T.S. No. 1, art. 1(a), Aug. 3, 1949 (establishing one of the COE's aims as being to achieve "a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress").

73. See *Council of Europe in Brief: Who We Are*, *supra* note 72 (defining the role of the COE and the basis of its principles in the European Convention on Human Rights); see also EUR. PARL. ASS., *Resolution 1031 on the Honouring of Commitments Entered into by Member States When Joining the Council of Europe*, 2d Sess., ¶ 9, Doc. No. 7037 (1994) [hereinafter *Resolution 1031*].

74. See Council of Europe, Comm. of Ministers, Recommendation Rec(2002)5 of the Comm. of Ministers to Member States on the Protection of Women Against Violence, ¶ 4 (Apr. 30, 2002), available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=280915> [hereinafter Recommendation Rec(2002)5] (recommending legislative initiatives and general principles to its member states); see also CAROL HAGEMANN-WHITE & SABINE BOHN, COUNCIL OF EUROPE, PROTECTING WOMEN AGAINST VIOLENCE: ANALYTICAL STUDY ON THE EFFECTIVE IMPLEMENTATION OF RECOMMENDATION REC(2002)5 ON THE PROTECTION OF WOMEN AGAINST VIOLENCE IN COUNCIL OF EUROPE MEMBER STATES 7 (2007) (noting that the COE's Recommendation Rec(2002)5 "expresses a consensus on general principles as well as describing necessary measures in services, legislation, policing, intervention with perpetrators, awareness-raising, education and training and data collection").

75. See Recommendation Rec(2002)5, *supra* note 74, ¶¶ 50-53 (outlining the COE's recommendation to its member states on batterer intervention programs); see also HAGEMANN-WHITE & BOHN, *supra* note 74, at 28 (noting that programs for perpetrators should be conducted while keeping the victim's safety in mind).

should consider establishing state-approved intervention centers.⁷⁶

All members of the COE are bound to the European Convention on Human Rights.⁷⁷ Under the Convention, states are obligated to secure for their citizens certain rights, including the right to life, the right to be free from torture or inhuman and degrading treatment, and the right to equal protection under the Convention, among others.⁷⁸ While the COE's recommendations are like the UN's—not binding on member states—they have influenced what actions states are expected to take to combat domestic violence. Further, the decision in *Opuz v. Turkey*, handed down by the European Court of Human Rights, has expanded the reach of these recommendations.⁷⁹ In *Opuz*, the petitioner, Nahide Opuz, and her mother had been subjected to brutal domestic violence from her husband for a number of years.⁸⁰ Although Opuz and her mother had both informed police and prosecuting attorneys of the abuse, the

76. See Recommendation Rec(2002)5, *supra* note 74, ¶ 52 (“Member states should . . . consider establishing specialised state-approved intervention centres for violent men and support centres initiated by NGOs and associations within the resources available . . .”).

77. See *Resolution 1031*, *supra* note 73, ¶ 1; see also *Council of Europe in Brief: Who We Are*, *supra* note 72 (defining the role of the COE and the basis of its principles in the European Convention on Human Rights).

78. See European Convention for the Protection of Human Rights and Fundamental Freedoms arts. 1–3, 14, Feb. 28, 1996, 213 U.N.T.S. 221, amended by Protocol 11 to The European Convention on Human Rights, 33 I.L.M. 943; see also Lee Hasselbacher, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection*, 8 NW. U. J. INT'L HUM. RTS. 190, 200–01 (2010) (“Before the [European Court on Human Rights], the young woman alleged violations of several European Convention articles, including Article 3, which guarantees freedom from torture and inhuman or degrading treatment, Article 8, which states that every person ‘has the right to respect for his private and family life,’ Article 13, which guarantees an effective remedy for those whose rights have been violated, and Article 14, which guarantees equal protection of rights enumerated in the Convention.”).

79. *Opuz v. Turkey*, App. No. 33401/02, 2009 Eur. Ct. H.R. 1, available at <http://www.unhcr.org/refworld/pdfid/4a2f84392.pdf>; see *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, INTERIGHTS, <http://www.interights.org/> (last visited Jan. 6, 2012) (noting that this landmark ruling elaborates on state obligations to protect their citizens from domestic violence).

80. See *Opuz*, 2009 Eur. Ct. H.R. at ¶¶ 7–69 (citing the facts of the case); see also *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, *supra* note 79 (describing the circumstances of the case brought by petitioner Nahide Opuz).

state failed to adequately protect the women from future abuse, which ultimately culminated in the death of the petitioner's mother.⁸¹ In its ruling, the European Court of Human Rights found Turkey liable to Opuz under the European Convention on Human Rights because the state had failed to adequately protect the petitioner and her mother from this violence.⁸² The court held that domestic violence is a form of discrimination under the Convention, which requires effective state action regarding prevention.⁸³ Notably, the court recognized that the state's failure to adequately respond to the threat of domestic violence against Opuz was a violation of the nondiscrimination clause of Article 14 of the Convention.⁸⁴ The European Court also found that Turkey had violated Articles 2 and 3, the right to life and the prohibition of torture and inhuman treatment, respectively.⁸⁵ Turkey was forced to pay damages to Opuz.⁸⁶

This ruling is significant because many critics of batterer intervention programs argue that they are ineffective and jeopardize victim safety, which could be considered tantamount to states not taking the threat of domestic violence seriously.⁸⁷

81. See *Opuz*, 2009 Eur. Ct. H.R. at ¶¶ 47–54; see also *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, *supra* note 79 (describing the circumstances of the case brought by petitioner Nahide Opuz).

82. See *Opuz*, 2009 Eur. Ct. H.R. at ¶ 191 (“It transpires from the above-mentioned rules and decisions that the State’s failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional.”); see also *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, *supra* note 79 (“Critically, for the first time the Court recognised the failure to adequately respond to gender-based violence as a violation of Article 14 of the Convention, the non-discrimination clause.”).

83. See *Opuz*, 2009 Eur. Ct. H.R. at ¶¶ 184–91; see also *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, *supra* note 79.

84. See *Opuz*, 2009 Eur. Ct. H.R. at ¶¶ 177–79, 214 n.7; see also *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, *supra* note 79.

85. See *Opuz*, 2009 Eur. Ct. H.R. at ¶¶ 128–76, 214 nn.4–5; see also *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, *supra* note 79 (discussing the findings of the European Court).

86. See *Opuz*, 2009 Eur. Ct. H.R. at ¶ 214; see also *Opuz v Turkey: European Court Clarifies State Obligations to Protect Women from Domestic Violence*, *supra* note 79 (noting that Turkey was ordered to pay Opuz £30,000 in damages).

87. See ELIZABETH M. SCHNEIDER ET AL., *DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE* 339 (2d ed. 2008) (“Provocative hypotheses have been put forward by observers discouraged at the extent to which convicted domestic violence offenders continue to serve only minimal prison sentences, or to avoid incarceration altogether. One such hypothesis is that the criminal justice system continues to

D. Domestic Policy on Batterer Intervention Programs

While a number of countries enacted domestic violence legislation calling for the implementation of batterer intervention programs years ago, some countries have only enacted such laws recently.⁸⁸ This Section discusses the approaches of countries that fall in both categories. Both the United States and England are countries whose national domestic violence policies have been in effect for a sustained period of time and, as a result, a number of studies have been conducted as to their effectiveness.⁸⁹ These countries' policies have influenced the recommendations of the UN and COE, who, in turn, have affected countries that have more recently enacted national domestic violence statutes, such as Brazil and India.

1. United States

Although major developments in the movement to end domestic violence over the past forty years originated in the United States, domestic violence still affects a significant proportion of Americans.⁹⁰ Approximately 1.5 million women are raped or physically assaulted by an intimate partner in the United States each year, a statistic that fails to include nonphysical forms of domestic violence.⁹¹ Of these domestic

discriminate against victims of domestic violence, and covertly condone the behavior of perpetrators, by imposing more lenient sentences in these cases than in parallel stranger violence cases.”); *see also* BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 26 (“The stakes for women’s safety are simply too high to rely heavily on the use of [batterer intervention programs] without stronger empirical evidence that they work.”).

88. *See infra* Part I.D.1–4. The United States and England both enacted national domestic violence legislation and initiatives over ten years ago. In contrast, Brazil and India have both enacted legislation designed to combat domestic violence within the past five or six years.

89. *See infra* Part I.D.1–2 (discussing the legislation and initiatives undertaken in the United States and England); *infra* notes 136–39 and accompanying text (discussing studies on the effectiveness of batterer intervention programs).

90. *See* Innocenti Research Ctr., *supra* note 58, at 5, tbl.2 (finding that twenty-eight percent of US women reported at least one episode of physical violence from their partner); *supra* Part I.A (stating that many major developments in the movement to end domestic violence originated in the United States in conjunction with the feminist movement).

91. *See* Dekki, *supra* note 50, at 551 (detailing that approximately 1.5 million women are raped and/or physically assaulted by an intimate partner in the United

violence cases, few ever make it to the courtroom.⁹² Despite developments made in some localities that implement rigorous prosecution policies, such as “no-drop” policies and specialized prosecution units, the majority of domestic violence cases in the United States end with the arrest of the abuser, but no prosecution thereafter.⁹³ The cases that are prosecuted often result in reduced charges.⁹⁴ Typically, in instances where prosecutors continue forward, the end result is a period of probation contingent upon completion of a batterer treatment program.⁹⁵

Although batterer treatment programs originated in only a handful of localities, their widespread employment throughout the United States is a result of federal and state policy endorsements.⁹⁶ In 1984, the US Attorney General’s Task Force

States every year). *See generally* PATRICIA TJADEN & NANCY THOENNES, NAT’L INST. OF JUST., U.S. DEP’T OF JUST., NCJ 183781, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (2000) (presenting findings from the National Violence Against Women Survey on domestic violence in the United States).

92. *See* SCHNEIDER ET AL., *supra* note 87, at 342 (reporting a study in New York County that showed that

Domestic violence cases were twice as likely as non-domestic violence cases to be dismissed. Of those cases prosecuting resulting in conviction, 72% of domestic violence cases resulted in some conditional discharge, including participation in a batterer treatment program or drug and alcohol treatment, compared with 47% of non-domestic cases. Only 17% of domestic violence defendants received a sentence that included jail, as opposed to 45% of the non-domestic cases.);

see also Hanna, *supra* note 36, at 1520–21 (noting that most domestic violence cases end in arrest, or alternatively with a deal being reached with the prosecutor).

93. *See* Kalyani Robbins, *No-Drop Prosecution of Domestic Violence: Just Good Policy, or Equal Protection Mandate?*, 52 STAN. L. REV. 205, 216 (1999) (noting that the “no-drop policy” is the commonly used expression for policies that limit prosecutorial discretion and influence from the victim in deciding whether domestic violence cases will be pursued); *see also* Hanna, *supra* note 36, at 1520–21 (recognizing that although many jurisdictions are forming specialized prosecution units and implementing “no-drop” policies, most domestic violence cases end in arrest).

94. *See* Hanna, *supra* note 36, at 1520–21 (explaining how domestic violence cases that make it past the arrest stage are often pled down to reduced charges); SCHNEIDER ET AL., *supra* note 87, at 342 (noting that only seventeen percent of domestic violent defendants receive a sentence including jail time, as opposed to forty-five percent of nondomestic violence cases).

95. *See* Hanna, *supra* note 36, at 1520–21 (noting that domestic violence cases that make it through the court process usually result in a sentencing equating to a period of probation in conjunction with completion of a batterer treatment program).

96. *See* Hanna, *supra* note 36, at 1526 (noting that following a report from the Attorney General in 1984, the federal government and a number of states implemented

on Family Violence lent credibility to the use of batterer intervention programs when it encouraged their use in domestic violence cases not involving serious injury to the victim.⁹⁷ Subsequent to the Attorney General's endorsement, state and federal governments alike have followed a "faith in treatment" philosophy that utilizes incarceration alternatives designed to rehabilitate offenders and address the underlying causes of certain offenses.⁹⁸ In 1994, the US Congress passed the Violence Against Women Act, which also instituted batterer treatment programs for violations of its criminal provisions.⁹⁹ This legislation was reauthorized in 2000 and again in 2005, and the recommendation that batterer treatment programs be used in domestic violence sentencing remains part of the Federal Sentencing Guidelines today.¹⁰⁰ The use of such programs continues in spite of the fact that no empirical evidence exists to

"faith in treatment" policies, which included the use of batterer intervention programs); SCHNEIDER ET AL., *supra* note 87, at 342 (describing the endorsement of batterer intervention programs by the US Attorney General and its influence).

97. See Hanna, *supra* note 36, at 1526 ("In 1984, the Attorney General's Task Force on Family Violence . . . recommended incarceration for serious offenses, it encouraged the use of batterer treatment programs in cases where the injury to the victim was not serious."); SCHNEIDER ET AL., *supra* note 87, at 342 ("In 1984, the Attorney General's Task Force on Family Violence threw its significant weight behind court-mandated batterers' treatment as an appropriate response to domestic violence crimes, except for the most serious. Whether that recommendation was sound remains an open question.").

98. See Hanna, *supra* note 36, at 1526 (opining that states and the federal government have followed a "faith in treatment" philosophy for domestic violence sentencing following the Attorney General's endorsement). States that follow a "faith in treatment" domestic violence sentencing policy include Alaska, California, and Florida. See ALASKA STAT. § 12.55.101(1) (2011); CAL. PENAL CODE § 1203.097(a)(6) (Deering 2011); FLA. STAT. ANN. § 741.281 (LexisNexis 2011).

99. Violence Against Women Act of 1994 (VAWA), Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (codified as amended in scattered sections of 8, 18, and 42 U.S.C.); 18 U.S.C. § 3563(a) (2006) ("The court shall provide, as an explicit condition of a sentence of probation . . . (4) for a domestic violence crime . . . by a defendant convicted of such an offense for the first time that the defendant attend a public, private, or private nonprofit offender rehabilitation program . . ."); see also Hanna, *supra* note 36, at 1526 ("The VAWA also endorses batterer treatment programs for violations of its criminal provisions."); SCHNEIDER ET AL., *supra* note 87, at 355 (detailing the passage and significance of the Violence Against Women Act in 1994).

100. See SCHNEIDER ET AL., *supra* note 87, at 355 ("The Violence Against Women Act was reauthorized in 2000, and again in 2005."); see also U.S. SENTENCING GUIDELINES MANUAL § 5B1.3(a)(4) (2010) ("For a domestic violence crime . . . a defendant convicted of such an offense for the first time . . . shall attend a public, private, or non-profit offender rehabilitation program . . .").

suggest that there is any direct correlation between these programs and an offender's attitudes, beliefs, or behavior.¹⁰¹

2. England

As in the United States, domestic violence is pervasive in England and has a significant impact on the criminal justice system. Each week, two women are killed in England (and Wales) as a result of domestic violence.¹⁰² In addition, statistics show that one in four women will endure domestic violence in her lifetime.¹⁰³

England has enacted several pieces of national legislation to confront domestic violence, including the Domestic Violence and Matrimonial Proceedings Act in 1976, the Family Law Act in 1996, and the Domestic Violence, Crime and Victims Act in 2004.¹⁰⁴ These laws increased the protection of victims of domestic violence by providing for orders of protection, restraining and occupation orders, and increased penalties for acts of domestic violence.¹⁰⁵ More recently, in 2006, the United

101. *See, e.g.*, SCHNEIDER ET AL., *supra* note 87, at 343 (summarizing data and research regarding the effectiveness of batterer intervention programs, and determining that there is no conclusive evidence to suggest such programs are effective); BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 26 (explaining that batterer intervention programs' inconsistency and indeterminable success should inhibit the government's use of such programs for the sake of victim safety).

102. *See Inconsistent Sentencing for Domestic Violence*, WOMEN'S AID FED'N ENGLAND (Aug. 24, 2007), <http://www.womensaid.org.uk/domestic-violence-articles.asp?itemid=1038&itemTitle=Inconsistent+sentencing+for+domestic+violence§ion=00010001002200070001§ionTitle=Articles%3A+criminal+law> ("Currently two women every week in England and Wales are killed as a result of domestic violence . . ."); *see also Cutting Support Services for Women Fleeing Domestic Violence Could Lead to a Rise in Murders, Campaigners Warn*, NAT'L HOUSING FED'N (Oct. 11, 2010), <http://www.housing.org.uk/?page=606> (citing that two women are killed every week in England and Wales as a result of domestic violence).

103. *See Inconsistent Sentencing for Domestic Violence*, *supra* note 102 ("[I]n England and Wales . . . 1 in 4 women experience domestic violence at some point in their lifetimes . . ."); *Legal and Physical Security*, EQUALITY & HUM. RTS. COMM'N, <http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/online-summary/legal-and-physical-security/> ("1 in 4 women have experienced some form of domestic abuse in England and Wales since reaching the age of 16 . . .").

104. Domestic Violence and Matrimonial Proceedings Act, 1976 (repealed 1.10.1997), c. 50 (Eng.); Family Law Act, 1996, c. 27, Part IV (Eng.); Domestic Violence, Crime and Victim's Act, 2004, c. 28 (Eng.).

105. *See* Domestic Violence and Matrimonial Proceedings Act, 1976 (repealed 1.10.1997), c. 50 (Eng.); Family Law Act, 1996, c. 27, Part IV (Eng.); Domestic Violence, Crime and Victim's Act, 2004, c. 28 (Eng.); *see also* U.N. Office on Drugs and

Kingdom Sentencing Guidelines Council (“Council”) released a directive on domestic violence sentencing.¹⁰⁶ Among its general principles, the Council sets forth that in certain circumstances the court should consider whether the preferred sentencing option is a suspended sentence or a community order including a requirement to attend a batterer intervention program.¹⁰⁷ The Council added that a sentence that includes a batterer intervention program is only appropriate “where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful.”¹⁰⁸

As in the United States, the endorsement of batterer intervention programs is undermined by studies whose findings remain inconclusive as to the effectiveness of such programs.¹⁰⁹

Crime & U.N. Div. for the Advancement of Women, Expert Group Meeting on good practices in legislation on violence against women, *The Struggle for Justice: The State’s Response to Violence against Women*, 3–6, U.N. Doc. EGM/GPLVAW/2008/EP.02 (May 12, 2008), available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20\(Funmi%20Johnson\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20(Funmi%20Johnson).pdf).

106. See SENTENCING GUIDELINES COUNCIL, *supra* note 24 (providing guidelines for the judiciary in England and Wales to use for sentencing in domestic violence cases, prioritizing aggravating factors and sentencing options); see also *Domestic Violence Offenders to Get Noncustodial Sentences*, GUARDIAN (U.K.) (Apr. 12, 2006), <http://www.guardian.co.uk/society/2006/apr/12/crime.penall> (detailing the inclusion of non-custodial options to sentencing in the Sentencing Guidelines Council’s directive to the judiciary).

107. See *supra* note 106 (citing the Sentencing Guidelines Council approach to batterer intervention programs in its definitive guidelines issued to judges).

108. SENTENCING GUIDELINES COUNCIL, *supra* note 24 (noting when a noncustodial or batterer’s intervention program may be used as an alternative sentence in domestic violence cases); see also *Domestic Violence Offenders to Get Noncustodial Sentences*, *supra* note 106 (describing how the guidelines provided by the Sentencing Council will allow a domestic violence offender to receive a noncustodial sentence, such as one mandated attendance at a batterer intervention program, if he or she demonstrates remorse to the judge).

109. See Sheila Burton & Audrey Mullender, *Reducing Violence . . . What Works? Perpetrator Programmes*, CRIME REDUCTION RESEARCH SERIES (2000), at 2 (citing, for example, that the “CHANGE and Lothian Domestic Violence Probation Project (Dobash et. al[sic], 1996) showed 67% of men avoided further violence for a year after the programmes as against only 25% of men subject to other disposals. However, the sample declined over time and so the suggested 67% success rate represented only 40.2% of those who responded initially The numbers involved in the study were extremely low by the end, and cause and effect claims require larger numbers than this”); MINISTRY OF JUST., WHAT WORKS WITH DOMESTIC VIOLENCE OFFENDERS?, *supra* note 14 (detailing studies and research regarding the ineffectiveness of batterer intervention programs in the UK and abroad).

As a policy, batterer intervention has also been criticized by domestic violence and women's advocacy groups.¹¹⁰ For example, the Chief Executive of Refuge, a domestic violence advocacy group, opposed the sentencing guideline policy towards batterer intervention programs stating that: "The idea that sending domestic violence perpetrators on courses as an alternative to a custodial sentence is ludicrous and would put more lives at risk."¹¹¹ These same groups have also criticized this type of sentencing as allowing too much discretion and creating inconsistency in domestic violence cases.¹¹²

Despite this criticism, England has continued to use batterer intervention programs with encouragement from the UN.¹¹³ Moreover, the UN has praised the United Kingdom's

110. See, e.g., *Domestic Violence Offenders to Get Noncustodial Sentences*, *supra* note 106 (reporting the reaction of women's activist groups to the Sentencing Guidelines Council draft provision regarding batterer treatment programs, a provision that remained in the guidelines through to the final version); *Domestic Violence and Sentencing Guidelines: Select Committee Submission*, REFUGE (May 7, 2006), available at http://www.refuge.org.uk/cms_content_refuge/attachments/29-0605-Domestic%20Violence%20and%20Sentencing%20Guidelines.doc (providing the reaction of Refuge, a domestic violence activist group, to the Sentencing Guidelines Council draft of the overarching principles and definitive guidelines for domestic violence safety).

111. James Slack, *Wife Beaters Who Say Sorry Will Escape Jail*, DAILY MAIL (U.K.), Apr. 12, 2006, <http://www.dailymail.co.uk/news/article-382817/Wife-beaters-say-sorry-escape-jail.html> (quoting Refuge spokesperson Sandra Horley on the proposal by the Sentencing Guidelines Council to accommodate non-custodial sentences for offenders who demonstrate remorse for their violent behavior); see *Domestic Violence Offenders to Get Non-custodial Sentences*, *supra* note 106 (referring to statements made by a Refuge spokesperson criticizing some of the guidelines put forth by the UK Sentencing Guidelines Council).

112. See *Inconsistent Sentencing for Domestic Violence*, *supra* note 102 ("Court sentencing for domestic violence is often inconsistent and sentences do not always reflect the severity of the crime."); see also Emine Saner, *So What's the Point of Going to Court?*, GUARDIAN (U.K.), Aug. 24, 2007, <http://www.guardian.co.uk/uk/2007/aug/24/ukcrime.gender> (providing several examples of judicial discretion questionably being abused in domestic violence cases to give lesser sentences to wealthy and affluent abusers).

113. See U.N. Div. for the Advancement of Women & U.N. Office on Drugs and Crime, Rep. of the Expert Group Meeting, *Good Practices in Legislation on Violence Against Women*, May 26–28 2008, available at <http://www.coe.int/t/dghl/standardsetting/violence/UN%20Guidelines%20on%20legislation.pdf> [hereinafter U.N. Rep., *Good Practices*, May 2008] (asserting that the United Kingdom utilizes batterer intervention programs in a positive light); see also *Handbook for Legislation on Violence against Women*, *supra* note 59 (recognizing the use of batterer intervention programs in the United Kingdom).

Integrated Domestic Abuse Program as a sentencing option in its report on good practices in legislation.¹¹⁴

3. Brazil

Every fifteen seconds a woman in Brazil is beaten by her intimate partner or ex-partner, another is prevented from leaving her home by her abuser, or yet another is forced to have sexual relations against her will.¹¹⁵ Almost seventy percent of female murder victims are killed as victims of domestic relations.¹¹⁶

These statistics and others like them served as the impetus behind a 2003 recommendation by the CEDAW Committee that Brazil “adopt ‘without delay legislation on domestic violence’ and ‘practical measures to follow-up and monitor the application of such a law and evaluate its effectiveness.’”¹¹⁷ It was this recommendation, in tandem with other international human rights laws and principles, which led to the enactment of the first national legislation criminalizing domestic violence in Brazil.¹¹⁸

114. See U.N. Rep., *Good Practices*, May 2008, *supra* note 113, at 61 (“The United Kingdom has had positive experiences with the Integrated Domestic Abuse Programme as an option in sentencing.”); see also *Handbook for Legislation on Violence against Women*, *supra* note 59 (positing that the United Kingdom has had good experiences using batterer intervention programs).

115. See Roure, *supra* note 68, at 92 (discussing the frequency of domestic violence in Brazil); see also *Shadow Report, Brazil and Compliance with CEDAW*, THE CIVIL SOCIETY 7 (2007), available at http://www.iwraw-ap.org/resources/pdf/BRAZIL_SHADOWREPORT_CEDAW_June,18%5B1%5D.pdf [hereinafter SHADOW REPORT] (reporting the prevalence of domestic violence in Brazil, as well as the state inaction regarding this type of violence).

116. See Roure, *supra* note 68, at 92; SHADOW REPORT, *supra* note 115 (reporting on domestic violence statistics and the entrenchment of domestic violence in Brazil).

117. SHADOW REPORT, *supra* note 115, at 7 (recommending that Brazil’s government take affirmative action and implement legislation to protect its citizens against domestic violence); see Roure, *supra* note 68, at 91 (emphasizing the importance of CEDAW’s recommendation to Brazil on domestic violence in the eventual implementation of legislative reform in the nation).

118. See Roure, *supra* note 68, at 69 (“International human rights laws and principles can provide an important source of inspiration and a rallying point for social change. The domestic violence reform in Brazil illustrates this fact.”); see also SHADOW REPORT, *supra* note 115 (noting that Law 11340/2006 (Law “Maria da Penha”) was approved in 2006, creating mechanisms and instituting reforms to restrain domestic violence and bring Brazilian law into compliance with the Convention on the Elimination of All Forms of Discrimination against Women and the Convention of Belém do Pará).

In 2006, Brazil enacted the Maria da Penha law, criminalizing domestic violence by allowing a domestic violence offender to be arrested for committing an offense, as well as preventatively, if the aggressor is determined to be a threat to the victim's life.¹¹⁹ The usual sentence given to an offender after a trial on a domestic violence charge under the Maria da Penha law is a three- to four-month long suspended jail sentence, along with mandatory participation in a batterer intervention program.¹²⁰ While this is a marked improvement from sentences given to domestic violence offenders prior to 2006, the use of batterer treatment programs in Brazil remains in doubt.¹²¹

4. India

In India, as in many countries, domestic violence exists within the cultural norms of a patriarchal social structure.¹²²

119. Lei No. 11340, de 7 de Agosto de 2006, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 8.8.2006 (Braz.); see Trygve Olfarnes, *Preventing Gender-Based Violence in Brazil: Will Therapy Work?*, UNFPA (May 19, 2009), <http://www.unfpa.org/public/site/global/lang/en/pid/2720> [hereinafter UNFPA] (detailing the passage of the Maria da Penha law and its main source of enforcement); see also *Lei Maria da Penha*, VAWNET.ORG, http://www.vawnet.org/summary.php?doc_id=1249&find_type=web_sum_GC (last visited Jan. 6, 2012) (providing a brief description of the Maria da Penha law, which was enacted in 2006).

120. See UNFPA, *supra* note 119 (“The usual outcome of a trial involving gender-based violence is a 3–4 month-long suspended jail sentence along with mandatory attendance of 20 group therapy sessions at SerH.”).

121. Although domestic violence was not a crime prior to 2006 in Brazil, cases of domestic violence were often tried in a Special Court under Law 9,099/95. See Roure, *supra* note 68, at 68. Punishments under this law for domestic violence acts included donation of food baskets to charity or payments of fines. See Roure, *supra* note 68, at 81 (relating the author's personal experience and firsthand accounts of sentences that included donations to charity or fines); see also UNFPA, *supra* note 119 (“Critics claim that the program may give offenders an easy way out of a jail sentence, and that it does not have the intended preventive effect.”). Limited resources in Brazil have also been discussed as hampering domestic violence initiatives. See Roure, *supra* note 68, at 94 (“Despite the increased resources, funding remains insufficient.”).

122. See Paul Subrata, *Combating Domestic Violence through Positive International Action in the International Community and in the United Kingdom, India, and Africa*, 7 CARDOZO J. INT'L & COMP. L. 227, 236 (1999) (“Wife beating has been widely accepted as an integral part of the patriarchal social structure in India, under which women are considered to be inferior.”); Pami Vyas, *Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to PROMOTE Women's Fundamental Rights*, 13 MICH. J. GENDER & L. 177, 185 (2006) (“This pervasive gender discrimination is deeply rooted in the notion of patriarchy, endorsed through a woman's life, from her childhood through death.”); see also UNESCO, *VIOLENCE AGAINST WOMEN: REPORTS FROM INDIA AND THE REPUBLIC OF KOREA 2* (1993), available

India's concept of family and familial relations adds to the impact of domestic violence.¹²³ In many households in India, a husband and wife live with the husband's entire family, which in some instances leads to violence being perpetuated by both the husband and the in-laws.¹²⁴ A 2002 survey report showed that eighty-five percent of Indian men admitted to engaging in some form of domestic violence in the previous year.¹²⁵

As a result of the Indian government's increasing participation in the international community as a member of international organizations and a signatory to treaties, it has progressively taken action in the field of domestic violence.¹²⁶ In 1995 at the Fourth World Conference on Women in Beijing, India ratified CEDAW and adopted the Beijing Platform of Action.¹²⁷ It was not until 2005, however, that the Indian

at <http://unesdoc.unesco.org/images/0009/000966/096629eo.pdf> ("Violence against women, then, has to be seen in the context of the Indian society in transition which has committed itself to the values of equality and justice, but which is unable to make the dominant socio-economic segments and the male population relinquish their traditionally held rights and power over the weaker segments and women.").

123. See Subrata, *supra* note 122, at 238 ("India's family system is an extended family where husband and wife live with the husband's entire family. This has created a situation where the in-laws, often the mother-in-law, contribute to the violence perpetrated by the husband against the wife."). See generally Marilyn Fernandez, *Domestic Violence by Extended Family Members in India: Interplay of Gender and Generation*, 12 J. INTERPERSONAL VIOLENCE 433 (1997) (reporting the involvement of extended family members in domestic violence incidents in India).

124. See Subrata, *supra* note 122, at 238 (explaining the structure of a typical Indian family, and the involvement of the extended family in domestic disputes).

125. See INT'L CTR. FOR RES. ON WOMEN, MEN, MASCULINITY AND DOMESTIC VIOLENCE IN INDIA 58 (2002), available at <http://www.icrw.org/files/publications/Domestic-Violence-in-India-4-Men-Masculinity-and-Domestic-Violence-in-India.pdf> (reporting the prevalence and relative acceptance of domestic violence in India, as eighty-five percent of men admitted to engaging in some form of domestic violence in the past year).

126. See Vyas, *supra* note 122, at 196–200 (describing India's international agreements and participation as it regards domestic violence and violence against women); see also Subrata, *supra* note 122, at 240 (describing India's early integration into the international community on the subject of domestic violence).

127. See Subrata, *supra* note 122, at 230 (detailing India's participation in the Fourth World Conference on Women in Beijing, and its ratification of CEDAW); see also *Call to End Violence Against Fair Sex*, THE HINDU, Nov. 26, 1998 (reporting India's ratification of CEDAW). The Beijing Platform of Action was adopted in 1995 at the UN World Conference of Women by 187 countries. See Subrata, *supra* note 122, at 230. The crux of the Platform specifies the need to take steps to reduce violence against women and encompasses a comprehensive program for addressing the ways in which women are subordinated. See *id.*

government adopted comprehensive domestic violence legislation, specifically, the Protection of Women from Domestic Violence Act.¹²⁸ Previously, Indian law included only two domestic-violence-related statutes.¹²⁹ One, the Anti-Dowry statute is directed at dowry-related-violence, the other, the Anti-Cruelty statute, deals with acts of “extreme cruelty” and applies in cases where women are driven to commit suicide or if grave injury is inflicted.¹³⁰ The 2005 statute was intended to address acts of domestic violence previously not covered by these statutes.¹³¹

The 2005 law also addresses the use of batterer intervention programs, specifically counseling programs.¹³² Under Section 18 (Chapter 18) of the Protection of Women from Domestic Violence Act, a judge may mandate that an offender attend counseling either alone or with his partner.¹³³ This option is considered controversial because victims can also be ordered to attend the counseling sessions.¹³⁴ Additionally, the effectiveness

128. The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005), vol. 12; *see* Vyas, *supra* note 122, at 179 (stating that India passed the Protection of Women from Domestic Violence Act in 2005).

129. *See* Vyas, *supra* note 122, at 178–79 (“Domestic violence legislation in India has historically been directed toward dowry related violence, thereby excluding the myriad of cases involving domestic violence for reasons unrelated to dowry demands. Until recently, only two laws addressed domestic violence: the Anti-Dowry statute and the Anti-Cruelty statute.”); *see also* PEN. CODE (1986) § 304B (India) (India’s Anti-Dowry statute); PEN. CODE (1983) § 498A (India) (India’s Anti-Cruelty statute).

130. *See* PEN. CODE (1986) § 304B (India) (India’s Anti-Dowry statute); PEN. CODE (1983) § 498A (India) (India’s Anti-Cruelty statute); Vyas, *supra* note 122, at 178–79 (describing the nature and extent of India’s domestic violence laws prior to 2005, as being limited in application to dowry incidents and acts of “extreme cruelty”).

131. *See* The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005), vol. 12; Vyas, *supra* note 122, at 178–79 (“Due to these limited characterizations, perpetrators of domestic violence unrelated to dowry demands have escaped prosecution, contributing to a pervasive societal attitude tolerant of other forms of violence against women. A recent bill passed by India’s parliament, however, aims to change this attitude. . . . The bill is unique in its comprehensive categorization of domestic violence, which represents a departure from previous, narrower characterizations of domestic violence.”).

132. *See* The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005), vol. 12, ch. 4, § 14(1) (providing that a judge may mandate a domestic violence offender to attend counseling either alone or with his partner).

133. *See id.*

134. *See id.*; *see also* Indira Jaising, *Reconsidered: Dangerous Bill: Severe and Nationwide Criticism of the Govt’s Domestic Violence Bill Resulted in it Being Reconsidered*, INDIA TOGETHER (Nov. 2002), <http://www.indiatogether.org/women/violence/domvolbill.htm> (“Moreover, Section 11 contains a provision for the woman to undergo mandatory counselling with the abuser. This goes against all accepted principles of

of this stipulation and other provisions within the law are limited by a lack of public awareness and inadequate funding.¹³⁵

The inclusion of batterer intervention programs in the recently enacted domestic violence legislation in Brazil and India is reflective of the influence of the recommendations of the UN and COE discussed earlier in Part I.C.1–2. In evaluating these recommendations, it is important to understand how they have fared in countries that have been publicly engaged with such policies for decades. Part I.D.1–2 offered this comparison by describing the use of batterer interventions in the United States and England. The existing and ongoing controversy regarding the use of these programs and the evaluation of the appropriateness of the recommendations of the UN and COE continues in Parts II and III.

II. *THE DEBATE OVER BATTERER INTERVENTION PROGRAMS*

Despite the ratification of domestic violence legislation that includes the use of batterer intervention programs, such programs remain controversial in domestic violence advocacy circles. This Part discusses the conflicting perceptions of batterer intervention programs by analyzing the arguments made by the programs' proponents and opponents in Sections A and B, respectively. Section C addresses whether batterer intervention programs should be part of a top-down policy approach to domestic violence sentencing.

A. *The Argument for Batterer Intervention Programs*

Supporters of batterer intervention programs often optimize and support a comprehensive community response to domestic violence. This approach utilizes the best efforts of judges, police officers, social workers, prosecutors, children, and

counselling. Mandatory counselling is one method of correcting abusive behaviour. It is ridiculous to enable the magistrate to insist on 'mandatory' counselling of the innocent party.”).

135. See Kavita Chowdhury, *Domestic Violence Act Not Backed Up*, INDIA TODAY (Apr. 4, 2010), <http://indiatoday.intoday.in/site/Story/91165/India/Domestic+Violence+Act+lacks+funds.html> (“Three years into its enactment, the Protection of Women from Domestic Violence Act is hampered by limited awareness and inadequate budgets.”).

batterers in domestic violence sentencing.¹³⁶ Success in reforming offender behavior has proven more frequent when abusers participate in batterer intervention programs operating in conjunction with a comprehensive community response and strict judicial monitoring.¹³⁷ For example, in Quincy, Massachusetts, the coordinated community response utilized by the District Court Domestic Abuse Program has seen a drastic reduction in domestic violence homicides compared with other jurisdictions in Massachusetts that simultaneously suffered increases.¹³⁸ Other researchers have also concluded that batterers' programs do have a positive, albeit modest, impact on domestic violence prevention.¹³⁹

136. See Tsai, *supra* note 31, at 1320 ("This suggests that batterer intervention programs may be more effective when coordinated with other community interventions and further emphasizes the need for a coordinated community response."); see also *Report on Domestic Violence: A Commitment to Action*, 28 *NEW ENG. L. REV.* 313, 377 (1993) (defending the use of batterer intervention programs when used in the context of coordinated community responses to domestic violence).

137. See Dekki, *supra* note 50, at 583–84 n.143 ("It has been proven that the best way to combat domestic violence is through a Coordinated Community Response, which stresses the severity of the problem."); see also Tsai, *supra* note 31, at 1319–20 ("One study documented that of those batterers under court supervision, the treated batterers showed a decrease in psychological abuse, as opposed to physical abuse, when compared with untreated batterers. . . . Some suggest that one reason for the initial success of court-mandated counseling may relate to the additional influence of the court intervention itself. This suggests that batterer intervention programs may be more effective when coordinated with other community interventions and further emphasizes the need for a coordinated community response.").

138. See Tsai, *supra* note 31, at 1318 ("The number of domestic violence homicides in the Commonwealth of Massachusetts had increased from one woman killed every twenty-two days in 1986 to one woman killed every four days during the early part of 1995. However, in the area served by the Quincy District Court Domestic Abuse Program, there has been only one homicide resulting from domestic violence in 16 years. This accomplishment is due in large part to the unification of the efforts of everyone from judges, police officers, and prosecutors to social service agencies serving victims, batterers, and children. It is this coordinated community response that has made the Quincy District Court program such a success."); see also Elena Salzman, Note, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 *B.U. L. REV.* 329, 338–39, n.57 (1994) (analyzing the Quincy program and its model for success).

139. See, e.g., Greg Berman & Anne Gulick, *Special Series: Problem Solving Courts and Therapeutic Jurisprudence: Just the (Unwieldy, Hard to Gather but Nonetheless Essential) Facts, Ma'am: What We Know and Don't Know about Problem-Solving Courts*, 30 *FORDHAM URB. L.J.* 1027 (2003) (describing moderate positive effects of batterer intervention programs on violence prevention); Robert C. Davis & Bruce G. Taylor, *Does Batter Treatment Reduce Violence? A Synthesis of the Literature*, in *WOMEN & CRIMINAL JUSTICE* 69,

While proponents are encouraged by positive results in jurisdictions like Quincy, Massachusetts, they also recognize that contradictory studies exist.¹⁴⁰ Faced with conflicting evidence, some advocates, including the National Academy of Sciences, conclude that the urgency and magnitude of domestic violence has prompted policy makers and the like to act without scientific support.¹⁴¹ These supporters view batterer intervention programs as being the only reform-minded approach for domestic violence offenders.¹⁴² Specifically, they argue that there is no adequate alternative.¹⁴³ The rationale underlying this belief is that if an offender is punished without participation in an intervention program, he will be just as likely to reoffend without having learned any reformed behavior.¹⁴⁴

Yet another argument for batterer intervention programs is that in many situations it is the sentence most desired by the victim.¹⁴⁵ Batterer intervention program advocates assert that if a

72, 82–83 (Lynette Feder ed., 1999) (reporting on studies that have exhibited positive results regarding the effectiveness of batterer intervention programs).

140. See, e.g., Rizza, *supra* note 52, at 131 (recognizing inconsistent and contradictory studies regarding the effectiveness of batterer intervention programs); Tsai, *supra* note 31, at 1318–19 (reflecting on the conflicting studies and reports on the efficacy of batterer intervention programs).

141. See Rizza, *supra* note 52, at 126 (“The National Academy of Science correctly concludes that the urgency and magnitude of domestic violence has encouraged policy makers, service providers, and advocates to act without scientific support.”); Lynette Feder & David B. Wilson, *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers’ Behavior?*, 1 J. EXPERIMENTAL CRIMINOLOGY 239, 257–58 (2005) (citing to the findings of the National Academy of Sciences on the importance of batterer intervention programs despite the lack of sound scientific evidence regarding their effectiveness).

142. See Dekki, *supra* note 50, at 564–65 (“A clear reason to support Batterer Intervention Programs, particularly court-mandated programs, is that there are presently no adequate alternatives.”); see also Rizza, *supra* note 52, at 145 (“In most jurisdictions in the United States, crimes of violence against a family member are punishable by incarceration, fines, mandatory batterer treatment, and negative social stigma. Effective offender treatment remains an enigma. As Duluth advocates recognized in the 1980s, incarceration alone fails to change behavior, especially considering that the roots of domestic violence lie deep in our patriarchal social structure.”).

143. See *supra* note 142 (rephrasing that proponents believe that there are no adequate alternatives to batterer intervention programs).

144. See *supra* note 142 (describing why batterer intervention programs are irreplaceable in a comprehensive and effective response to domestic violence).

145. See Tsai, *supra* note 31, at 1310–11 (“However, the system must also take into account . . . the wishes of its victims.”); see also *Report on Domestic Violence: A Commitment*

court imposes harsh penalties and aggressive prosecution policies against a victim's wishes, it is using paternalism to further disempower victims.¹⁴⁶

B. *The Argument Against Batterer Intervention Programs*

The central argument of opponents of batterer intervention programs is simply that these programs are ineffective. Over thirty-five studies have been conducted in the United States regarding the effectiveness of batterer intervention programs, and the only consensus to emerge from these studies is that there is no consensus at all.¹⁴⁷ A report conducted by the National Institute of Justice in 2003 reviewed the results from studies that evaluated the effectiveness of batterer intervention programs and concluded that “[t]he stakes for women’s safety are simply too high to rely heavily on the use of [batterer intervention programs] without stronger empirical evidence that they work.”¹⁴⁸

Opponents further stress that the continued endorsement of batterer intervention programs is a misguided policy that

to Action, *supra* note 136, at 338–39 (discussing the incorporation of victim’s wishes into the sentencing formula in domestic violence cases).

146. See Tsai, *supra* note 31, at 1311 (“[A]ggressive prosecution . . . may ultimately disempower victims by taking away their freedom of choice and forcing prosecution when they may ultimately benefit more from a different course of action.”); see also Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849–50 (1996) (noting that “tensions between state accountability and victim autonomy” exist).

147. See BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 2 (“More than 35 BIP evaluations have been published. . . . The results, however, remain inconclusive because of methodological flaws in these evaluations.”); see also Jennifer P. Maxwell, *Mandatory Mediation of Custody in the Face of Domestic Violence: Suggestions for Courts and Mediators*, 37 FAM. & COUNCIL. CTS. REV. 335, 343 (1999) (“Studies of batterers’ intervention programs have consistently found that the effectiveness of these programs is difficult to determine, with many of the intervention programs themselves claiming little success.”); MINISTRY OF JUST., WHAT WORKS WITH DOMESTIC VIOLENCE OFFENDERS?, *supra* note 14 (explaining that most studies conducted on batterer intervention programs have been done in the United States).

148. See BATTERER INTERVENTION PROGRAMS, *supra* note 8, at 26 (finding that the inconsistency of research studies on the effectiveness of batterer intervention programs leads to the conclusion that for the sake of victim safety, batterer intervention programs should not be relied upon); see also SCHNEIDER ET AL., *supra* note 87, at 343 (quoting the National Institute of Justice’s findings regarding victim safety and the indeterminable nature of studies on batterer intervention program success).

misappropriates funds toward experimentation.¹⁴⁹ These skeptics contend that programs in the criminal justice system should not receive governmental support or funding without assurances that the promised results can, and will, be delivered.¹⁵⁰ In communities with limited resources and funding, opponents argue that these funds could be better directed towards proven effective measures like victims' services and community education programs.¹⁵¹

Critics further question whether government support for batterer intervention programs is responsible governance.¹⁵² They cite to the risks associated with the potential failure of such programs.¹⁵³ These risks include: potential threats to victim safety, the message being sent to offenders that their violent actions will incur no punishment, and perceived discrimination

149. See Mae C. Quinn, *The Modern Problem-Solving Court Movement: Domination of Discourse and Untold Stories of Criminal Justice Reform*, 31 WASH. U. J.L. & POL'Y 57, 81 (2009) ("New state courts, like new medications, should not receive federal support or approval without proper study, testing, and vetting, as well as delivery of promised results."); see also Tsai, *supra* note 31, at 1314 ("A third source of controversy involves the use of valuable domestic violence resources on services for perpetrators. Many battered women's advocates object to spending money on long-term interventions for batterers when doing so diverts limited funds away from services for battered women.").

150. See Quinn, *supra* note 149, at 81–82 (arguing that federal support should not be given to solutions still in the experimental stage without evidence supporting their purported results); see also Tsai, *supra* note 31, at 1314 (explaining the opposition of many domestic violence advocates to using limited domestic violence funding for perpetrators instead of victims).

151. See *OPDV Bulletin: Programs for Men Who Batter: What Have We Learned?*, N.Y. STATE OFF. PREVENTION DOMESTIC VIOLENCE [OPDV], http://www.opdv.state.ny.us/public_awareness/bulletins/fall2000/batterers.html (last visited Jan. 6, 2012) [hereinafter *OPDV*] (purporting that funding for domestic violence should be directed toward victims services or alternatively community education programs, not batterer intervention programs); see also Tsai, *supra* note 31, at 1314 (noting that critics of batterer intervention programs are opposed to domestic violence funding being diverted away from victims to support batterer programs).

152. See *OPDV*, *supra* note 151 (criticizing batterer intervention programs as putting victim safety in danger, for the sake of experimentation); see also HEALEY, SMITH & O'SULLIVAN, *supra* note 25, at 10 (quoting Andrew Kleing, Chief Probation Officer, Quincy, Massachusetts: "Batterer intervention is a public safety program, not treatment; you must keep the focus on victim safety. Otherwise, the criminal justice system is only offering the batterer a safe haven to escape the consequences of his offense."). See generally Robbins, *supra* note 93 (arguing that the US Constitution's Equal Protection Clause mandates that domestic violence be treated by the criminal justice system in the same way as violence committed by strangers).

153. See, e.g., *OPDV*, *supra* note 151; HEALEY, SMITH & O'SULLIVAN, *supra* note 25, at 10.

toward domestic violence victims whose abusers ultimately receive lesser sentences than victims who are subject to violence from strangers.¹⁵⁴ The Office for the Prevention of Domestic Violence in New York has condemned batterer intervention programs stating that the “trial and error” of these programs has the potential to falter at the expense of victim safety.¹⁵⁵ These advocates argue that these programs reinforce the notion that domestic violence is less serious than other violent offenses, and can be “fixed” outside of the criminal justice system.¹⁵⁶ It is further contended that the wrong message is being sent to communities about the seriousness of domestic violence when offenders are given suspended sentences with mandated attendance in a batterer treatment program for crimes that in other circumstances would have warranted jail time.¹⁵⁷

With regard to batterer treatment programs that utilize couples counseling, as in India, criticism has been particularly strong.¹⁵⁸ The National Institute of Justice explained: “Family systems interventions . . . [may] endanger the victim if not performed conscientiously.”¹⁵⁹ The perceived threat of couples counseling in the eyes of these critics stems from the belief that

154. See OPDV, *supra* note 151; see also HEALEY, SMITH & O’SULLIVAN, *supra* note 25, at 10 (detailing the risks that follow the failure of batterer intervention programs).

155. See OPDV, *supra* note 151 (advocating against batterer intervention programs because they endanger victim safety for “trial and error”); see also Tsai, *supra* note 31, at 1310 (“In addition to this problem of conflicting goals, critics argue that despite innovative domestic violence advances, improper enforcement of new policies may negate their intended effect.”).

156. See OPDV, *supra* note 151 (alleging that batterer intervention programs undermine efforts to move society away from the notion that domestic violence is a less serious crime); see also Tsai, *supra* note 31, at 1311 (“This approach may send a message that domestic violence cases are not considered to be serious, because defendants can avoid criminal punishment by attending counseling programs.”).

157. See Tsai, *supra* note 31, at 1311 (noting that “[t]his approach may send a message that domestic violence cases are not considered to be serious, because defendants can avoid criminal punishment by attending counseling programs.”); see also FAGAN, *supra* note 31, at 39 (noting that sentencing options in domestic violence cases must be handled very delicately so as not to undermine the ability of legal institutions to protect against violence).

158. See Maxwell, *supra* note 147, at 345 (noting criticism of batterer intervention programs designed as couples counseling); see also *infra* Part I.D.4 (regarding the counseling provision in India’s domestic violence law, and criticism of that provision).

159. Maxwell, *supra* note 147, at 344 (quoting the National Institute of Justice on the troublesome aspects of batterer intervention programs that take the form of couples counseling).

any successful counseling will be based on a foundation of equal power between the participants.¹⁶⁰ In abusive relationships, however, the balance of power between the victim and the perpetrator is inherently unequal as the victim often possesses a fear of physical violence, coercive attacks, and the perception that her participation will result in retaliation by the abuser.¹⁶¹ Thus, this form of treatment is only considered viable once victims have become equally empowered.¹⁶²

Additionally, opponents argue that alternatives exist that would serve the same purpose more successfully, such as increased judicial monitoring and offender accountability measures, which could include the offender routinely reporting to the court for status updates.¹⁶³ The New York Office for the Prevention of Domestic Violence has stated, “[a] batterers program is not necessary to achieve an effective, coordinated response to domestic violence.”¹⁶⁴ Instead, based on the Offices’ years of experiences, it concludes that offender accountability is

160. See *Marriage/Couples Counseling v. Men’s BIP*, CRISIS CONNECTION, http://www.crisisconnectioninc.org/pdf/marriage_counseling.pdf (last visited Jan. 6, 2012); see also *Policy Statement on Couples Counseling & Anger Management of Domestic Violence Cases*, N.Y. STATE OFF. PREVENTION DOMESTIC VIOLENCE, http://opdv.state.ny.us/public_awareness/bulletins/fall2003/legalcorner.html (last visited, Jan. 6, 2012) [hereinafter *Couples Counseling & Anger Management*].

161. See *Marriage/Couples Counseling v. Men’s BIP*, *supra* note 160; *Couples Counseling & Anger Management*, *supra* note 160 (“People who are being either hit, intimidated or controlled through threats or other coercive means by their partners are not free to engage in open dialogue.”).

162. See *Marriage/Couples Counseling v. Men’s BIP*, *supra* note 160; *Couples Counseling & Anger Management*, *supra* note 160.

163. See Berman & Gulick, *supra* note 139, at 1043 (“Evidence suggests that rigorous court monitoring may have more of an effect on recidivism than do batterer reeducation programs.”); see also ROBERT C. DAVIS ET AL., DOES BATTERER TREATMENT REDUCE VIOLENCE? A RANDOMIZED EXPERIMENT IN BROOKLYN (2000) (studying the comparative success of offenders assigned to community service with those linked to batterers’ intervention and finding that those offenders least likely to reoffend were those under court supervision for the longest period of time).

164. See OPDV, *supra* note 151 (noting that batterers programs are not necessary to elicit an effective, coordinated response to domestic violence); see also LABRIOLA ET AL., *supra* note 52, at viii (“Indeed, the main findings from our randomized trial are consistent with other recent trials, of which none found that mandating offenders to a batterer program for groups for men produced lower rates of re-abuse.”).

best achieved through effective probation supervision and criminal justice sanctions.¹⁶⁵

C. A Top-Down Approach to Domestic Violence Sentencing Policy

Both international and national governing forces have played a dominant role in promulgating human rights and the movement against domestic violence.¹⁶⁶ For example, in Brazil and India international pressure was a motivating factor behind the passage of key domestic violence legislation.¹⁶⁷ On the other hand, there are a number of complicating and problematic issues that arise when an international or national body makes specific, detailed policy recommendations for localities to implement.¹⁶⁸

One such issue is that localities claim no stake in the success of these policies because they played no part in their creation.¹⁶⁹

165. See OPDV, *supra* note 151; see also Berman & Gulick, *supra* note 139, at 1043 (“Evidence suggests that rigorous court monitoring may have more of an effect on recidivism than do batterer reeducation programs.”).

166. See Roure, *supra* note 68, at 65 (noting that “[i]nternational human rights laws and principles can provide an important source of inspiration and a rallying point for social change. The domestic violence reform in Brazil illustrates this fact”); see also *The International Legal Framework*, *supra* note 59 (discussing the role that the international community and organizations have played in instigating human rights development throughout the world).

167. See *supra* notes 59, 117–18, and 126–28 (citing the influence that international organizations had on the instigation of change in domestic violence policy in Brazil and India).

168. Greg Berman & Aubrey Fox, *The Future of Problem-Solving Justice: An International Perspective*, 10 RRG 1, 19 (2010) (“There is an inherent tension between local and central government ownership of problem-solving justice reform. For example, when central government imposes formal targets on local criminal justice agencies.”); see OFFICE OF CRIMINAL JUSTICE REFORM, WORKING TOGETHER TO CUT CRIME AND DELIVER JUSTICE: A STRATEGIC PLAN FOR 2008–2011, 2007, Cm. 7247, 31–36 (U.K.), available at http://www.criminalsolicitor.net/forum/uploads/shrek/Glink/2007-11-15_150844_1_Strategic_Plan_All.pdf (providing evidence of the challenges between coordinating local and national efforts in problem solving justice). Berman and Fox conducted individual interviews with players in the criminal justice system in England to gather information for this paper. See Berman & Fox, *supra* note 168.

169. See Berman & Fox, *supra* note 168, at 18–19 (stating that local buy in is a serious challenge to implementation of problem solving justice in England and Wales); see also *Problem-Solving Justice in the United States: Common Principles*, CTR. FOR CT. INNOVATION, http://www.courtinnovation.org/sites/default/files/Problem_Solving_Justice_in_the_US.pdf (last visited Jan. 6, 2012) [hereinafter CTR. FOR CT. INNOVATION] (“Citizens and neighborhood groups have an important role to play in helping the justice system identify, prioritize, and solve local problems.”).

The need for local investment in policy changes to the criminal justice system has been especially emphasized by scholars and researchers in the field of problem-solving justice.¹⁷⁰ Interviews conducted in England on the subject indicate that many practitioners feel that domestic violence reforms and other problem solving court issues are the “flavor of the month,” “forced upon them from above.”¹⁷¹ This attitude, compounded with natural tensions between local and central governments, has led to an “ownership” problem with reform.¹⁷²

Another issue with the top-down approach concerns funding.¹⁷³ In communities with limited resources, it is arguably impractical for supranational and national bodies to recommend policy initiatives that are ultimately dependent on sustained and reliable local funding.¹⁷⁴ Moreover, the difficulty

170. See Berman & Fox, *supra* note 168, at 19 (evaluating challenges in implementing national policies for problem-solving justice without local involvement); see also CTR. FOR CT. INNOVATION, *supra* note 169, at 2 (noting the importance of local players in effectuating problem-solving court initiatives). Problem-solving justice refers to a development in the justice system of employing specialized courts to deal with cases that confront specific social issues who are not generally compatible with the traditional system of adversarial justice and punishment. See *Problem Solving Courts and Other Court Innovation*, CUTTING EDGE L., <http://www.cuttingedgelaw.com/page/problem-solving-courts-and-other-court-innovation> (last visited Jan. 6, 2012). These specialized courts are focused on attempting to address the root of the problems brought before them in order to prevent future occurrences. See *Problem Solving Courts and Other Court Innovation*, *supra*. The most common kinds of problem-solving courts are drug courts and domestic violence courts. See *Problem Solving Courts and Other Court Innovation*, *supra*.

171. See Berman & Fox, *supra* note 168, at 19 (“For some ground-level practitioners, there is a feeling that problem-solving reform is the ‘flavor-of-the-month’ being forced upon them from above.”).

172. See *id.* (“There is an inherent tension between local and central government ownership of problem-solving justice reform.”); see also CTR. FOR CT. INNOVATION, *supra* note 169, at 2 (highlighting the importance of the relationship between local and national players in effectuating problem-solving court initiatives).

173. See Berman & Fox, *supra* note 168, at 19–20 (“In a time of shrinking resources, it may be difficult to sustain the problem-solving initiatives already in place, let alone expand their use.”); see also Roure, *supra* note 68, at 94 (“Despite the increased resources, funding remains insufficient.”); David Barrett, *Cash Crisis ‘Undermining Sentencing,’* PRESS ASS’N NEWSFILE, Mar. 17, 2008, available at LEXIS (reporting the effects of insufficient funds and budgetary crises on domestic violence and other sentencing options); Chowdhury, *supra* note 135 (“Three years into its enactment, the Protection of Women from Domestic Violence Act is hampered by limited awareness and inadequate budgets.”).

174. See Berman & Fox, *supra* note 168, at 19–20 (noting that the Attorney General of England ruled out replicating a successful community justice center because of its expense); see also Roure, *supra* note 68, at 94 (“Despite the increased resources,

of generating the resources needed to support batterer intervention programs is further strained by these programs' inability to produce substantive data illustrating their success.¹⁷⁵ The argument follows that, in order for a tax-paying public to have confidence and support in criminal justice programs, these programs ultimately have to produce results.

Finally, another difficulty with top-down implementation of batterer intervention programs, as well as domestic violence sentencing policies generally, is that it reflects a "one size fits all" approach.¹⁷⁶ In many jurisdictions batterer treatment programs are either statutorily mandated or practically utilized for almost every domestic violence offender, leaving little allowance for different family situations or diversity among offenders.¹⁷⁷ This "one size fits all" approach fails to address some of the most common causes and effects of domestic

funding remains insufficient."); Barrett, *supra* note 173 (reporting the effects of insufficient funds and budgetary crises on domestic violence and other sentencing options); Chowdhury, *supra* note 135 ("Three years into its enactment, the Protection of Women from Domestic Violence Act is hampered by limited awareness and inadequate budgets.").

175. See Berman & Fox, *supra* note 168, at 22 (arguing that substantive data proving success of criminal justice programs is necessary to retain public confidence and political support for funding); see also *supra* notes 147–49 (detailing studies whose results indicate either no success or an inability to determine the success of batterer intervention programs).

176. See Jean Ferguson, *Professional Discretion and the Use of Restorative Justice Programs in Appropriate Domestic Violence Cases: An Effective Innovation*, 4 *CRIM. L. BRIEF* 3, 4 (2009) ("The tendency of both mandatory arrest and prosecution policies and batterer's treatment programs is to respond identically in all domestic violence situations."); see also Mae C. Quinn, *Anna Moscovitz Kross and The Home Term Part: A Second Look at the Nation's First Criminal Domestic Violence Court*, 41 *AKRON L. REV.* 733, 761 ("[The] one-size-fits-all approach' . . . seems to permeate today's domestic violence courts and contemporary attempts to explain violence between intimates."). For a more in depth discussion of the complications associated with adopting a uniform approach to the handling of domestic violence situations, see Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and the Implications for Interventions*, 46 *FAM CT. REV.* 476 (2008). Kelly and Johnson discuss differing forms of domestic violence and argue that tailored responses, which appropriately and uniquely address a particular kind of domestic violence, should be used by the criminal justice system. See generally Kelly & Johnson, *supra*.

177. See Ferguson, *supra* note 176, at 4 (noting that, in California, all persons convicted of a crime of family violence are required to participate in a batterer intervention program); see also CAL. PENAL CODE § 1203.097 (2011) (providing an example of a statute that mandates that all domestic violence offenders participate in a batterer treatment program).

violence, like substance abuse, by focusing solely on violence intervention.¹⁷⁸

III. *THE LOCAL VOICE BEHIND SENTENCING POLICY MATTERS*

Domestic violence is undoubtedly a difficult issue for criminal justice systems throughout the world. Its widespread prevalence has compelled international and national governments to respond through legislation and policy initiatives.¹⁷⁹ As noted, a number of these initiatives have recently included policy endorsements for the use of controversial batterer intervention programs.¹⁸⁰ While these programs have been debated for a number of years on the local level, their invocation on the national and international level raises new controversy as to whether it is appropriate and sound policy for these bodies to advocate the use of such programs. This Note argues that it is irresponsible for international and governmental bodies to broadly endorse the use of batterer treatment programs in legislative recommendations to nations and localities. Instead, this Note proposes that the promulgation of batterer treatment programs in policy and practice should remain with the localities ultimately accountable for their success.

A. *Effectiveness of Batterer Intervention Programs*

Although only a relatively small percentage of domestic violence cases make their way to court, the judicial considerations in issuing a criminal sentence for abuse committed in an intimate or familial relationship are complex and serious.¹⁸¹ The judge must weigh the gravity of the harm posed by the offender, the wishes of the victim, the safety of the

178. See Ferguson, *supra* note 176, at 4 (recognizing that batterer treatment programs typically do not address substance abuse, which is often both a cause and effect of domestic violence).

179. See *supra* Parts I.C–D.

180. See *supra* Parts I.C.1–2.

181. See *supra* notes 92–95 and accompanying text (portraying the relatively small percentage of domestic violence cases that ultimately end up in court); see also *supra* note 44 and accompanying text (discussing the complex issues that are unique to domestic violence cases, which complicate sentencing of abusers).

victim, and the policy goals and best interests of the community and society at large, among other factors.¹⁸² In looking at the historical rise of batterer intervention programs, it is apparent that the use of such programs was originally intended to address these often contradicting factors.¹⁸³ In practice, however, it is also clear that these programs have not been as successful as hoped.¹⁸⁴ Despite the programs' sporadic and small successes in some instances, most studies have failed to show that batterer intervention programs are effective.¹⁸⁵

Additionally, it is unfortunate that coordinated community responses to combat domestic violence require not only more funding but also more local investment and support.¹⁸⁶ Given current economic circumstances, government funding in many countries has been limited for criminal justice programs.¹⁸⁷ This funding shortage hinders the ability of many local jurisdictions to adequately implement their desired sentencing policies.¹⁸⁸ In many developing countries where domestic violence legislation is just emerging, like Brazil and India, these funding concerns are very serious.¹⁸⁹

The outlook on batterer intervention programs, however, is not completely grim.¹⁹⁰ Studies indicate that batterer intervention programs utilized as one part of a coordinated

182. *See supra* note 44 (discussing factors that often complicate the sentencing of a domestic violence abuser).

183. *See supra* Part I.B (outlining the historical antecedents of the domestic violence movements and the rise of batterer intervention programs).

184. *See supra* notes 1–16 and 147–50 and accompanying text (indicating that batterer intervention programs are ineffective and have been unsuccessful).

185. *See supra* notes 136–41 and 147–50 and accompanying text (noting that while some programs have seen success, collectively there is no foundation to suggest that batterer intervention programs are effective).

186. *See supra* Part II.C (explaining why problem-solving justice requires more local buy-in).

187. *See supra* Part II.C (explaining why funding shortages limit the effect of problem solving justice); *see also supra* note 121 (discussing Brazil's limited resources); *supra* note 135 (discussing obstacles to the full implementation of domestic violence law in India because of a lack of resources); *supra* notes 173–74 (discussing the funding limitations on problem-solving justice).

188. *See supra* note 174 (detailing the impact of limited funding resources on the implementation of domestic violence measures).

189. *See supra* notes 121 and 135 (noting financial constraints in Brazil and India on the enforcement of their new domestic violence laws).

190. *See supra* notes 136–39 and accompanying text (providing evidence of batterer treatment success).

community response have a greater likelihood of success.¹⁹¹ Several jurisdictions that are financially capable of sustaining a coordinated community response have seen marked improvements in domestic violence rates as a result of this comprehensive approach.¹⁹² Despite these developments, it should be noted that some studies have indicated that increased judicial monitoring, and not batterer intervention programs, are what really influence recidivism rates in coordinated responses.¹⁹³ Nevertheless, in a community or world with unlimited resources, the relatively small success rate in reducing domestic violence would justify the use of batterer intervention programs.¹⁹⁴ Any amount of victims spared violence would be better than none at all.¹⁹⁵ Therefore, batterer intervention programs, when used as part of a fully-funded, fully-operational coordinated community response, are important and useful. Absent those conditions, however, these programs are potentially dangerous to victim safety and should not be used.¹⁹⁶

*B. The Role of International and National Domestic Violence
Legislation and Policy on Batterer Intervention Programs*

The secondary question in this analysis is whether international and national governments should advocate for these programs when ultimately they are not responsible for their implementation. In short, this Note concludes that the answer is no.

191. *See supra* notes 136–39 and accompanying text (discussing the increased success with coordinated community response approaches to domestic violence sentencing).

192. *See supra* notes 136–39 and accompanying text (citing to jurisdictions like Quincy, Massachusetts, as an illustration of increased rates of success of fully-funded coordinated community responses to domestic violence).

193. *See supra* notes 136–39 and accompanying text (contrasting opinions as to why coordinated community responses have been successful, giving credit to increased judicial monitoring and not batterer intervention programs).

194. *See supra* note 141 and accompanying text (citing to the National Academy of Sciences, which has stated that the severity of domestic violence warrants unscientifically proven measures).

195. *See supra* notes 136–39 and accompanying text (referring to the small but important relative success of batterer intervention programs).

196. *See supra* note 152 (describing risks associated with the failure of batterer intervention programs).

On the one hand, international and national governmental bodies have been incredibly influential in the development of the movement against domestic violence.¹⁹⁷ Their influence and recommendations have led to local and national legislation and initiatives that have dramatically shifted the traditional legal framework for domestic violence.¹⁹⁸ Along this vein, it is natural to suggest that these bodies should continue to pioneer legislative and policy recommendations to this end, including ones that endorse batterer intervention programs. After all, in the sample of international and national governmental bodies reviewed, almost all qualified their policy recommendations by explicitly noting that batterer intervention programs should be accompanied by heightened judicial scrutiny and monitoring.¹⁹⁹

In practice, however, despite these technical qualifications, heightened judicial scrutiny and court monitoring in many jurisdictions has not been fully or even adequately realized.²⁰⁰ Either because of a lack of funding and resources or because the law or local policy only partially internalized the national or international policy directives, batterer intervention programs are being replicated and run ineffectively and dangerously.²⁰¹ Well-intended legislative suggestions by international bodies and well-purposed national laws have thus inadvertently given rise to sentencing that is reckless and may actually exacerbate the problem of domestic violence.²⁰² Brazil and India, two countries that have only recently enacted comprehensive domestic

197. *See supra* Part I.D (detailing international and national domestic violence legislation); *see also supra* notes 117–19 (discussing the impact of CEDAW on Brazil’s passage of the Maria da Penha law); *supra* notes 126–27 (detailing the role of the international community in the movement to end domestic violence in India).

198. *See supra* notes 117–19 and 126–27 (providing the changes of law in Brazil and India as two examples of the influence of the international community on domestic violence legislation).

199. *See supra* notes 59–63 and 74–76 (describing the policy recommendations of the UN and COE, including qualifying statements encouraging judicial scrutiny and close monitoring of offenders).

200. *See supra* notes 60–61 and 74–76 and accompanying text (citing the qualification language included in international policy recommendations for batterer intervention programs).

201. *See supra* Part II.B–C; *see also supra* notes 1–16 and accompanying text (noting the dangerous outcomes of ineffective implementation of batterer intervention programs).

202. *See supra* notes 60–61 and 74–76 and accompanying text.

violence legislation, are perfect illustrations of this problem.²⁰³ Both countries drafted legislation with the policy recommendations of the UN and following models of countries like England and the United States, and both included batterer intervention programs as part of their domestic violence framework.²⁰⁴ They did this despite the financial and structural limitations facing their governments for combating domestic violence.²⁰⁵ International and national governmental bodies should refrain from dictating or advocating such policy for this exact reason. The safety of victims needs to be a more thoughtful priority.

Despite the assertion that national and international governments should not make any legislative recommendations for domestic violence, it is crucial to note that these bodies do have an important and significant role to play in the fight against domestic violence.²⁰⁶ In terms of providing funding and resources, guiding criminal penalties, conducting research and studies, and coordinating interstate and cross-border programs, national and international bodies serve a unique and critical role.²⁰⁷ However, given the inconclusive and controversial nature of batterer intervention programs, as well as their potential to undermine victim safety while simultaneously encouraging harmful perceptions of domestic violence, supranational and national bodies should be overly cautious and refrain from suggesting these particular programs.²⁰⁸

Instead of a top-down approach, local communities that are ultimately responsible for implementing sentencing options should individually consider whether they are in fact capable and equipped to utilize these programs effectively. Without local

203. *See supra* Part I.D.3–4 (noting the fairly recent enactment of domestic violence legislation in Brazil and India).

204. *See supra* Part I.D.3–4 (describing the influence of the UN and other governments on the domestic violence legislation enacted in Brazil and India).

205. *See supra* notes 121, 135, 173–74 and accompanying text.

206. *See supra* Part I.D and notes 117–19, 126–27 (reiterating the significance of the international community on the movement to end domestic violence).

207. *See supra* Part I.D and notes 117–19, 126–27 (discussing the positive roles that international and national policies have played in the movement to end domestic violence).

208. *See supra* Part II.A–C (outlining the criticisms and inconclusive results of studies measuring the effectiveness of batterer treatment programs).

commitment to fund and enforce these programs, they cannot and will not be successful.

This conclusion is subject to amendment in the future should new research indicate that batterer treatment programs have increased in their effectiveness. Until that point, however, victim safety must be the first priority of local, national, and supranational bodies. Idealistic and experimental sentencing policies espoused from afar should be avoided. Instead, countries newly embracing domestic violence legislation should prioritize victim safety over batterer rehabilitation. Their legislation should be tailored to the capabilities and social realities of their countries and with the incorporation of local participation. This focus should continue until the individual society and governments have successfully implemented fully-functional and fully-funded coordinated community responses.

CONCLUSION

Domestic violence presents unique challenges to criminal justice systems and governmental bodies seeking to remedy its severe and pervasive consequences worldwide. In an attempt to address the severity of domestic violence, international and national governmental bodies have increasingly adopted sentencing policies that endorse the use of controversial batterer intervention programs. In many cases, these programs provide an alternative to a harsher sentence, taking into the sentencing process the considerations of offender rehabilitation and victims' wishes. Some studies have indicated that these programs are ineffective and potentially dangerous because their leniency toward offenders risks victim safety. Furthermore, the theoretical purity of these policies has been undermined in translation from international and national policy to local implementation, largely as a result of funding and intergovernmental coordination problems. Taking these factors into consideration, national and international bodies should not issue overly broad endorsements of batterer intervention programs. Rather, because successful batterer intervention programs are contingent on the effectiveness of local follow-through and funding, their implementation and perpetuation, as a policy, should be limited only to localities that have the capacity and capabilities to utilize them properly.