

Peace at Home:

**Report on the Review of the Social and Legal
Measures in the Prevention and Intervention of
Domestic Violence in Hong Kong**

**Department of Social Work and Social Administration
The University of Hong Kong
Hong Kong
June 2005**

PRINCIPAL INVESTIGATOR

Chan, Ko Ling, Ph.D.
Department of Social Work & Social Administration,
The University of Hong Kong

RESEARCH TEAM

Chiu, Man Chung Andy, Ph.D.
School of Law, Charles Darwin University,
Darwin, Australia

Chiu, Lai Suen Elsa, M.Soc.Sc.

Enquiries

Department of Social Work & Social Administration,
The University of Hong Kong,
Pokfulam, Hong Kong
Tel : (852) 2859-2077
Fax : (852) 2858-7604
Email : eklchan@hku.hk

Suggested citation: Chan, K. L.; Chiu, M.C. & Chiu, L.S.(2005). *Peace at home: Report on the Review of the Social and Legal Measures in the Prevention and Intervention of Domestic Violence in Hong Kong*. [A Consultancy Study Commissioned by the SWD of the HKSAR]. Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong.

Final draft: June, 2005

*This study is commissioned by the Social Welfare Department and
funded by the Lotteries Fund.*

Table of Contents

Table of Contents	ii
Acknowledgements	iii
Abbreviations	iv
Executive Summary	v
1. The Background of the Study	1
2. Essential Elements Contributing to Effective Prevention and Intervention	9
3. Existing Criminal Justice and Welfare Systems in Handling Domestic Violence in Hong Kong	18
4. Major Findings	33
5. Legislation of Mandatory Treatment in other Jurisdictions	59
6. Court-Mandated Batterers' Intervention Programmes	100
7. Domestic Violence Policy and the Reform of Legal Measures	114
8. Reform of the Domestic Violence Ordinance	143
9. Summary of Recommendations	168
Appendices	174

Acknowledgements

Domestic violence is a crime. It is hard to believe that such a crime could happen commonly at home where love, care and protection should be in place. Fighting crime at home makes the issue more complicated that should rely on the collaboration of legal and welfare systems. This review is to suggest strategies in bringing together efforts from multidiscipline. To work together, every party has to make change which may be the most difficult part of the reform. With shared mission, passion and goals, we believe that all parties involved will work collaboratively to condemn domestic violence crime and to build a peaceful family, community and society.

We would like to acknowledge the active support and cooperation of the Social Welfare Department, Department of Justice, Hong Kong Police Force, Health, Welfare and Food Bureau, Security Bureau, and Non-governmental Organizations throughout the study process. We also wish to acknowledge all overseas and local advisors, especially Dr. Catherine Cerulli, Ms. Vera Lam, Mr. Yip Hak Kwong and Ms. Hesta Ho for their prompt and helpful advice. We owe much from the service recipients who shared their unhappy experiences. We could only pay back by working harder to improve the system and make it more human.

Last but not the least, I would like to express my appreciation to Ms. Elsa Chiu and Dr. Andy Chiu, from whom I learn most.

Chan, Ko Ling, Ph.D.

Department of Social Work and Social Administration

The University of Hong Kong

April 2005

Abbreviations

BIP	Batterer Intervention Programme
DVO	Domestic Violence Ordinance
FCPSU	Family and Child Protective Services Unit
HKCSS	Hong Kong Council of Social Service
HKFWS	Hong Kong Family Welfare Society
HKSAR	Hong Kong Special Administrative Region
SWD	Social Welfare Department

Executive Summary

1. There are two objectives of the review. The first is to identify the essential elements contributing to effective prevention and intervention (including whether the provision of legislative measures, such as the Domestic Violence Ordinance, could facilitate prevention and intervention). The second is to study the feasibility and implications of adopting mandatory treatment of perpetrators in Hong Kong (including, but not limited to, mode and definition, manpower, related judicial, administrative and legislative arrangement, etc.) with reference to overseas examples (e.g. UK, USA, Singapore, Canada, New Zealand, Australia, etc.).
2. In identifying the essential elements contributing to effective prevention and intervention of domestic violence, the Public Health Approach advocated by World Health Organization is adopted. It stipulates that the violence prevention depends upon social policies and programs, and the coordinated community and legal efforts in the building of peaceful society and family. The Consultant gives views on the overall strategies in prevention and intervention of the problems before leading to the specific discussion on the effective legal measures, including mandatory treatment of perpetrators.
3. Based on the findings from the studies conducted for this review, and the review of literature and legislations in other Jurisdictions, a number of issues related to legal measures were examined. The legal measures include the context and conditions in providing court-ordered mandatory batterer intervention programmes, reporting of domestic violence cases, the practice of arrest and prosecution, legal support for victims, multidisciplinary collaboration, reform of Domestic Violence Ordinance (Cap 189), utilization of the injunction orders, child protection and risk assessment.
4. The making of a government policy which states clearly the commitment of the government to tackle domestic violence, philosophy in combating domestic violence, and the strategies in fighting against and preventing the domestic violence is recommended. The policy shall include a holistic and inter-agency coordinated community and legal approach in the prevention and intervention with domestic violence.

5. The context of a coordinated criminal justice system plays a significant role in making effective the mandatory programmes for perpetrators of domestic violence. The provisions of BIPs under the existing system and through the reform of laws are recommended. A time-limited pilot project is recommended to implement the court-mandatory BIP in Hong Kong.
6. Active support and participation from the legal system is the most crucial in making mandatory BIP feasible. A number of legal remedies are recommended for closer examination, including reporting domestic violence cases, the policy and practice of arrest and prosecution, setting up a specialized domestic violence court and a domestic violence serious injury or fatality review, education for the public and training for legal actors, and legal support for victims.
7. Reform of the Domestic Violence Ordinance (Cap 189) is recommended to expand the scope of protection and strengthen the laws in the prevention of and intervention with domestic violence.

Chapter 1

The Background of the Study

Objectives

- 1.1 The Department of Social Work and Social Administration, the University of Hong Kong was commissioned by the Social Welfare Department (SWD) of the Government of Hong Kong Special Administrative Region (HKSAR) to study the effectiveness of measures in the protection of victims suffering from domestic violence, with the emphasis of child abuse and spouse battering. This is the report of the study which contains the findings and recommendations addressing the objectives of the study.
- 1.2 More specifically, this research has the following objectives:
 - (a) To identify the essential elements contributing to effective prevention and intervention (including whether the provision of legislative measures, such as the Domestic Violence Ordinance, could facilitate prevention and intervention);
 - (b) To study the feasibility and implications of adopting mandatory treatment of perpetrators in Hong Kong (including, but not limited to, mode and definition, manpower, related judicial, administrative and legislative arrangement, etc.) with reference to overseas examples (e.g. UK, USA, Singapore, Canada, New Zealand, Australia, etc.);

Definition of child abuse and spouse battering

- 1.3 Domestic violence is "an act of violence committed by any member against another member of the family or co-habitation".¹ In this study, it addresses mainly the issues of child abuse and spouse battering, as commissioned by the SWD, HKSAR.
- 1.4 Definition of Spouse Battering: According to the multi-disciplinary procedural guidelines developed for handling battered spouse cases, spouse battering is a

¹ Family and Child Welfare Branch. (2000). *Guidelines on Handling Battered Spouse Cases*. Hong Kong: Social Welfare Department.

kind of domestic violence.² In using violence or the threat of violence, physical or psychological harm is inflicted with the effect of establishing control by one individual over another. It covers incidents of physical attack, when it may take the form of physical and sexual violations, such as slapping, pushing, pinching, spitting, kicking, hitting, punching, choking, burning, clubbing, stabbing, throwing boiling water or acid and setting on fire as well as spouse being forced to be involved in sex or undesirable sexual acts. It also includes psychological abuse, which can consist of repeated verbal abuse, harassment, confinement and deprivation of physical, financial, personal resources and social activities, etc.

- 1.5 In the procedural guidelines, “spouse battering” refers to battering that occurs in a relationship between two partners who want to maintain a lasting relationship which is more than just brief encounter, and the partners can be married couples, co-habitees, separated partners, etc.³ In the majority of cases, the abused person is likely to be a woman. However, the terms "battered spouse" and "victim" adopted in this procedural guideline mean both female and male abused person unless specified.
- 1.6 Definition of child abuse: According to the multi-disciplinary procedural guidelines developed for handling child abuse cases, child abuse is defined as any act of commission or omission that endangers or impairs a child’s physical/psychological health and development.⁴ Child abuse is not limited to a child-parent/guardian situation but includes anyone who is entrusted with the care and control of a child e.g. child-minders, relatives, teachers, etc. Child abuse includes physical abuse, sexual abuse, neglect and psychological abuse.
- 1.7 The above definitions of child abuse, and spousal abuse, have neither legal effect nor legal implications. It only provides operational guidelines in dealing with abuse cases.⁵
- 1.8 For the purpose of police intervention, the Hong Kong Police Force defines domestic violence as "any incident involving an assault, or breach of the peace

² Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases (2004)*. Hong Kong: Social Welfare Department.

³ Ibid.

⁴ Working Group on Child Abuse (1998). *Procedures for handling child abuse cases Revised 1998*. Hong Kong: Social Welfare Department.

⁵ Ibid.

between parties who could generally be described as married or having a family relationship". This includes co-habitants or lovers, and a relationship includes spouses who are separated or divorced.⁶

Prevalence of child abuse and spouse battering worldwide

1.9 A survey conducted in North London in 1993 reported 12% and 30% of women had experienced an incidence of violence during the 12 months prior to the survey and during their lifetime respectively.⁷ The British Crime Survey estimated that 13% of women and 9% of men had been subject to domestic violence (abuse, threats or force), sexual victimization or stalking in the 12 months prior to being interviewed. If the definition of domestic violence was narrowed to non-sexual domestic force only, then 3% of women and 2% of men were affected.⁸

1.10 A national survey of the USA in 1985 showed that the annual prevalence rate of physical violence among couples was 16%.⁹ Nearly one third of all married women reported at least one incidence of physical violence during the course of their marriage.¹⁰ The National Crime Victimization Survey of the USA revealed that intimate partner violence made up 20% and 3% of all nonfatal violent crime experienced by women and men respectively in 2001.¹¹

1.11 In 1999, Statistics Canada's General Social Survey on Victimization estimated that during the five years previous to the survey, 8% of women and 7% of men had experienced violence by a spousal partner (including common-law and marital partners). This represented an estimated 690,000 women and 550,000 men.¹²

⁶ Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

⁷ Krug, E. G., & et al (Eds.). (2002). *World report on violence and health*. Geneva: World Health Organization.

⁸ Walby, S. & Allen, J. (2004). *Domestic violence, sexual assault and stalking: Findings from the British Crime Survey*. London: Home Office.

⁹ Straus, M. A., & Gelles, R. J. (Eds.). (1990). How violent are American Families? Estimates from the National Family Violence Resurvey and other studies. In *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families*. New Brunswick, NJ.: Transaction Publishers.

¹⁰ Stith, S. M., & Straus, M. A. (Eds.). (1995). *Understanding partner violence: Prevalence, causes, consequence and solutions*. Minneapolis: National Council on Family Relations.

¹¹ Rennison, C.M. (2003). *Intimate partner violence, 1993-2001* (NCJ Publication No. 197838). Washington, DC: US. Department of Justice.

¹² Statistics Canada (2001). *Family Violence in Canada: A Statistical Profile 2003*. Canada: Canadian Centre for Justice Statistics. (Ottawa: Statistics Canada: Cat no. 85-224-XIE).

- 1.12 Women's Safety Survey in Australia indicated that 8% of partnered women reported an incidence of violence during their current relationship.¹³ About 7% of women aged 18 or over had experienced an incident of violence during the 12 months prior to the survey, most frequently in the home. 38% of women had experienced at least one incident of violence since the age of 15.
- 1.13 A national survey of families and households conducted in New Zealand reported that 20% of women and 18% of men had perpetrated violence against their cohabited partners in the preceding year of interview.¹⁴
- 1.14 Having searched databases through the Electronic Reference Library (ERL server), including Medline, PsycINFO and Social Work Abstracts, no report on the national survey of domestic violence in Singapore was found. Only one study reported on the rate of family violence with physical abuse (30%) from 70 consecutive referrals to the Department of Psychological Medicine, National University Hospital, for treatment of drinking problems.¹⁵
- 1.15 On child abuse, a national survey in 1995 estimated that the rate of child physical abuse in the USA was 49 per 1,000 children.¹⁶ In Canada, an estimated 9.71 per 1,000 children were substantiated as child maltreatment in 1998.¹⁷ In 2003, there were around 26,600 children on child protection registers in England. It represented 24 children per 10,000 of the population under the age of 18.¹⁸

¹³ Australian Bureau of Statistics (1996). *Women's Safety Australia*. Retrieved July 6, 2004, from the Australian Bureau of Statistics Web site:

http://www.osw.dpmc.gov.au/elimination_violence/domestic_family_violence/nationaldata_dv.htm

¹⁴ DeMaris, A. (2001). The influence of intimate violence on transitions out of cohabitation. *Journal of Marriage and Family*, 63, 235-246.

¹⁵ Kua, E.H. & Ko, S.M. (1991). Family violence and Asian Drinkers. *Forensic Science International*, 50, 43-6.

¹⁶ Straus, M. A., Hamby, S. L., Finkelhor, D., Moore, D. W., & Runyan, D. (1998). Identification of child maltreatment with the Parent-Child Conflict Tactics Scales: Development and psychometric data for a national sample of American parents. *Child Abuse and Neglect*, 22(4), 249-270.

¹⁷ Trocmé, N. & Wolfe, D. (2001). *Child maltreatment in Canada: Selected Results from the Canadian Incidence Study of Reported Child Abuse and Neglect*. Ottawa, Ontario: Minister of Public Works and Government Services Canada.

¹⁸ Department for Education and Skills. (2004). *Statistics of Education: Referrals, Assessments, and Children and Young People on Child Protection Registers, England - Year ending 31 March 2003*. London: National Statistics.

- 1.16 The number of substantiated reports of child neglect or abuse in Australia increased from 24,732 in 1999–2000 to 40,416 in 2002–2003. The rates of children aged 0–16 years who were the subjects of child protection substantiations in 2002–2003 ranged from 1.8 per 1,000 in Tasmania to 10.1 per 1,000 in Queensland.¹⁹
- 1.17 Study of violence experience of elementary school children revealed that 70.6% of Chinese children had experienced family violence over the past one year. Among them, 42.2% were minor violence and 20.6% were serious. Although these figures represent only the situations of Shanghai and Yanji of China, similar prevalence rates (68.91%) of family violence experience were reported by Korean children with serious violence (51.31%) being far more dominant.²⁰
- 1.18 Numerous studies on violence against children and intimate partners have been conducted worldwide. However, the results obtained differ according to the differences in the definition of violence, methodologies used, study population, timing of study and the regions being investigated. The figures reported across the world should therefore be used as referencing data. If comparison between countries is to be made, studies with similar nature, like methodology used and sample studied, should be examined to reveal the true extent of difference.

Problems of child abuse and spouse battering in Hong Kong

- 1.19 The rapid demographic, social and economic changes in Hong Kong have undermined family solidarity and have resulted in increased incidents of family violence.
- 1.20 According to studies conducted in recent years, the prevalence of husband-to-wife physical violence is about 10%²¹ to 14% of families²², though these figures cannot represent the prevalence rate of the whole

¹⁹ Australian Institute of Health and Welfare (2004). *Child protection Australia, 2002-03*. AIHW Cat. No. CWS 22, AIHW, Canberra.

²⁰ Kim, D. H., Kim, K. I., Park, Y. C., Zhang, L. D., Lu, M. K., & Li, D. (2000). Children's experience of violence in China and Korea: A transcultural study. *Child Abuse and Neglect*, 24(9), 1163-1173.

²¹ Tang, C. S. K. (1999), "Wife abuse in Hong Kong Chinese families: a community survey", *Journal of Family Violence*, 14(2), 173 – 191.

²² Tang, C. S. K. (1994). "Prevalence of spousal aggression in Hong Kong", *Journal of Family Violence*, 9(4), 347-356.

population. Based on statistics released by the Central Information System on Battered Spouse Cases of the Government of Hong Kong SAR, the number of reported battered spouse cases increased threefold from 1,009 in 1998 to 3,298 in 2003. In 2003, about 88% of spouse abuse victims were women. Amongst these cases, 82% of the perpetrators were husbands, in which, 78% of the cases involved physical abuse.

- 1.21 The number of newly reported child abuse cases was 409 in 1998 and 481 in 2003, more or less constant throughout the years.²³
- 1.22 A study commissioned by the SWD in 1997, revealed that the percentage of parents who had at least one incident of psychologically abusing a child in the surveyed year was as high as 68%; for minor violent behaviour against children, the percentage was 52%; and of severe violent behaviour, 40%.²⁴
- 1.23 In a household survey conducted by the principal investigator of this consultant study in 2003-2004 on child abuse and spouse battering²⁵, it is found that about 45% of child respondents indicated they had ever encountered physical assault by either of or both their parents. The ever prevalence rate for very severe physical assault was only about 9%. About 23% of child respondents indicated they had encountered physical assault by either of or both their parents during the 12 months prior to enumeration. The annual prevalence rate for very severe physical assault was only about 4%.
- 1.24 In the same survey, it is estimated that about 13.9% of respondents were ever battered by their partners. The percentage of respondents who reported that they had battered their partners was slightly higher, at 15.1%. About 7% of respondents were battered by their partners during the 12 months prior to enumeration. The percentage of respondents who reported that they had battered their partners was slightly higher, at 8%.
- 1.25 It is also estimated that there were about 10.6% of households with respondents who reported to have been battered by their partners. The

²³ According to the Child Protection Registry: Statistics on Newly Registered Child Abuse Cases, provided by SWD.

²⁴ Social Welfare Department (1999), *Studies on child abuse: associative factors and district differences*.

²⁵ Chan, K. L. (2005). *Study on Child Abuse and Spouse Battering: Report on findings of Household Survey*. [A Consultancy Study Commissioned by the SWD of the HKSAR]. Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong.

percentage of households with respondents who reported to have battered their partners was slightly higher, at 11.9%.

Nature of domestic violence and implications for the present study

- 1.26 The increasing number of spouse battering cases is alarming. The present restructuring of the Hong Kong economy, with resulting economic hardship, almost certainly poses further strain on family relationships. The SWD has responded in an effective manner with an integrated and multi-disciplinary approach to tackle child abuse and spouse battering cases.
- 1.27 It is now widely recognized by research that relationships between partners in marital, cohabiting, and dating relationships are often violent.²⁶ Recognition of the high-risk nature of intimate relationships is important in order to take steps to make intimate partner relationships free of violence.
- 1.28 Furthermore, child abuse and spouse battering, with a family with violent behaviour, are inter-related and multi-faceted. A victim of spouse battering could be a perpetrator of child abuse. A perpetrator of spouse battering could also abuse children. Children who witness family violence could also be victims of child abuse.²⁷ To support an evidence-based early identification, intervention and prevention programme, it is necessary to examine the dynamics of family violence, involving both parents and children.
- 1.29 Violence in intimate relationships is commonly mixed up with family conflict. Particularly minor violence without injury would be deemed as conflict, or an expression of love the traditional Chinese usually thinks. Unfortunately the boundary between conflict, minor violence, severe violence with injury and homicide is not clear and easily controlled. Escalation of violence is commonly identified through a cycle of violence²⁸, especially when there is no legal and social service interventions, plus a traditional belief of treating minor violence as trivial. Holding a public attitude of zero-tolerance of violence is extremely important to create no room for the negotiation of any kind and level of violence.

²⁶ Please see for example Barnett, Ola W., Cindy L. Miller-Perrin, and Robin D. Perrin. (1997). *Family violence across the lifespan: An introduction*. Thousand Oaks, CA: Sage Publications.

²⁷ Chan, K. L. (2002). *Study of children who witnessed family violence*. Hong Kong: Christian Family Service Centre and Department of Social Work & Social Administration, the University of Hong Kong (Resource Paper Series No. 47).

²⁸ Walker, L.E. (1979). *The battered women*. New York: Harper & Row.

- 1.30 Family could be a place of love as well as aggression given the nature of intensive interaction among its members. It should not be unilaterally regarded as a place for protection and nurturing. It could be a place full of crime (like assault, rape, incest, wounding or inflicting grievous bodily harm, etc.). The making of social policies like youth, family, rehabilitation for mentally and physically challenged people should take into consideration of the vulnerabilities of risk groups. State or governmental interventions through legal measures into the family should be well recognized.
- 1.31 The above considerations are in line with the integrated approach, with the participation of the victims, perpetrators and other family members, as adopted by the SWD in dealing with child abuse and spouse battering. To further develop the integrated approach, the essential elements contributing to effective prevention and intervention will be discussed in Chapter 2, based on findings from the household survey conducted by the principal investigator²⁹ and the review of the Public Health approach adopted by the World Health Organization in the violence prevention. The provision of legislative measures that could facilitate prevention and intervention, such as the Domestic Violence Ordinance, mandatory treatment of perpetrators etc. is reviewed and presented in Chapter 3 to 9 in this report.

²⁹ Chan, K. L. (2005). *Study on Child Abuse and Spouse Battering: Report on findings of Household Survey*. [A Consultancy Study Commissioned by the SWD of the HKSAR]. Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong.

Chapter 2

Essential Elements Contributing to Effective Prevention and Intervention

2.1 This chapter suggests the essential elements contributing to effective prevention and intervention of domestic violence in Hong Kong.

Public Health Approach

2.2 The Public Health approach³⁰ is employed as a conceptual framework to identify the essential elements contributing to effective prevention and intervention of domestic violence. This perspective has been adopted by the World Health Organization in the violence prevention.³¹

2.3 The approach stipulates that the health of individuals and groups depend upon social policies and programs, and the coordinated national, regional and community efforts in the building of healthy communities. Public health includes the health of the individual in addition to the health of populations. From this perspective, domestic violence is not an individual problem. Its appearance reflects a deep rooted problem of the society. Public health considers the interactions between various sectors (legal, health, social etc.) and disciplines in preventing violence and designing better care services for the general public.

2.4 The public health approach to violence is based on the rigorous requirements of the scientific method. In moving from problem to solution, it has four key steps³²:

2.4.1 Surveillance – uncovering knowledge about all the aspects of violence through systematic data collection on the magnitude, scope, characteristics and consequences of violence at local, national and international levels;

2.4.2 Risk factor identification – investigating the causes, risk factors and protective factors of violence;

2.4.3 Intervention evaluation – using the information collected to explore and design ways in preventing violence; to implement, monitor and evaluate interventions;

2.4.4 Implementation – implementing prevention strategies that appear promising, widely disseminating information and determining the cost effectiveness of the strategies.

30 Developed by Potter, L.B., Rosenberg, M.L. & Hammond, W.R. (1998). Suicide in youth: A public health framework. *Journal of the American Academy of Child and Adolescent Psychiatry*, 37, 484-487.

31 Krug EG, et.al. (eds.)(2002) *World report on violence and health*. Geneva, World Health Organization. World Health Organization (2004). *Preventing violence: A guide to implementing the recommendations of the World report on violence and health*. Geneva, World Health Organization.

32 Mercy JA et al. Public health policy for preventing violence. *Health Affairs*, 1993, 12:7–29.

Surveillance and Risk Factor Assessment

2.5 From the household survey conducted by the principal investigator of this consultant study, the risk factors child abuse and spouse battering are identified and summarized in Table 1³³:

Individual factors	Relationship factors	Family factors	Societal Factors
<ul style="list-style-type: none"> • Pregnancy • Young age • Stalking • Childhood experienced or witnessed parental violence • Criminal history • Face need • Low self-esteem • Suicidal ideation • Violence Approval • Lack of support • Stressful conditions • Alcoholic & drug abuse • Depression • Poor anger management • Low social desirability 	<ul style="list-style-type: none"> • Spousal age difference • Male domination • Jealousy • Relationship Distress • Negative Attribution • In-law conflict • Extended Family Influence 	<ul style="list-style-type: none"> • Unemployment • Disability • New arrival • Chronic illness • Low income/ poverty (receiving CSSA) • Indebtedness 	<ul style="list-style-type: none"> • Violence approval (Social norms supportive of violence) • Gender inequality (male domination) • Lack of social resources to render support

Table 1. Risk Factors associated with child abuse and spouse battering in Hong Kong

2.6 Mental disorders, including personality disorders, schizophrenia, psychosis etc. have been identified as the risk factors of violence.³⁴ Although these had not been included in the household survey because of the measurement issues, mental disorders as the risk factors of violence should not be ignored in the design of prevention strategies.

2.7 Prevention is an important strategy of the Public Health perspective.³⁵ It should target on the reduction of risk factors. Using the targeted intervention approach, the preventive strategies should be “universal, selective and indicated”.³⁶ Universal strategies focus on the

33 Analysis of risk factors can be referred to the Ch. 4&5, Chan, K. L. (2005). *Study on Child Abuse and Spouse Battering: Report on findings of Household Survey*. [A Consultancy Study Commissioned by the SWD of the HKSAR]. Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong.

Supplementary analysis of risk factors using logistic regression can be referred to the Chan, K. L. (2005). *Report on the Development of Chinese Family Violence Risk Assessment Tool*. [A Consultancy Study Commissioned by the SWD of the HKSAR]. Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong.

34 Monahan, J., & Steadman, H. (1983). Crime and mental disorder: An epidemiological approach. In M. a. M. Tonry, N. (Ed.), *Crime and Justice: An Annual Review of Research* (pp. 145-189). Chicago, IL: University of Chicago Press.
Swanson, J. W., Swartz, M. S., Essock, S. M., Osher, F. C., Wagner, H. R., Goodman, L. A., et al. (2002). The social-environmental context of violent behavior in persons treated for severe mental illness. *American Journal of Public Health, 92*(9), 1523-1531.

Taylor, P. (2004). Mental disorder and crime. *Criminal Behaviour and Mental Health, 14*, S31-S36.

35 Developed by Potter, L.B., Rosenberg, M.L. & Hammond, W.R. (1998). Suicide in youth: A public health framework. *Journal of the American Academy of Child and Adolescent Psychiatry, 37*, 484-487.

36 Developed by Gordon, R. (1987). An operational classification of disease prevention. In J.A. Steinberg & M.M. Silverman (Eds.) *Prevention of Mental Disorder* (pp. 20-26). Rockville, MD: U.S. Department of Health and Human

entire population as the target. Prevention is implemented through reducing risk and enhancing health. Selective strategies target at high-risk groups and individuals, though not all members of the groups bear risks. Prevention is implemented through reducing risks. Indicated strategies target at the symptomatic and marked high risk individuals and provide interventions to prevent full-blown disorders and re-offending violence.

Intervention and Implementation

2.8 The framework of violence prevention and the essential elements contributing to effective prevention and intervention of domestic violence in Hong Kong are listed in Table 2.

Universal strategies

2.9 Anti-domestic violence policy and policy in tackling poverty: A comprehensive and holistic government policy which states clearly the commitment of the government to tackle domestic violence, philosophy in combating domestic violence, and the strategies in fighting against and preventing the domestic violence is recommended. The policy shall include a holistic, inter-departmental and inter-agency coordinated community and legal approach in the prevention of domestic violence.

2.10 The policy should state how the preventive strategies could reduce the risk and enhancing health as well as the coping capacity of families. Particular attention should be paid on the public attitude towards violence, stress coping, conflict resolution in family relationships and the help-seeking behavior. As domestic violence is closely related to poverty, the government should have policy in tackling poverty, as a preventive measure to prevent domestic violence. Efforts should be made in ensuring fair share of resources and safety net should be built for the disadvantaged.

2.11 Global health and psychological health awareness: To prevent the onset of the stress disorder, depression, anger, personality disorders or mental illness is a good strategy to prevent violence against others. Global health and psychological health awareness programs can serve to raise people's awareness of the importance of public health. A healthy community may enhance the well-being of individuals which in turn reduce the likelihood of familiar conflicts.

2.12 Enhancing coordinated community and legal responses: Multidisciplinary collaboration among professionals from health, legal and social services should be enhanced to address the problem of domestic violence. District planning and coordination addressing particular

needs of every district should be promoted. The profile of child abuse and spousal battering of each district should be well studied and compared to the district distribution of reported child abuse and spousal battering cases.

- 2.13 Anti-violence education/campaign: Education programs and campaign to educate the public with the correct concepts and attitude towards domestic violence and respect to the opposite sex are recommended. Societal and district level education/campaign strategies should be formulated, monitored and implemented. At the societal level, the White Ribbon day – a worldwide campaign aiming at ending violence against women, for instance, could be considered. At the community level, community-based and school-based programs on anti-violence, gender equality, reduction of alcohol and substance abuse are recommended.
- 2.14 Legal remedies and judicial reforms: It serves to validate the “zero tolerance” attitude of the government by criminalizing abusive behavior, setting the court for domestic violence, and requesting for domestic violence fatality review. Introducing mandatory and voluntary reporting of domestic violence cases help fostering early detection of abuse, which in turn prevents the occurrence of serious injuries and increase the safety of victims by relieving them of the necessity to make reports. Other legal measures include the reform of Domestic Violence Ordinance (Cap 189), enhancement of child protection services, review of arrest and prosecution policies, launch of court-mandated treatment for offenders etc. Comprehensive review on the legal measures has been conducted and discussed in this report.
- 2.15 Research on domestic violence: To enhance understanding of the scope and the nature of domestic violence in Hong Kong, research on the prevalence, risk factor and protective factors of domestic violence is necessary. The commissioned study on the spousal battering and child abuse in Hong Kong is the first of its kind. It provides the prevalence and risk factors of child abuse and spousal battering. The findings serve as the baselines for future comparison. It is recommended to repeat the same study in five years’ period to show the trend of changes.
- 2.16 If preventive strategies or programs are launched, it is recommended to conduct research to study the effectiveness of the prevention programs.
- 2.17 School programs on reduction of delinquency, substance and alcoholic abuse: Young age, crime rate, substance and alcoholic abuse are all risk factors of domestic violence and are inter-related. Comprehensive programs addressing these issues are recommended. School programs should guide young people to explore gender roles and build up positive sexual relationships in order to induce a sense of respect to the opposite sex.

- 2.18 Training program for healthcare professionals and other related parties to facilitate detection and reporting of abuse: Training is important to equip healthcare professionals and other related parties in detecting and reporting early signs and symptoms of domestic violence. Techniques and protocols in using screening tools, performing physical examinations and conducting interviews are suggested.
- 2.19 Universal screening for people at risk: Universal screening is an important strategy to early identify families with conflict and violence. Routine screening for violence could be introduced in hospital departments like Obstetrics and Gynaecology, Accidental and Emergency, Paediatrics and Adolescent, Gerontology, Psychiatric etc. In school settings, screening for child abuse and child witnessed domestic violence could facilitate early identification of victims.
- 2.20 Special preventive strategies for child abuse: To counter child abuse, parents should be well equipped with skills in caring for their children. Training in parenting could be provided to parents in stress, especially pregnant women, to enhance their competency in caring for their babies and children, and coping with the stress induced by the new born baby. Resources for child care are needed. Professionals are encouraged to report on child abuse. It is recommended to consider the practice of mandatory reporting on child abuse.
- 2.21 Special preventive strategies for spousal battering: Emphasis should be put on the help-seeking behavior. The public is encouraged to seek help at the early stage of problem. It is to build up a non-stigmatized help-seeking culture in Hong Kong.

Selective strategies

- 2.22 From the findings of the survey, the families receiving CSSA or with young couples may have higher chance of using violence acts as tactics of handling conflict. Without proper use of conflict resolution, the families may turn to intensive conflict, and thus severe violence. Early identification of the potential abusive cases could be conducted by the regular monitoring of the families. Several preventive strategies that focus on helping the families at risk are recommended:
- a. Outreach work should be supported to contact people and families with higher risk. Home visitation and family support programs should be provided for family with problems. These programs aim to detect signs of violence and bring community resources to families at risk. Particular effort is needed to contact isolated individuals and families.

- b. Neighbourhood watch or community “gatekeepers” should be encouraged to early identify families or individuals demonstrating signs of abuse.
- c. Coordinated community response and multidisciplinary collaboration should be developed in providing timely response to the families with domestic violence.
- d. Protocols and tools for the screening for potential risk and risk assessment should be promoted to professionals working with domestic violence.
- e. Special preventive strategies for child abuse could include training and support in parenting, as well as training for teachers, health professional and social workers on child protection procedures.
- f. Special preventive strategies for spousal battering could include referral for drug and alcohol treatment, gambling, debt or suicide crisis counseling for the perpetrators and victims of spousal battering.

Indicated strategies

- 2.23 In view of the association of spousal battering and child abuse, a family approach of risk assessment should be adopted. It aims to investigate other types of violence (e.g. physical, psychological, sexual etc.) against other members once a certain type of domestic violence is identified. A comprehensive risk assessment of family violence is needed to explore all types of violence in a family.
- 2.24 Family support services are needed to provide counseling, health services and support for victims and perpetrators. Home visitation and referral of social services would be helpful.
- 2.25 The treatment for perpetrators of child abuse and spousal battering is important. It is recommended to launch court-mandated batterer intervention programs in Hong Kong. The study on the feasibility of launching the BIPs will be discussed in this report.
- 2.26 When violence has been in place, prevention is aimed at minimize the damage and provide support to the victims. Protection and treatment for victims of spousal battering and/or child abuse is strongly recommended. Particular attention should be given to those who are victims of dual violence, and children who witnessed parental violence. Helpline, women shelters and other types of supports should make available to the potential victims. Counseling and immediate supports should be provided to child abuse victims to minimize the devastating consequences like emotional problems and delayed development.

Conclusion

2.27 In the above discussion, the consultants have proposed the framework of violence prevention and identified essential elements contributing to effective prevention and intervention of domestic violence in Hong Kong, making reference on the findings of the household survey and the review of the Public Health approach adopted by the World Health Organization in the violence prevention. Echoing the objectives of the consultant study, we are to identify and to discuss the specific legal measures, including feasibility and implications of adopting mandatory treatment of perpetrators, leading to effective prevention and intervention of domestic violence in HK, in the following chapters of this report.

Intervention Approach	Target Populations	Scope	Objectives	Risk Factors	Preventive Strategies	
					Child Abuse	Spousal Abuse
Universal Preventive Intervention	General populations or groups regardless to individual risk	Society	Prevent violence through reducing risk and enhancing protective or mitigating factors across broad groups of people	<ul style="list-style-type: none"> • Violence approval (Social norms supportive of violence) • Gender inequality 	<ul style="list-style-type: none"> • Anti domestic violence policy & policy in tackling poverty • Global health and psychological health awareness • Enhancing coordinated community and legal responses • Anti-violence education/campaign • Legal remedies and judicial reforms • Research on domestic violence 	
		Community		<ul style="list-style-type: none"> • Pregnancy • Mental illness • Child abuse and neglect 	<ul style="list-style-type: none"> • School programs on reduction of delinquency, substance & alcoholic abuse • Training program for healthcare professionals and other related parties to facilitate detection and reporting of abuse • Universal screening for people at risk 	
				<ul style="list-style-type: none"> • Training in parenting • Resources for child care • Encourage reporting of child abuse 	<ul style="list-style-type: none"> • Help-seeking behavior 	
Selective Preventive Intervention	Identified individuals or subgroups bearing a significantly higher-than-average risk	Community	Prevent violence through addressing population specific characteristics that place individuals at higher than average risk	<ul style="list-style-type: none"> • Low income/ Poverty • Lack of social resources 	<ul style="list-style-type: none"> • Outreach work • Coordinated community response • Multidisciplinary collaboration in conducting standardized risk assessment 	
		Families or individuals at risk		<ul style="list-style-type: none"> • CSSA • Chronic illness • Mental illness • Newly arrival • Disability • Spousal age difference • Separation • Indebtedness 	<ul style="list-style-type: none"> • Screening for potential risk and risk assessment • Programs to contact isolated individuals/families • Home visitation • Family support programs 	
				<ul style="list-style-type: none"> • Training and support in parenting • Training on child protection procedure 	<ul style="list-style-type: none"> • Referral for drug and alcohol treatment, gambling, debt or suicide crisis counseling • Community “gatekeepers” to detect changes in lives of people 	

Table 2. Summary table of preventive strategies for domestic violence in Hong Kong

Intervention Approach	Target Populations	Scope	Objectives	Risk Factors	Preventive Strategies	
					Child Abuse	Spousal Abuse
Indicated Preventive Intervention	Identify high risk individuals with detectable symptoms	Problematic families/victims	Treat individuals with symptoms and risk factors to prevent emergence of full-blown disorder and re-offending violence	<ul style="list-style-type: none"> • Familial conflict • Male dominance • Economic stress 	<ul style="list-style-type: none"> • Family approach of risk assessment • Family support service • Home visitation and referral • Court-mandated Batterers Intervention Program 	
		Perpetrators		<ul style="list-style-type: none"> • Mental disorder • Criminal and antisocial behaviours • Addicted problems • etc. 	<ul style="list-style-type: none"> • Treatment and supervision of the mentally disordered perpetrators • Treatment on drug & alcoholic abuse, gambling, debt or suicidal ideation or attempt 	
		Victims	Protect, support & treat victims of spousal battering, child abuse & witnessing DV		<ul style="list-style-type: none"> • Therapeutic treatment for the victims & survivors of domestic violence • Helpline and other resources for victim support • Legal and health support services for victims of DV 	
					<ul style="list-style-type: none"> • Child protective services • Surrogate parents for children being abused 	<ul style="list-style-type: none"> • Women's shelter for the victims

Table 2 (cont'd).

Chapter 3

Existing Criminal Justice and Welfare Systems in Handling Domestic Violence in Hong Kong

Existing Laws

- 3.1 This chapter reviews the existing legal instruments in handling domestic violence. At present, there are mainly three ordinances in Hong Kong that provide victims with protection against domestic violence. They are the Crimes Ordinance (Cap 200), the Offences against the Person Ordinance (Cap 212) and the Domestic Violence Ordinance (DVO) (Cap 189). The first two laws, which are part of the criminal justice system, are punitive in nature, while the last, a civil statute, is preventive. (For details, please see Appendix 1 and 2).
- 3.2 There are two major procedures in dealing with domestic violence cases. For criminal cases, the decision on whether or not to prosecute depends on whether the Department of Justice considers that “there is enough evidence to secure a conviction, and whether the prosecution is in the public interest”.³⁷ A person charged with a criminal offence will make the first court appearance following an arrest before a magistrate. The appearance will be in the magistracy, which has the jurisdiction over the location where the alleged violence occurs. A defendant who wants to be legally represented can either choose between private lawyers or the lawyers who participated under the Duty Lawyer Scheme.
- 3.3 For civil cases, it refers only to the application of an Injunction Order under the DVO (Cap 189). Under the Ordinance, an injunction can be applied for by lodging an application with an affidavit to the District Court. The Court of First Instance may, in case of urgency, exercise the same powers as conferred on the District Court, if it is satisfied that special circumstances are present which make it appropriate for the Court of the First Instance rather than the District Court to exercise those powers.³⁸ If there is a power of arrest attached to an injunction granted under the DVO (CAP 189), a police officer may arrest, with all necessary powers including power of entry, a person whom she/he

³⁷ P. 108, Roebuck, D. (ed.) (1996). *The Criminal Procedure of Hong Kong: A Descriptive Text*. Beijing: Peking University Press. And P.12, Department of Justice (2002). *The Statement of Prosecution Policy and Practice*. Hong Kong Special Administrative Region.

³⁸ See *Halsbury's Law of Hong Kong*.

suspects of being in breach of the injunction without a warrant. The person arrested must be brought before the judge of the Court granting the injunction before the expiry day after the day of arrest.

3.4 According to the DVO (CAP 189), where there is an application of injunction made by a party to marriage / cohabitation, a judge, if satisfied that the applicant or a child living with her / him has been molested by the other party to marriage / cohabitation, can grant an injunction containing the following provisions:

- (a) A provision restraining the other party from molesting the applicant;
- (b) A provision restraining the other party from molesting the child living with the applicant;
- (c) A provision excluding the other party from the matrimonial home or a specified part of the matrimonial home or from a specified area whether or not the matrimonial home is included in that area;
- (d) A provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of matrimonial home.

3.5 The judge can also attach a power of arrest to the restraining order and exclusion order, if she/he is satisfied that the other party has caused actual bodily harm to the applicant, or as the case may be, to the child concerned. An ouster order or entry order contained in an injunction under the section 3(1)(c) or (d) or the power of arrest will have effect for a period of not more than three months. The Court may extend an injunction granted containing a provision mentioned in section 3(1)(c) or (d) or a power of arrest attached so that the total period does not exceed six months from the date when that injunction was granted or that power of arrest attached.

Arrest and investigation of domestic violence cases

3.6 According to the procedural guidelines³⁹, whenever an incident of domestic violence is reported to the police, two police officers, one of either gender, attend the scene.

³⁹ Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

- 3.7 If there is evidence to show that a crime has been committed, then the alleged offender would be arrested and the case is passed to a crime unit for investigation, irrespective of the wishes of the victim. If there is insufficient evidence to prove the allegation against the alleged offender, a Domestic Incident Notice is served on the alleged offender, warning the possibility of imprisonment if there is sufficient evidence. A Domestic Incident Notice is not to be served in respect of any incident involving assaults on children or juveniles.
- 3.8 Assistance to victim: Officers should arrange for the victim to be taken to the Accident and Emergency Department of the nearest hospital by ambulance if medical treatment is needed. The victim should be interviewed by the same gender, if available, and separately from the alleged offender so that the victim will not feel pressurized into relating the incident in front of the alleged offender. The victim should never be asked in the presence or hearing of the alleged offender if she/he wants to bring a criminal complaint against the alleged offender and whether she/he would be prepared to give evidence at court hearing. Officers should not interview either the alleged offender or victim at a location where implements are available which may be used to cause injury, for example in a kitchen.
- 3.9 Referral to social services: Police officers should facilitate the female victims to contact the refuge centres, if requested. If a male victim or batterer requires temporary accommodation services, information can be obtained from the organizations listed. If assistance is not immediately available, he should be asked if he wishes to remain in the police station whilst subsequent arrangements are made with the SWD.
- 3.10 Police officers should also serve the victim and the alleged offender with a copy of the Family Support Service Information Card, Pol. 917 (Rev. 2003). The upper portion of the Information Card contains useful telephone numbers of the agencies providing temporary accommodation and support services in both Chinese and English. Hotline counselling services offered by the SWD and other NGOs, and the services offered by the Legal Aid Department are listed.

- 3.11 The lower portion of the Information Card includes a Consent for Referral to the SWD. Referral of the victim and/or the alleged offender to appropriate government departments/other non-governmental organizations for support services will be made. Since January 2003, the Police have started to refer cases to the SWD for follow-up support services even without the consent of the victim/alleged offender. Since then, a notable increase of referrals of family violence cases has been recorded. During the year of 2003, a total number of 1,617 cases (including 91 of which were without the consent of the victims/alleged offenders) were referred by the Police to the Family and Child Protective Services Units (FCPSUs) of the SWD.⁴⁰
- 3.12 If necessary, follow-up visits to the victim/alleged offender/child(ren) would be arranged by the Police. Under normal circumstances, no police follow-up is required if the victim has moved to a safe place or refuge centre for women, or the case has been referred to the SWD for social services in accordance with the above paragraphs.
- 3.13 An arrest would take place when there is evidence to show that a crime has been committed. Where a Power of Arrest has been attached to an injunction, a police officer may arrest, without warrant, any person whom she/he reasonably suspects of being in breach of the injunction by reason of that person's use of violence or her/his entry into any premises or area specified in the injunction. The officer shall also have all necessary powers including the power of entry by the use of reasonable force to effect the arrest.
- 3.14 A flowchart illustrating the police actions to be taken in Domestic Violence incidents is found in Appendix 3.
- 3.15 In handling child abuse cases, the following should be observed, according to the procedural guidelines⁴¹:
- (a) The child must not be further traumatized by the investigation. The child should not be questioned or asked to describe the abuse incident(s) repeatedly.

⁴⁰ Health, Welfare and Food Bureau and Social Welfare Department (2004), *An update on strategy and measures to prevent and tackle family violence*. Paper no. cb(2)2131/03-04(01). Paper submitted to Panel on Security and Panel on Welfare Services of the Legislative Council on 26 April 2004.

⁴¹ Working Group on Child Abuse (1998). *Procedures for Handling Child Abuse Cases – Revised 1998*. Hong Kong: Social Welfare Department.

- (b) The best interest of the child must always be of paramount importance. The child and the family should be interviewed in privacy to minimize any distress to the child.

3.16 Divisional/District Crime Units will be responsible for the investigation of all complaints/allegations of child abuse that do not fall within the Charter of Regional Child Abuse Investigation Units (CAIUs). The duties and responsibilities are listed in Chapter 10 para. 10 of the “Procedures for Handling Child Abuse Cases – Revised 1998”.

In respect of cases of sexual abuse where the victim is a child under 17 years of age or in cases of serious physical abuse where the victim is a child under 14 years of age, CAIU is responsible for investigating allegations of the following nature:

- (a) Intra-familial sexual abuse (including the extended family e.g. mother, father, aunt, uncle);
- (b) Sexual abuse where the perpetrator is known to the child or is entrusted with the care of the victim (e.g. baby sitter, school teacher, youth worker);
- (c) Serious physical abuse at the discretion of the respective Senior Superintendent of Crime Region; and
- (d) Organized child abuse (Organized child abuse is defined as abuse which may involve a number of abusers, a number of abused children and juveniles and often encompasses different forms of abuse. It will also involve to a greater or lesser extent an element of organization e.g. paedophile or pornography rings).

3.17 On receipt of such a referral, the CAIU will initiate investigation and will, where appropriate, in conjunction with FCPSU/SWD, form a Child Protection Special Investigation Team (CPSIT).

3.18 Any cases in need of welfare services should be referred to relevant SWD units in writing, except known cases of the non-governmental organizations (NGOs). In certain cases, e.g. where a child has witnessed the murder of a parent, the SWD should be informed for consideration of welfare assistance to the family.

3.19 After the Tin Shui Wai family tragedy happened in April 2004, the information system at the police report room is being enhanced so that its previous police report made of the cases can be traced. The Review Panel on Family Services in Tin Shui Wai which was set up after the family tragedy acknowledges the efforts the Police have made to improve its procedural guidelines in handling of domestic violence and cooperation with other concerned service units. The Review Panel recommended the Police to exert continuous effort in streamlining the reporting procedures for domestic violence and to provide adequate training to the police officers particularly those working at the frontline to enhance their sensitivity and knowledge in understanding and helping those affected by family violence.⁴²

Legal aid

3.20 Per the procedural guideline⁴³, victims of battered spouse cases who wish to seek legal services in connection with their matrimonial problems may apply for legal aid in person.

3.21 Subject to satisfying both the means and merits tests, the Handling Legal Aid Counsel/Senior Legal Aid Counsel (hereafter referred as "Handling Counsel") should offer legal aid to a battered spouse to take appropriate legal proceedings including but not necessarily limited to the following:

- (a) Divorce (including ancillary and other relief);
- (b) Where necessary and appropriate, injunction;
- (c) Where necessary and appropriate, ouster order;
- (d) Where necessary and appropriate, interim custody order.

3.22 In deciding whether legal aid should be offered to a victim to seek an injunction and/or ouster order in addition to the matrimonial proceedings, the Handling Counsel should consider and discuss with the applicant the practicability and feasibility of an injunction and/or ouster order in the particular circumstances of the case. Stated in the procedural guideline, in some extreme cases, an application for an injunction and/or ouster order may produce an adverse effect and provoke the batterer to exert further violence.

⁴² Review Panel on Family Services in Tin Shui Wai (November 2004). *Report of Review Panel on Family Services in Tin Shui Wai*. HK: Social Welfare Department.

⁴³ Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

- 3.23 If the applicant feels unsafe to return home, the Handling Counsel should not advise the applicant to return home by relying on the strength and protection of an injunction order. The Handling Counsel may refer the applicant for shelter services or advise the facilities and services available from other sources. Cases involving elements of child abuse should immediately be referred to the FCPSUs of the SWD.
- 3.24 Victims should be advised not to withdraw their complaints against the batterers to the Police without due consideration. If a victim wishes to withdraw the application or discontinue the Court action against the batterer where legal aid has already been granted, the assigned solicitor should interview the victim to ensure that the withdrawal/ discontinuance is not made under pressure from the batterer. If an applicant is adamant not to take any further action against the batterer after thorough discussion and explanation, the decision should be recorded and respected.

Prosecution policy and practice

- 3.25 A prosecution for an offence of domestic violence will be taken place if there is enough evidence to provide a reasonable prospect of conviction.⁴⁴

The sufficiency of the evidence

- 3.26 When considering the sufficiency of the evidence, it is very likely that the victim will have to give evidence in person because spouse battering usually occurs in private and the victim is often the only prosecution witness to the commission of the offence. If for various reasons a victim may decide to withdraw the complaint, counsel should ask the Police to take a further statement from the victim setting out in details her/his reasons for the decision, and whether the original statement was true or not. It may at times be necessary for counsel to ask for an adjournment to enable a proper investigation and evaluation of all the options to be carried out.
- 3.27 If the victim confirms the complaint was true but still wishes to withdraw, counsel should consider whether evidence from the victim is vital to prove the case. If not, the case can still proceed, provided that it is in the public interest

⁴⁴ Ibid.

to do so. If the complaints cannot be proved without the victim's evidence, there are three options:

- (a) Compel the victim to attend court to give evidence;
- (b) Consider whether the victim's statement be admitted in evidence under section 65B of the Criminal Procedure Ordinance; or
- (c) Discontinue.

3.28 Discontinuance of the proceedings on evidential grounds should only happen when all options have been considered and found inappropriate. Counsel should ensure that the Police should provide information about family circumstances, the likely effect of proceedings on family members and any relevant background information. If necessary, counsel may approach the concerned social worker for any relevant information to assist him/her in the decision-making process.

The public interest criteria

3.29 According to the Statement of Prosecution Policy and Practice issued by the Department of Justice, once the Prosecutor is satisfied that the evidence itself can justify a conviction, the prosecutor must then consider whether the public interest requires a prosecution. Regard should be had to the availability or efficacy of any alternatives to prosecution.

3.30 Although the public interest will be the paramount consideration, the interests of the victims are an important factor in determining the balance of the public interest and should be taken into account. The factors which can properly lead to a decision not to prosecute will vary from case to case, but broadly speaking, the graver the offence, the less likelihood will there be that the public interest will allow of a disposal less than prosecution. In assessing the gravity of the offence, it will be necessary to consider whether the victim has suffered significant harm or loss; the meaning of 'significant' may be relative to the circumstances of the victim.

3.31 Where an offence is not so serious as plainly to require prosecution, the prosecutor should consider whether the public interest requires a prosecution. If the case falls within any of the following categories, this may be an

indication that proceedings are not required, subject to the particular circumstances of the case⁴⁵:

- (a) Likely penalty
- (b) Staleness
- (c) Youth
- (d) Old age and infirmity
- (e) Mental illness or strain
- (f) Sexual offences/non-existence of any element of sexual exploitation
- (g) Peripheral defendants/minimal role play by the defendant
- (h) Remorse
- (i) Delay
- (j) Mitigation
- (k) Availability of a civil remedy
- (l) Counter-productiveness of prosecution
- (m) Mistake
- (n) Attitude of the victim
- (o) Assistance to the authorities

3.32 The following factors, which are not exhaustive, increase the seriousness of the offence and thereby the likelihood that the public interest requires a prosecution:

- (a) Where a conviction is likely to result in a significant penalty;
- (b) Where the suspect was in a position of authority or trust, which has been abused;
- (c) Where the offence was premeditated;
- (d) Where a weapon was used or violence was threatened during the commission of the offence;
- (e) Where the suspect was a ringleader or an organizer of the offence;
- (f) Where the offence was carried out by a group;
- (g) Where the victim of the offence was vulnerable, was put in considerable fear, or suffered personal attack, damage or disturbance;
- (h) Where there is a marked difference between the actual or mental ages of the suspect and the victim;
- (i) Where there is any element of corruption;

⁴⁵ Department of Justice (2002). *The Statement of Prosecution Policy and Practice*. Hong Kong Special Administrative Region.

- (j) Where the suspect's previous convictions or cautions are relevant to the present offence;
- (k) Where the suspect is alleged to have committed the offence whilst on bail, on probation, or subject to a suspended sentence or an order binding over the suspect to keep the peace and be of good behaviour;
- (l) Where the offence, although not serious in itself, is widespread in the area in which it occurred;
- (m) Where there are grounds for believing that the offence is likely to be continued or repeated, as where there is a history of recurring conduct.

Attitude of the victim

3.33 The attitude of the victim plays an important role in the decision to prosecute. Stated in the prosecution policy, the counsel should take the victim's wishes into account⁴⁶. In considering the sufficiency of evidence, it relies on whether the victim is willing to give witness or wishes to withdraw, particularly in the case of sole witness. In considering if the public interest requires a prosecution, the attitude of the victim is one of the criteria for consideration:

“In addition to considering the impact of the alleged offence on the victim, the prosecutor may have regard to any available information indicating the views of the alleged victim as to whether prosecution is appropriate or whether the case might appropriately be disposed of by other means. In the assessment of the public interest the views of the victim will be an important factor for consideration.”⁴⁷

The Charging Practice and Procedure

3.34 With the availability of evidence that supports offence(s) charged, the prosecutor will decide what are the appropriate charges which can adequately reflect the offender's culpability – normally the most serious revealed by the evidence. A domestic background does not reduce the selection of the charge.

Binding Over

⁴⁶ Department of Justice (2002). *The Statement of Prosecution Policy and Practice*. Hong Kong Special Administrative Region.

Ch. VI. Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

⁴⁷ Refer to para. 9(n), Department of Justice (2002). *The Statement of Prosecution Policy and Practice*. Hong Kong Special Administrative Region.

3.35 A binding over order may be appropriate in some minor cases if⁴⁸:

- (a) The parties are reconciled;
- (b) There is no history of violence; but
- (c) There is a concern for a future breach of the peace.

3.36 A binding over order may be sought when the victim withdraws support for the original prosecution and it is decided to discontinue the case, however, there must be sufficient evidence to justify the complaint and the order, which is intended to restrain the offender from similar conduct in the future.

Offence against Public Justice

3.37 If the police investigation reveals that the complainant has been intimidated, threatened or assaulted by or on behalf of the defendant, counsel should consider preferring an additional charge of attempting to pervert the course of public justice where there is sufficient evidence to support such a charge. “Assault”, “criminal intimidation” etc. might be separate offences. Only if investigation reveals that the victim has been directly or indirectly threatened, intimidated, assaulted etc. by the offender so as to pressurize him/her to drop the case, or not to attend court to testify, not to tell the whole truth etc. would additional charge(s) of attempt to prevent the course of justice be considered.

Charge Rate of Domestic Violence and Child Abuse Cases

3.38 According to the table in Appendix 4, the total number of domestic violence cases as known to the police from 2001 to 2003 had increased and the rate of child abuse cases reported was steady. In 2003, the percentage of cases of domestic violence dealt with by court was 46.1% (14.3% for criminal charge and 31.8% for binding over). As for child abuse, the percentage of cases dealt with by court in the same period was 24.8% (all related to criminal charge).

Welfare system

⁴⁸ Ch. VI. Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

Multi-disciplinary collaboration

- 3.39 For multi-disciplinary collaboration, two committees have been set up: the Committee on Child Abuse (CCA) and the Working Group on Combating Violence (WGCV). Both CCA and WGCV are convened by the SWD and comprises representatives from different policy bureaux, departments and NGOs to map out strategies and approaches for the prevention and handling of spouse battering and sexual violence at the central level. Improvements relating to the handling of child abuse and battered spouse cases that have been made include (a) enhancing the Child Protection Registry to collect more specific information on child abuse cases; (b) strengthening post-abuse treatment of child abuse victims and their families; (c) enhancing the Central Information System on Battered Spouse in 2003 to include sexual violence cases and to collect more information on battered spouse cases; (d) enhancing the referral mechanism between the Police and the SWD since January 2003, so that under certain conditions, the Police can refer family violence cases to the SWD for intervention without the consent of the victims or abusers; and (e) launching a website in June 2003 to promote support services for victims of various nature including spouse battering and to facilitate access/sharing of information among related professionals.
- 3.40 Continued improvements have also been made to the various procedures in handling child abuse and spouse battering cases. The “Guide to Participants of the MDCC in Appendix XIX of the “Procedures for Handling Child Abuse Cases - Revised 1998” (Procedures) was revised in 2002 to promote participation of parents in the MDCC and to further strengthen multidisciplinary co-operation through providing more specific guidelines on the pre-conference and post-conference arrangements.
- 3.41 The referral mechanism for family violence cases has given more authority to police to refer cases to the SWD in the absence of the consent from the victims/alleged offenders.⁴⁹ In the revised version of the Procedural Guidelines for Handling Battered Spouse Cases, a Multi-disciplinary Case Conference (MDCC) is employed in which the professionals handling the battered spouse case can help the victim formulate a welfare plan through

⁴⁹ Legislative Council Panel on Welfare Services (10 Feb 2003), *An update on strategy and measures to prevent and tackle family violence*.

sharing their professional knowledge, information and concern on the family⁵⁰.

- 3.42 The importance of the multidisciplinary collaboration, as well as district planning and coordination are particularly emphasised in the review report on the Tin Shui Wai family tragedy published in November 2004.⁵¹ The strategies of the multidisciplinary collaboration will be discussed in this review.

Family services and specialized services

- 3.43 A three-pronged approach is adopted by the government to prevent and tackle family violence with the provision of a continuum of preventive, supportive and specialized services. At the primary level, a variety of publicity and community education programmes are launched to enhance public awareness of the need to strengthen family solidarity, encourage early help seeking and prevention of family violence. At the supportive level, a wide range of services such as family services, residential child care service, housing assistance, etc. are available to help the needy individual/families cope with different problems and prevent the problems from deteriorating. At the tertiary level, specialized services are provided by different units (e.g. the Family and Child Protective Services Units (FCPSUs), clinical psychology units, refuge centres for women, Family Crisis Support Centre) to help the individuals/families suffering from family violence.⁵²
- 3.44 Social workers of the FCPSUs adopt a multi-disciplinary approach in collaboration with other professionals such as doctors, clinical psychologists, teachers, etc. to provide outreach, investigation, early intervention, statutory protection, intensive casework and group work services to those involved in child abuse and spouse battering. The Units have also launched a series of public education programmes on the prevention of family violence. Additional training is provided to social workers in a holistic approach to handling child abuse and domestic violence.⁵³ The SWD is planning to further strengthen the manpower of the specialised FCPSUs by expanding to six teams through

⁵⁰ Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

⁵¹ Review Panel on Family Services in Tin Shui Wai (November 2004). *Report of Review Panel on Family Services in Tin Shui Wai*. HK: Social Welfare Department.

⁵² Social Welfare Department 2001 Annual Report.

⁵³ Health, Welfare and Food Bureau (2003), *Policy objectives: welfare services 2003*.

re-deployment of manpower resources generated from the re-engineering of family services centres.⁵⁴

- 3.45 At present, a total of 162 places are provided by the four refuge centres for women (one centre run by the SWD and three centres run by the NGOs), with round-the-clock admission. The Family Crisis Support Centre (FCSC) has also provided temporary accommodation for cases in crisis situation. The Suicide Crisis Intervention Centre (SCIC) of The Samaritan Befrienders Hong Kong (SBHK), which was set up in September 2002, provides round-the-clock outreaching, crisis intervention/intensive counselling to persons in crisis situation and at high/ moderate suicidal risks.⁵⁵

Safety need of women at risk

- 3.46 For combating domestic violence, the Administration provides a variety of preventive, supportive and specialized services as mentioned in paragraph 3.43. In addition, mechanisms at different levels are in place to facilitate cross-sector collaboration. Several sets of multi-disciplinary guidelines on spouse battering, child abuse, sexual violence and elderly abuse are available to ensure that frontline workers of different disciplines will handle the abuse cases with a common understanding of the problem and good coordination.

Victim support services

- 3.47 The SWD provides a wide range of welfare services for victims of child abuse, spouse battering and sexual violence and their family members.⁵⁶ The objectives of the services on victim support are:

- (a) To promote victims' rights;
- (b) To safeguard the well-being of the victims;
- (c) To provide support and assistance to individual victims and their families so as to help them overcome the trauma brought about by child abuse, spouse battering and sexual violence; and

⁵⁴ Panel on security and panel on welfare services (2004), *An update on strategy and measures to prevent and tackle family violence*. Paper no. cb(2)2131/03-04(01). Paper submitted to LEGCO on 26 April 2004.

⁵⁵ Ibid.

⁵⁶ SWD Support for victims of child abuse, spouse battering and sexual violence. Website: <http://www.info.gov.hk/swd/vs/english/intro.html>

(d) To educate the public on the prevention and proper handling of child abuse, spouse battering and sexual violence incidents.

- 3.48 The legal rights of the victims are expressed in the Victims of Crime Charter.⁵⁷ According to the Department of Justice, victims and witnesses deserve consideration and understanding throughout criminal proceedings. The taking of practical steps to improve the service to victims and witnesses is just as important as responding sympathetically to their concerns. The Department is committed to liaison with others in the criminal justice system to protect the interests of victims and witnesses.⁵⁸
- 3.49 In strengthening support to the abused children serving as witnesses in criminal proceedings, support persons would be arranged through the Witness Support Programme, set up jointly by the SWD and the Police, to accompany the abused children who have to testify in the court proceedings through a live television link system. The Witness Support Programme is also available to the mentally incapacitated persons. Requests for arrangement of support persons under the Witness Support Programme are made to the SWD by the Police.⁵⁹
- 3.50 There are NGOs providing support service to the victims of domestic and sexual violence. The Harmony House, the Hong Kong Association for the Survivors of Women Abuse and the “RainLily” of the Association on Concerning Sexual Violence against Women have volunteers who escort victims to the Court and staff who provide information on legal procedures.

⁵⁷ The Victims of Crime Charter. June 2003, HKSAR Government.

⁵⁸ Department of Justice (2004). *The Statement on the Treatment of Victims and Witnesses*. HKSAR Government.

⁵⁹ SWD Witness Support Programme. Website: <http://www.info.gov.hk/swd/vs/english/welfare.html>

Chapter 4

Major Findings

METHODOLOGY

- 4.1 This chapter presents the major findings from the study of legal measures dealing with domestic violence in Hong Kong. The objective of the study was to collect empirical data to identify the essential elements contributing to effective prevention and intervention. The study was exploratory in nature. It was not aiming to evaluate the effectiveness of the legal and welfare practitioners or to judge the performance of the legal and welfare systems.
- 4.2 Both quantitative and qualitative methodologies were employed for the study to develop a comprehensive understanding of the legal and welfare systems, from the users' point of view, in stopping domestic violence, protecting victims and holding batterers accountable to the violence in the local context. Focus group discussions with stakeholders, professionals and male batterers, and case analyses with in-depth interviews with victims were undertaken. Some findings from the household survey conducted by the principal investigator in 2003-2004 on child abuse and spouse battering will be presented. Statistics provided by the Government on the application of injunction orders under the DVO (Cap 189) were analysed.

Focus group discussions

- 4.3 As the study is exploratory in nature, a representative sample is not required. To obtain more in-depth information about the DVO (Cap 189) and the feasibility of adopting mandatory treatment of perpetrators in Hong Kong, four focus groups with professionals and stakeholders involved in services provision were conducted in January, 2004.
- 4.4 A representative sample was not required in selecting participants for the various focus group discussions. However, participants were generally selected so that the groups could bring into various views and experiences from different perspectives. The focus groups discussants are listed in Appendix 5. The focus groups' discussions followed the guidelines as listed below:

Type of focus group	Themes discussed
<p>Focus Group 1: Frontline professionals who have direct experience in providing treatment programmes for perpetrators of spousal battering and child abuse</p>	<ul style="list-style-type: none"> - Source of referral, profile of participants - Treatment programme philosophy, theoretical approach, goal, content - Critical incidents of the treatment process: dropout, conflict, therapeutic elements - Evaluation: criteria of success, evaluation tools, design of evaluation and findings - Measures in victim protection - Training, gender, experience - Follow-up services
<p>Focus Group 2: Social service practitioners working with victims of spousal battering and child abuse</p>	<ul style="list-style-type: none"> - Merits and limitations of the existing legal protection measures and services for victims - Suggestions for improving the existing legal protection and services and e.g. amendment of the DVO (Cap 189).
<p>Focus Group 3: Legal & medical practitioners working with victims of spousal battering and child abuse</p>	<ul style="list-style-type: none"> - Merits and limitations of the existing legal protection measures and services for victims - Suggestions for improving the existing legal protection and services and e.g. amendment of the DVO (Cap 189).
<p>Focus Group 4: Male perpetrators of spousal battering & child abuse</p>	<ul style="list-style-type: none"> - Participants' needs and concerns - Expectation of treatment content & format, e.g. group, clinical psychological service, individual counselling, marital counselling etc. - What motivated or discouraged them to attend the treatment programme? - Suggestions on how to motivate perpetrators to receive treatment

Table 1: Focus groups

In-depth case study

- 4.5 The purpose of conducting a case study was to obtain a holistic view of the experience of female victims being stalked by their husband/partners or ex-husband/partners, and to examine the utilization of injunction orders under the DVO (Cap 189) and its effectiveness in facilitating prevention and intervention with victims. As the victims of over 90% of the reported spousal battering cases were female, only female victims were recruited due to the constraint of resources.
- 4.6 To address the objectives of this study, it was expected to recruit 50 battered women with 10 in each of the five categories listed in Table 2. At last, 41 battered women were successfully recruited as subjects for this study. A representative sample was not required in selecting participants for the case studies. To ensure that the views of victims with different experience in stalking and utilizing the DVO (Cap 189) were sought in the discussions, the subjects were recruited from the following categories to include various experience encountered by new comers, local residents, staying with or separated from husbands, and those who had the experience in applying for an injunction order.

Categories	No. of subjects interviewed
Battered women (new comers from the Mainland China), separated from their husbands	10
Battered women (new comers from the Mainland China), staying intact with their husbands	4
Battered women (non new comers), separated from their husbands	12
Battered women (non new comers), staying intact with their husbands	11
Battered women who have had experience in applying for an injunction order under the DVO (Cap 189)	4

Table 2: Categories of subjects recruited for in-depth case study

- 4.7 The profile of the subjects interviewed is shown in Appendix 6.
- 4.8 The following themes about stalking & legal protection were investigated:
- (a) Briefly describe the relations with husband/partner or ex-husband/partners
 - (b) Is there any stalking behaviour acted by their husband/partner? E.g. frequent phone calls (at home, at the workplace), verbal threats, chasing, violence etc.
 - (c) Knowledge about legal services & social services
 - (d) Experience in accessing legal services: procedures, difficulties etc.
 - (e) Experience in using legal aid services
 - (f) Did they apply for an Injunction Order under the Domestic Ordinance? Why or why not?
 - (g) Experience in applying for an Injunction Order
 - (h) Perceived effectiveness of legal protection (under the DVO (Cap 189))?
- 4.9 The subjects were recruited from the Family & Child Protective Service Units, with the assistance of the SWD. The subjects' consent in participating in the study was obtained.

Household survey

- 4.10 A territory-wide household survey, which provided a comprehensive and up-to-date report on the prevalence and incidence of child abuse and spouse battering in Hong Kong, was conducted during the period from December 2003 to August 2004.
- 4.11 In the survey, two questions were included to solicit the views of the public on the social services required in handling domestic violence and the attitude towards court-mandated counselling for perpetrators of domestic violence.

Statistics provided by the Government

- 4.12 Statistics provided by the Government on the application of injunction orders under the DVO (Cap 189) and police response to domestic violence cases were analysed to provide a picture of the arrest and prosecution rate in Hong Kong.

FINDINGS

I. Findings from focus groups and case study

1. Existing batterer intervention programmes (BIPs) in Hong Kong:

4.13 (*Findings from Focus Group 1*) During the discussion, members were requested to introduce the BIP they had conducted. The Hong Kong Family Welfare Society first started a treatment group for male batterers in 1995. Until 2003, five groups for male batterers were completed. About 8-10 participants were recruited in each group. They were mainly referred to the programme by social workers of the same agency and refuges for battered women. A small portion of the participants was self-referred. A significant proportion of participants were unemployed. Applying the cognitive-behavioural and feminist approaches, the group focused on self-understanding, anger and stress management, gender equality and conflict resolution. The group was conducted weekly for eight sessions. Pre-group and post-group individual interviews were conducted for assessment and evaluation. The agency also ran parallel groups for battered women and their children. For child abuse cases, groups for abusive parents were organized. It was usually the mothers who came forward. Parent-child communication was one of the themes of the group therapy. The groups had fixed membership and were run by social workers.

4.14 Harmony House started a men's group treatment programme called "The Third Path" in 2001. The programme aims to stop family violence through intensive treatment of male batterers and to provide after care support to their families. Sources of referral are mainly through the hotline and the refuge run by the agency, and some are recruited from NGOs. It was modelled after "Emerge" which was the first programme for batterers in the USA. The model was theoretically based on feminism and power and control concepts. The group emphasized on anger management, conflict resolution and gender equality. An open group format was used with group sizes varying from 3 to 9 people. It lasts for 17 sessions.

4.15 The SWD FCPSU (NTW) and the clinical psychology unit have been running groups for male batterers since 2001. Until 2003, 3 groups have been completed. The social workers and the clinical psychologists have been

involved as the group leaders, while police and medical social workers mainly made referrals. It consists of a batterer orientation group of 1-2 sessions, followed by psycho-educational and therapeutic groups of 12 sessions each. Individual pre-group and post-group interviews were conducted. Each group comprised of about 8-10 participants. The objectives of the group included: ending abusive beliefs and behaviour; learning skills in managing stress, anger and conflict resolution, enhancing spousal communication and relationship skills. Applying cognitive-behavioural techniques, the group taught the participants techniques for anger management and relaxation exercise. They also attempted a parallel group for couples where the couples joined together at the last session. Each group (one for men and one for women) lasted for 10 sessions. The group content evolved from the men's group emphasising on self-understanding and control and then shifted to spousal communication and relationships. There were also groups for the children from families with violence, with an emphasis on play groups.

Experience of male batterers before receiving group treatment

- 4.16 Needs and concerns of male batterers: (Findings from Focus Group 1)
According to the experience of the group workers, they identified that the male batterers they served usually had a lot of anger and unhappiness. They were stressful and emotional, having alcohol abuse, poor social support, spousal and in-law conflict. They felt that they were the real victims. They perceived that the general public always attributed the wrongdoing to the male, without investigating the actual reason behind the situation. Generally speaking, the males wanted quick fixes of the family problems, rather than expressing the need for long-term solutions that related to feelings and emotions.
- 4.17 A study of the male batterers receiving group services in Hong Kong showed that they were at a high level of stress. That motivated them to seek help from social workers. Another preliminary study conducted by the clinical psychology service of the SWD revealed that the batterers who were receiving clinical psychology service had used moderate to severe levels of physical violence against their partner. They suffered from substance-related problems, impulsive-control issues and adjustment disorders, as well as personality

disorders like borderline, narcissistic and obsessive-compulsive. Nevertheless, most of them were willing to receive clinical psychology service.⁶⁰

- 4.18 (*Findings from Focus Group 4*) A focus group was held with the participation of five male batterers recruited by the SWD. All the participants had been previously arrested and were reached by social workers at police station. One of them showed that he had attempted suicide twice. The first attempt was by charcoal burning and the second attempt was by jumping down from a flat. He wanted to kill anyone whom he saw, including his son. One man warned his wife who was going to separate from him by saying that, if she left, he would throw their son out the window. Another man hit his wife and locked her up. She then reported this to the police and took away their daughter.
- 4.19 These individuals were approached by social workers at the police station or at social workers' offices. They showed appreciation in the initiative of the social workers - especially after knowing that social workers were readily available to help. All the subjects found that they benefited much from the groups. They learned how to relate with people, how to forgive and how not to be stubborn. They learned about life, acknowledged their mistakes and accepted reality.
- 4.20 Follow-up services: (*Findings from Focus Group 1*) The group workers recruited those who were deemed recovered, as volunteers for another group for batterers. They could help support the new group members and the new group experience could help consolidate their learning. Self-help groups and interpersonal skill training groups were arranged for those who still need further intervention. Follow-up on individual basis was provided for extra support such as marital counselling.

Voluntary and mandatory participation

- 4.21 (*Findings from Focus Group 1 & 2*) It is controversial on the choice between voluntary and mandatory participation of treatment programmes for batterers. A member in Focus Group 2 showed reservations on the system of court-mandated counselling arguing that, with the absence of motivation on the part of perpetrators, the programme is unlikely to succeed. The rationale of preferring voluntary participation is based on the belief that voluntary

⁶⁰ Domestic Violence Working Group (2003). *A preliminary study on the demographic and psychosocial profile of battered spouse cases at the clinical psychology units*. Social Welfare Department Clinical Psychology Service Branch.

participation either in individual or group therapy would secure better engagement with less resistance encountered throughout the changing process.

- 4.22 Another critique from service for victims of domestic violence worried that family harmony overemphasizes the victim's safety and the responsibility of perpetrators.⁶¹ They queried that the social workers, intending to engage with the batterers, would overemphasize the welfare of batterers and the wholeness of the family, while overlooking victim's safety.
- 4.23 The participants of Focus Group 1 and 2 generally agreed that voluntary participation is a preferred condition for therapy, but it is not necessarily a must. The engaging skills and the set up of context for mandatory participation can help improve the participation of involuntary batterers. From the feedback of male batterers in Focus Group 4, they were involved in group treatment at the time they were facing legal issues. They were arrested and received binding over for stopping violence and/or were fined. They had to face the legal procedures and, at this moment, they were approached by social workers who presented a helpful attitude to them. Their response to the group was positive.
- 4.24 Reviewing the profile of participants of the group programmes in recent years, most of the participants of Focus Group 1 believed that the treatment groups had not yet reached the "real hard core" male batterers who perpetrated the most severe level of violence and shared very rigid traditional cultural beliefs that women should be obedient and subordinate to their husband. Convincing the hard-core batterers to join the group would have been a very difficult task. Comparing the registered battered spouse cases each year, less than 5% of the batterers participated in the group treatment.⁶² Working with batterers could not rely solely on the voluntary participation of batterers. Most of the participants suggested that compulsory participation, say court-mandatory treatment, should be well studied.

⁶¹ The Hong Kong Association for the Survivors of Women Abuse (Kwan Fook) had expressed such worry.

⁶² About 100 batterers joined 10 groups in FCPSU units in 2003. [Refer to the paper CB(2)2131/03-04(03) submitted to the joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004.] Harmony House had served 75 batterers from December 2000 to December 2002, with about 38 batterers served each year. [Refer to Chan, Y. C. (2003). *Interim Report on "Third Path"*. Harmony House.] The Hong Kong Family Welfare Society had recruited about 12 batterers in a group in 2003. Comparing to the 3298 reported battered spouse cases in 2003, about 4.5% of battered spouse cases participated in the groups for batterers in 2003.

- 4.25 Responding to the worries about victim safety, it was noted by the participants of Focus Group 1 that most of the batterers' intervention programmes in the USA and the UK are putting emphasis on victim safety and holding batterers accountable to their use of violence. The intervention should not jeopardize the safety and welfare of the victims.
- 4.26 According to the participants of Focus Group 1, the existing treatment programmes for batterers in Hong Kong have a series of measures in enhancing victim protection. The group workers usually inform case-workers that the male is currently undergoing treatment. They would perform a "safety plan" during recruitment for the victims. They will ask the male participants if their wife knows that they are undergoing treatment. The social workers will skilfully inform the male batterers that confidentiality will be kept except when affecting victims' safety.

Training, experience & gender of the group workers

- 4.27 (*Findings from Focus Group 1*) Usually, male and female social workers were involved in leading the group programmes. The male worker could be engaging with the male batterers while the female worker could give a female perspective to the participants and help them understand the needs of women. The female worker could also help in role-play exercises. The groups ran by the NGO were normally led by social workers. The clinical psychologists of the SWD involved themselves in some groups. All the group workers received internal training and were at the rank of ASWO or above. No expectation on the year of working experience before running groups was specified. It was consented among the participants of Focus Group 1 that the group leaders should be professionals such as social workers, clinical psychologists or counsellors. Prior training on domestic violence was recommended.

Context for the BIP

- 4.28 (*Findings from Focus Group 1*) All the participants agreed that the BIPs should not stand without the support from the legal system. The supportive attitude of the police, the prosecutor, the probation officer and the judge is prerequisite to the success of the programmes. Referrals made from the legal system and ongoing collaboration between the legal and social services personnel on the monitoring of the cases would be very important. Some

participants cited the example of the Duluth model from the USA, there is need to monitor the progress of those batterers undergoing treatment. The judge and the probation officer should be aware of the existence and function of the BIPs. Appropriate referrals should be made and the performance of batterers in the groups should be monitored, including the breach of injunction orders, threatening behaviour or the ending of abusive behaviour after intervention.

- 4.29 Besides the BIPs for batterers, other support groups are deemed necessary to provide holistic intervention for families with violence. The Hong Kong Family Welfare Society and the SWD provide groups for battered women and their children, as well as parenting groups or courses for child abuse perpetrators and non-abusive parents.

Programme evaluation

- 4.30 (*Findings from Focus Group 1*) The Hong Kong Family Welfare Society had conducted a single group research design with pre-test, post-test and follow-up test to evaluate the effectiveness of the groups. Using the results measured by the Revised Conflict Tactics Scale (CTS2), it showed a significant drop in physical assault and psychological aggression when comparing the post-group test to the pre-group test. The findings based on the reports of caseworkers indicated that in one and a half years after the termination of the group intervention, 78.6% of the participating batterers stopped using violence against their female partners. The dropout rate was about 17.6%, which means the completion rate was 82.4%.⁶³ No control group was employed.
- 4.31 Harmony House had conducted an evaluation on the treatment programme for male batterers.⁶⁴ Based on the report from the perpetrators and their spouse, the programme was effective in bringing down physical and sexual abuse among its participants. This was especially so in its first three months of service.
- 4.32 The SWD had designed self-constructed items for pre-group and post-group measurements that asked about individual coping and attitude towards partners

⁶³ Chan, K. L. (2001). *An Evaluative Study of Group Therapy for Male Batterers cum Intervention Strategies*. Hong Kong: Hong Kong Family Welfare Society.

⁶⁴ Chan, Y. C. (2003). *Interim Report on "Third Path"*. Harmony House.

and violence. Their report in the focus group meeting showed that the average attendance for men was around 70%.

- 4.33 It was generally agreed that the existing programme evaluation for batterers' groups was not yet up to scientific levels. Experimental or quasi-experimental design of programme evaluations with the use of instruments with good psychometric properties is recommended. It is controversial to look into "statistically significant" decreases in violent behaviour. The "practical significance" for victims should be considered, i.e. ending, rather than decreasing, violent behaviour. Threat still exists when violent behaviour is not stopped. Ending violent behaviour and ending physical and psychological threats of violence to battered women was recommended by the participants to be used as criteria of success.⁶⁵

Summary

- 4.34 The development of the BIPs in Hong Kong, though still requiring scientific evaluation on its effectiveness, has been giving a promising experience in changing batterers' abusive behaviour. The social workers and clinical psychologists from the SWD and NGOs are competent to run effective programmes for the batterers. However, this only applies to BIPs with voluntary participation of batterers.
- 4.35 Provision of these programmes for voluntary as well as compulsory participation is deemed important in rehabilitating the batterers with the active involvement of the criminal justice system. The existing treatment groups had not yet reached the "real hard core" batterers. The social workers and clinical psychologists working with batterers generally agreed that they could not rely solely on the voluntary participation of batterers. Compulsory participation, say court-mandatory treatment, should be well studied.
- 4.36 Considerations on the training of the group workers, programmes contents and monitoring should be taken very carefully. The provision of the BIP should be placed in a context of collaboration between legal and welfare sectors. Referral and monitoring of cases across the systems should be ensured.

⁶⁵ Edleson, J. L. (1996). Controversy and change in batterers' programmes. In J. L. Edleson & Z. C. Eisikovits (Eds.), *Future interventions with battered women and their families*. USA: Sage Publications, Inc.

2. Review of legal protection

- 4.37 Stalking behaviour of perpetrators: *Findings from the case study* showed that the women subjects found the stalking behaviours perpetrated by their husband/ex-husband/partner/ex-partner very disturbing and threatening. Besides using physical violence, the most frequent use of abusive behaviour was verbal aggression and stalking. Putting blame and causing face losing on the women before others created great stress on the women.
- 4.38 According to the women subjects, stalking behaviours included disruption, molestation and intimidation like repeatedly calling at her home at night, or at the place of work. Sometimes the perpetrators called their children but resulted in losing temper and yelling at the women. Some of them even called the women's friends who were receiving the women victims at home. Chasing to victim's parents' home, work place, children's school, and to her new living place was frequently reported. They always used coarse language and verbal threats, e.g. threatened to burn them with gasoline if they wouldn't let him enter into their apartment, or by saying that the place she was living is not very safe. The perpetrators even threatened to harm her children, her family or friends. Some women subjects reported that their husband had warned to kill himself, or to kill her and their children first, and then kill himself.
- 4.39 Some women subjects who were staying intact with their husband/partner showed that stalking or molestation behaviours happened in their relationship. The perpetrators molested her and their children by turning off the air conditioning or fan in the midst of the hot summer or moistening blanket that made them unable to sleep; yelling at mid-night, turning up the volume of TV on purpose while the women victims and their children were sleeping. Some perpetrators even had threatened to bring other women home.
- 4.40 For some new arrival women, their suffering was not limited to the above. Their husbands threatened to call the police and force them back to the Mainland and leaving their children in Hong Kong. They threatened to take away the children after divorce. Without knowledge and support, the new arrival women were put under control and forced to tolerate violence until they received help from social services.

- 4.41 Most of the women subjects shared that the victims of domestic violence are in great need of legal protection not only when they are facing violence, but also after the reporting of violence to police, social services and medical practitioners. This is particularly true to the women who lacked economic independence and carried with them their children who were, in all likelihood, also abused by the same perpetrators. Lack of social support was also predominant for new arrival women. They shared that they expected effective legal protection and support in preventing the violence and stalking behaviours pressing against them. Their experiences in encountering legal services varied and it is summarized in the following.
- 4.42 Reporting domestic violence cases: (*Findings from Focus Group 2*) Reporting domestic violence cases to police, whether suspected or established, is the crucial step in bringing the cases into the legal system. Social workers and medical practitioners are usually involved first, especially if the cases are not criminal, i.e. the evidence is not strong or the severity of violence is minor. Referral to the police will be made if cases are suspected to be criminal and need police investigation. However, according to some participants of Focus Group 2, the reporting depends on the judgment of the physician or social worker.
- 4.43 The focus group had discussed the feasibility of launching mandatory reporting. Some participants suggested that professionals like physicians, social workers, counsellors, schoolteachers etc., are required to report to the police if they identify a suspected case of abuse, particularly suspected child abuse. However, some other participants reminded that victims might be worried about their own safety if reporting to the police becomes mandatory. They may not wish to employ legal measures to deal with family problems. As suggested by some participants, education on the criminal nature of domestic violence, and the punitive as well as treatment nature of the legal system in dealing with domestic violence should be promoted. This should be done regardless of whether mandatory reporting is launched. Focus Group 2 did not come to any conclusion on the feasibility of launching mandatory reporting in Hong Kong. However, the participants agreed that more discussion and consultation on the advantages and disadvantages of mandatory reporting is needed.

4.44 Arrest: (*Findings from the case study*) About two thirds of the women victims interviewed did not call police after being battered. There were several common reasons:

- (a) Trivialize family violence: To the women victims interviewed, calling police implies imprisonment, separation, breakdown of family and relationship, revenge etc. Unless the incident was severe enough, they would hesitate to report “trivial” violence to police like throwing hard objects at them and their children. Most of the women victims were not sure if the police regarded violent acts as criminal offences. Some reported that they were even told by some police officers that these were only spousal conflicts, and not necessarily a crime.
- (b) Imprisonment or rehabilitation? Most of the women victims wished to stop violence but did not want their husband or partner to be arrested. They did not believe that arrest or imprisonment alone could be effective in stopping their partner’s violence because the abusive partners would take revenge after being released from prison. Almost all the women interviewed wished their partners could be helped through warning, education and counselling to stop using violence.
- (c) Pressure from social norms: Some women victims refused to report to the police because it would result in losing face and they might be blamed by relatives for being so cruel to their husband. Family values like preventing revealing shame to others, maintaining family wholeness, being loving and responsible etc. are preventing them from disclosing family violence to the legal system.
- (d) Children factor: One of the major barriers of calling police was the consideration of the well-being of the children. Keeping the family intact for the sake of the children was widely shared among the subjects until they eventually found that their partners might hurt their children.
- (e) Lack of knowledge, support and confidence: On the average, the women subjects did not know much about the legal procedures. They did not know what would happen after calling police, neither the procedures nor consequences. It is especially disturbing for the new arrival women who are strangers to police and social services. Most of them regarded

themselves as uneducated and thought that the system was unfriendly to them. They showed low confidence about themselves and the police as well. Some of them did not believe that the police could protect them from being hurt by their husband.

- (f) Fear of revenge: Most of the women victims revealed how their partners threatened to harm them, their children, their family and friends. One of the subjects shared that her husband indeed had hurt his ex-wife and his daughter. That scared her and so she did not want to irritate him by calling police.

4.45 About a third of the women subjects had called police after repeated incidences of violence. The reasons for calling police were: (1) they were too scared; (2) they hoped that police intervention could stop abusive behaviour and warn the perpetrator; (3) it was the last resort. They did not know if there were other methods to help.

4.46 The women victims had different comments on police intervention. Some of them thought that the police were not helpful. There were some police officers who had bad manners and tried to push victims back to the husband by blaming them for causing trouble and listing the complexities of taking any legal action. A woman respondent said that she had called the police 4 to 5 times, usually when her husband threw things at their daughters. Police came and took records but never charged him. She believed that it was because the police officers treated the violence incident as family conflicts rather than criminal behaviour. These women subjects showed no confidence in police intervention in stopping violence and stalking behaviour.

4.47 Other women subjects thought that the police officers they encountered had good manners and tried to help by giving them options whether to sue the perpetrator or not, and also by providing resources (e.g., contact of social workers) for them to get help. It was very common that the police officers asked the victims if they wanted to press charges against the perpetrator. The women respondents shared the feeling that they were stressed out in making the decision to press charges and, eventually, most of them withdrew their complaints. They found that police intervention was effective in providing information to the victims and giving verbal warning to the perpetrators. However, the perpetrators used violence again after the police had left.

- 4.48 In the views expressed by most of the women subjects, police asking victims if they wanted to press charges against perpetrators created ambiguity that domestic violence is a conflict between two adults. It created an impression that the legal system would not take action unless the victims insist. Most of them queried that if domestic violence is really treated as a crime, why do the police have the discretion in letting the victims to decide if they want to press charges? As a result, all the responsibility is shifted to the victims who are already stressful and fearful enough to insist on pressing charges, be noted that they had already called 999.
- 4.49 Reported by a member of Focus Groups 2 working in a refuge for battered women, there were occasions that, after a victim reported an occurrence of domestic violence to the police, some police officers suggested the victim to seek help from refuges but they did not arrest the batterer. As observed by a medical officer of Focus Groups 3, different police stations have different attitudes in dealing with domestic violence cases. He commented that police investigation is not helpful in domestic violence cases, sometime it even reverses the effect. They prefer to work with social workers.
- 4.50 Some participants appreciated that while some police officers were not helpful in handling domestic violence cases, others were supportive and would escort the victims back home for the collection of their personal belongings.
- 4.51 Prosecution: (*Findings from Focus Group 3*) Some participants commented that the initiation of criminal proceedings against batterers in cases where there are no independent witness/evidence would depend on the quality of evidence to be given by the victims as well as their willingness to testify against the batterers.
- 4.52 Feedback from the social workers of the SWD revealed that the referral, with or without the victim or batterer's consent, made by the police to the FCPSUs enhanced the intervention of domestic violence cases. It helps convey the message that the police will intervene or reserve the right to intervene, with or without consent, and the social worker would follow up. If the case were confirmed criminal, arrest would take place. The message that legal intervention in domestic violence is clear. It is significant in public education.

- 4.53 However, it is not uncommon that some victims may not be able to assist police in the course of police investigation or to testify in court against the batterers in case their cases proceed with criminal charges against the batterers, or even gave different accounts in their testimony in court. Opinions from medical professionals showed that consent from victims could be relatively easy to obtain by professionals from medical and social services because the victims would regard them as helpful and supportive. However, the experience in involving the legal process is perceived as unfriendly to most people. The reasons why some domestic violence victims drop their charges or change their mind in giving testimony during investigation or prosecution include: (1) they worry about their own safety after disclosing the violence and during the process of pressing charges; (2) they experience pressure from other family members; (3) they feel uncertain about the legal procedures.
- 4.54 Sharing from the prosecutor in Focus Group 3, if the prosecutions decided that the batterers should not be charged, then the prosecutions may consider the viable option to bind over the batterers for a period of time if there is sufficient evidence to support such an order to be made. Such option is considered to be effective as a form of preventive justice and it should not be treated as a ‘let off’. In fact, the order serves to keep the batterers on the straight and narrow in that if the batterers commit further offence during the operational period of the order, the recognizance may be lost and the batterers may be subjected to further punishment. A medical professional of Focus Group 3 queried that the order is too passive and the effective period of the order is short. Most domestic violence cases have a long history where the abusive behaviour is habitual. Moreover, the order cannot help the batterers change as most victims often wish.
- 4.55 In view of the limitations of the existing arrest and prosecution policy, some participants of Focus Group 2 & 3 suggested to evaluate the practice of arrest and prosecution and study the feasibility of introducing mandatory arrest, a no-drop prosecution policy, court-mandated treatment programmes for batterers and victim support service. By enforcing the legal interventions, strengthening support and rehabilitating as well as punishing perpetrators, the victims of domestic violence could be protected.
- 4.56 Legal support services for victim: (*Findings from the case study*) Most of the victims interviewed found that their lawyers were mainly focusing on the

divorce, custodial or property issues. They could provide advice but were not ready to provide emotional support. The social workers were supportive but not familiar with the legal procedures. The victims expected that the legal system could be more supportive and transparent. According to the victims' sharing, a number of measures are deemed helpful to the victims such as: well-informed knowledge and choice about legal services and procedures, supportive attitude of the personnel like lawyers, police, prosecutors, administrative officers etc., being empathetic and less critical to the victims, giving explanation on the details of legal procedures, and so on.

- 4.57 Multidisciplinary collaboration: (*Findings from Focus Group 2*) The social services, including FCPSUs and MSW, as well as the medical services, like Obstetrics & Gynecology, A & E, & Paediatrics, are working closely on spousal and child abuse cases. Interfacing with the legal system, especially the police force, is perceived as essential. Most of the participants of Focus Group 2 emphasized that collaboration and communication among the professionals is deemed important in the detection of suspected cases, referrals made among the professionals, victim protection and offender punishment. The common goal of the different systems should be put on the safety of children and victims.
- 4.58 Review the Domestic Violence Ordinance (Cap 189): The request to review the DVO (Cap 189) is raised among the participants of Focus Group 2. The definition of "family violence" is to be reviewed to include different kinds of violence amongst family members. Some participants suggested that the definition of "family" should expand beyond the boundary of "matrimonial" to include various kinds of intimate relationships like in-law family members, same sex couples etc. The definition of violence should not be limited to physical abuse and sexual abuse, but to include psychological abuse and stalking behaviour. Some participants noted that the measurement of psychological abuse could be difficult because there is a lack of standard assessment on the psychological abuse or the impact of psychological abuse.
- 4.59 In summary, there were several suggestions for consideration in the review of the ordinance.
- (a) Review the definition of family violence
 - (b) Include psychological abuse and stalking as kinds of violence

- (c) Review the maximum period of the injunction order applied
- (d) Consider allowing a “third party”, not only the victim of domestic violence, to apply an injunction order for the victim. The third party can be a professional or police. It is a way for the society to take up the responsibility of protecting the victims.
- (e) Consider the nature of the DVO (Cap 189), which is now civil in nature. Should it be a part of criminal law? Should domestic violence be criminalized?

4.60 Injunction Order: (*Findings from the case study*) The function of the order is needed, as commented by some of the women victims, because, in principle, the order can keep the batterers from making contact with the victims who prefer to avoid seeing their partner. In reality, the victims would rather move home and change children’s school than to apply for an injunction order. Among the victims interviewed, most of them did not know that they could apply for an injunction order. Some knew about the order through their lawyers, social workers or pamphlet from the legal aid service.

4.61 Those who hadn’t applied for an injunction order were worried that, even with an injunction order granted by the Court, their partner could locate them and threaten them through phone contact or by stalking. The effectiveness of the injunction order in providing protection was queried by most of the women victims interviewed. The maximum duration of an injunction order issued under section 3(1)(c) or (d) is six months. This is inadequate for victims to proceed for a divorce and set up a new place to live. The application for an order was perceived as difficult, unless physical injury was demonstrated. Although not much evidence was required for the application of an order, the victims still perceived that it would be difficult to show proof that they had been abused. Two victims had requested the legal aid service to help apply for an injunction order. Such request was denied with the reason of impossibility of applying for the order without any concrete evidence of husband’s stalking. Some women victims were afraid of using the injunction order because it would worsen the batterers’ fury and the batterers would threaten the victims or their family. The practical difficulty was in the visitation of children, unless the batterers are abusive to their children and the injunction order includes the limitation of access to children, the batterers may request to visit the children and as a result would be able to locate the living place of the victims.

4.62 For those who had got the injunction order found the order could send a warning message to the perpetrator. However, some perpetrators kept chasing after the victims unless power of arrest was attached to the order. Overall, most victims thought that an injunction order is necessary and would be more effective if power of arrest is attached. The victims suggested simplifying the application procedure of injunction orders so that more women can be protected from domestic violence.

II. Findings from the Household Survey

4.63 There were two items related to the treatment for the batterers included in the household survey. The findings are presented in Table A and B in Appendix 7.

4.64 Over half of the subjects from the household survey thought that family and individual counselling would be useful in handling domestic violence. About 46% of the sample thought that financial support is necessary and about a third of the sample perceived that education from school and mass media could be useful.

4.65 To help the unmotivated perpetrators of domestic violence, over 60% thought that social workers could help. Of the sample, 56.8% and 52.9% respectively agreed that compulsory referral by law and intervention from police could be useful. The least useful way of making the perpetrators receive counselling was by taking their spouse's advice.

III. Statistics on the Application of the DVO (Cap 189)

4.66 In the period from January 2003 to June 2004, the Health, Welfare and Food Bureau collected a total of 30 report forms on the application of the DVO (Cap 189) from the Judiciary and were forwarded to the consultants. The forms contained the information about applicants and respondents, types of molestation, and the orders granted. The purpose of the analysis on the report forms was to provide figures on the utilization of injunctions under the DVO (Cap 189).

4.67 Profile of the applications (Listed in Appendix 8): A total of 30 applicants were documented from January 2003 to June 2004. The median age of the

applicants and respondents is 38 and 39.5 respectively. Among the applicants, 90% were female and most of them were the wives of the respondents (86.7%). About 90% of the applicants were living with their children. That implied 55 children or 44 children under 18 were being affected by the order in some way or another. Up to 30% of the respondents were unemployed at the time of the application. It was sure that 60% of the applicants were not mentally incapacitated persons. However, up to 40% of the applicants, according to the record, were not sure if they were mentally incapacitated. The screening and assessment for such a vulnerable group was not promising. Special attention should be given to the protection of mentally incapacitated persons who may need to be represented.

- 4.68 Types of molestation: Almost all the applicants (29 out of 30) had experienced physical molestation such as: punching, slapping, throwing acid, using weapon and setting fire etc. Two cases complained of sexual molestation such as forced sex or undesirable sexual acts. Although there were some cases having been psychologically molested, there was only one case that did not report on any physical or sexual molestation. This applicant was a wife aged 33, who was not a mentally incapacitated person. Her husband, aged 37, was ordered to respond to S3(1)(a) & (c) (non-molestation and exclusion orders) for 16 days. No extension of order was granted. Although there was only one case found in this period, it was not impossible to grant non-molestation and exclusion order solely based on psychological molestation.
- 4.69 Order granted: All the applicants were granted the restraining order under the section 3(1)(a) of the DVO (Cap 189). About 63.4% were granted together with the restraining order under the section 3(1)(b) (non-molestation order for children) and 36.7% were granted under the section 3(1)(c) (exclusion order). The waiting time for the granting of an order was satisfactory. About 80% of the applicants were able to get the order within the same day of application. There were three applicants who had to wait for more than 10 days. We do not have any information from the report form about the unusually long waiting period.
- 4.70 Duration of the orders: Among the 27 applications, which had indicated specific duration of the orders applied, the mean duration of order was 23 days ($SD = 33$ days), ranging from 2 days to 6 months. Over half of the applications received orders for a duration of less than half month. There were 70% of the

applicants granted the power of arrest attached to the orders. Except for two cases, the duration of the power of arrest granted was exactly the same with that of the orders. Given that the maximum period of the duration of the orders under the DVO (Cap 189) should be 6 months, 3 cases was granted with orders for an indefinite period of time “until further order”. It was not clear about the details of the background of the application. One of the three cases also had the duration of “until further order” granted for the power of arrest attached and the extension of the orders. Three cases were granted extensions with the duration of 2 weeks, 1 month and 1.5 months respectively.

4.71 In principle, there is no time limit for the non-molestation order section 3(1)(a)(b). However, all the orders granted had set time limit on the non-molestation order(s), with a mean duration of 23 days and the maximum duration of six months. The judges may find it necessary to set a time limit and take reference on the time limit set for the ouster and entry orders. Another possibility was that the time limit set for the ouster and entry orders may create some impressions that it is also applied to the non-molestation orders. In any situation, we would review the setting of time limit in a way to provide better protection for the victims in need.

4.72 Protection of children: There were 11 orders (36.7%) granted that did not include the S3(1)(b).⁶⁶ Three cases of which were where the children weren't living with the applicants. For the other eight cases, six were granted S3(1)(a) and two were granted S3(1)(a) & (c). Among the eight cases, 17 children (age median = 7) were involved. With the exception of three children who were aged over 18, the median age was 7. Unless assessment was taken to ensure adequate safety for the children who were living with parents with one party making complaint of spousal violence against the other party, the 14 children under 18 years of age (32% of the total number of children under 18) were not receiving protection under the DVO (Cap 189).

4.73 Implication of the findings of DVO: Here are some major points that are derived from the findings:

(a) Low utilization rate: A total of 23 report forms were collected for the period from January to December, 2003. Comparing to the 3,298 reported battered spouse cases in 2003 from the Centralized

⁶⁶That is, “a provision restraining that other party from molesting any child living with the applicant”.

Information System, the rate of applying the DVO (Cap 189) was too low (less than 1%). Although it is not possible for all spousal violence cases to apply the injunction orders under the DVO (Cap 189), it is reasonable to expect a higher rate because the DVO (Cap 189) is supposed to provide prompt protection for the victims of domestic violence.

- (b) Efficiency: The time needed to process the applications was fast. It is a good practice in providing prompt protection for the victims. It is reasonable to say that the administrative procedure should not be complicated.
- (c) The need for legal education and support: Learning from the case study, the battered women were not knowledgeable about the function and procedure of applying the DVO (Cap 189). Legal education and support for the victims of domestic violence is needed to help the victims throughout the process. Education for social workers who work closely with victims would be helpful. They can be a helpful resource to the victims.
- (d) Psychological abuse: It is worthwhile to note that sole psychological abuse (e.g. repeated verbal abuse, deprivation of physical, financial and personal resources etc.) was considered in the granting of the DVO (Cap 189), though only one case was reported in the period from January 2003 to June 2004.
- (e) Protection of children: Protection for children from violent families is necessary, particularly when the adult victim needs protection from the DVO (Cap 189). It is necessary to review the need to grant S3(1)(b) for all applicants who have children under 18 living with them.
- (f) Risk assessment: In the application of the DVO (Cap 189), the request made for the types and duration of the order depends on the knowledge of the applicants, or their representative lawyers. It may not be grounded on systematic risk assessment. Under or over estimation of the risk and thus the need for longer and further orders to be granted may occur. It is recommended to have a built-in risk assessment, which at least includes the assessment of the severity and frequency of

molestation, use of weapons, stalking behaviour etc. The result of the risk assessment can be documented for the consideration of the judge.

- (g) Record system: The data of the current report forms on DVO (Cap 189) collected by the Judiciary are mainly for observing the overall profiles and trends with little information on the background of the applicants. It is recommended to collect more background information of the families, particularly the children, the reasons considered in granting the orders and deciding the duration of the orders applied in the report forms to facilitate understanding of the applications made under DVO.

SUMMARY OF FINDINGS

- 4.74 For effective prevention and intervention with domestic violence, it appears that the following measures have not been adequately dealt with.
- 4.75 Batterer intervention programmes (BIPs): The success of the existing BIPs in Hong Kong applies to the programmes with voluntary participation of batterers. The effectiveness of court-ordered mandatory BIP has yet to be demonstrated.
- 4.76 Most of the respondents of the focus group and 56.8% of the respondents from the household survey agreed that mandatory participation using court order is an effective means to ensure perpetrators to participate in counselling/education programmes.
- 4.77 Under-reporting of domestic violence cases: For various reasons discussed in this chapter, the incidence of domestic violence has been under-reporting. In 2003, there were 3,298 reported cases of spouse battering and 481 cases of child abuse. It is far below than the annual prevalence rate of respondents who reported to have been battered by their partners and child physical assault found in the household survey, which are 7% and 23.3% respectively.
- 4.78 Low arrest and charge rate: Referring to Appendix 4, out of the 2,401 reports of domestic violence received in 2003, 1602 were miscellaneous reports of which majority concerned disputes and noise complaints etc. that did not

amount to any criminal offences. Among the 799 classified crime cases relating to domestic violence, the percentage of cases dealt with by court was 46.1% (14.3% for criminal charge and 31.8% for binding over). As for child abuse, the percentage of cases dealt with by court in the same period was 24.8% (all related to criminal charge). Learning from the case study, the practice of arrest, the legal procedures and the persistence of victims in pressing charge are some of the possible factors affecting the arrest and charge rate.

- 4.79 Legal protection and support for victims: Most subjects of the case study reported that they were suffering from the stalking behaviour of the perpetrators. In their experience in encountering the legal system, most of them found the legal system unfriendly. They expected effective legal protection and support in preventing the violence and stalking behaviours pressing against them. There is a need for further review of the legal education and procedures.
- 4.80 It is suggested to review the practice of arrest and prosecution and consider the feasibility of introducing mandatory arrest, a no-drop prosecution policy, court-mandated treatment programmes for batterers and victim support services.
- 4.81 Multidisciplinary collaboration is recommended in the handling of domestic violence cases.
- 4.82 It is suggested to review the DVO (Cap 189).
- 4.83 Low utilization rate of the DVO (Cap 189): Legal education and support is needed for the victims and professionals in using injunction orders to provide protection.
- 4.84 Child protection and child visitation: Safety should be ensured in arranging the visitation of the batterers to their children. The need for the use of non-molestation order for children should be reviewed.
- 4.85 Built-in systematic risk assessment for the applicants of the DVO (Cap 189) is recommended.

4.86 Record system: It is recommended to collect more background information of the families, particularly the children, the reasons considered in granting the orders and deciding the duration of the orders applied in the report forms to facilitate understanding of the applications made under DVO (Cap 189).

Chapter 5

Legislation of Mandatory Treatment in other Jurisdictions

- 5.1 The second objective of the review is to study the feasibility and implications of adopting the mandatory treatment of perpetrators in Hong Kong (including, but not limited to mode and definition, manpower, related judicial, administrative and legislative arrangement, etc.) with reference to overseas examples.
- 5.2 In UK, USA, Singapore, Canada, New Zealand, Australia, a court-ordered mandatory batterer intervention programme (BIP) is an integral part of legal measures to stop domestic violence. The BIPs are usually education and counselling programs with group as the prominent form of intervention. Its ultimate goals are to reduce the rate of re-offending, protect victims, hold the batterer accountable for their violence and to stop abusive behaviour by issuing court orders to make batterers attend counselling programmes.
- 5.3 Such a programme has two important functions. First, it conveys a message to the public that as an integral part of legal and social interventions to stop domestic violence, domestic violence is not a private matter and is unacceptable to society. Through the therapeutic jurisprudence approach, the batterers will be both charged with violent behaviour and rehabilitated through educational programmes. Second, it provides a more acceptable sentencing option for less severe levels of violence. Those victims who do not want their abusive partner imprisoned but still expect legal interventions will be more willing to report to police and press charges.

METHOD

- 5.4 To study the feasibility of launching a court-ordered mandatory programme for perpetrators of domestic violence in Hong Kong, the experiences of six countries (USA, Australia, Canada, New Zealand, Singapore and UK) were reviewed. The references found were based on Web pages of the governments, related community groups or academia of these countries. The literature review took place was from May to November 2003, with further supplementary searching until February 2004. The final stage of data clearance was conducted from September to November 2004.

- 5.5 The review started by studying the context and structure in which the court-ordered mandatory programmes operated. These included government domestic violence policies and the government structure that were responsible for handling domestic violence. As the issuance of mandatory orders to perpetrators to ensure that they would participate in the mandated programme required effort from both law enforcement and the judiciary, the legal measures supporting the BIPs were studied. The review then focused on the programme implementation including the mode of provision, programme format and content, and the professional standards in operation in these mandatory programmes. The evaluations of outcome effectiveness of the programmes were reviewed. The topics reviewed and the relevant information from these countries are shown in Appendix 9.
- 5.6 Upon reviewing the overseas experiences, a series of focus group discussions amongst the professions and practitioners concerned were organised. This is described in Chapter 4. The discussions aimed at gaining an understanding of local concerns and collecting related suggestions to explore the feasibility of exercising a mandatory programme for perpetrators of domestic violence in Hong Kong.

DOMESTIC VIOLENCE POLICY

The Government's commitment to tackling domestic violence

- 5.7 Across the six countries, domestic violence is regarded as a serious social problem that affects public health and has negative social and economic costs for society.⁶⁷ The New Zealand government even highlights domestic

⁶⁷ Strategic Partners Pty Ltd & Research Centre for Gender Studies (1999). *Current Perspectives on Domestic Violence: A review of national and international literature*. Commonwealth of Australia.

http://www.padv.dpmc.gov.au/projects/curr_persp_dv.pdf

Tim Roberts Focus Consultants. (1996). *Working Document: Spousal Assault and Mandatory Charging in the Yukon: Experiences, Perspectives and Alternatives*. Department of Justice, Canada. <http://www.4woman.gov/owh/violence.htm>

Ministry of Social Development. (2002). *TE RITO New Zealand Family Violence Prevention Strategy*. NZ: Ministry of Community Development. <http://www.msd.govt.nz>

Home Office (2000a). *Home Office Circular 19/2000*. London: Home Office. <http://www.homeoffice.gov.uk/docs/hoc1900.html>

The Office On Women's Health, National Women's Health Information Center (2003). *Violence Against Women*. <http://www.4woman.gov/owh/violence.htm>

violence as an abuse of human rights.⁶⁸ Though domestic violence seems private, it is a public issue. In the UK, violence is treated as a crime that both police and judiciary take serious steps in handling. Both Australia and the USA clearly spell out that domestic violence is gendered violence, which is an abuse of power.⁶⁹

- 5.8 Responding to the domestic violence, the governments of Canada, New Zealand and the USA adopt both a public health perspective and a criminal justice perspective, which is a quite comprehensive federal approach. Australia and the UK put greater emphasis on using a criminal justice perspective in which domestic violence is treated as criminal assault.

Government strategies to tackle domestic violence

Central coordinating mechanism

- 5.9 No single service unit can handle domestic violence effectively; it has to be achieved by collaboration. All of the six countries had central coordination mechanisms for tackling domestic violence, emphasising the use of coordinated criminal justice and community approaches.
- 5.10 These central coordinating mechanisms were the Partnership Taskforce in *Australia*, the Te Rito National Executive in *New Zealand*, the National Family Violence Networking System of *Singapore*, the Interdepartmental Group on Violence against Women and Domestic Violence in the *UK*, the “Family Violence Initiatives” of the Federal Government in *Canada* and the National Advisory Council on Violence Against Women in the *USA*.⁷⁰

⁶⁸ Ministry of Social Development. (2002). *TE RITO New Zealand Family Violence Prevention Strategy*. NZ: Ministry of Community Development. <http://www.msd.govt.nz>

⁶⁹ Commonwealth Office of the Status of Women (2003). *Partnership Taskforce*. Au: Commonwealth Office of the Status of Women. <http://www.padv.dpmc.gov.au>

⁷⁰ Commonwealth Office of the Status of Women (2003). *Partnership Taskforce*. Au: Commonwealth Office of the Status of Women. <http://www.padv.dpmc.gov.au>

Department of Justice Canada (2003). *Family Violence*. CA: Department of Justice. <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

The Office On Women’s Health, National Women's Health Information Center (2003). *Violence Against Women*. <http://www.4woman.gov/owh/violence.htm>

Ministry of Social Development. (2002). *TE RITO New Zealand Family Violence Prevention Strategy*. NZ: Ministry of Community Development. <http://www.msd.govt.nz>

Ministry of Community Development and Sports (2003). *Supporting Families – FAQs*. Singapore: Ministry of Community Development. <http://www.mcds.gov.sg/>

Home Office (2000a). *Home Office Circular 19/2000*. London: Home Office. <http://www.homeoffice.gov.uk/docs/hoc1900.html>

- 5.11 These central coordinating mechanisms were convened or co-chaired by federal government offices, including the Commonwealth Office in *Australia*, the Ministry of Social Development in *New Zealand*, the Ministry of Community Development and Sports in *Singapore*, the Home Office in the *UK*, Health Canada in *Canada* and the Departments of Justice and Health and Human Services in *USA*.
- 5.12 These central coordinating mechanisms were responsible for enhancing persistence amongst concerned parties in responding to domestic violence. They steered the working direction and were responsible for cultivating a favourable social context for stronger collaboration in handling domestic violence.

Coordinated criminal justice system

- 5.13 Handling domestic violence is not solely a welfare issue. The criminal justice systems in the countries investigated are actively coordinating the improvement of the policy and practice in the system.
- 5.14 In *Australia*, the Australian Capital Territory uses the Interagency Family Violence Intervention Programme as a coordinated criminal justice and community response to domestic violence.⁷¹ This programme emphasises improved investigative practice provided with training, close monitoring and coordination, strengthened collaboration between the judiciary and non-government organizations providing domestic violence crisis service.
- 5.15 In Auckland, *New Zealand*, SAFTINET (Safer Auckland Families Through Intervention Networking) coordinates statutory and community agencies to strengthen efforts in tackling domestic violence.⁷²
- 5.16 Similar efforts have been adopted in *Canada*. The Federal government's "Family Violence Initiatives" provided policy and legal advice in enhancing the criminal justice system's response to family violence. The Department of

⁷¹ Key Young (2000). [Evaluation of ACT Interagency Family Violence Intervention Programme, Final Report](http://padv.dpmc.gov.au/oswpdf/Evaluation_ACT.pdf). ACT Department of Justice and Community Safety. http://padv.dpmc.gov.au/oswpdf/Evaluation_ACT.pdf

⁷² Domestic Violence Centre (2003). [SAFTINET Interagency Coordination](http://www.dvc.org.nz/dvcserv3.htm). NZ: Domestic Violence Centre. <http://www.dvc.org.nz/dvcserv3.htm>

Justice has reviewed efforts to strengthen and sensitise the system in spousal abuse cases. The suggested measures include setting and enforcing mandatory charging and prosecution policies, domestic violence courts, protective measures for victims and mandated treatment for abusers. The Department emphasises making further efforts to support victims in prosecution, dealing with the high attrition rate of spousal violence cases in court, under-reporting and the training of criminal justice personnel.⁷³

5.17 The UK uses a coordinated criminal justice system, the Interdepartmental Group on Violence Against Women and Domestic Violence, which was established in 1995. The Home Office⁷⁴ issued the Home Office Circular on Domestic Violence in 1995 and the Multi-agency Guidance for Addressing Domestic Violence in 2000. Following these guidelines, the Crown Prosecution Service prepared and trained its staff and the Police established specialised domestic violence units or trained domestic violence officers. Civil Law and the Probation Service strengthened law and order in enhancing the protection of victims.

5.18 The US Attorney General's Task Force on Family Violence⁷⁵ has acknowledged that judges and sentences could strongly reinforce the message that violence is a serious criminal matter for which the abuser should be held accountable. There is a shared value that if judges fail to handle family violence with appropriate concern, then the crime is trivialized and victims received no real protection or justice.

LEGAL MEASURES SUPPORTING BIPs

5.19 In the late 1970s, activists who worked with battered women realised that although they might help individual victims, no real progress could be made against the problem of domestic violence unless actions was taken to reform perpetrators and challenge the cultural beliefs that tolerate domestic violence.

⁷³ Department of Justice Canada (2003). *Family Violence*. CA: Department of Justice. <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

⁷⁴ Home Office (2000a). *Home Office Circular 19/2000*. London: Home Office. <http://www.homeoffice.gov.uk/docs/hoc1900.html>

Home office (2000b). *Domestic Violence: Break the Chain - Multi-Agency Guidance for Addressing Domestic Violence*. London: Home Office. <http://www.homeoffice.gov.uk/docs/mag.html>

⁷⁵ U.S. Attorney General's Task Force on Family Violence (2003). *Enhancing Justice Programmes. Building Partnership to End Men's Violence*. Family Violence Prevention Fund. <http://endabuse.org/bpi/>

Batterer intervention programmes (BIPs) were initiated as the first step towards changing batterers and raising cultural awareness of the problem.

- 5.20 In 1980, the Coordinated Community Response to Domestic Violence and Domestic Abuse Intervention Project in Duluth, Minnesota, was the pioneer community-based coordinated system for responding and intervening in domestic abuse.⁷⁶ The responding systems included critical effort from the criminal justice system in ordering batterers to participate in education groups. A strong pro-arrest policy and mandatory attendance at non-violence education programmes was included as part of sentencing. In the 1990s, the Duluth model was broadly used with customisation in other states of the USA and other countries such as Australia, Canada, New Zealand and the UK.

Coordinated criminal justice system and BIPs

- 5.21 Healey et al.⁷⁷ found that a BIP alone could not stop violence - a strong, coordinated criminal justice response combining the effects of arrest, incarceration, adjudication and probation supervision was used. This was emphasised in government policies.⁷⁸ Babcock and Steiner⁷⁹ remarked that the treatment of batterers would be most effective when there was consistent legal consequences for non-compliance with treatment. In brief, the BIP was an integral part of any comprehensive approach to domestic violence.⁸⁰
- 5.22 Active referral: Jeremy Travis, the Director of the National Institute of Justice in the USA stated that criminal justice agencies responded by referring

⁷⁶ Pence, Ellen (1996) *Coordinated Community Response to Domestic Assault Cases: A Guide for Policy Development (Revised)*. Minnesota: Minnesota Programme Development, Inc

⁷⁷ Healey Kerry Murphy, Smith Christine, & O'Sullivan Chris. (Feb 1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. [National Institute of Justice, Office of Justice Programmes. U.S. Department of Justice](http://www.ojp.usdoj.gov/nij/JusticeProgrammes). <http://www.ojp.usdoj.gov/nij/>

⁷⁸ Department of Justice Canada (2003). *Family Violence*. CA: Department of Justice. <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

Home Office (2003). *Government Policy Around Domestic Violence*. London: Home Office.

Austin Juliet & Dankwort Juergen (August 1998). *A Review of Standards for Batterer Intervention Programmes. (Revised)*. Violence Against Women Online.

<http://caleplus.lwa.gov.au/home.htm>

Ministry of Social Development. (2002). *TE RITO New Zealand Family Violence Prevention Strategy*. NZ: Ministry of Community Development. <http://www.msd.govt.nz>

⁷⁹ Babcock, J.C., & Steiner, R. (1999). "The Relationship Between Treatment, Incarceration, and Recidivism of Battering: A Program Evaluation of Seattle's Coordinated Community Response to Domestic Violence". *Journal of Family Psychology*. 3 (1), p 46-59.

⁸⁰ Healey Kerry, Smith Christine, & O'Sullivan Chris. (Feb 1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. [National Institute of Justice, Office of Justice Programmes. U.S. Department of Justice](http://www.ojp.usdoj.gov/nij/JusticeProgrammes). <http://www.ojp.usdoj.gov/nij/>

an increasing number of batterers to interventions via pre-trial or as part of sentencing. For instance, in Massachusetts 85% of abusers who attended BIPs were instructed to do so by the courts.⁸¹ The role of the judge is essential in ensuring that batterers are referred to and enrolled in BIPs when that is part of the sentence.

- 5.23 Coordination of parties: Pre-trial screening ensures that batterers are not released on their own recognisance or on bail before arraignment. Pre-trial service staff gather as much background information as possible for the prosecutor and judge. Victims' advocates assist in preparing cases, pursuing probation revocation and requesting offender participation in BIPs as a condition of probation or other sentences. Probation officers can also take the lead in establishing meetings with batterer intervention service providers to monitor progress. Prosecutors who specialise in handling domestic violence cases work with the police, probation officers and victims' advocates to follow cases through.
- 5.24 Victim safety: Healey and Smith⁸² stressed that victims can be endangered by any breakdown in communication in the criminal justice system, the failure of training or the lack of follow through by any one of the parties involved.
- 5.25 Specialised training programmes: Specialised training programmes are used to enhance the sensitivity and understanding of police officers, prosecutors, judges and probation officers to domestic violence. The jurisdictions investigated had policies of training legal actors (judges, prosecutors, police, lawyers and probation officers), teachers, health professionals, counsellors, social workers, etc.
- (a) USA: The US Attorney General's Task Force on Family Violence has stated that judges are the ultimate legal authority in the criminal justice system.⁸³ The Family Violence Prevention Fund's Judicial Education Project (which is attached to the Office on Violence Against Women

⁸¹ Rothman Emily F, Butchart Alexander & Cerda Magdalena (2003). *Intervening with Perpetrators of Intimate Partner Violence: A Global Perspective*. World Health Organization. <http://whqlibdoc.who.int/publications/2003/9241590491.pdf>

⁸² Healey Kerry Murphy, Smith Christine, & O'Sullivan Chris. (Feb 1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. [National Institute of Justice, Office of Justice Programmes. U.S. Department of Justice](http://www.ojp.usdoj.gov/nij/JusticeProgrammes). <http://www.ojp.usdoj.gov/nij/>

⁸³ Family Violence Prevention Fund (2003). *Building Partnership to End Men's Violence*. Family Violence Prevention Fund. <http://endabuse.org/bpi/>

within the United States Department of Justice) has worked to improve the courts' handling of cases involving domestic violence. This project has aimed at educating the judges on how their decisions play a crucial role in preventing domestic violence injuries and deaths. Travis⁸⁴ evaluated family violence training programmes for law enforcement and other justice system staff conducted by the United States Department of Justice from 1986 to 1992. The study concluded that the training programmes had brought more uniform and progressive domestic violence policies in participating jurisdictions, improved attitudes and services to victims and enhanced working relationship amongst agencies.

- (b) Canada: The Department of Justice Canada⁸⁵ (2003) recognised that the response of criminal justice system personnel in cases of family violence was crucial. These personnel included police, crown attorneys, judges, probation officers, victim-witness assistance personnel, correctional personnel and others who play a key role in providing services and supports. The Department is developing resources to promote the awareness of family violence issues, knowledge of the dynamics of family violence and an understanding of best practices in cases of family violence.
- (c) New Zealand: The Te Rito New Zealand Family Prevention Strategy highlights the importance of training criminal justice personnel to be aware of and understand family violence issues.⁸⁶
- (d) UK: The Crown Prosecution Service has prepared and trained its staff for dealing with domestic violence cases. The government has proposed specially trained and dedicated police, prosecutors and judges to be used in specialist domestic violence courts.⁸⁷

⁸⁴ Travis Jeremy, Director (1995). *Evaluation of Family Violence Training Programmes. Research Review*. National Institute of Justice, Office of Justice Programmes. Washington D.C.: U.S. Department of Justice.

⁸⁵ Department of Justice Canada (2003). *Family Violence*. CA: Department of Justice. <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

⁸⁶ Ministry of Social Development. (2002). *TE RITO New Zealand Family Violence Prevention Strategy*. NZ: Ministry of Community Development. <http://www.msd.govt.nz>

⁸⁷ Home Office. (2003). *Safety and Justice: The Government's Proposals on Domestic Violence*. June 2003. UK: Home Office.

Home Office (2003). *Summary of responses to "Safety and Justice: The Government's Proposals on Domestic Violence"*. November 2003. UK: Home Office

Legal measures

- 5.26 Within the criminal justice systems across the countries reviewed, there were a number of supporting policies and measures to make the system respond to domestic violence effectively. These include:
- (a) Mandatory reporting;
 - (b) Mandatory arrest/pro-arrest, mandatory charging and prosecution;
 - (c) Specialised domestic violence courts with advocates; and
 - (d) Domestic violence homicide/fatality reviews.
- 5.27 The experiences in Canada and the UK show how these legal measures interact to ensure effective criminal justice responses and BIPs.

Canadian experience

- 5.28 The Minister of Justice and Solicitor General issued a public statement on the investigation and prosecution of spousal violence in 1983. Mandatory reporting, charging and prosecution policies were developed.⁸⁸ These measures aimed at removing victims from responsibility for initiating criminal charges and ensuring that police investigators gave priority to remove cases that involved spousal violence. The Mandatory Charge Policy was enacted in Yukon in 1983.
- 5.29 Family violence courts were established in Winnipeg in 1990 and Ontario in 1997.⁸⁹ Since 1990, the Winnipeg Family Violence Court has handled cases of spousal, child and elder abuse in Winnipeg, the first jurisdiction in Canada to develop a specialised Family Violence Court for family violence cases. The goals were to achieve:⁹⁰
- (a) Expeditious court processing;

⁸⁸ Tim Roberts Focus Consultants. (1996). *Working Document: Spousal Assault and Mandatory Charging in the Yukon: Experiences, Perspectives and Alternatives*. Department of Justice, Canada.

⁸⁹ Ursel E.Jane. (1994). *The Winnipeg Family Violence Court*. Service Bulletin. Statistics Canada. <http://www.hc-sc.gc.ca/hppb/familyviolence/winnipegfamily.pdf>
Ursel E Jane. (2000). Winnipeg Family Violence Court Report. Statistics Canada (2000). Family Violence Courts. *Family Violence in Canada: A Statistical Profile 2000*. Canada: Canadian Centre for Justice Statistics. (Ottawa: Statistics Canada: Cat no. 85-224-XIE) <http://www.statcan.ca/english/freepub/85-224-XIE/0000085-224-XIE.pdf>

⁹⁰ Ursel E.Jane. (1994). *The Winnipeg Family Violence Court*. Service Bulletin. Statistics Canada.

- (b) Rigorous prosecution; and
- (c) More appropriate sentencing than that of non-specialised courts.

5.30 Five major strategies were used to achieve those goals:

- (a) A pro-arrest policy known as the Zero Tolerance Policy;
- (b) A women's advocacy and child victim witness programme for victims of family violence;
- (c) A specialised prosecutorial unit of eleven crown attorneys in Winnipeg;
- (d) Specially designated court rooms and dockets for intake, screening court and trials; and
- (e) A special unit in the probation office to deliver court mandated treatment programmes.

5.31 Over two years of operation, the Court achieved the following goals:

- (a) A three-month average processing time;
- (b) A 150% increase of charges in spousal abuse cases from 1302 to 3316, a 89% increase in child abuse charges from 371 to 702 and a 138% increase in elder abuse charges from 26 to 62 from 1990 to 1992; and
- (c) Imposed more appropriate sentences for family violence cases that proceeded to sentence; court mandated treatment was a condition on 53% of all persons sentenced in the Family Violence Court.

5.32 Related legislative reforms were enacted to improve the criminal justice legal framework for addressing family violence in Canada.⁹¹ These included:

- (a) Increasing the maximum penalty for criminal harassment;
- (b) Creating a new anti-stalking offence of criminal harassment;
- (c) Facilitating victims' participation in the criminal justice process by banning the publication of their identities and making the application of peace bonds (protective orders) easier; and
- (d) Police and others could apply on behalf of a person at risk of harm for a peace bond.

⁹¹ Department of Justice Canada (2003). *Family Violence*. CA: Department of Justice. <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

- 5.33 Ursel⁹² observed that after seven years the sentencing pattern in the Family Violence Court had been consistent. About 62% of all convicted offenders had supervised probation as one of their sentencing outcomes. About 68% of those who received a supervised probation sentence were required to join batterers' treatment groups. All provincial institutions operated batterers' treatment groups.
- 5.34 In 1997, a pilot Domestic Violence Court was established in Toronto with an aim to:
- (a) Provide better support to victims of domestic abuse throughout the criminal justice process;
 - (b) Prosecute domestic violence cases more effectively;
 - (c) Hold offenders accountable for their behaviour if they were found guilty of a domestic violence related offence.
- 5.35 McCallen (2000) found that by February 2000, 69% of cases resulted in a guilty disposition.⁹³ He also showed that the Coordinated Prosecution Component with the Court ensured that domestic violence cases were prosecuted more effectively. The ability to proceed with a prosecution had previously depended largely on the victim's testimony. Because of fear or intimidation, victims often recanted their original statements to the police or refused to testify. This often necessitated the withdrawal of charges by the prosecution, because without the victim's testimony there might be no reasonable prospect of conviction.
- 5.36 The specially trained domestic violence crown prosecutors relied on the "enhanced evidence" to proceed with the prosecution, particularly if the victim recanted the original statement made to police. The Police obtained:
- (a) 911 tapes;
 - (b) Medical reports;
 - (c) Photographs of injuries;

⁹² Ursel E Jane. (2000). Winnipeg Family Violence Court Report. Statistics Canada (2000). Family Violence Courts. *Family Violence in Canada: A Statistical Profile 2000*. Canada: Canadian Centre for Justice Statistics. (Ottawa: Statistics Canada: Cat no. 85-224-XIE) <http://www.statcan.ca/english/freepub/85-224-XIE/0000085-224-XIE.pdf>

⁹³ McCallum T. (2000). Ontario Domestic Violence Courts Initiative. *Family Violence in Canada: A Statistical Profile 2000*. Canada: Canadian Centre for Justice Statistics. (Ottawa: Statistics Canada: Cat no. 85-224-XIE) <http://www.statcan.ca/english/freepub/85-224-XIE/0000085-224-XIE.pdf>

- (d) Interviews with family and neighbours; and
- (e) Audio- and/or video-taped victim statements.

5.37 The Police also laid charges where there were reasonable grounds to believe that the offender had breached the conditions of bail or probation.

The UK experience

5.38 The Civil Law of the UK required the courts to attach power of arrest to an occupation order and to strengthen the Children Act in 1989 to enable the courts to make emergency protection orders. A Victim Support Victim Service is also available to support victims. The UK has adopted a comprehensive and coordinated criminal justice response.⁹⁴

5.39 From 2001 to 2003, the Crown Prosecution Service in England piloted five types of specialised domestic violence courts.⁹⁵ In 2003, a number of legal remedies were adopted in the criminal justice system to enhance its effectiveness in providing safety for victims within a multiagency framework that works with victims, perpetrators and their children. “Safety and Justice: the Government’s proposals on Domestic Violence”⁹⁶ addressed issues of prevention, protection and support. The changes included:

- (a) Implementing the following legislative measures in the Domestic Violence, Crime and Victims Bills.
 - (i) Make common assault an arrestable offence.
 - (ii) Criminalise breaches of non-molestation orders made under the Family law Act 1996 to allow the police to arrest for breach; and rationalise the availability of orders to harmonise the position of

⁹⁴ Home office (2000). *Domestic Violence: Break the Chain - Multi-Agency Guidance for Addressing Domestic Violence*. London: Home Office. <http://www.homeoffice.gov.uk/docs/mag.html>

⁹⁵ Cook D., Burton M., Robinson A. & Valley C. (2004). *Evaluation of Specialist Domestic Violence Courts / Fast Track Systems*. Cardiff University, University of Leicester, University of Wolverhampton, Department for Constitutional Affairs, *Race Unit of Criminal Justice System & Crown Prosecution Service*. UK: Crown Prosecution Service. <http://www.cps.gov.uk/publications/docs/specialistdvcourts.pdf>

⁹⁶ Home Office. (2003). *Safety and Justice: The Government’s Proposals on Domestic Violence*. UK: Home Office.

Home Office (2003). *Summary of responses to “Safety and Justice: The Government’s Proposals on Domestic Violence*. UK: Home Office.

same-sex couples and extend protection to couples who have never cohabited or have never been married

- (iii) Extend the availability of restraining orders under the protection from the Harassment Act 1997 to cover all offences.
- (iv) Set out how and when reviews for domestic violence homicides should take place.
- (v) Extend restraining orders when a person is not convicted of a criminal charge but the Court considers that it is necessary to make an order to protect the victim.

- (b) Enhance evidence gathering by developing and using risk assessment tools to prompt police officers to gather and present more appropriate evidence.
- (c) Use specialist courts to deal with domestic violence cases.
- (d) Consider the use of independent advocates in supporting victims through the criminal justice system, and provide wider support to victims in dealing with the many statutory agencies that might be involved in their cases.

5.40 In November 2001 the Crown Prosecution Service issued a revised policy on prosecuting cases of domestic violence, which focused on safety, support and information for victims, a closer civil/criminal interface and, whenever possible, constructing cases based on evidence other than that of the victim. The Service established a national network of Domestic Violence Coordinators to help implement this policy.

5.41 The UK government revealed that victims welcomed these supporting measures and were highly satisfied with the advice, support and information supported by lay advocates and others in the voluntary and community sectors, which pointed to a link between supported victims and their participation in the criminal justice process. Special measures were available for child witnesses and it was believed that advocates for adult victims of domestic violence would make a significant impact on their willingness to testify.

5.42 The government also proposed a number of non-legislative measures in the justice system in response to domestic violence cases. These included:

- (a) Educating children and young people;

- (b) Running awareness-raising campaigns;
- (c) Running a 24-hour free phone helpline;
- (d) Researching domestic violence and substance misuse;
- (e) Piloting routine ante-natal questioning for domestic violence;
- (f) Promoting good practice amongst health professionals to intervene for patients who are experiencing domestic violence;
- (g) Developing closer policy and service delivery links with the government and others on child protection;
- (h) Working with public private sector employers and unions to address workplace support to victims and bring offenders to justice; and
- (i) Developing programmes of work to address the behaviour of offenders, including looking at the benefits of early intervention.

5.43 It was found that all criminal justice interventions in the UK had positive effects on the behaviour of men who were convicted of violence against their female partners.⁹⁷ The provision of community-based and prison-based programmes makes sure that perpetrators receive education in changing violent behaviour. A criminal justice system provides a strong monitoring authority to stop domestic violence.

5.44 In sum, a strengthened and coordinated mechanism in launching a policy to stop violence cannot succeed without criminal justice support. The advantages of such support include:

- (a) Strengthening protection of victims' safety;
- (b) Holding the perpetrators accountable for their violence;
- (c) Increasing societal awareness that domestic violence is a crime and unacceptable to society;
- (d) Removing victims' responsibility in making the charge;
- (e) Shortening court processing time; and
- (f) Providing alternative sentencing options beyond punishment by making an intervention programme mandatory.

5.45 In 2000, a child named Victoria Climbe was abused to death. The Secretary of State for Health and the Secretary of State for the Home Department nominated a judge to conduct the statutory inquiry into the death in 2001. The

⁹⁷ Dobash Russell P, Dobash R Emerson & Lewis Cavanagh (1996). *Research Evaluation of Programmes for Violent Men*. Edinburgh: Scottish Office Central Research Unit.

report of the Victoria Climbe Inquiry⁹⁸ was published in 2003. After the release of the report, the Prime Minister received a paper entitled “Every Child Matters”⁹⁹ from the Chief Secretary to the Treasury and launched a number of measures to enhance the protection of children.

- 5.46 The UK government proposed a Domestic Violence, Crime and Victims Bill [HL] in December 2003 to establish and conduct domestic homicide reviews.

Establishment and conduct of reviews

In this section “domestic homicide review” means a review of the circumstances in which a person aged 16 or over has died as a result of violence, abuse or neglect from:

- (a) a person to whom he was related or with whom he was or had been in an intimate personal relationship, or
- (b) a member of the same household as himself, held with a view to identifying the lessons to be learnt from the death.

- 5.47 Under the proposed Crime and Victim Bill, the Secretary of State may in a particular case direct a specified person or body to establish or participate in a domestic homicide review. The specified person may include chief officers of police, or those in local authorities, local probation boards, health authorities and primary care trusts.

Issuance of mandatory orders

- 5.48 Mandatory orders were issued to perpetrators of domestic violence by the courts to enforce a BIP. The order could be made at any stage throughout criminal proceedings in different countries or states.

USA

- 5.49 In Duluth, Minnesota, the mandatory order to attend a BIP can be made when the offender pleads guilty at the arraignment court. In case the alleged assailant pleads not guilty, participation in a counselling programme is issued

⁹⁸ The Secretary of State for Health and The Secretary of State for the Home Department (2003). *The Victoria Climbe Inquiry: Report of an Inquiry by Lord Laming*. UK: Crown.

⁹⁹ The Chief Secretary to the Treasury (2003). *Every Child Matters*. UK:Crown

through the Order of Protection while awaiting trial to ensure the protection of victims. An order for a BIP can be a condition of bail or pre-trial release, pre-sentence and probation. If the assailant consistently fails to attend the programme, then programme staff can request a revocation of probation hearing or a civil court review hearing. The Court might, in probation cases, impose all or some of the original jail sentence and again require the assailant to complete the programme upon release from jail. The assailant can be found in contempt of court, incarcerated, and given a choice of completing the programme or remaining in jail.¹⁰⁰

- 5.50 Although there is no federal legal regulation on mandatory counselling, there are six state laws, e.g. in Duluth, Minnesota, and Quincy, Massachusetts, that provide mandatory counselling services. In Duluth, the mandatory BIP is made under the Domestic Abuse Act (Chapter 518B.01). Under Chapter 518B.02 ‘Domestic abuse counselling programme or educational programme required’, the Court will order that as a condition of the stayed sentence, the offender must participate in and successfully complete a domestic abuse counselling or education programme. (See Appendix 11).

Singapore

- 5.51 In Singapore, a counselling order is made by the Family Court under Section 65(5)(b) of the Women’s Charter (Amendment) Bill 1996 (Chapter 353)¹⁰¹ which was passed in 1961 to protect the rights of women and girls. The Order for a perpetrator and/or victim or their children to attend mandatory counselling is made by the minister of the Ministry of Community Development, Youth and Sports or as directed by the Family Court.¹⁰² (See Appendix 11).
- 5.52 The Family Court can issue a Provisional Counselling Order together with a Personal Protection Order for those involved in family violence to attend a compulsory counselling programme. The counsellors at the Ministry of Community Development, Youth and Sports or a counselling agency conduct a pre-counselling assessment, and the results are reported to the Family Court.

¹⁰⁰ Pence Ellen (1996) *Coordinated Community Response to Domestic Assault Cases: A Guide for Policy Development (Revised)*. Minnesota: Minnesota Programme Development, Inc.

¹⁰¹ Women’s Charter. Singapore. <http://statutes.agc.gov.sg/>

¹⁰² The Women’s Charter. <http://www.gov.sg>.

The Court, based on the assessment, determines if a Mandatory Counselling Order should be issued and periodic review scheduled.¹⁰³

- 5.53 Failure to attend the counselling sessions scheduled by the counselling agency will constitute a breach of the Counselling Order and will be deemed as contempt of court punishable by law.

Australia

- 5.54 Under Section 5(1)(g), Restrictions in order, in the Crimes (Family Violence) Act 1987, an order might direct the defendant to participate in prescribed counselling.

- 5.55 In February 1999, the New South Wales Minister for Women announced government funding for the establishment of a 12-month pilot men's behaviour change programme. Participation in the programme was to be ordered post conviction for domestic violence offences. The programme commenced in July 2001.

- 5.56 In South Australia, there was a pilot programme for post sentencing and another programme operated during the sentencing process.¹⁰⁴ These pilot programmes have been reviewed and funding will continue until June 2005. The Northern Territory, Western Australia and the Australian Capital Territory have also provided court-directed programmes for men who use violence towards family members in their jurisdictions.¹⁰⁵

New Zealand

- 5.57 In New Zealand, a Counselling Order can be made to a respondent or associated respondent under the Domestic Violence Act 1995, section 32(1)&(2), as attached to a Personal Protection Order issued by the Family Court.

¹⁰³ Ministry of Community Development and Sports (2003). [What is Mandatory Counselling?](#) Singapore: Ministry of Community Development.

http://www.mcys.gov.sg/MCDSFiles/Resource/Materials/Mandatory_Counselling.pdf

¹⁰⁴ Commonwealth of Australia (2000). [Key Findings on Working with Men](#). Partnership Against Domestic Violence. Au: Commonwealth of Australia.

¹⁰⁵ Commonwealth Office of the Status of Women (2001). Taking Responsibility: A framework for developing best practice in programs for men who use violence toward family members at http://padv.dpvc.gov.au/projects/taking_responsibility.pdf

Canada

- 5.58 Canada has no federal law on the issuance of mandatory orders. Six jurisdictions have implemented civil legislation to provide protection to persons at risk of family abuse: Saskatchewan (in 1994), Prince Edward Island (in 1996), Yukon (in 1997) Alberta (in 1998), Manitoba (in 1999), Nova Scotia (in 2003) and Ontario (in 2000). In Alberta, under the Protection Against Family Violence Act, Sect 4(2)(k), the Court can require the respondent to receive counselling. See Appendix 11.
- 5.59 The Family Violence Court can issue an order to treatment for the offender. Court mandated treatment is a condition on 53% of all persons sentenced by Family Violence Court. Attendance at and completion of a batterers treatment course is a condition of one-half of the mandated cases with alcohol treatment designated.¹⁰⁶ The cumulative effect of these conditions has been to provide a much more intensive programme for the monitoring and treatment of offenders than was the case before court specialisation.

The UK

- 5.60 Domestic Violence Perpetrator Programmes are one of the sentencing options made by the five specialist domestic violence courts in Cardiff, Derby, Leeds, West London and Wolverhampton.¹⁰⁷ Referrals to perpetrator programmes vary across the sites. They are a common part of sentencing in Leeds, with the West Yorkshire Probation Service piloting the Duluth Domestic Violence Pathfinder Programme, which involves the victim if she wishes. However, referrals in other areas might well depend on the availability of local programmes. The West London Specialist Domestic Violence Court aims to increase the number of perpetrators sent to violence prevention programmes.
- 5.61 In general, mandatory orders for perpetrators of domestic violence to participate in the BIP can be made at various stages in the criminal justice process. They can be amongst the sentencing options or a condition attached to a order of protection/personal protection order, bail, pre-trial release, pre-sentence, post conviction order, probation order or jail sentence.

¹⁰⁶ Ursel E.Jane. (1994). *The Winnipeg Family Violence Court. Service Bulletin*. Statistics Canada. <http://www.hc-sc.gc.ca/hppb/familyviolence/winnipegfamily.pdf>

¹⁰⁷ Home Office. (2003). *Safety and Justice: The Government's Proposals on Domestic Violence*. June 2003. UK: Home Office.

Consequences of breaching mandatory order

5.62 For mandatory counselling programmes, the breaching of an order to attend is reported to the Court. In the USA, the consequence is likely to be imprisonment or re-starting the programme¹⁰⁸. In New Zealand, the police may arrest those who fail to attend a stopping violence programme by order. A maximum penalty of six months in prison or a fine of \$5000 is imposed. If three offences are committed within three years, then the penalty is increased to two years in prison¹⁰⁹.

Summary

5.63 There seems to be no strict rule about the best time to issue a mandatory order to participate in a programme for batterers; it depends on the individual case. The administrations reviewed believe that it is important to have flexibility and awareness. Using the mandatory order for the maximum benefit is not only holding the perpetrator accountable for the violence used but also increasing victims' safety at the earliest possible stage was the utmost crucial factor. Opening more options in the legal process to make perpetrators participate in the BIP should be the guiding principle in early intervention.

PROGRAMME IMPLEMENTATION

Programme objectives

5.64 The programmes for perpetrators of domestic violence in the six countries shared clear common goals of:

- (a) Reducing the re-offending rate;
- (b) Increasing victim safety;
- (c) Holding batterers accountable for the violence used; and
- (d) Stopping their abusive behaviour.

¹⁰⁸ Ibid.

¹⁰⁹ Police, New Zealand. [What is Domestic Violence?](http://www.police.govt.nz/safety/domesticviolence.php) NZ: Police. <http://www.police.govt.nz/safety/domesticviolence.php>

- 5.65 Mandatory programmes offered an alternative sentencing option to judges in removing batterers' violent behaviour.¹¹⁰

Programme approaches

- 5.66 Healey et al reviewed thirteen BIPs in five states of the USA, and 80% of them were mandatory programmes. Most of the BIPs reviewed were based on a feminist educational model such as the "Duluth Model" of Duluth, Minnesota. The EMERGE model of Quincy, Massachusetts blended feminist educational approaches with more intensive group work concerning relationships. The AMEND model of Denver, Colorado, used feminist educational topics as a basis for an in-depth intervention addressing batterer psychology and moral development.¹¹¹

Feminist psycho-educational approach: The Duluth Curriculum

- 5.67 The Duluth Curriculum uses a feminist psycho-educational approach with cognitive-behavioural techniques. It involves gender analysis of power and control issues, which reflects the patriarchal organization of society. Violence is a means of maintaining male power in the family. Feminist programmes target raising consciousness about society's sex role conditioning and how it guides male behaviour. A model of egalitarian relationships based on trust instead of fear is presented.ⁱ This emphasizes the importance of a coordinated community response to battering and places battering within a broader context of the range of controlling behaviour. The curriculum is taught in classes that emphasize the development of critical thinking skills around the following eight themes:

¹¹⁰ Strategic Partners Pty Ltd & Research Centre for Gender Studies (1999). *Current Perspectives on Domestic Violence: A review of national and international literature*. Commonwealth of Australia. http://www.padv.dpmc.gov.au/projects/curr_persp_dv.pdf

Ministry of Social Development. (2002). *TE RITO New Zealand Family Violence Prevention Strategy*. NZ: Ministry of Community Development. <http://www.msd.govt.nz>

Ministry of Community Development and Sports (2003). *What is Mandatory Counselling?*

Singapore: Ministry of Community Development.

http://www.mcds.gov.sg/MCDSFiles/Resource/Materials/Mandatory_Counselling.pdf

Department of Justice Canada (2003). *Family Violence*. CA: Department of Justice. <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

The Office On Women's Health, National Women's Health Information Center (2003). *Violence Against Women*. <http://www.4woman.gov/owh/violence.htm>

¹¹¹ Healey Kerry, Smith Christine, & O'Sullivan Chris. (Feb 1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. [National Institute of Justice, Office of Justice Programmes. U.S. Department of Justice.](http://www.ojp.usdoj.gov/nij/) <http://www.ojp.usdoj.gov/nij/>

- (a) Non-violence;
- (b) Non-threatening behaviour;
- (c) Respect;
- (d) Support and trust;
- (e) Accountability and honesty;
- (f) Sexual respect;
- (g) Partnership; and
- (h) Negotiation and fairness.

5.68 However, feminist approaches have been criticized for the exclusion of traits in the individual, such as growing up abused.¹¹² Under the belief in institutional gender stereotypes, all men are thought to be abusive. Feminism fails to explain why many men are not violent in other relationships.¹¹³ Nevertheless, power and control is the core issue addressed in most of the BIPs.

Cognitive behavioural and feminist educational Approach: EMERGE and AMEND

5.69 In general, the EMERGE and AMEND models are largely based on a cognitive behavioural approach and a feminist educational approach with intensive group work techniques.

5.70 The first BIP was developed in Boston, Massachusetts in 1977 by David Adams, the founder of EMERGE.¹¹⁴ It adopted group counselling in addition to education and skills learning. It targeted physical, emotional and psychological abuse for reform. Exercises were used to develop respect and empathy for the victim. The topics covered by the EMERGE model included:

- (a) Defining domestic violence;
- (b) Negative versus positive self-talk;
- (c) Effect of violence on women: quick fixes versus long-term solutions;

¹¹² Dutton D. (1994). "Patriarchy and Wife Assault: The Ecological fallacy". *Violence and Victims* 9(2): 167-182.

¹¹³ Healey Kerry, Smith Christine, & O'Sullivan Chris. (Feb 1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. [National Institute of Justice, Office of Justice Programmes. U.S. Department of Justice](http://www.ojp.usdoj.gov/nij/). <http://www.ojp.usdoj.gov/nij/>

¹¹⁴ Carbon Susan B. Judge (2002). *Batterers Intervention Programmes*. Presentation on International Conference on Prevention of Domestic Violence 2002 at Taipei, Taiwan on November 22, 2002. (2002 年家庭暴力防治國際研討會) http://www.moi.gov.tw/div6/gov/violence0010012002_年家暴暴力防治國際研討會實錄.doc

- (d) Psychological, sexual and economic abuse;
- (e) Abusive versus respectful communication;
- (f) Effects of partner abuse on children;
- (g) Batterer responsibility;
- (h) Alternatives to violence; and
- (i) Development of individualised goals based on current and past abuse.

5.71 The cognitive behavioural approach focuses on the conscious rather than the unconscious, and the present rather than the past to help batterers function better by modifying how they think and behave. The approach is compatible with a criminal justice response by addressing and changing the violent acts, without trying to solve issues of gender inequality in a larger system or delve into deep-seated psychological problems. The discussion in the group on violence issues is didactic and confrontational.¹¹⁵

5.72 At AMEND, feminist educational topics are used as the basis for in-depth intervention addressing batterer psychology and moral development. It takes a multi-modal approach to batterer intervention centered on group therapy, and also applies techniques of individual counselling or couples work.¹¹⁶ The topics covered are:

- (a) The Feminist Power and control theory;
- (b) Violence is a crime;
- (c) Violence and abuse are choices and a victim is not responsible for the violence;
- (d) Teaching behaviour change to stop violence and abuse, e.g. anger and conflict management techniques, relaxation techniques; and addressing psychological features of the batterer's problem;
- (e) Ending violence is a long-term process, ranging from one to five years;
- (f) Ending violence is complex and required multi-modal intervention; and
- (g) Treatment of batterers requires special skills and training.

5.73 The Duluth curriculum, EMERGE and AMEND, though with individual differences, shared cognitive-behavioural techniques.

Cognitive-behavioural techniques

¹¹⁵ Ibid.

¹¹⁶ EUROWC. <http://www.euowrc.org>

- 5.74 Cognitive-behavioural techniques help batterers to recognise how they stoke their own rage through irrational “self-talk”, the internal dialogue that the batterers use to build themselves up to an abusive incident. Examining thoughts and feelings that preceded the abuse helps the batterers to realise that they do not just lose their temper and build up negative thoughts that justify the use of violence. Cognitive-behavioural techniques target three elements:
- (a) What the batterer thinks about before an abusive incident;
 - (b) How the batterer feels, physically and emotionally, as a result of these thoughts; and
 - (c) What the batterer does, such as yelling and throwing things, which builds up to violent behaviour.

Summary

- 5.75 No single programme approach fits all because batterers are heterogeneous: There are different theoretical explanations for men’s use of abusive, violent and controlling behaviour towards their female partners. The approaches could be roughly divided into the socio-cultural, gender-based feminist approach, the individual psychological approach and the systemic approach. These approaches respectively deal with gender inequality in a specific socio-cultural context, power and control issues, and intra-individual and interpersonal problems. There is no absolute way of discerning which approach is the most effective.¹¹⁷
- 5.76 There were different programmes in the USA, Australia, Canada and New Zealand designed for perpetrators from different cultural backgrounds. In the USA, Australia and Canada, there were programmes developed for gay, lesbian, disabled persons and the elderly.¹¹⁸ Apart from mandatory

¹¹⁷ Home Office (2003). *Government Policy Around Domestic Violence*. London: Home Office
Mullender Audrey & Burton Sheila (2000). [Reducing Domestic Violence...What Works? Perpetrator Programmes](http://www.homeoffice.gov.uk/docs/perpprog.pdf). Crime Reduction Research Series. London: Home Office Research, Development and Statistics Directors. <http://www.homeoffice.gov.uk/docs/perpprog.pdf>
Austin Juliet & Dankwort Juergen (August 1998). [A Review of Standards for Batterer Intervention Programmes. \(Revised\)](http://caleplus.lwa.gov.au/home.htm). Violence Against Women Online. <http://caleplus.lwa.gov.au/home.htm>

Gondolf E.W. (1997). A multi-site evaluation of batterer intervention systems: a summary of preliminary findings. Indiana, P.A.: Mid-Atlantic Addiction Training Institute.

¹¹⁸ National Clearinghouse on Family Violence. (2002). [Canada's Treatment Programmes for Men who Abuse their Partners](http://www.hc-sc.gc.ca/hppb/familyviolence/pdf/2002-menwhoabuse.pdf). Canada: Ministry of Health. <http://www.hc-sc.gc.ca/hppb/familyviolence/pdf/2002-menwhoabuse.pdf>

programmes, there were programmes provided for voluntary and self-referred men in these countries. Recently, in Duluth, USA, a programme named “Crossroads” was developed for victims of ongoing domestic abuse who were charged with criminal offences against their partners. It provided participants with an opportunity to address their use of violence within the context of their victimisation¹¹⁹.

- 5.77 The gender-based, cognitive behavioural approach fits most: Although there are a variety of approaches to BIPs, a shared belief in the countries studied was that domestic violence is a gender issue about power and control, and cognitive-behavioural techniques are thus widely used.¹²⁰
- 5.78 Matching the typology of batterers to BIPs: Holtzworth-Munroe and Stuart¹²¹ presented a batterer typology based on the severity and frequency of the violence, and the psychopathology or personality disorders of batterers. Batterers were classified into family-only batterers, a borderline-dysphoric group and a general anti-social group.
- 5.79 A number of studies have been conducted to match the types of batterers and the programme approaches used. Programmes that are based on the psychopathology of batterers and criminal justice based programmes have been gaining popularity.¹²²
- 5.80 White and Gondolf¹²³ studied a random sample of 100 perpetrators based on MCMI profiles. They found that the prevailing gender-based, cognitive behavioural approach was appropriate for most of the men in the sample who had been referred to batterers’ programmes. There was a small group of men

Healey Kerry Murphy, Smith Christine, & O’Sullivan Chris. (Feb 1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. [National Institute of Justice, Office of Justice Programmes, U.S. Department of Justice](http://www.ojp.usdoj.gov/nij/JusticeProgrammes). <http://www.ojp.usdoj.gov/nij/>

¹¹⁹ Duluth City Attorney’s Office (2003). *Crossroads Program Prosecution Guidelines. Training material distributed on the Training on Building a Coordinated Community Response to Domestic Violence*, organized by Domestic Abuse Intervention Project, October 2003. MN: Duluth City Attorney’s Office.

¹²⁰ Ibid.

¹²¹ Holtzworth-Munroe, A., & Stuart, G. L. (1994). “Typologies of male batterers: Three subtypes and the differences among them”. *Psychological Bulletin*, 116(3), 476-497.

¹²² Ibid.

Healey Kerry Murphy, Smith Christine, & O’Sullivan Chris. (1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. [National Institute of Justice, Office of Justice Programmes, U.S. Department of Justice](http://www.ojp.usdoj.gov/nij/JusticeProgrammes). <http://www.ojp.usdoj.gov/nij/>

¹²³ White, R.J. & Gondolf, E.W. (2000). “Implications of Personality Profiles for Batterer Treatment”. *Journal of Interpersonal Violence*, 15 (2), p.467-489.

with severe personality or psychopathological problems that needed additional psychiatric intervention.

Programme content

5.81 In line with the belief that domestic violence is an issue of power and control against women, which is a product of the interaction of socio-cultural systems, mandatory programmes usually adopt content that is related to the cognitive-behavioural and gender approaches. Programme content can include:

- (a) Understanding violence (physical, emotional, intimidation and isolation);
- (b) Confrontation of beliefs and values about violence;
- (c) Male privileges for changing their attitudes towards their partners;
- (d) Accountability and responsibility;
- (e) Sexual respect;
- (f) Male privilege;
- (g) Coercion and threats;
- (h) Power and control; and
- (i) Victim safety.

5.82 Holding batterers accountable for the violence that they use is the main theme of BIPs.¹²⁴ There are programmes for batterers in Singapore¹²⁵ and Canada¹²⁶ that include anger and stress management, communication skills and empathy development. However, Mullender and Burton¹²⁷ argued that managing anger, reducing alcohol misuse and working with couples and families were not effective in stopping violence. These programme elements convey a misleading message that victims should share partial responsibility for domestic violence that might further place women in danger and discourage them from seeking help.

¹²⁴ Strategic Partners Pty Ltd & Research Centre for Gender Studies (1999). *Current Perspectives on Domestic Violence: A review of national and international literature*. Commonwealth of Australia. http://www.padv.dpmc.gov.au/projects/curr_persp_dv.pdf

¹²⁵ Ministry of Community Development and Sports (2003). *What is Mandatory Counselling?* Singapore: Ministry of Community Development. http://www.mcds.gov.sg/MCDSFiles/Resource/Materials/Mandatory_Counselling.pdf

¹²⁶ National Clearinghouse on Family Violence. (2002). *Canada's Treatment Programmes for Men who Abuse their Partners*. Canada: Ministry of Health. <http://www.hc-sc.gc.ca/hppb/familyviolence/pdf/2002-menwhoabuse.pdf>

¹²⁷ Mullender Audrey & Burton Sheila (2000). *Reducing Domestic Violence...What Works? Perpetrator Programmes*. Crime Reduction Research Series. London: Home Office Research, Development and Statistics Directors. <http://www.homeoffice.gov.uk/docs/perpprog.pdf>

Pre-intervention assessment

5.83 As batterers are a heterogeneous group, not all perpetrators will benefit from community-based BIPs. Pre-intervention risk assessment and the psycho-social assessment of batterers is necessary to make appropriate screening to select the most appropriate programme model. Australia and Canada piloted prison-based programmes for perpetrators and identified alcohol and substance abuse as the prominent risk factors of violence. Isolated alcohol and substance abuse treatment was found to be effective in stopping further violence.¹²⁸

Couple counselling

5.84 Couple counselling has been subject to a similar critique for inappropriately assigning the victims a share of the blame for the continuation of violence.¹²⁹ Couples therapy views men and women as equal participants in creating disturbances in the relationship.¹³⁰ Sonkin's study¹³¹ argued that couple or family interventions might be as effective as other forms of treatment, which suggests that there is a place for couples and family therapy either as the primary intervention or as an adjunct to other interventions. Couple counselling may be used when there is no violence and when respect has been established with a balanced distribution of power in the couple. The assessment of risks and sensitivity in the power relationship are essential in employing interventions, particularly couple counselling. Clear guidance and indicators on when to use conjoint interviewing is required. For instance, when:

- (a) Violence has stopped for 6-12 months;
- (b) A balanced power status between the couple is achieved;
- (c) The batterer has demonstrated positive progress at the BIP;
- (d) Safety is monitored; and

¹²⁸ Ibid.

¹²⁹ Babcock, J.C., and J.J. La Taillade. (2000). "Evaluating Interventions for men Who Batter". In J.P. Vincent and E.N. Jouriles (eds). *Domestic Violence: Guidelines for Research-Informed Practice*. Philadelphia: Jessica Kingsley Publishers.

¹³⁰ Ashcroft J., Daniels D. J. & Hart S. V. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* Special Report, National Institute of Justice. U.S. Department of Justice.

¹³¹ Sonkin D. J. (2000). *Domestic Violence: Court-Mandated Perpetrator Assessment and Treatment Handbook*. Online version. <http://www.daniel-sonkin.com>

- (e) Both parties show willingness with clear objectives in a co-joint session.

Victim safety

- 5.85 Victim safety is the primary concern in running BIPs. Policies on victims' contact and parallel programmes for enhancing victims' safety are widely adopted in Australia, the UK and the USA. The programme workers of BIP inform victims when their abusive partners or ex-partners start and complete a programme. Victims learn from the service agent about the perpetrators' progress to monitor if there is any further potential for danger.¹³²
- 5.86 Duluth, Minnesota, requires by law that the counsellor or facilitator of BIPs set policies on victim protection to:
- (a) Notify the victim of the circumstances if the offender is reported back to the Court or is removed from the programme;
 - (b) Notify the victim of the right not to provide any information;
 - (c) Inform the victim of the confidentiality of information;
 - (d) Provide the victim with referral information for support services;
 - (e) Warn a potential victim of imminent danger based on information provided by an offender or abusing party; and
 - (f) Coordinate with the Court, probation and corrections officers, battered women's and domestic abuse programmes, child protection services and other providers on promotion of victim safety and offender accountability.
- (See Appendix 11).

Programme duration

- 5.87 Mandatory programmes for perpetrators of domestic violence usually include at least 20 sessions, extended across 24 to 52 weeks with a follow-up period of

¹³² Strategic Partners Pty Ltd & Research Centre for Gender Studies (1999). *Current Perspectives on Domestic Violence: A review of national and international literature*. Commonwealth of Australia.

http://www.padv.dpmc.gov.au/projects/curr_persp_dv.pdf

Mullender Audrey & Burton Sheila (2000). *Reducing Domestic Violence...What Works? Perpetrator Programmes*. Crime Reduction Research Series. London: Home Office Research, Development and Statistics Directors. <http://www.homeoffice.gov.uk/docs/perpprog.pdf>

Edleson Jeffrey L. (1995). *Do Batterers' Programmes Work?* University of Minnesota and Domestic Abuse Project, Inc. Minnesota Center Against Violence and Abuse. <http://www.mincava.umn.edu/papers/battrx.htm>

6 to 24 months. Lengthy follow-up service could better monitor and sustain the effect.¹³³

- 5.88 In Canada, one programme provides 4 to 8 pre-sessions before going into the 16-session intervention programme.¹³⁴ In Australia, the BIPs last for 24 weeks or 54 hours. The follow up periods range from six to twelve months across the states and territories.¹³⁵ Mullender and Burton (2000)¹³⁶ reviewed BIPs in the UK, which lasted from 20 hours over 10 weeks to 120 hours over 48 weeks. The National Practitioners' Network¹³⁷ (1994) recommended programmes of 75 hours over 30 weeks, with a minimum of 50 hours over six months.
- 5.89 According to Austin and Dankwort's¹³⁸ national review in the USA, programme duration ranged from 12 to 52 weeks; most of the states' standards suggested 24 to 26 weeks programmes. Edleson¹³⁹ reviewed a number of batterers' programmes and concluded that the predominant format lasted from 10 to 36 sessions. Such programmes consisted of small groups of 5 to 15 men, which were highly structured and focused on teaching behavioural and attitudinal change. The leaders were most often, but not always, male.

Definition of success

- 5.90 A number of indicators are used in measuring BIP success. A study conducted by the National Institute of Justice in Florida and New York considered a

¹³³ Dobash Russell P, Dobash R Emerson & Lewis Cavanagh (1996). *Research Evaluation of Programmes for Violent Men*. Edinburgh: Scottish Office Central Research Unit.

¹³⁴ *Family Violence Prevention Programme*. (2003). <http://www.mamawi.com>

¹³⁵ Strategic Partners Pty Ltd & Research Centre for Gender Studies (1999). *Current Perspectives on Domestic Violence: A review of national and international literature*. Commonwealth of Australia. http://www.padv.dpmc.gov.au/projects/curr_persp_dv.pdf

¹³⁶ Mullender Audrey & Burton Sheila (2000). *Reducing Domestic Violence...What Works? Perpetrator Programmes*. Crime Reduction Research Series. London: Home Office Research, Development and Statistics Directors. <http://www.homeoffice.gov.uk/docs/perpprog.pdf>

¹³⁷ The National Practitioners' Network (1994). *Statement of Principles and Guidelines for Good Practice for Intervention Programmes Working with Men Towards Ending Their Violence and Abuse to Women Partners*. UK: Domestic Intervention Project.

¹³⁸ Austin Juliet & Dankwort Juergen (1998). *A Review of Standards for Batterer Intervention Programmes. (Revised)*. Violence Against Women Online. <http://caleplus.lwa.gov.au/home.htm>

¹³⁹ Edleson Jeffrey L. (1995). *Do Batterers' Programmes Work?* University of Minnesota and Domestic Abuse Project, Inc. Minnesota Center Against Violence and Abuse. <http://www.mincava.umn.edu/papers/battrx.htm>

reduction in violence to be a success.¹⁴⁰ Most programme effectiveness studies¹⁴¹ consider measuring the following aspects:

- (a) Increasing victims' sense of safety;
- (b) Stopping violence;
- (c) Reducing re-offence/recidivism; and
- (d) Reducing drop-out and increasing compliance.

5.91 These data are collected from victims' reports, batterers' self-reports, official records of re-offence and attendance at the mandatory BIP.

5.92 Source of measurement: Jackson¹⁴² suggested that using more than one source of data to measure the effect of a programme increased the validity of the findings. For instance, batterer's self-reports, victim reports and official records of re-arrest would be considered as other sources. However the sole use of official re-arrest records was problematic. Gondolf¹⁴³ revealed that official re-arrest records capture only those violations that reach the authorities, but there is evidence that batterers often avoided re-arrest by using psychological and verbal abuse. Batterer's self-reports were not a valid indicator of outcome, as they would be subjected to perpetrator denial and minimisation.¹⁴⁴

5.93 Upholding practical significance: Conceptually, "statistically significant" decreases in violent behaviour or increases in other types of behaviour that

¹⁴⁰ Jackson S., Feder L., Forde D.R., Davis R.C., Maxwell C.D. and Taylor B.G. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* National Institute of Justice Special Report. Washington D.C.: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

¹⁴¹ Edleson, J.L. & Syers, M. (1990). "The relative effectiveness of group treatments for men who batter". *Research in Social Work Research and Abstracts*, 26, 10-17.

Edleson, J.L. & Syers, M. (1991). "The effects of group treatment for men who batter: An 18-month follow-up study". *Research in Social Work Practice*, 1, 227-243.

Austin Juliet & Dankwort Juergen (1999). "The Impact of A Batterer's Program on Battered Women". *Violence Against Women*, 5(1), 25-42.

Gondolf E. W. (2000). "Mandatory Court Review and Batterer Program Compliance". *Journal of Interpersonal Violence*. 15 (4), 428-437. SAGE Publications.

Gregory, C., & Erez, E. (2002). "The Effects of Batterer Intervention Programs: The Battered Women's Perspective". *Violence Against Women*. Vol. 8(2), p. 206-232.

¹⁴² Jackson S., Feder L., Forde D.R., Davis R.C., Maxwell C.D. and Taylor B.G. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* National Institute of Justice Special Report. Washington D.C.: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

¹⁴³ Gondolf E.W. (1997). "Patterns of Reassault in Batterer Programs". *Violence and Victims*. 12 (4); 373-387.

¹⁴⁴ Ibid.

were not linked to violence could be used as criteria of success. However, this was heavily challenged by Edleson (1996)¹⁴⁵ who maintained that the “practical significance” for victims should be considered. That means, ending violent behaviour and physical and psychological threats of violence to battered women should be used as criteria of success. Programme success should be measured in terms of life improvement of the victims; otherwise the programmes should not be regarded as successful.¹⁴⁶

5.94 In this regard, the combination of the victims’ report and re-arrest are considered valid indicators of programme effectiveness. The primary outcome of perpetrators’ programmes can be best measured by victims’ report and re-arrest.¹⁴⁷ Mullender and Burton (2000) of the UK believed that a follow-up period of more than a year was needed, and that a longer period is almost certainly better.¹⁴⁸

Programme effectiveness

5.95 It was generally concluded that BIPs are at least modestly successful at preventing further physical abuse. The BIPs were generally significant in ending violent behavior.¹⁴⁹

¹⁴⁵ Edleson, J. L. (1996). “Controversy and change in batterers’ programs”. In J. L. Edleson & Z. C. Eisikovits (Eds.), *Future interventions with battered women and their families*. USA: Sage Publications, Inc.

¹⁴⁶ Eisikovits, Z. C., & Edleson, J. L. (1989). “Intervening with men who batter: A critical review of the literature”. *Social Service Review*, 63, 384-414.

¹⁴⁷ Edleson, J.L. & Syers, M. (1990). “The relative effectiveness of group treatments for men who batter”. *Research in Social Work Research and Abstracts*, 26, 10-17.

Edleson, J.L. & Syers, M. (1991). “The effects of group treatment for men who batter: An 18-month follow-up study”. *Research in Social Work Practice*, 1, 227-243.

Bennett Larry & Williams Oliver (Unpublished, 2003). *Controversies and Recent Studies of Batterer Intervention Programme Effectiveness*. National Electronic Network on Violence Against Women, Violence Against Women Online Resources. <http://www.vaw.umn.edu>

Mullender Audrey & Burton Sheila (2000). *Reducing Domestic Violence...What Works? Perpetrator Programmes*. Crime Reduction Research Series. London: Home Office Research, Development and Statistics Directors. <http://www.homeoffice.gov.uk/docs/perpprog.pdf>

¹⁴⁸ Mullender Audrey & Burton Sheila (2000). *Reducing Domestic Violence...What Works? Perpetrator Programmes*. Crime Reduction Research Series. London: Home Office Research, Development and Statistics Directors. <http://www.homeoffice.gov.uk/docs/perpprog.pdf>

¹⁴⁹ Gondolf E.W (2002). *Batterer Intervention Systems: Issues, Outcomes, and Recommendations*. Thousand Oaks, CA, Sage Publication

Saunders D (1996). “Feminist-cognitive-behavioural and process-psychodynamic treatments for men who batter: Interaction of abuser traits and treatment models”. *Violence and Victims*. 11, 393 - 414.

Bennett Larry & Williams Oliver (Unpublished, 2003). *Controversies and Recent Studies of Batterer Intervention Programme Effectiveness*. National Electronic Network on Violence Against Women, Violence Against Women Online Resources. <http://www.vaw.umn.edu>

5.96 Gondolf¹⁵⁰ highlighted the importance of evaluating the batterer intervention system including the coordinated community and legal responses, rather than focusing solely on batterer programmes. For instance, compliance in attending batterer programmes was a core factor in halting violence; therefore, the legal system's response to increased participation was imperative. The court should not only refer batterers to programs but also has to follow through their participation and attendance, communicate with agencies running BIPs and with victims.

(a) Increasing Victims Safety

5.97 Austin and Dankwort¹⁵¹ interviewed 25 women with partners participating in Canadian BIPs attached to a women's refuge. Three quarters of the respondents reported a sense of enhanced well-being after their partners' involvement. This was associated with increased positive self-esteem, feeling of empowerment and relief of burden in taking care of their partners.

5.98 Gregory and Erez¹⁵² found that a majority of the women reported positive outcomes from their partners' participation in BIPs in the USA. Fifty-five per cent of the women reported that their partners no longer used physical violence. However, over 75% reported fear and anxiety when their partners started the programme for fear of the men's anger being displaced to them. Thus, the authors suggested that supportive service should be provided to these women in a proactive manner, particularly, during the initial stage.

(b) Stopping Physical Violence/Reducing Re-offence or Recidivism

5.99 Edleson and Syers¹⁵³ revealed that by various interventions in the USA, 53% to 85% of men stopped their physically abusive behaviour after involvement

Rothman Emily F, Butchart Alexander & Cerda Magdalena (2003). *Intervening with Perpetrators of Intimate Partner Violence: A Global Perspective*. World Health Organization. <http://whqlibdoc.who.int/publications/2003/9241590491.pdf>

150 Gondolf E.W (2002). *Batterer Intervention Systems: Issues, Outcomes, and Recommendations*. Thousand Oaks, CA, Sage Publication.

151 Austin Juliet & Dankwort Juergen (1999). *The Impact of A Batterer's Program on Battered Women. Violence Against Women. Vol. 5(1)*, p.25-42.

152 Gregory, C., & Erez, E. (2002). "The Effects of Batterer Intervention Programs: The Battered Women's Perspective". *Violence Against Women. Vol. 8(2)*, p. 206-232.

153 Edleson, J.L. & Syers, M. (1990). "The relative effectiveness of group treatments for men who batter". *Research in Social Work Research and Abstracts*, 26, 10-17.

in the programmes. Programme evaluations from the UK and USA revealed that 50-90% of people who completed the programmes remained non-violent for follow-up periods ranging from 6 months to 3 years.

- 5.100 The largest-scale evaluation to date conducted by Gondolf¹⁵⁴ found that those who completed the programme were 67% less likely to physically re-assault their partners than those who dropped out of them, even considering demographic and behavioural factors. However, 72% were verbally abusive 15 months after completing a programme and were increasingly using verbal abuse in the years following programme completion. It was possible that some BIPs turned batterers into more skilful, verbal batterers. Thus, the BIPs should not emphasize solely on skill training like anger management skills but should also change the attitudes that support abusive behaviour.
- 5.101 Research studies of Gondolf, Edleson and Syers¹⁵⁵ mentioned that in stopping physical violence the programmes had achieved significant outcomes. The effectiveness in stopping verbal abuse was an area to be further studied.
- 5.102 The Centre for Disease Control¹⁵⁶ suggested the need to further study the interaction effects between the characteristics of the offender, the treatment programme and the criminal justice system in relation to treatment completion. Further research is needed to find out whether the elimination of verbal abuse should require a longer time of intervention for changing batterers' values and beliefs not only in using physical violence, but also in using psychological abuse.
- 5.103 Bennett and William¹⁵⁷ found that most re-offences occurred early, usually within six months of initial programme intake, which means that assessment

Edleson, J.L. & Syers, M. (1991). "The effects of group treatment for men who batter: An 18-month follow-up study". *Research in Social Work Practice*, 1, 227-243.

¹⁵⁴ Gondolf E. W. (2000). "Mandatory Court Review and Batterer Program Compliance". *Journal of Interpersonal Violence*. 15 (4), 428-437.

¹⁵⁵ Edleson, J.L. & Syers, M. (1990). "The relative effectiveness of group treatments for men who batter". *Research in Social Work Research and Abstracts*, 26, 10-17.

Edleson, J.L. & Syers, M. (1991). "The effects of group treatment for men who batter: An 18-month follow-up study". *Research in Social Work Practice*, 1, 227-243.

¹⁵⁶ Centre for Disease Control (2003). [Fact Sheet: Male Batterer](http://www.cdc.gov/ncipc/factsheets/malebat.htm). National Centre for Injury Prevention and Control. USA: CDC. <http://www.cdc.gov/ncipc/factsheets/malebat.htm>

¹⁵⁷ Bennett Larry & Williams Oliver (Unpublished, 2003). [Controversies and Recent Studies of Batterer Intervention Programme Effectiveness](http://www.vaw.umn.edu). National Electronic Network on Violence Against Women, Violence Against Women Online Resources. <http://www.vaw.umn.edu>

and accountability must be on going. Batterers who did not complete their programme were twice as likely to be re-arrested.¹⁵⁸

- 5.104 Dobash¹⁵⁹ evaluated CHANGE and the Lothian Domestic Violence Probation Project in the UK. Sixty-seven percent of men avoided further violence for a year after the programmes as against only 25% of men subject to other programmes. However, the success rate represented only 40.2% of those who responded initially because the sample declined over time.
- 5.105 The National Institute of Justice¹⁶⁰ reviewed two evaluations of batterer intervention programmes in Broward County, Florida¹⁶¹, and Brooklyn, New York¹⁶², based on an experimental design of random samples in control and treatment groups. The Broward County study with a sample size of 404, found no significant differences between batterers in treatment groups (sentenced to 1 year probation and 26 weeks batterer intervention programme) and control groups on re-offense rates or attitudes toward domestic violence after 6 months and 12 months.
- 5.106 There were 376 batterers in the Brooklyn study sentenced to the BIPs when prosecution, defence, judge and the batterers agreed to the treatment. In the treatment groups, batterers were assigned to programmes lasted 39 hours in 26 weeks and 8 weeks respectively. It was found that men who completed an 8-week treatment programme showed no differences from the control group, but men who completed a 26-week programme had significantly fewer official complaints lodged against them than those in the control groups. No difference was found among the three groups in attitudes toward domestic violence with a 6-12 months follow up period.

¹⁵⁸ Bennett Larry & Williams Oliver (Unpublished, 2003). *Controversies and Recent Studies of Batterer Intervention Programme Effectiveness*. National Electronic Network on Violence Against Women, Violence Against Women Online Resources. <http://www.vaw.umn.edu>

¹⁵⁹ Dobash Russell P, Dobash R Emerson & Lewis Cavanagh (1996). *Research Evaluation of Programmes for Violent Men*. Edinburgh: Scottish Office Central Research Unit.

¹⁶⁰ Ashcroft J., Daniels D. J. & Hart S. V. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* Special Report, National Institute of Justice. U.S. Department of Justice.

¹⁶¹ Feder L. & Forde D.R. "The Broward Experiment". In Ashcroft J., Daniels D. J. & Hart S. V. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* Special Report, National Institute of Justice. U.S. Department of Justice.

¹⁶² Davis. R.C., Maxwell C.D. & Taylor B. G. "The Brooklyn Experiment". Ashcroft J., Daniels D. J. & Hart S. V. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* Special Report, National Institute of Justice. U.S. Department of Justice.

5.107 Ashcroft, Daniels and Hart reviewed 35 batterer intervention evaluations and found the differences in evaluation methods. Pure experimental designs were favoured by researchers, which made finding true effects easier, and reduced the likelihood of error but were challenging to put in real practice because it requires randomized assignment of subjects into experimental and control groups. Quasi-experimental designs were not by random sampling; they were easier to put in practice but were more open to misinterpretation.¹⁶³

5.108 Concerning the programme approach, no one single mainstream approach has yet been proven to be more effective in reducing recidivism than any other.¹⁶⁴ The best way is to work closely with local victim services agencies or victims' advocates. The most effective reduction in partner violence has occurred in those communities with the strongest combination of coordinated accountable elements. A programme alone cannot effectively reduce the batterers' potential for violence. However, the programme could hold hard to treat men in a pattern that increased time for battered women to get into a safer position.¹⁶⁵ Therefore, for the BIPs proved to be effective, they are part of the effective coordinated community and legal systems.

(c) Reducing Drop Out/Attrition Rate and Increasing Compliance

5.109 Programme dropout rate was a significant problem as around 50% of batterers failed to complete the mandatory programmes in both USA and Canada. Two national surveys of batterers' programmes in the USA in 1984¹⁶⁶ reported that amongst 90 programmes, one-third to one-half of the men dropped out after the first session of the programme.

¹⁶³ Ashcroft J., Daniels D. J. & Hart S. V. (2003). *Batterer Intervention Programs: Where Do We Go From Here?* Special Report, National Institute of Justice. U.S. Department of Justice.

¹⁶⁴ Bennett Larry & Williams Oliver (Unpublished, 2003). [*Controversies and Recent Studies of Batterer Intervention Programme Effectiveness*](#). National Electronic Network on Violence Against Women, Violence Against Women Online Resources. <http://www.vaw.umn.edu>;

Gondolf E.W. (1997). *A multi-site evaluation of batterer intervention systems: a summary of preliminary findings*. Indiana. P.A.: Mid-Atlantic Addiction Training Institute.

¹⁶⁵ Bennett Larry & Williams Oliver (Unpublished, 2003). [*Controversies and Recent Studies of Batterer Intervention Programme Effectiveness*](#). National Electronic Network on Violence Against Women, Violence Against Women Online Resources. <http://www.vaw.umn.edu>

¹⁶⁶ Feazell, C.S., Mayers, R.S. & Deschner, J. (1984). "Services for Men Who Batter: Implications for Programs and Policies". *Family Relations*, 33, 217-223.

5.110 Gondolf¹⁶⁷ found that only one in five men successfully complete a programme and remain non-violent over a relatively short period of 18 months. The majority of these groups reported high attrition rates, with as many as 50% to 75% of men failing to complete the mandated programme. The factors included lifestyle instability (e.g. youth, low education and unstable working histories) and incongruence between the batterer's self-identified problems and the treatment provided.

5.111 However, provided with persistent and vigorous support from the justice system, the attrition rate was lowered. Therefore, more men could complete the programmes. For instance, in Pittsburgh, the no-show rate of the programme for perpetrators dropped from 26% to 6% from 1994 to 1997, given criminal justice intervention. If perpetrators failed to appear at the intake or if there was no evidence of compliance at 30 days or at programme completion, then it was considered a breach of order.¹⁶⁸

(d) Voluntary vs Mandatory participation

5.112 At the early stage of studies, about 50% of those men initially contacting a programme for an intake appointment never appeared in the programme¹⁶⁹, and the dropout rates ranged between 40% and 60%.¹⁷⁰ The principle means for addressing non-compliance in BIPs has been due to increased legal sanctions such as jailing or extended sentences.

5.113 Gondolf's (2000)¹⁷¹ study on compliance to batterer programmes found that there was a substantial increase in compliance following the implementation of mandatory court review of cases in the Pittsburgh Domestic Violence Court from 1994 to 1997 with 985 pre-test and 995 post-test samples. Compliance to programme intake increased from 64% of those who were referred by the Court in 1994 to 94% in 1997. Programme completion by those who appeared

¹⁶⁷ Gondolf E.W. (1997). *A multi-site evaluation of batterer intervention systems: a summary of preliminary findings*. Indiana, P.A.: Mid-Atlantic Addiction Training Institute.

¹⁶⁸ Mullender Audrey & Burton Sheila (2000). *Reducing Domestic Violence...What Works? Perpetrator Programmes*. Crime Reduction Research Series. London: Home Office Research, Development and Statistics Directors. <http://www.homeoffice.gov.uk/docs/perpprog.pdf>

¹⁶⁹ Gondolf, E & Foster, R. (1991). "Preprogramme attrition in batterer programs". *Journal of Family Violence*, 6, 337-350.

¹⁷⁰ Gondolf, E. (1990). An exploratory survey of court-mandated batterer programs. *Response*, 13 (3), 7-11.

¹⁷¹ Gondolf, E. (2000). "Mandatory Court Review and Batterer Program Compliance". *Journal of Interpersonal Violence*, 15, 428-437.

for programme intake remained at approximately 70%. The percentage of court referrals that completed the programme rose from 48% in 1994 to 65% in 1997. The utility of court reviews with pre-trial referrals in improving compliance and the importance of considering court procedures in assessing programme outcomes was suggested in this study.

5.114 In comparing voluntary to mandatory participation in batterer programmes, drop-out rates were found to be 61% and 33%, while re-offence rates were 44% and 29% respectively¹⁷² Thus, mandatory orders are effective in making a batterer stay in a programme, with the re-offence rate decreasing by almost a third.

Programme standards

5.115 There is no one set of standard for BIPs, especially in relation to the qualifications of counsellors or facilitators. Only Canada, the UK and the USA have national standards or requirements.

USA

5.116 As at February 1997, Austin and Dankwort¹⁷³(1998) showed that as at February 1997, 31 states in America had developed County or State standards. These states required programme staff to be violence-free in their personal lives; 45% of them stated that they must not abuse alcohol or drugs; and 55% of them required the staff to rid themselves of sexist attitudes. It was equally important that proper and continuous training was essential in maintaining service quality.

5.117 Regarding the professional qualifications, 42% of the standards indicated a preference for a professional degree and/or license. Training and experience in domestic violence work were considered important. About 90% of the standards suggested that the length of training should range from 24 to 80 hours.

5.118 Many of the standards make reference to how staff should be vigilant about their own issues of power and control (e.g. Texas), and at least one state

¹⁷² Gondolf E.W (2002). *Batterer Intervention Systems: Issues, Outcomes, and Recommendations*. Thousand Oaks, CA, Sage Publication.

¹⁷³ Ibid.

(Massachusetts) required new staff be asked about abusive and controlling behaviour that they had used in their personal relationships. Some standards delineated procedures for a staff member who became violent with their partner while affiliated with a batterers' intervention service (e.g. Pennsylvania). Occasionally, standards provided criteria for former batterers who wished to become facilitators. Typically, they required that person to have attended a batterers' programme and be violence-free for a number of years.

- 5.119 In Duluth, Minnesota, standards for domestic abuse counselling programmes, domestic abuse educational programmes and programme accountability were included in the Domestic Violence Act.

Australia

- 5.120 In 2000, Brendan Mulhall and Associates Pty Ltd prepared "Competency Standards for people who come into professional contact with those affected by domestic/family violence", with funding from Partnerships Against Domestic Violence of the Commonwealth of Australia. The standards listed the competence, level of skills and programme content requirements for those who worked with batterers. Service providers working with perpetrators should have appropriate skills and expertise as developed by training based on competency standards. A male and female worker should jointly facilitate programmes for perpetrators.¹⁷⁴

UK

- 5.121 The National Practitioners' Network (1994)¹⁷⁵ in the UK stated that practitioners had to have some basic awareness training on domestic violence, though sometimes as little as a one-day course. The majority had training on working with perpetrators, but not all had had child protection training or any training on the safety issues that affect women and children when perpetrators are challenged to change their behaviour.

¹⁷⁴ Commonwealth of Australia (2000). [*Key Findings on Working with Men*](#). Partnership Against Domestic Violence. Au: Commonwealth of Australia.

¹⁷⁵ The National Practitioners' Network (1994). *Statement of Principles and Guidelines for Good Practice for Intervention Programmes Working with Men Towards Ending Their Violence and Abuse to Women Partners*. UK: Domestic Intervention Project.

Fee charging

5.122 Although most mandatory programmes for perpetrators of domestic violence are fully or partly government-funded, some batterers still have to pay for them. It is believed that this could increase the sense of responsibility to the perpetrators. In Canada, some agencies charge a fee, largely dependent on individual programme and funding sources.¹⁷⁶ In Singapore, an affordable fee is charged for some of the programmes or services. However, clients can apply for fee waiver if they are unable to pay.¹⁷⁷ Austin and Dankwort's national review¹⁷⁸ in the USA found that 71% of the standards state that batterers should pay for their services as a way of being responsible for what they have done. About 52% stated that a sliding scale should be provided and 48% stated that there should be a provision made for indigent clients.

Issues of concerns

5.123 As the 'one-size-fits-all' approach to batterer intervention cannot accommodate the diverse population of batterers entering the criminal justice system, two new specialized approaches have been put forward:

- (a) Interventions tailored to a specific types of batterer, based on psychological factors, risk assessment, or substance abuse history; and
- (b) Intervention designed to enhance programme retention and efficacy with specific populations, based on socio-cultural difference, such as poverty, literacy, race, ethnicity, nationality, gender or sexual orientation¹⁷⁹.

For instance:

¹⁷⁶ National Clearinghouse on Family Violence. (2002). *Canada's Treatment Programmes for Men who Abuse their Partners*. Canada: Ministry of Health. <http://www.hc-sc.gc.ca/hppb/familyviolence/pdf/2002-menwhoabuse.pdf>

¹⁷⁷ Ministry of Community Development and Sports (2003a). *What is Mandatory Counselling?* Singapore: Ministry of Community Development. http://www.mcds.gov.sg/MCDSFiles/Resource/Materials/Mandatory_Counselling.pdf

¹⁷⁸ Austin Juliet & Dankwort Juergen (August 1998). *A Review of Standards for Batterer Intervention Programmes. (Revised)*. Violence Against Women Online. <http://caleplus.lwa.gov.au/home.htm>

¹⁷⁹ Healey Kerry Murphy, Smith Christine, & O'Sullivan Chris. (Feb 1998). *Batterer Intervention Programme Approaches and Criminal Justice Strategies*. *National Institute of Justice, Office of Justice Programmes*. U.S. Department of Justice. <http://www.ojp.usdoj.gov/nij/>

(a) Mutual battering or perpetrators who used to be victims of ongoing domestic abuse

5.124 The mainstream BIPs were designed for dealing with men's use of violence towards their partners. There is, however, a necessity to research the need for the development of programmes for female batterers and batterers who were at the same time victims of ongoing domestic abuse. Recently, the Minnesota Programme Inc. of Duluth developed a programme called "Crossroads", for victims of ongoing domestic abuse who were charged with criminal offences against their partners. It provides participants with an opportunity to address their use of violence within the context of their victimisation.¹⁸⁰

(b) Same sex couples

5.125 The need for special programmes to take care of the perpetrators of domestic violence amongst same sex couples has become a community concern. The applicability of gender-based theoretical orientation in the programme has been questioned. The focus has shifted to the power and control issues in relationships.

(c) Multicultural backgrounds

5.126 New Zealand, America and Australia have paid special attention to violence amongst native and ethnic groups. They have unique cultural backgrounds and use different languages where the existing mainstream BIPs might not be able to fit for their needs. Babcock and Steiner¹⁸¹ found that ethnic minorities comprised a high proportion of programme non-completers. In the existing curriculum, there are pilot programmes and studies focusing on the development of culturally specific approaches and programme content. A special project was piloted in New Zealand taking care of culturally specific need of the Maori.¹⁸² Liang¹⁸³ (2002) mentioned that the Maori used

¹⁸⁰ Duluth City Attorney's Office (2003). *Crossroads Program Prosecution Guidelines. Training material distributed on the Training on Building a Coordinated Community Response to Domestic Violence*, organized by Domestic Abuse Intervention Project, October 2003. MN: Duluth City Attorney's Office.

¹⁸¹ Babcock, J.C., & Steiner, R. (1999). "The Relationship Between Treatment, Incarceration, and Recidivism of Battering: A Program Evaluation of Seattle's Coordinated Community Response to Domestic Violence". *Journal of Family Psychology*, 3 (1), 46-59.

¹⁸² Ministry of Social Development. (2002). [TE RITO New Zealand Family Violence Prevention Strategy](http://www.ms.govt.nz). NZ: Ministry of Community Development. <http://www.ms.govt.nz>

restorative justice approaches: they drew on a range of processes such as mediation and dispute resolution.

SUMMARY

- 5.127 Conclusive from the above review on the effectiveness of BIPs in the countries studied, there is abundant evidence showing that the BIPs are effective in stopping violence. Through the review of the legislation of mandatory treatment in other jurisdictions, it is identified that three dimensions of strategies in implementing court-ordered mandatory BIPs are deemed important, including domestic violence policy, legal measures supporting BIPs and the model of the programme implementation.
- 5.128 Domestic violence policy: The jurisdictions under review have clearly stated their commitment to tackling domestic violence, and perspectives of domestic violence held by the countries. This guides the formation of strategies and central coordination mechanisms in handling domestic violence, emphasising the interagency coordination and the coordinated criminal justice system. The core belief is that no one service unit can handle the issue effectively. It must be achieved by collaboration.
- 5.129 Legal measures supporting BIPs: The context of a coordinated criminal justice system plays a significant role in making effective the mandatory programmes for perpetrators of domestic violence. The legal measures and the issuance of mandatory orders are actively involved in linking with the programmes through capturing the perpetrators in the legal systems, protecting victims, holding perpetrators accountable for the violence that they have used and referring and monitoring the performance of perpetrators. Specialised training programme on law enforcement and judiciary process are crucial in ensuring that the performance of the legal actors is outstanding.
- 5.130 Programme implementation: There is no single effective programme approach and content, though historically and politically the cognitive behavioural feminist model is predominant. The programmes share common objectives (increasing victims' safety, holding perpetrators accountable for the violence used and stopping their violent acts) and standards (careful application of

¹⁸³ Laing Lesley (2002). *Responding to men who perpetrate domestic violence: Controversies, interventions and challenges*. Au: Australian Domestic and Family Violence Clearinghouse. Issues Paper 7, 2002. http://www.austdvclearinghouse.nsw.edu.au/PDF%20files/Issues_paper_7.pdf

couple counselling, victim safety measures, consequences of breaching mandatory orders, service standards, etc.). The scientific evaluation of the programme effectiveness, particularly the definition of success, is emphasised.

Chapter 6

Court-Mandated Batterers' Intervention Programmes

- 6.1 In launching court-mandated BIP in Hong Kong which are usually education and counselling programs with group as the prominent form of intervention, the heterogeneous nature of batterers should be considered. They can be classified into subgroups in terms of the severity of violence, risk levels, motivation, stages of change, etc. They are involved at different stages of the legal process. Various options of involving the batterers, voluntary or mandatory, in the programmes should be considered. Community-based and prison-based programmes would be suitable for different types of batterers at different stages.
- 6.2 There are several channels for batterers to be referred or mandated in the programme: voluntary participation through referral or self-referral, and mandatory orders.

Launching BIPs under the existing system

Voluntary participation

- 6.3 Community-based BIPs should be available for the voluntary participation of batterers. In the local experience, these batterers are at the early stage of family violence, with minor to moderate levels of violence used. They are usually family-only batterers,¹⁸⁴ with higher motivation for rebuilding family relationships.

(a) Strengths

- (i) Early identification of risk groups: Community-based BIPs, if launched in different districts, could be convenient for families with minor violence. It could attract families with members who are willing to restore the functions of the family with the support of counselling programmes. The involvement of all family

¹⁸⁴ Holtzworth-Munroe, A., & Stuart, G. L. (1994). "Typologies of male batterers: Three subtypes and the differences among them". *Psychological Bulletin*, 116(3), 476-497.

members is possible. Groups for victims and their children can be provided in parallel with the BIPs.

- (ii) Prevention: This type of BIP can focus on education about stopping violence, conflict resolution and couple communication. It could further prevent the violence from becoming severe.

(b) Limitation

- (i) Low participation: As shown by the experience of programme providers (discussed in Chapter 4), recruitment based on the self-referral or referral by other social service providers has been difficult.

(c) Actions to be taken

- (i) Coordinated referral system: Referral from the police is a good source of recruiting batterers. The success of non-consensual referral implemented by the police since January 2003 will make the voluntary participation of batterers possible, particularly with the encouragement of the legal actors, including police, lawyer, prosecutor and judge. With the referral of cases to the FCPSU/SWD, social workers could further help to motivate batterers to participate in these programmes. Further collaboration with other social service practitioners or providers, such as, medical and nursing professionals and MSW in health settings, legal actors in criminal justice system, and social workers in social welfare sector, is deemed important. The referral system could be enhanced through administrative coordination and the sharing of common vision in handling domestic violence.
- (ii) Public publicity of BIPs: Centralized and coordinated publicity of the programmes should be organized to encourage the families at risk, particularly the batterers, to seek help from the BIPs.

A sentencing condition attached to a probation order

6.4 Under the existing Probation of Offenders Ordinance (Cap 298), the Court may, after conviction, make a probation order requiring an offender to be subjected to the supervision of a probation officer for a period of not less than 1 year and not more than 3 years (S3(1)). A probation order may in addition require the offender to comply with such requirements as the Court considers necessary for securing good conduct, or for preventing repetition, or the commission of other offences (S3(2)).

(a) Strengths

- (i) The great advantage of attaching a counselling order to the probation order is that it can be implemented immediately without waiting for the amendment of laws. A probation officer may recommend, as a condition attached to a probation order, for an offender to participate in and successfully complete a domestic abuse counselling programme or educational programme. The Court may, in considering an appropriate sentence, adopt the recommendation(s) of a probation officer, and grant the order with the recommended condition(s) accordingly.
- (ii) Probation officers should be responsible for monitoring the progress and the safety of victims. Upon completion of the programme or if the offenders breach the order, then the case should be brought to the Court for review. The probation officer could mediate between the Court and the BIP.

(b) Limitations

- (i) Not all criminal offenders receive probation orders, which are subject to the discretion of the judge, having regard to the circumstances of the case. Probation officers also have the discretion to make recommendations on the requirements to be attached to the order. Unless enough training and clear administrative instruction is provided to probation officers, this may create inconsistency in issuing orders. No one administrative

measure would be clearer than the law-making of the mandatory attendance of the BIP.

- (ii) For offenders who have used severe violence against partner and have chronic risk factors like mental illness, substance abuse, pathological gambling etc., they may need more time to undergo treatment. The length of time in which the probation order is effective is between 1 to 3 years. Such limit is not flexible enough for the Court to consider longer period of treatment.

(c) Actions to be taken

- (i) Coordination with the Court for the consideration of the requirement of attending and completing a BIP should be arranged. The Court should be informed of the functions and the effectiveness of a BIP in stopping violence and holding batterers accountable to the violence they used, and the approved list of BIPs.
- (ii) Training for probation officers on the functions of BIPs and the monitoring of probationer's performance in a specific BIP should be conducted. The role of the probation officer in communicating with the BIP providers should be clearly stated.

Prison-based BIPs

6.5 Imprisonment does not ensure the change of abusive beliefs and the ending of abusive behaviour. If the Court finds that the perpetrator should be incarcerated, then BIPs could be provided in prison to rehabilitate the domestic violence offenders. Psychological services are provided by the Correctional Services Department for inmates with a view to improve their institutional adjustment and general mental health, and to change their offending behaviour. Counselling services are provided to inmates with emotional and behavioural problems. Structured treatment programmes are currently arranged for sex offenders and offenders with substance abuse problems. Thus, the structured treatment programmes should be extended to include domestic violence offenders.

(a) Strengths

- (i) The great advantage of this arrangement would be the provision of a BIP under the existing mechanism of service provision. With the support of Correctional Services Department, it would help domestic violence offenders to stop violence and reduce their re-offending rate.
- (ii) Prison-based BIPs help rehabilitate the batterers who had used severe level of violence. With the experience of community-based BIPs, it could help build up knowledge and competence in working with batterers from various levels of violence.

(b) Limitation

- (i) The provision of prison-based BIPs would be under different administration. The SWD should work collaboratively with other departments to ensure better coordination.

(c) Action to be taken

- (i) Coordination with Correctional Services Department should occur to standardise the approach, content and evaluation of the BIPs. Consent and support from Correctional Services Department would make the intervention with domestic violence offenders more comprehensive.

Summary

6.6 The above three measures are the possible ways to launch BIPs under the existing laws and administration. They could be implemented as a pilot project to identify effective strategies for quality assurance of the programmes and the efficient coordination of the parties involved. However, the making of laws to provide BIPs is the most effective way of sending a message to the public, social services professionals and legal actors that domestic violence is a crime. Court-ordered mandatory BIPs are a good demonstration of coordinated community and criminal justice systems in intervention in domestic violence.

Thus, in the long term, laws should be reformed to make enforce counselling or attendance of a BIP as a court order.

Recommendation 1

We recommend that:

The batterer intervention programmes (BIPs) could be launched under the existing systems.

- (a) Voluntary participation enhanced by the coordinated referral system and public publicity of the programmes.
- (b) A sentencing condition attached to a probation order enhanced by the coordination with the Court and the probation officers.
- (c) Prison-based BIPs enhanced by the coordination with the Correctional Services Department in providing the structured treatment programmes to the domestic violence offenders.

Issuance of mandatory orders: Law reform

Civil law

6.7 Taking reference from Singapore, Australia, New Zealand, Canada and the US, the counselling order could be issued by the Court with a protection order. The Court could make a mandatory counselling order for the batterer to attend a BIP as a condition attached to the non-molestation order under the DVO (Cap 189). Their performance in the programme would be considered in assessing the extension of the period of the non-molestation order.

Criminal law

6.8 Mandatory counselling as a condition attached to a bind-over order: A bind-over order may be appropriate in some minor domestic violence cases if the parties are reconciled, there is no history of violence and there is a concern for a future breach of the peace.¹⁸⁵ The Court has the power to issue a bind

¹⁸⁵ Ch. VI. Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

order under Section 109I of the Criminal Procedure Ordinance (Cap 221)¹⁸⁶, Section 41 of the Offences Against the Person Ordinance (Cap 212)¹⁸⁷, and the Section 61(1) of the Magistrates Ordinance (Cap 227).¹⁸⁸ The function of a BIP is to keep the offender from using violence, which is in line with the bind-over order to keep the peace and to be of good behaviour. However, it does not appear that the court has power to attach other conditions with the bind-over order under the existing law. This matter should be put beyond doubt by making the counselling order a condition to the bind-over order.

- 6.9 Placing a counselling order separately in criminal proceedings: For the handling of severe domestic violence cases, the consultants suggest placing the mandatory counselling order in criminal proceedings. The Court that sentences a person convicted of domestic violence should have power to make a counselling order that requires the offender to attend and complete a BIP. The BIP could be community-based or prison-based. This means that the Court could sentence the offender to the BIP or imprisonment, or both. When offenders have successfully completed the programme, a minimum of 12-months of follow up after completion of the programme could be used in monitoring the case progress. Upon completion of the programme or if the offenders breach the order, the case should be brought to the Court for review.

¹⁸⁶ A judge, a district judge or a magistrate can have, as ancillary to their jurisdiction, the power to bind over to keep the peace, and the power to bind over to be of good behaviour, a person who or whose case is before the court, by requiring them to enter into their own recognisances or to find sureties or both, and committing them to prison if they do not comply.

¹⁸⁷ In the event of a conviction under section 39 or 40, the convicting court may, in addition to imposing any penalty, order the offender to enter into a recognisance, with or without sureties, of a sum not greater than \$500, to keep the peace or to be of good behaviour for a period not exceeding 12 months.

¹⁸⁸ The power of a magistrate, on the complaint of any person, to adjudge a person to enter into a recognisance and find sureties to keep the peace or to be of good behaviour towards the first-mentioned person is exercised by an order upon complaint, and the provisions of this Ordinance must apply accordingly, and the complainant and defendant and witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.

Recommendation 2

We recommend that:

The Court can make mandatory counselling order for the batterers to attend a BIP by the following ways:

- (a) As a condition attached to the non-molestation order under the DVO (Cap 189).
- (b) As a condition attached to a bind-over order.
- (c) Placing a counselling order as a separate sentencing option in criminal proceedings.

Legislation

- 6.10 The consultants recommend the amendment of laws to make the attendance of BIPs an order issued by the Court. The laws to be amended include the DVO (Cap 189), Section 109I of the Criminal Procedure Ordinance (Cap 221), Section 41 of the Offences Against the Person Ordinance (cap 212) and the Section 61(1) of the Magistrates Ordinance (Cap 227).

Recommendation 3

We recommend that:

To make BIP an order issued by the Court, the laws to be amended include the DVO (Cap 189), the Section 109I of the Criminal Procedure Ordinance (Cap 221), the Section 41 of the Offences Against The Person Ordinance (cap 212), and the Section 61(1) of the Magistrates Ordinance (Cap 227).

- 6.11 Content of the counselling order in legislation: The counselling order should include the following themes:

- (a) Order the offender to participate in and successfully complete a BIP;

- (b) Standards for BIPs, including written policies in programme approach and content, acceptable range of duration, policies in securing victim safety and reporting on potential violence or risk, qualification of programme workers, handling of substance abusers, conditional use of couple counselling, communication with the Court and probation officer, programme accountability, monitoring and evaluation; and
- (c) Upon completion of the programme or if the offenders breach the order, the case should be brought to the Court for review. Punishment for the breaching of order should be stated.
- (d) Duration of order: For offenders who have used severe violence against partner and have chronic risk factors like mental illness, substance abuse, pathological gambling etc., they may need more time to undergo treatment and may take longer time to end violence. To give the flexibility for the Court to consider special conditions in making the order, the duration of order could be open. The Court should specify, in each counselling order, the effective period of the order. A review system and procedure should be introduced to allow an application made whether by the party or by his/her counsel.

Recommendation 4

We recommend that:

The content of the counselling order in legislation shall include the order for the offender to participate in and successfully complete a BIP, standards for BIPs and the punishment for the breaching of order.

Pilot project

- 6.12 As court-mandatory BIPs are new in Hong Kong, a time-limited pilot project should be launched to implement the idea.

Formation of central coordination mechanism in operating the BIP

6.13 A group including the police, medical practitioners, social service practitioners, probation officers, prosecutors, judges and academia should be formed to steer the pilot project. The functions of the steering group should include:

- (a) Preparing guidelines and working protocols in supporting the implementation of the BIPs, including referral procedures, risk assessment, evaluation, etc.;
- (b) Monitoring the programme implementation and the communication of the programmes with the Court;
- (c) Evaluating the effectiveness of the BIPs, using an experimental or quasi-experimental design;
- (d) Working out standards for the BIPs and consulting service providers;
- (e) Certifying a list of piloted BIPs that should be up to the requirements of the standards; and
- (f) Forming a Batterers' Intervention Programme Authority to take on the roles and functions of the steering group after the pilot project. Its main functions will be to certify the programmes and uphold quality assurance.

6.14 The pilot project could be implemented in 2-3 years, in either a selected district or territory-wide. For good management of the pilot project, the following factors should be carefully considered and planned:

- (a) Consensus on the objectives, monitoring and evaluation mechanism amongst the concerned parties;
- (b) Coordination and communication amongst the concerned parties;
- (c) The involvement of competent practitioners in the BIPs;
- (d) The provision of specialised training for the parties involved in the system;
- (e) A test of active referral and the conditions attached to bind over the order, probation order and sentencing option;
- (f) The establishment of a central database with agreed items targeting the objectives and outcome indicators; and
- (g) Adequate resources.

Recommendation 5

We recommend:

To launch a time-limited pilot project to implement the court-mandatory BIP in Hong Kong. The following strategies are recommended:

- (a) A group including the police, medical practitioners, social service practitioners, probation officers, prosecutors, judges and academia should be formed in preparing, monitoring and evaluating the pilot project.
- (b) The steering group will work out standards for the BIP and consult service providers.
- (c) The steering group will certify a list of piloted BIPs.
- (d) The steering group will prepare the formation of the Batterers' Intervention Programme Authority.

Programme implementation

6.15 Although no single programme approach fits all batterers, a gender-based, cognitive behavioural approach fits most. The consultants recommend the following programme approach and content that are shared among existing BIPs.

(a) Programme objectives

6.16 All BIPs should share common goals of:

- (a) Reducing the re-offending rate;
- (b) Increasing victims' safety;
- (c) Holding batterers accountable for the violence used; and
- (d) Stopping their abusive behaviour.

(b) Programme approach and content

6.17 Pre-intervention risk assessment and the psycho-social assessment of the batterers should be used to inform the specific designs of BIPs. Isolated treatment for drug and substance abuse should be considered as part of the mandatory treatment. Couple counselling should be employed with caution only when violence has stopped and respect has been established.

(c) Victim safety

6.18 The BIP should have written policies and strategies to secure the safety of victims including victim contact, warning of imminent danger based upon information provided by an offender or abusing party, and the coordination of services in the promotion of victim safety and offender accountability.

(d) Programme duration

6.19 Mandatory programmes for batterers usually last from 24 to 52 weeks, with a 1.5 hour session each week. To secure enough time to educate batterers, 24 weeks could be tentatively drawn as a reference. Evaluation of the effectiveness of programmes with different durations should be conducted to provide empirical support for the programme duration.

(e) Programme evaluation

6.20 Programme evaluation must be conducted in pilot projects. The criteria of success should be carefully defined as ending violence as reported by victims, reducing the re-offence/recidivism rate, increasing victim safety and reducing drop out or the attrition rate.

(f) Programme standards

6.21 In Hong Kong, the majority of social workers who provide group programmes for batterers are experienced and have relevant training. There is no existing standard in monitoring and evaluating batterers' programmes. A set of programme standards should be explicitly stated, with the collaborative effort of service providers and the SWD.

(g) *Fee charging*

6.22 There are both free of charge and fee charging voluntary participation practices in the batterers' intervention groups in Hong Kong. It is not necessary to intervene with the charging policies of individual agencies. The consideration of fee charging for court-ordered mandatory programmes may ensure that perpetrators own the consequences of using violence. This is worth discussing amongst local communities in reaching a consensus.

Recommendation 6

We recommend that:

A set of strategies required for the implementation of BIP:

- (a) All BIPs should share common goals of reducing the re-offending rate, increasing victims' safety, holding batterers accountable for the violence used and stopping their abusive behaviour.
- (b) Pre-intervention risk assessment and the psycho-social assessment of the batterers is recommended to inform the specific designs of the BIPs.
- (c) The BIPs should have written policies and strategies to secure the safety of victims.
- (d) The BIPs could last from 24 to 52 weeks, with a 1.5 hour session each week. Evaluation of the effectiveness of programmes with different durations should be conducted to provide empirical support for the programme duration.
- (e) Programme evaluation of the effectiveness of the programmes should be conducted, with the criteria of success defined as ending violence as reported by victims, reducing the re-offence/recidivism rate, increasing victim safety, and reducing drop out or the attrition rate.
- (f) Programme standards should be explicitly stated, with the collaborative effort of service providers and the SWD.

Anticipated difficulties

- 6.23 In view of the lifestyle of Hong Kong's working population, regular participation in the perpetrators' programme may be difficult. For instance, perpetrators may have long or inflexible working hours and fear losing their jobs. It might also be difficult to monitor the victims' safety in view of the heavy caseload of the probation officers or social workers.
- 6.24 The capacity of the available batterers' intervention programme is one of the key determinants for the judge in making the mandatory order. The readiness of programme development and availability of manpower should be assessed with consideration of the scale of the programme.
- 6.25 For the implementation of BIPs, it would be best to monitor the number of eligible agencies in conducting the programme in the pilot stage. A good start with careful planning and implementation is essential in ensuring a quality service outcome.
- 6.26 To conclude, the implementation mode and the related issues of concern should be open for discussion amongst local communities to design a recognised model for use in Hong Kong.

Chapter 7

Domestic Violence Policy and the Reform of Legal Measures

- 7.1 One of the study objectives was to identify the essential elements contributing to effective prevention and intervention (including whether the provision of legislative measures, such as the Domestic Violence Ordinance, could facilitate prevention and intervention). This chapter discusses the reform of legal measures in handling domestic violence cases. Chapter 8 will discuss the reform of the DVO (Cap 189).

Message confused - Domestic violence is a dispute

- 7.2 Domestic violence is a unique social problem that requires specialized legal, medical, social and therapeutic interventions. It can be a common family dispute that could be resolved through social and therapeutic interventions. It can also be a crime that results in serious injury or even homicide. In which case, legal and medical interventions should be involved.
- 7.3 The boundary between dispute and criminal violent behaviour can hardly be drawn. The dynamic process of domestic violence involves emotional elements and attitudes including love, hatred, tolerance, acceptance, torture, escalation of violence, resilience etc. It makes it hard to decide at which point the behaviour is socially acceptable (or unacceptable) and which is criminal. Social acceptability could be influenced by cultural beliefs and social values. Without clear and definite guidance, the ambiguity of the boundary could make the interventions inconsistent and uncoordinated. It could also create excuses and confusion in tolerating mild to moderate levels of violence, with overemphasis on family harmony, but overlooking the potential escalation and negative impact on immediate victims (e.g. battered women and abused children) and bystanders (e.g. children witnessing family violence).

Message clear - Domestic violence is a crime

- 7.4 Thus, a message that domestic violence is a crime should be emphasized. This message should be made clear to the public through the making of a policy of legal and welfare responses to domestic violence and through the reform of the DVO (Cap 189). Justification on the need to reform laws could be made by taking reference on the making of marital rape as a category of criminal law.

7.5 On the issue of marital rape, the Administration advised, at the meeting of the Panel on Home Affairs, LEGCO, on 2 June 2000, that under section 118 of the Crimes Ordinance, a man has committed rape if he had unlawful sexual intercourse with a woman who, at the time of the intercourse, did not consent to it. However, since some commentators considered that the law was not entirely clear on this point, the Government was examining whether a legislative amendment should be introduced to put the matter beyond doubt¹⁸⁹.

7.6 The Administration's initial view was –

(a) A man who has sexual intercourse with his wife without her consent would be liable to be convicted for rape under Hong Kong law. It was not necessary to amend the law; and

(b) Following the landmark decision of the House of Lords in *Regina v R*, a husband might be guilty of rape of his wife if the wife did not consent to sexual intercourse. The Hong Kong Court of Appeal had already accepted the correctness of the judgment of the House of Lords in *HKSAR v Chan Wing Hung* (1997) 3 HKC 472, albeit the case was not one that was concerned with a charge of rape.

7.7 The consensus of the Panel on Administration of Justice and Legal Services, LEGCO, was that an express provision should be provided in the Crimes Ordinance to the effect that the offence of rape included non-consensual marital intercourse. Subsequent to the consultation exercise, the Administration reported that all parties consulted agreed that marital rape was an offence and the law should be amended to clarify that beyond doubt. The misconception about the offence of marital rape should be dealt with as a matter of urgency for the stronger protection of women.

7.8 As a result, new section 117(1B) of the Crimes Ordinance (Cap. 200) was provided:

¹⁸⁹ Panel on Administration of Justice and Legal Services (2004), *Review of sexual offences in Part XII of the Crimes Ordinance and related issues*. Paper no. LC Paper No. CB(2)2008/03-04(01). Background brief prepared by Legislative Council Secretariat on 15 April 2004.

For the avoidance of doubt, it is declared that for the purposes of sections 118, 119, 120 and 121 and without affecting the generality of any other provisions of this Part, "unlawful sexual intercourse" does not exclude sexual intercourse that a man has with his wife.

- 7.9 Domestic violence is definitely a crime. It could be charged by the criminal laws like assault, rape, incest or murder etc. However, if the public still holds a myth that domestic violence could be excused, it is justifiable to amend the law to clarify that beyond doubt, as in the case of marital rape. The making of a policy of legal and welfare responses to domestic violence is necessary to deal with issues like the attitude towards domestic violence, reporting domestic violence, arrest, prosecution, Domestic Violence Court, domestic violence fatality review, victim support, education and training, and court-mandated BIPs.

DOMESTIC VIOLENCE POLICY

- 7.10 The making of a government policy which states clearly the commitment of the government to tackle domestic violence, philosophy in combating domestic violence, and the strategies in fighting against and preventing the domestic violence is recommended. The policy shall include a holistic and inter-agency coordinated community and legal approach in the prevention and intervention with domestic violence.
- 7.11 The domestic violence policy is a necessary condition for the implementation of court-mandated BIPs. It provides guides for the operation of the programmes in terms of objectives and outcome indicators. A need analysis will facilitate the calculation of resources required in supporting the programmes.

Philosophy

- 7.12 There are basic philosophies to be made prior to the discussion of legal measures in combating domestic violence in Hong Kong:
- (a) Domestic violence is a crime: It is not simply conflict or dispute. Since the perpetrator uses the first violence during conflict, it turns the conflict to criminal behaviour.

- (b) Zero-tolerance of violence: From conflict to violence and thus the escalation of violence is a dynamic process. The cycle of violence demonstrates universally that the violence will not be stopped solely by the effort of the perpetrator or victim. Traditional cultural beliefs provide lots of justifications to accept violence. In a position to fight against domestic violence, it should be very clear that not one single act of violence should be accepted or tolerated. Such attitude should be conveyed unambiguously to the public as a way to counter the influence of cultural beliefs.
- (c) Safety first: The safety and the protection of the victim (including children witnessing domestic violence) should be utmost, than to preserve the harmony or wholeness of the family. Their safety should not be compromised.
- (d) A perpetrator should hold sole responsibility for the use of violence. No victim should be blamed for his or her involvement in the conflict. Treatment and education for perpetrators could be employed, in addition to punishment in the legal system.
- (e) Family approach of investigation of violence should be adopted. It is not meant to address the maintenance of family unity, but to investigate other types of violence (e.g. physical, psychological, sexual etc.) against other members once a certain type of domestic violence is identified. Police investigation and comprehensive assessment of family violence by social workers is needed to explore all types of violence in a family.
- (f) Multidisciplinary collaboration: Domestic violence is a complex social, legal and health problem. It demands the interventions from different professionals as well as the collaboration amongst the professionals. Legal measures would be a strong arm to stop crime, to provide legal protection for victim, and to punish and treat perpetrators. Legal measures shall not stand alone, but must be put in a context of coordinated community response involving social services, health professionals, legal practitioners, school, media and various community resources.

(g) Public health perspective and therapeutic jurisprudence: Combating domestic violence involves a number of strategies informed by the public health perspective as well as therapeutic jurisprudence. For example:

- (i) Early identification: strategies involve universal screening, mandatory reporting, supportive legal procedure that motivate victims to seek help earlier;
- (ii) Public legal education;
- (iii) Risk assessment and management strategies: to reduce risk and increase victim safety;
- (iv) Domestic violence is a crime: to have a clear message that domestic violence is definitely a crime. It involves creating a category of domestic violence in the Crimes Ordinance (Cap 200) and setting up a Specialized Domestic Violence Court to handle domestic violence cases;
- (v) Court-mandated treatment for perpetrators of domestic violence;
- (vi) Fatality review for homicide and severe violence cases.

Therapeutic jurisprudence

7.13 The making of a policy of legal and welfare responses to domestic violence is a strategy to integrate the legal and welfare measures. Such integration can be theoretically supported by the concept of therapeutic jurisprudence.

7.14 Therapeutic jurisprudence provides an analytical framework that goes beyond the liberal separatist approach adopted by traditional law in controlling domestic violence in Hong Kong. As Dennis Saccuzzo elaborates: “In therapeutic jurisprudence, the goal is to make decisions that affect behaviour in a positive way, such as to begin the healing process for victims of domestic violence or the rehabilitation process for (domestic violence) batterers”.¹⁹⁰ The philosophical perspective offers “suggestions about how the various legal actors that deal with domestic violence cases – police, judges and other court personnel, prosecutors, and defence lawyers – can perform their roles in ways that can help to rehabilitate offenders and bring about healing for their victims”.¹⁹¹

¹⁹⁰ Saccuzzo, D. (1999). “How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest”, 39 *Santa Clara L Rev* 765, 768.

¹⁹¹ Bruce Winick (2000) ‘Applying the Law Therapeutically in Domestic Violence Cases’ 69 *UMKCL Rev* 33, 33.

7.15 Therapeutic jurisprudence can be substantiated by the adoption of mandatory counselling in the handling of domestic violence. In fact, the Legal Aid Commission of Western Australia adopts the theoretical framework. In their annual report for 2002-2003, it was stated:

“Legal Aid WA continues to play an important role in the administration of justice. A key trend this year has been the focus on therapeutic jurisprudence and rehabilitative justice...

...The Joondalup Family Violence Court is a specialist court that deals with people charged with offences that have a direct connection to domestic violence, such as breach of a violence restraining order, assault occasioning bodily harm or threatening behaviour...this court involves elements of therapeutic jurisprudence where offenders are encouraged to strive towards rehabilitation instead of merely awaiting retribution. Offenders are placed in a six-month group counselling programme run by Relationships Australia where they are encouraged to focus on anger management strategies so as to address the cause of their offending behaviour”.¹⁹²

7.16 Critics against the intervention approach worry that the model would in fact pathologize and marginalize both the victims and the batterers.¹⁹³ However, as shown in a recent local study, the results of the victims interviewed showed that people prefer a refix of domestic relationships that can be achieved by the intervention model rather than the punishment of batterers, which means destruction to the family.¹⁹⁴ An intervention model can bring positive effects to families haunted by domestic violence.

Recommendation 7

We recommend that:

¹⁹² Legal Aid WA (2003) ‘Annual Report 2002-2003 – Special Projects and New Initiatives’.

Retrieved from <http://www.legalaid.wa.gov.au/Annual/2002/ARTherapeutic.htm> on 18 May 2004.

¹⁹³ Linda Mills (1999) ‘Killing Her Softly: Intimate Abuse and the Violence of State Intervention’ 113 *Harvard Law Journal* 550, 569

¹⁹⁴ Man-chung Chiu (2001) *Mandatory Counselling – Restruction of Harmonic Relationship: ‘Controlling Domestic Violence and Wife Abuse: A Plea for Mandatory Counselling for Wife Abusers’ – Final Report (2001)* Hong Kong: The City University of Hong Kong.

A governmental domestic violence policy is made to state clearly the commitment of the government to tackle domestic violence, philosophy in combating domestic violence, and the strategies in fighting against and preventing the domestic violence.

LEGAL MEASURES SUPPORTING BIP

- 7.17 Active support and participation from the legal system is the most crucial in making mandatory BIP feasible. It is widely recognized in other countries that mandatory programme is part of a coordinated community and legal system in responding to domestic violence.
- 7.18 Police officers, probation officers, prosecutors and judges in the legal system are the authorized parties with the mandate to protect victims, sanction the perpetrators and send message to the society that domestic violence is not a private matter but a crime with priority of social concern. For its influence towards ending domestic violence, a coordinated legal system efforts in handling domestic violence, victims' rights and safety and effectiveness of the legal system in holding the perpetrator accountable for the violence used could be further strengthened.
- 7.19 A number of legal remedies are discussed in the following.

Reporting domestic violence cases

- 7.20 Mandatory reporting policies, adopted in the USA, require medical doctors to file a report with the police when they suspect that the patient's injuries are related to domestic violence. The aim of the policy is to counteract the medical professionals' indifferences towards domestic violence.¹⁹⁵
- 7.21 Little research has been conducted on the effect of the policy. One study demonstrates that 68% of physicians in the USA said that if the patients had no objection, they would report the cases. But the women groups oppose the policy citing reasons such as fear of retaliation by the abuser, mistrust of the legal system, fear of family separation and preference for confidentiality and

¹⁹⁵ Linda Mills (1999) 'Killing Her Softly: Intimate Abuse and the Violence of State Intervention' 113 *Harvard Law Journal* 550.

autonomy.¹⁹⁶ Critics also argue that this policy deters victims from seeking medical advice. A research further shows that 59% of the medical practitioners in California said that if a patient opposed, they might not report the case.¹⁹⁷

7.22 Reporting domestic violence cases to police is a very important step to help early identification of potential risk cases, without waiting for the decision of the victims or the happening of a traumatic event. To make the reporting mandated would be premature at this stage in the context of Hong Kong. At this stage, a number of measures could be done for the improvement of reporting domestic violence cases.

7.23 Recommendations:

- (a) Education for professionals like physicians, nurses, lawyers, teachers, social workers, psychologists etc. on the risk assessment of suspected cases is needed. Appropriate and prompt referral should be made.
- (b) More empirical studies on the reporting practice are needed. With the empirical support, strategies in improving reporting from professionals, including mandatory measures, should be examined.

¹⁹⁶ *Domestic violence Without Associated Child Abuse: The Future of Children*. Retrieved from http://www.futureofchildren.org/information2827/information_show.htm?doc_id=70533 on 28 Nov 2003.

¹⁹⁷ Michael Rodriguez et al (1999) 'Mandatory Reporting of Intimate Partner Violence to Police: Views of Physicians in California' *89 Am J Pub Health* 575.

Recommendation 8

We recommend that:

- (a) Education for professionals like physicians, nurses, lawyers, teachers, social workers, psychologists etc. on the risk assessment of suspected cases is needed. Appropriate and prompt referral should be made.
- (b) More empirical studies on the reporting practice are needed. With the empirical support, strategies in improving reporting from professionals, including mandatory measures, should be examined.

Arrest policy and practice

7.24 Court-mandated counselling usually goes with mandatory arrest.¹⁹⁸ Such policy is to limit the discretion of the police in arresting suspects of domestic violence. Eve Buzawa and Carl Buzawa summed up the classic response of the police to domestic violence into three characteristics:

- (a) Relatively few of the potential universe of domestic violence cases were ever formally addressed by the police, the majority being screened out;
- (b) The police did not desire to intervene in family disputes, and
- (c) There was a strong, sometimes overwhelming bias against making arrests.¹⁹⁹

7.25 With the findings from the case study conducted for this consultancy study (refer to Chapter 4 of this report), some, though not knowing how many, police officers may not follow procedures in handling domestic violence. Even if there may be few among the whole police population, the poor attitude and malpractice of a few could be failing to deter domestic violence and homicide.

7.26 The typical attitude of resistance held by the police signifies the fact that societies still do not consider domestic violence a criminal act, but more of a

¹⁹⁸ Duluth mode is an example.

¹⁹⁹ Page 102, Eve Buzawa and Carl Buzawa (1996) *Domestic Violence: the Criminal Justice Response* (2nd ed) London: Sage Publication.

private matter.²⁰⁰ Mandatory arrest hence becomes a tool to tackle this conventional idea of ignorance towards domestic violence. The policy of mandatory arrest usually means that the police would arrest the batterer when there is a probable cause to believe that violence (for example: physical violence) has occurred amongst family members. It is in this context where mandatory arrest provides the following edges:

- (a) The policy serves to control the police behaviour – it reduces the police power by taking away their discretion;
- (b) It communicates to the society that domestic violence is a serious crime – the policy can therefore help court-mandated counselling in reconstructing the mindset of the arrested batterers;²⁰¹
- (c) It can stop the violence immediately and guarantee the safety of the victims, and it can provide time and space for the victim to consider her / his options – a research in the USA shows that the arrest can put the victim at a lower risk of repetitive abuse than mediation or separation;²⁰²
- (d) If the victim is injured or frightened in the scene where the violence happens, it would be very difficult for her / him to decide whether s/he wants the batterer to be arrested at that very moment, so it would be better if the police can make the decision;²⁰³
- (e) It can deter future violence in the arrested batterer;²⁰⁴
- (f) The policy empowers the victim – making the call itself is already the first step towards the ending of abuse²⁰⁵, and the most significant is: when the victims call, they are guaranteed a specific police response. As Jessica Dayton further explains:

²⁰⁰ Lisa Lehman (1981) *Prosecution of Spousal Abuse: Innovations in Criminal Justice Response*; 'Development in The Law: Legal Response to Domestic Violence' 106 *Harv L Rev* 1498; Margaret Martin (1994) 'Mandatory Arrest for Domestic Violence: the Court's Response' 19 (2) *Criminal Justice Review* 212; Catherine Durant (2003) 'When to Arrest: What Influences Police Determination To Arrest When There Is A Report Of Domestic Violence' 12 *S Cal Rev L and Women's Stud* 301.

²⁰¹ Joan Zorza (1994) 'Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies' 28 *New Eng L Rev* 929.

²⁰² Lawrence Sherman and Richard Beck (1984) 'The Specific Deterrent Effects of Arrest for Domestic Assault' 49 *American Sociological Review* 261.

²⁰³ Kathleen Waits (1985) 'The Criminal Justice System's Response to Battering: understanding the Problem, Forging the Solution' 60 *Wash L Rev* 267; see also Erin Han (2003) 'Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases' 23 *BC Third World LJ* 159, 178.

²⁰⁴ Donna Welch (1994) 'Mandatory Arrest of Domestic Abusers: Panacea or Aperpetuation of the Problem of Abuse' 43 *DePaul L Rev* 1133.

²⁰⁵ Sarah Buel (1988) 'Mandatory Arrest for Domestic violence' 11 *Harv Women's L J* 213.

‘...when the state power and resources are behind the battered woman, she will feel more valued as a member of society and more likely to protect herself from further violence.’²⁰⁶

- 7.27 A pro-arrest policy was also introduced across all police forces in the UK.²⁰⁷ In every state in the USA except Arkansas, police who respond to domestic-abuse calls are now required to make an arrest if they believe that an assault has occurred -- even if the victim objects to the arrest. Many cities have also recently adopted "no drop" policies, in which prosecutors are encouraged to pursue such cases even if the victim requests that the charges be dropped.²⁰⁸
- 7.28 The effectiveness of the mandatory arrest policy was supported by research. A research publicized in 1983 demonstrated that after the policy was installed in Duluth, 87% of the victims were living violence-free 3 years after the course was brought to the Court.²⁰⁹ In 1984, another research considering the effect of the mandatory arrest policy carried out in Minneapolis, USA, showed that the policy reduced effectively the rate of re-offending within the ensuing 6-month period by 50% when compared to less formal police intervention.²¹⁰
- 7.29 Supported by Harmony House, a pro-arrest policy could help relieve the pressure of battered women.²¹¹ The existing prosecution and arrest policy is to see if there is strong evidence or if the battered woman is willing to witness when there is no third witness in the wife abuse incidence. Witnessing against their partner would create great pressure on them. Under the pro-arrest policy, the police have to collect enough evidence to support reason to press charges against the batterer. It is the responsibility of the police to make such decision rather than have it solely shouldered on battered women.

²⁰⁶ Jessica Dayton (2003) ‘The Silencing of a Woman’s Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases’ 9 *Cardozo Women’s LJ* 281, 288.

²⁰⁷ The Secretary of State for the Home Department (2003). *Safety and Justice: The Government’s Proposals on Domestic Violence*. London: Home Office.

²⁰⁸ Eve Buzawa and Carl Buzawa (1996) *Domestic Violence: the Criminal Justice Response* (2nd ed) London: Sage Publication.

²⁰⁹ Ellen Pence (1983) ‘The Duluth Domestic Abuse Intervention Project’ 6 *Hamline Law Review* 247.

²¹⁰ Lawrence Sharman and Richard Berk (1984) ‘The Specific Deterrent Effects of Arrest for Domestic Assault’ 49 *American Sociological Review* 261-272; USA Department of Justice (2001) *The Effects of Arrest on Intimate Partner Violence: New Evidence from the Spouse Assault Replication Programme*.

²¹¹ Harmong House (2004). Paper submitted to Welfare Panel of LEGCO (防止和處理家庭暴力的策略及措施), CB(2)2131/03-04(09), April 26, 2004.

7.30 However, the effect of mandatory policy is controversial. Similar investigation in 6 other cities in the USA, however, demonstrates different results: re-offending may increase if other factors (like unemployment) are also present.²¹² Police also argue that mandatory arrest limits their discretion and control over the scene.²¹³ Critics of mandatory arrest list the following weaknesses of the policy:

- (a) Dual arrest: Police officers often arrest both the victims and the batterers rather than determine who was the primary aggressor, a typical scenario is: when they see both victim and batterer are injured, they may have no choice but to arrest both parties, even if one appears to be the primary aggressor – it is a response to the policy when the police is compelled to hold someone responsible for the violence and – the worst is: ‘dual arrest effectively blames the victim, holding her equally responsible for the abuse’;²¹⁴
- (b) The policy disempowers the victims as their own choices are not respected – so it is further argued that the policy would discourage victims to call if they do not want to see their partners being arrested;
- (c) The arrest may provoke greater violence from the batterers.

7.31 Nevertheless, in a research conducted in 1994 among prosecutors and police, it shows that dual arrest is rare; the study also shows that police support the policy.²¹⁵ The shortcoming of mandatory arrest, as argued by Jennie Long, is often caused by the lack of social support provided to the offender and, hence, can be compensated by court-mandated counselling.²¹⁶ Also, there is a study showing that even though the victims do not want their batterer arrested, they

²¹² Jane Ursel (2001) ‘Report on Domestic Violence Policies and Their Impact on Aboriginal People’ submitted to the Aboriginal Justice Implementation Commission.

²¹³ Marion Wanless (1996) ‘Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?’ *U Ill L Rev* 533, 540.

²¹⁴ Linda Mills (1999) ‘Killing Her Softly: Intimate Abuse and the Violence of State Intervention’ 113 *Harvard Law Journal* 550, 588; see also John Johnson (1996) ‘A New Side to Domestic Violence: Arrests of Women Have Risen Sharply Since Passage of Tougher Laws’ *LA Times* 27 April, A01.

²¹⁵ *Family Protection and Domestic Violence Intervention Act of 1994: Evaluation of the Mandatory Arrest Provisions* page 7.

²¹⁶ Jennie Long (2001) *The Link Between mandatory arrest and community involvement in policing domestic violence recidivism* US: American Society of Criminology.

are willing to support the arrest if the criminal justice system can provide them assistance and support.²¹⁷

7.32 The policy of mandatory or pro-arrest means that the police would arrest the batterer when there is a probable cause to believe that violence has occurred amongst family members. Such policy could resolve the problem of low arrest rates. It removes the ambiguity in seeing domestic violence as a dispute or a crime. Thus, it is premature to introduce the policy without setting the measures like court-mandated treatment programmes for batterers and victim support services, to handle the increasing number of arrested cases. The consultants suggest to study the existing practice of arrest and to do consultation of the launching of mandatory or pro-arrest policy.

7.33 Recommendations: Meanwhile, improvement on the practice arrest is recommended by providing clear policy and practice guidelines on arresting domestic violence crime. These include:

- (a) Evidence gathering:
 - (i) All domestic incident calls should be recorded in a domestic incident report (DIR) and reported to the superior.
 - (ii) The DIR should contain the following information:²¹⁸
 - Demographic information relating to victim and defendant (age, sex, etc.)
 - Acts of violence
 - Evidence collected including victim, witness and suspect statements
 - Risk assessment etc.
 - (iii) At the scene of the offence, the police officers should identify the primary aggressor and history of violence, conduct a risk assessment, and separate the perpetrator from the victim when taking statements.
 - (iv) Check if there is injunction order. If no, inform victim that s/he can apply it with legal aid support. If yes, check if power of arrest is

²¹⁷ Machaela Hoxtor (1997) 'Domestic Violence as Crime Against the State: The Need for Mandatory Arrest in California' 85 *California Law Review* 643.

²¹⁸ The Metropolitan Police, London, has a very detail Domestic Violence Investigation/Arrest Form (Book 124D) that contains brief definition of domestic violence, guides for arrest and evident gathering, evidence collected, victim, witness and suspect statements, risk assessment and risk management guide etc.

attached. If yes, do arrest. If no, inform victim that s/he could appeal to the Court that the respondent is breaching order.

- (v) Evidence-led prosecution, not victim-led: More active in gathering evidence to support victim's statement. Prompt action is required to take victim for medical examination and to take victim statement.
 - (vi) Supervision: The superior should monitor that the frontline police officers are strictly following the guidelines in evidence gathering.
- (b) Investigation
- (i) The investigation should be independent of the victim's consent. It would be good to have victim's cooperation and consensus of being a witness. However, regardless of whether the victim is willing to witness, the special unit should conduct the investigation independently.
 - (ii) If there is any occurrence of violence, all such cases should be handled by a special unit of the Police, like the Child Abuse Investigation Unit (CAIU) of the Police which is responsible for investigating allegations of the following nature according to the CAIU Charter. The CAIU could be expanded to investigate domestic violence cases.
- (c) The report of the case investigation should be filed to the Department of Justice for the consideration of prosecution.
- (d) Providing support to victims is very important to get them involved and collaborating. The victims need emotional support and legal advice as well. Referral should be made to social services for the provision of support.
- (e) Information system: The record on the number of domestic incident call, DIR and number of cases filed to the Department of Justice.
- (f) Training: Mandatory training for the frontline police officers and the investigators of the special unit are required. They should be trained with the knowledge of domestic violence and special techniques in the collection of evidence.

Recommendation 9

We recommend that:

Improvement on the practice of arrest is enhanced by providing clear policy and practice guidelines on arresting domestic violence crime.

Including:

- (a) Evidence gathering
- (b) Investigation
- (c) The report of the case investigation should be filed to the Department of Justice for the consideration of prosecution.
- (d) Providing support to victims.
- (e) Information system.
- (f) Training

Prosecution policy and practice

7.34 According to the table in Appendix 4, the rates of criminal charge laid against alleged offenders were from 14% to 24% for domestic violence cases and 25% to 34% for child abuse cases, from 2001 to September 2003. The charge rate is not high, particularly for the domestic violence cases. As discussed in para. 2.32 in this report, the attitude of the victim plays an important role in the decision to prosecute.

7.35 No-drop prosecution policy, another tool of intervention model, would mandate that prosecutors press charges when an individual has been arrested for domestic violence.²¹⁹ Since 1983, Canada started to adopt policy directives which require the prosecutors to ‘charge and prosecute all incidents of spousal abuse where there were reasonable and probable grounds to believe

²¹⁹ Barbara Fedders (1997) ‘Lobbying for Mandatory Arrest Policies: Race, Class, and the Politics of the Battered Women’s Movement’ 23 *NYU rev L and Soc Change* 281; Linda Mills (1997) ‘Intuition and Insight: A New Job Description for the Battered Woman’s Prosecutor and Other More Modest Proposals’ 7 *UCLA Women’s Law Journal* 183; Jessica Dayton (2003) ‘the Silencing of a Woman’s Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases’ 9 *Cardozo Women’s LJ* 281.

that an offence had been committed'.²²⁰ A recent study in Canada shows that the mandatory arrest policy has decreased the level of violence.²²¹

7.36 The decision to prosecute, under the effect of no-drop prosecution policy, is usually made without any reference to the consent or wishes of the complainants. In other words, whether the complainant is reluctant to cooperate with the prosecution of the accused is not determinative provided that there is adequate independent evidence.²²² Prosecutors in the USA have started to treat these cases as though no complainant / victim were available to testify. Spontaneous statements made by the victim at the time of arrest, videos or photographs taken at the time of injury, and police officers' testimonies form the case against the batterer.²²³

7.37 The concerns of adopting the no-drop policy are:

- (a) Victims of domestic violence are 'incapable of making their own decisions because of the totality of the abuser's control';²²⁴
- (b) Prosecutors cannot rely on the complainants to hold the perpetrators accountable as the complainants often decline to press charges since 'the batterer is likely to use increased violence and threats to intimidate his [her] victim if he [she] knows it will result in pending charges being dropped';²²⁵
- (c) Prosecutors are supposed to intervene so as to protect the victims of domestic violence.²²⁶

²²⁰ Other examples include: Ontario Calgary and Yukon. Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislations Page 1.

²²¹ London Family Court Clinic Inc. (1991) *Wife Assault as a Crime: the Perspective of Victims and Police Officers on a Charging Policy in London, Ontario From 1980-1991* Canada: Department of Justice page 25.

²²² According to Section 57 of Criminal Procedure Ordinance (Capt 221 LHK), victims in criminal prosecution which involves family violence are compelled to testify in the judicial hearing.

²²³ Linda Mills (1999) 'Killing Her Softly: Intimate Abuse and the Violence of State Intervention' 113 *Harvard Law Journal* 550, 561.

²²⁴ Erin Han (2003) 'Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases' 23 *BC Third World LJ* 159, 183-184.

²²⁵ Marion Wanless (1996) 'Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?' *University of Illinois Law Review* 533, 567; see also Virginia Hench (1997) 'When Less is More – Can Reducing Penalties Reduce Household Violence?' *University of Hawaii Law Review Spring* 37.

²²⁶ Donna Wills (1997) 'Domestic Violence: the Case for Aggressive Prosecution' 7 *UCLA Womn's Law Journal* 173, 173.

7.38 However, a no-drop policy cannot guarantee that a perpetrator will be ‘locked away’.²²⁷ A study found that recidivism was unaffected by whether a case was dropped, dismissed or prosecuted.²²⁸ As the consent of the victims does not have any say under a no-drop policy and prosecutors can subpoena the victim to attend the trial and force them to testify against their will, academics argue that the policy is in fact patronizing and through ignoring their subjectivities, disempowering the victims.²²⁹ Erin Han further points out that only by letting the victims make the decision, they can be empowered:

‘...empowerment is a process of encouraging and facilitating a victim’s own decision-making, and it is through this process that the victim has the best chance to realize personal autonomy.’²³⁰

7.39 The prosecution policy is connected with the reporting and arrest policies. Without adequate empirical support and discussion with the victims and social services practitioners, it is premature to introduce the no-drop policy at this stage.

7.40 The consultants suggest to improve the prosecution practice by adopting independent/proactive investigation. The investigation should be independent of the victim’s consent. Whether the victim is willing to witness, the investigation will be taken independently. This practice is adopted by the UK government that “revised the policy on prosecutions focusing on safety, support and information for victims; a closer civil/criminal interface; and, whenever possible, constructing cases based on evidence other than that of the victim”.²³¹

²²⁷ Jessica Dayton (2003) ‘the Silencing of a Woman’s Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases’ 9 *Cardozo Women’s LJ* 281, 289.

²²⁸ Robert Davis et al. (1998) ‘The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors’ 44 *Crime and Delinq* 434.

²²⁹ Linda Mills (1997) ‘Intuition and Insight: A New Job Description for the Battered Woman’s Prosecutor and Other More Modest Proposals’ 7 *UCLA Women’s Law Journal* 183.

²³⁰ Erin Han (2003) ‘Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases’ 23 *BC Third World LJ* 159, 184.

²³¹ The Secretary of State for the Home Department (2003). *Safety and Justice: The Government’s Proposals on Domestic Violence*. London: Home Office.

Recommendation 10

We recommend that:

Improvement on the prosecution practice is made by adopting independent/proactive investigation.

Domestic Violence Court

7.41 Domestic violence cases are handled in different Courts. The victims have to witness at different Courts for different issues like divorce, application of injunction orders, common assault etc. The burden is shouldered on victims and thus the holding of responsibility for batterers is diffused due to inconsistent judgment made by different judges based on different ordinances.

7.42 In the USA, Family Courts strive to keep families together, whereas Criminal Courts are more punitive in purpose. A Domestic Violence Court usually means an integrated court system where both civil injunctions and criminal cases related to domestic violence can be handled.²³² In 2000, there were more than 200 domestic violence courts in the USA, and the number is growing. Canada, in the 1980s, echoing with the adaptation of ‘no-drop prosecution policy’, started the establishment of domestic violence courts.²³³ For instance, the Winnipeg Family Violence Court was set up in 1990 in order to handle cases of spousal, child and elderly abuse in Winnipeg, Manitoba.

7.43 In December 1999, the ‘Joondalup Family Violence Court project’ was launched in Australia.²³⁴ The advantages of setting up a domestic violence court include:

- (a) The court can provide continual and effective monitoring in dealing with domestic violence cases;

²³² Amy Karan et al (1999) ‘Domestic Violence Courts: What are they and how should we manage them?’ *Juv & Fam Ct J* Spring 72-73.

²³³ Other examples include: Ontario Calgary and Yukon. *Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislations.*

²³⁴ The aims of the project were:

1. To improve the criminal justice response to family violence;
2. To make perpetrators accountable for their behaviour;
3. To support victim in the criminal justice system and ensure their safety; and
4. To reduce the incidence of family violence in the Joondalup district.

- (b) The court can incorporate the judicial system with multiple community services (for example: referrals for counselling) more effectively;
- (c) Judges can develop expertise in dealing with all aspects of domestic violence control policies;
- (d) Establishment of a specialized domestic violence court can show the community the seriousness and dedication of the judiciary in handling with domestic violence.²³⁵

Integrated Domestic Violence Court

7.44 Beginning in December 2003, an Integrated Domestic Violence Court (IDV Court) was set up in the Tompkins County, Rochester, New York. Until recently, such kind of IDV Court has been set up in other counties.²³⁶ The court is specially designed to better serve families experiencing domestic violence. Previously, litigants in domestic violence cases were required to appear in front of multiple courts and judges to address their criminal, family and matrimonial issues. In order to simplify the court process and ensure effective case resolution, the IDV Court was established as embracing a "one family-one judge" concept, allowing a single judge to hear a family's related cases where the underlying issue is domestic violence. The goals of the IDV Court are to promote informed judicial decision-making, maintaining consistency in orders of protection, reduced court appearances, enhances services to victims and increased offender accountability, while protecting the rights of all litigants.²³⁷

7.45 Court Transfer: The IDV Court will hear interrelated cases from throughout Tompkins County. All cases (criminal offence, assault, divorce, custody etc.) involving allegations of domestic violence or a violation of an order of protection between the alleged victim and a defendant will be removed to the IDV Court. Upon identification of appropriate cases, the IDV Court will issue a mandatory Transfer/Removal Order notifying the parties and originating local courts that the matters have been transferred. Once the parties have been notified, they need only appear in IDV Court and need not attend scheduled appearances in other Courts.

²³⁵ Bruce Winick (2000) 'Applying the Law Therapeutically in Domestic Violence Cases' *UMKC Law Review* Fall 33: 39-43.

²³⁶ For example, an IDV Court was set up in Munroe County, Rochester, in Jan, 2004.

²³⁷ Robinson, Susan "Integrated domestic violence court", Retrieved June 1, 2004 from Tompkins County Family Court Web site:
<http://www.courts.state.ny.us/6jd/countymaps/tompkins/tpkfamily/idvcourt.html>

- 7.46 A unique feature of the IDV Court is the intensive judicial monitoring of cases to ensure ongoing offender accountability. A Resource Coordinator will act as a liaison to criminal justice agencies and local service providers to provide up-to-date reports to Judges before each court appearance, for example, defendants' compliance with orders of probation and terms of conditional discharges.
- 7.47 Another important aspect of the IDV Court is the presence of a Victim Advocate. The Victim Advocate, a specially trained representative from The Advocacy Center, will be available in Court and thereafter to provide emotional support, safety planning, referrals and other services to victims.
- 7.48 In the UK, the first Specialist Domestic Violence Court was set at West London Magistrates Court. It sits once a week, for hearings and for trials at West London. It serves the London Borough of Hammersmith & Fulham and the Royal Borough of Kensington & Chelsea. The Specialist Court commenced operations at the West London Magistrates Court on October 17, 2002. The Court is the first specialist in domestic violence in London and the first to hear trials in the country.
- 7.49 The aims of the launch of the Specialist Domestic Violence Court are²³⁸:
- (a) To increase the effectiveness of the judicial system in:
 - (i) Providing protection and support to victims and witnesses of domestic violence
 - (ii) Providing appropriate sanctions to perpetrators
 - (iii) Reducing delay through effective case management
 - (b) To further increase co-ordination and involvement of agencies, including the Crown Court, in supporting victims and witnesses and dealing with perpetrators.
 - (c) To explore the potential for linking civil courts into the criminal justice process at West London Magistrates Court
- 7.50 The court does not stand alone but work collaboratively with other agencies and departments. The project Standing Together convenes the Court Management Group and co-ordinates the network of Victim/Witness Support

²³⁸ Standing Together Against Domestic Violence (2003). The First Annual Review of the Specialist Domestic Violence Court at West London Magistrates Court. London: Standing Together Against Domestic Violence

Agencies. It provides a comprehensive support service for victims and witnesses. It is indeed an approach of coordinated legal and community responses.

- 7.51 In the evaluation of the effectiveness of the Specialist Court, the aims of the court are being met with greater coordination of services for survivors of domestic violence. With a more systematic approach to domestic violence case management, it has resulted in improved safety. More importantly, the rate of repeat victimisation has been reduced.²³⁹

Setting up a domestic violence court in Hong Kong

- 7.52 Hong Kong has a family court. It is solely for civil cases involving divorce and custody disputes, and is not for criminal cases involving violence. A domestic violence case may be appeared in family court dealing with the divorce proceeding while at the same time appeared in a criminal court addressing the violence issue. The victim has to witness for several times and the defendant may present different stories.

- 7.53 The consultant suggests setting up a domestic violence court in Hong Kong that would handle all criminal and civil cases involving allegations of domestic violence or a violation of an injunction order. It could be a new criminal court while keeping the family court as a civil one to handle divorce and custody cases with no domestic violence alleged. The other possibility is to set up an integrated criminal and civil court by restructuring and strengthening the existing family court. This option would be easier to get the domestic violence court started by using the existing structure, but would end up in overloading the court with divorce and custody cases.

- 7.54 In either options, a number of strategies and procedures have to be designed to ensure:

- (a) A continual and effective monitoring system in dealing with domestic violence cases;
- (b) A judge with expertise in dealing with all aspects of domestic violence problems and policies; familiar with both criminal and civil procedures;
- (c) Holding a holistic perspective to consider other types of domestic violence; for example, the defendant may also be the perpetrator of

²³⁹ Ibid.

elderly or child abuse. Awareness of the co-occurrence of child abuse and violence amongst family members should be raised.

- (d) Well designed information and monitoring system to provide up-to-date reports to Judges before each court appearance, for example, defendants' compliance with orders of probation, terms of conditional discharges, or performance in the treatment or the BIP, if any;
- (e) Reduced court appearances for victims and children;
- (f) Independent representative for children;
- (g) Effectiveness in victim protection and holding perpetrators accountable to the use of violence;
- (h) Enhanced victim support services, including the arrangement of Victim Advocate, a specially-trained professional available in Court and thereafter to provide emotional support, safety planning, referrals and other services to victims. In the existing practices, the lawyer (focusing on the legal issues) and the social workers (focusing on the family issues, with inadequate knowledge of legal aspects) are not ready to provide the support. The Victim Advocate is part of the legal system with knowledge about the legal procedures while standing on the victim's side to provide advice and emotional support.
- (i) Establishment of an effective coordination with multiple community services, for example, referrals for counselling (for batterers, victim and children), safe visitation arrangements, monetary and housing support for children, spouses and ex-spouses, family support, mental health screening and assessment etc.

Recommendation 11

We recommend:

To set up a domestic violence court in Hong Kong that would handle all criminal and civil cases involving allegations of domestic violence or a violation of an injunction order.

Domestic Violence Serious Injury or Fatality Review

7.55 With increased sensitivity to domestic violence amongst the public, policymakers and the agencies, there is a recognized need to explore ways to work together as a team to share resources, information and professional

views²⁴⁰. There are now four California counties that have begun a systematic review of fatal domestic violence and California has passed a law providing official status to the domestic violence fatality review process.²⁴¹

- 7.56 Some agencies and individuals have proposed to set up a domestic violence fatality review or child fatality review.²⁴² Against Child Abuse²⁴³ suggests setting up a Child Death (Fatality) Review to conduct review of deaths of children by a multidisciplinary team. The purpose is to improve the understanding of why children die and taking action to prevent child deaths. The Hong Kong Council of Social Services suggests setting up a Domestic Violence Serious Injury or Fatality Review Committee to include cases from the whole family.²⁴⁴
- 7.57 The fatality review started in the US by the National Center on Child Fatality Review (NCFR)²⁴⁵ studied deaths of children under 18 caused by accident, abuse or neglect in order to prevent similar cases from happening again. A similar structure was set up in Canada and South Wales, Australia.²⁴⁶
- 7.58 The Child Fatality Review has been expanded to the domestic violence fatality review. The Department of Justice in the US has set up the National Domestic Violence Fatality Review Institute. At least 13 states have created the review structure.²⁴⁷
- 7.59 With reference to child fatality reviews, the Domestic Violence Serious Injury or Fatality Review Committee is a multi-agency, multi-disciplinary team that reviews domestic violence deaths from various causes. Benefits of child fatality reviews include improved inter-agency case management,

²⁴⁰ US Department of Justice, Fact Sheet – Child Fatality Review, April 2001.

²⁴¹ The National Center on Child Fatality Review, 2004

²⁴² Suggested by Dr. Hon. Law, CK. “Handling family violence” CB(2)1265/01-02(06) & Against Child Abuse papers, papers submitted to Welfare Panel of LegCo, March 11, 2002.; Hong Kong Council of Social Services, Proposal on the set up of Domestic Violence Serious Injury or Fatality Review. October, 2004.

²⁴³ Against Child Abuse. paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004, CB(2)2131/03-04(10).

²⁴⁴ Hong Kong Council of Social Services (2004). Proposal on the formation of Domestic Violence Serious Injury or Fatality Review Committee. October 15, 2004.

²⁴⁵ [The National Center on Child Fatality Review](http://www.ican-ncfr.org), Interagency Council on Child Abuse and Neglect, LA County, Ca. <http://www.ican-ncfr.org> (browsed in July 2004)

²⁴⁶ Michael Durfee, Deanne Tilton Durfee & M. Patricia West (2002). “Child Fatality Review: An International Movement”. *Child Abuse & Neglect*, 26 (6-7), 619-636.

²⁴⁷ Office on Violence Against Women, Office of Justice Program, US Department of Justice. [The National Domestic Violence Fatality Review Initiative](http://www.ndvfri.org). <http://www.ndvfri.org> (browsed in July 2004)

identification of gaps and breakdowns in agencies and systems designed to protect children and the development of data information systems that can guide the formation of protocols and policy for agencies that serve families and children.

- 7.60 The common goal for all teams is the prevention of child death and injury. It is based on the belief that the preventable death of any child is a tragedy. It may also be an opportunity for a community to grow together, learn together and thereby grow stronger. The spirit of the review is not to accuse any party, but for continuous improvement of the system response for enhancing protection to the families and children.
- 7.61 In this light, a Domestic Violence Serious Injury or Fatality Review should be one of the initiatives in the coordinated legal and community response mechanisms for better integrating the multi-disciplinary experience in preventing death and injury due to domestic violence.
- 7.62 The scopes of the review should cover at least three important dimensions: (1) Causes of death: This is the scope of the inquest conducted by the Coroner's Court. The prime purpose of an inquest is to ascertain the circumstance surrounding a particular death.²⁴⁸ (2) Services provision, practice and procedures: This is similar to the function of the Tin Shui Wai Family Services Review Group²⁴⁹ which focused only on the family services. For a thorough fatality review, it should include social services and practice of police and social services practitioners. (3) Psycho-social risk factors: Psychological autopsy is a research method by which comprehensive information is collected retrospectively about an individual who died. The investigation included the circumstances that precipitated the deaths and the life history of the person who died. Psychological autopsy was developed as a procedure parallel to physical autopsy. The physical autopsy and the circumstances about a death is the main function of the Coroner's Court.
- 7.63 However, the Coroner's Court does not include the other two functions regularly. Under special situations such as the suicide case in Tin Shui Wai in 2004, the Coroner's Court appointed the Hong Kong Jockey Club Centre for

²⁴⁸ Hong Kong Judiciary Annual Report, 2002.

²⁴⁹ "Tin Shui Wai Family Services Review Group", Paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 24 May 2004, CB(2)2131/03-04(08).

Suicide Research and Prevention, the University of Hong Kong to conduct the psychological autopsy on the suicide case.

7.64 The existing death review is conducted by the Coroner’s Court and, under a special request, the Administration would form a panel to review a particular aspect related to the deaths. However, the information collected for each part may not be comprehensive to cover the above three dimensions and there is no one panel to conduct the review based on the information collected through different channels. Thus, a Review Committee is recommended to conduct a thorough review on domestic violence serious injury and fatality cases. The Committee can be convened by a coroner using the existing channel (e.g. by police investigation, and by nomination of pathologist and/or social scientists for physical and psychological autopsy) to collect information for review. Consistent review on all deaths related to domestic violence will help develop a profound understanding of the causes of death and suggest measures to the prevention of similar deaths in the future.

7.65 Members of the Committee can include a Coroner, chief officers of police, local authorities, health and social services professionals, academia etc.

Recommendation 12

We recommend:

To set up a Domestic Violence Serious Injury or Fatality Review to conduct a thorough review on domestic violence serious injury and fatality cases with regards to the causes of death, service provision and psycho-social risk factors.

Education and training

7.66 Prevention is an important strategy of the Public Health perspective.²⁵⁰ It could be achieved through education and training, change of knowledge, attitude and practice. The strategies adopted should be “universal, selective

²⁵⁰ Developed by Potter, L.B., Rosenberg, M.L. & Hammond, W.R. (1998). Suicide in youth: A public health framework. *Journal of the American Academy of Child and Adolescent Psychiatry*, 37, 484-487.

and indicated”.²⁵¹ Education and training as a strategy of prevention should target the public and professionals who are working closely with high-risk groups or symptomatic individuals.

Education for the public

7.67 Public education is recommended as a public health strategy in preventing domestic violence. The content should cover knowledge (help-seeking, laws related to domestic violence, legal aid service, social services), attitude (zero-tolerance of violence, domestic violence is a crime, gender equality). The aims are (1) to reduce the negative attitudes as public risk factors (e.g. cultural acceptance of domestic violence, attitudes towards women and children – accept male domination); (2) to increase knowledge of legal and social services, and thus to motivate help-seeking behaviour.

7.68 Public education can be implemented through media education and education for selective groups e.g. students, groups with higher possibility of encountering domestic violence e.g. low income families, new arrival families etc.

Training for legal actors

7.69 The legal actors include lawyers, police, prosecutors and judges. Overseas academics always sense that judges are not sensitive towards domestic violence.²⁵² In the USA, Section 1406 of the Violence Against Women Act and Family Protection and Domestic Violence Intervention Act (1994): Evaluation of the Mandatory Arrest Provisions (California, USA) states that training for the judges should be provided. If court mandated counselling is to be engaged successfully in Hong Kong, such training is also essential.

²⁵¹ Developed by Gordon, R. (1987). An operational classification of disease prevention. In J.A. Steinberg & M.M. Silverman (Eds.) *Prevention of Mental Disorder* (pp. 20-26). Rockville, MD: U.S. Department of Health and Human Services.

“Universal” – entire population as the target – prevention through reducing risk and enhancing health
“Selective” – high-risk groups (& individuals), though not all members bear risks – prevention through reducing risks

“Indicated” – symptomatic and ‘marked’ high risk individuals – interventions to prevent full-blown disorders

²⁵² Marion Wanless (1996) ‘Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?’ *U III L Rev* 533;

- 7.70 In the UK, the Government has developed improved training for judges and magistrates. For example, the Judicial Studies Board (JSB) produced a domestic violence training pack for magistrates. A Working Group took this forward and produced a training video and supporting material by the end of June 2003.²⁵³
- 7.71 In a study conducted by Tin on the magistrates in Hong Kong, it is found that a magistrate's perceptions of relationship issues and the cause of wife abuse were likely to affect his judgment of the case. Other influential cognitive factors included the magistrate's understanding of the subjective experiences of the victim and the realistic situation and feelings of a battered woman. Following these cognitive factors, the magistrate might feel reluctant to severely punish the abuser. They may worry about causing hardship to the family due to the sentencing and find it difficult in deciding the sentencing. She suggested that training should be provided for the judges, so as to strengthen their knowledge in the issue and arouse their sensitivity and objectivity in trying cases.²⁵⁴
- 7.72 Training for lawyers and prosecutors is recommended, particularly on the research and knowledge of domestic violence. The UK Government has issued a best practice guidance for the courts and other professionals on how to deal with child contact cases and domestic violence. The effectiveness of the guidance is being monitored and evaluated.²⁵⁵
- 7.73 Training for police. The Hong Kong Police Force has been conducting training for the police officers. It is recommended to keep on the right track and increase more training for frontline police officers and the superiors as well. The training areas should include knowledge and attitude in handling domestic violence, procedure and good practice, gender sensitive, identification of primary aggressor, risk assessment etc.

²⁵³ The Secretary of State for the Home Department (2003). *Safety and Justice: The Government's Proposals on Domestic Violence*. London: Home Office.

²⁵⁴ Tin, F. (1999). *An exploratory study of magistrates' responses to wife abuse*. Unpublished Master of Social Science, The University of Hong Kong, Hong Kong.

²⁵⁵ Ibid.

Recommendation 13

We recommend that:

Education for the public and training for legal actors is needed as a strategy of prevention of domestic violence.

Legal support service for victims

- 7.74 Commonly, victims of domestic violence hesitate to report violence to the police. They are unwilling to press charges against the perpetrator and often withdraw charges during the prosecution and court proceedings. The fluctuation in the decision making process reflects that they do not have legal knowledge and are overwhelmed by emotions like fear of revenge, hoping their husband to change but not be charged, worried about their children etc. They need legal knowledge (e.g. legal right, procedures in applying injunction order, negotiating with lawyer etc.) and emotional support.
- 7.75 In Minnesota, USA, legal advocates provide victim support services. They can empower victims of domestic violence and sexual assault to go through the legal process. They are trained with legal knowledge, evidence gathering and skills in empowering victims. They are working with prosecutors, explaining criminal and civil procedures to victims, and escorting them to court.²⁵⁶ Similar services are provided in Canada, under the Department of Justice Canada²⁵⁷ and in the New South Wales of Australia by the Crime Victim Bureau²⁵⁸ and the Domestic Violence Advocacy Service.²⁵⁹
- 7.76 In the UK, the Victim Support provides free and confidential support and information for victims of violence and witnesses.²⁶⁰ Witness services like the Victim Support Scotland's Witness Service was established in all Sheriff Courts and the High Courts in Edinburgh and Glasgow by 2002. The service is to provide assistance to victims and witnesses attending court. The Crown Office and Procurator Fiscal Service have also signaled their intention to

²⁵⁶ Pence (1996). *Coordinated Community Response to Domestic Assault Cases: A Guide for Policy Development*. Minnesota Program Development, Inc.

²⁵⁷ Department of Justice, Canada (<http://canada.justice.gc.ca>).

²⁵⁸ Victims of Crime Bureau, Australia (<http://www.lawlink.nsw.gov.au>)

²⁵⁹ Domestic Violence Advocacy Service, Australia (<http://www.womenslegalnsw.asn.au>)

²⁶⁰ Victim Support, UK. (<http://www.victimsupport.org.uk>)

provide an enhanced level of care and support to victims and witnesses via the establishment of a Victim Liaison Office.²⁶¹

7.77 In view of the existing services on victim support provided by the SWD and some NGOs (discussed in Chapter 3), the consultants recommend to evaluate the effectiveness of the services and identify the room for improvement. Special attention should be paid to the Witness Support Programme, which should include the victims of domestic violence as the target of service recipient. The “support person” should be systematically trained with knowledge of legal rights and procedures and skills in providing emotional support.²⁶² Escort services to court, linking with prosecutor and lawyer are found important to the victims. The existing support services for victims and witnesses should be well coordinated with and supported by the legal system.

Recommendation 14

We recommend that:

The existing support services for victims and witnesses should be well coordinated with and supported by the legal system.

²⁶¹ Victim Support (2004). *No more victims*. Edinburgh: Victim Support Scotland

²⁶² The Hong Kong Council of Social Service (2004). *Strengthening Support Service for Victims of Domestic and Sexual Violence in HK: Legal Support Service to Victim of Domestic and Sexual Violence*, 2004 February.

Chapter 8

Reform of the Domestic Violence Ordinance

- 8.1 In recent years, there have been voices from various organizations to amend the DVO (Cap 186).²⁶³ The Hong Kong Law Reform Commission also recommended reviewing the DVO (Cap 189) in the report on stalking in 2000.²⁶⁴
- 8.2 With the abundant research conducted in the past twenty years, domestic violence has been identified as a complicated social problem that requires multidisciplinary interventions. The domestic violence can be directed by all family members against all other member of the same family. It may include spousal violence, child abuse, elderly abuse, sibling abuse, parent abuse, homosexual partner abuse, etc. The violence may start before marriage and may last after divorce. It can be inflicted in multiple forms including physical assault, sexual violence, psychological aggression, threat with or without physical violence, torture, stalking etc.
- 8.3 The existing DVO (Cap 189), which was created in 1986, can no longer meet the challenges of the many faces of domestic violence. The Ordinance was largely based on the English Domestic Violence and Matrimonial Proceedings Act 1976.²⁶⁵ The difference between the Hong Kong ordinance and the English ordinance was that in Hong Kong ordinance, there was a maximum duration (section 6) and stating criteria of issuing an order (section 3(2)). The recommendations of including elderly abuse and counselling information were rejected in 1986. It makes the court-mandated counselling programmes and the study of elderly abuse under-developed while, in the past twenty years, these two areas have been proliferated in Western societies. The English

²⁶³ In 2002, the Against Child Abuse and Harmony House submitted papers to the LegCo Panel on Welfare Services requesting the amendment of DVO, refer to papers CB(2)1265/01-02(10) & CB(2)2501/01-02(01). In 2004, the Association Concerning Family Violence (關注家庭暴力問題聯席) proposed to reform the domestic violence ordinance. Refer to the paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004, CB(2)2131/03-04(08).

²⁶⁴ Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

²⁶⁵ Scully-Hill, Anne (2004). *The Annotated Ordinances of Hong Kong: Domestic Violence (Cap 189)*. Hong Kong: LexisNexis.

ordinance had been changed while the Hong Kong ordinance has remained the same since 1986.²⁶⁶

8.4 This chapter describes the proposal of the amendment of the DVO (Cap 189) in fighting against the complex domestic violence. The main principle of setting up the DVO (Cap 189) is that violence amongst people in intimate relationships is different from that amongst strangers. Violence in intimate relationships has its own dynamics, risk factors and impacts. It would mislead the public by overemphasizing love and affection in violent intimate relationships that makes the public unreasonably tolerating the violence and makes the victims suffering much more than those victimized in other relationships.

Function of the restraining orders

8.5 The ordinance under section 3(1) of the DVO (Cap 189) gives District Courts the power to grant injunction orders in various forms: non-molestation orders for the protection of the applicant or a child living with the applicant from being molested by the respondent; exclusion orders excluding the other party from the matrimonial home, or from a specified part of the matrimonial home, or from a specified area whether or not the matrimonial home is included in that area; or entry orders requiring the other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home.

8.6 The major principle of the provision of an injunction order is to prevent any violence or severe hardship on the part of the applicant.²⁶⁷ The respondent should be restricted so to allow the applicant time to resolve their situation.

8.7 Non-molestation orders are court orders that prohibit the offender from having any contact with the victim.²⁶⁸ It is a protection that the victims of domestic violence can seek from the Court for the prevention of re-assault or molestation. Prompt issuance of the orders and accessibility of the orders to

²⁶⁶ Hong Kong ordinance changed to the terminology relating to the courts after 1 July 1997. The English Domestic Violence and Matrimonial Proceedings Act 1976 was incorporated into the Family Law Act, 1996 (Chapter 27 of 1996) [Part IV, in particular].

²⁶⁷ P.22, Scully-Hill, Anne (2004). *The Annotated Ordinances of Hong Kong: Domestic Violence (Cap 189)*. Hong Kong: LexisNexis.

²⁶⁸ P.230, Wallace, H. (2002). *Family violence: Legal, medical and social perspectives*. Boston: Allyn and Bacon.

the victims of domestic violence are the guiding principles to see the effectiveness of the orders.²⁶⁹

- 8.8 Although the grant of an exclusion order may be interfering with the rights of the respondent in accessing to his or her property, the order does not adjust the property right of the respondent. These rights are merely suspended for a specified time period as a consequence of the abusive behaviour of the respondent. It is to regulate the relations between the two family members but not to adjust the property right of the respondent.²⁷⁰

Definition of Violence

- 8.9 There are different types of definitions of domestic violence on a global scale. South Africa defines domestic violence as physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into complainant's residence without consent, where parties do not share the same residence; or any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm, to the safety, health or wellbeing of the complainant.²⁷¹
- 8.10 China (PRC) does not give a detailed definition of domestic violence. Taiwan includes verbal abuse as a type of domestic violence. The Partnerships Against Domestic Violence, Australia defines domestic violence as an abuse of power perpetrated mainly (but not only) by men against women in a relationship or after separation.²⁷²
- 8.11 The World Health Organization²⁷³ defines violence as:

“The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in

²⁶⁹ Kinports, K. & Fischer, K. (2001). Orders of protection in domestic violence cases: An empirical assessment of the impact of the reform statutes. In Lemon, Nancy K.D. (2001). *Domestic violence law*. St. Paul, MINN.: West Group.

²⁷⁰ Ibid.

²⁷¹ Section 1 of South African Domestic Violence Act, 1998.

²⁷² Refer to the web site <http://padv.dpmc.gov.au/index.htm>, retrieved on Aug 13, 2004, from the Partnerships Against Domestic Violence (Partnerships), an Australian Government initiative.

²⁷³ Krug, E. G., & et al (Eds.). (2002). *World report on violence and health*. Geneva: World Health Organization.

or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation”. (P.5)

The child abuse as defined by the WHO:

“Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power”. (P.59)

8.12 Thus, it is recommended to define violence as physical assault, sexual violence, psychological abuse, neglect (for children and elderly), stalking and exposing a child to domestic violence.

Physical assault

8.13 The SWD defines physical violence as “physical attack, when it may take the form of physical and sexual violations, such as slapping, pushing, pinching, spitting, kicking, hitting, punching, choking, burning, clubbing, stabbing, throwing boiling water or acid and setting on fire as well as spouse being forced to be involved in sex or undesirable sexual acts”.²⁷⁴

8.14 In Hong Kong, there is no controversy in defining physical violence in a legal setting under the existing laws (See Appendix 1 and 2). Injury is not a necessary condition in defining physical violence, but it can be an indicator of severe physical violence.

Sexual violence

8.15 In Canada, sexual violence is defined as²⁷⁵:

(a) All forms of sexual assault, sexual harassment, or sexual exploitation

²⁷⁴ P.1, Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

²⁷⁵ Retrieved on Aug 13, 2004, from the Department of Justice Canada’s web site <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

- (b) Forcing a person to participate in any unwanted, unsafe or degrading sexual activity
- (c) Using ridicule or other tactics to try to denigrate, control or limit a person's sexuality or reproductive choices
- (d) Using a child for sexual purposes—including fondling, inviting, manipulating or forcing a child to engage in sexual activity or intercourse
- (e) Rape, sodomy or exhibitionism
- (f) Involving a child in prostitution or pornography.

8.16 In Hong Kong, sexual violence can include marital rape or rape (Cap 200 section 117 & 118), sexual harassment (Cap 480) and sexual offences in Part XII of the Crimes Ordinance (Cap 200), Prevention of Child Pornography Ordinance (Cap 579) etc.

Psychological abuse

8.17 Although psychological abuse is included in many domestic violence ordinances, it is not without debate in the operationalization of the concept to an extent that it could press charge with evidence. Opponents to the inclusion of psychological abuse are worried about the subjectivity of the psychological abuse. Many abusers may claim that they are “psychologically abused” by their partners who are indeed victims of violence perpetrated by their partner. The so-called psychological abuse could be simply annoying or disturbing, not really causing psychological damage. That means, without clear definition of psychological abuse, it could be misused.

8.18 Taking reference of the overseas examples, the Department of Justice, Canada defines psychological or emotional abuse as²⁷⁶:

- (a) Harming a person's sense of self and putting them at risk of serious behavioural, cognitive, emotional or mental disorders
- (b) Attacking a person verbally - for example, by yelling, screaming, name calling, criticizing, threatening or intimidating
- (c) Using criticism, verbal threats, social isolation, intimidation or exploitation to dominate someone
- (d) Routinely making unreasonable demands

²⁷⁶ Retrieved on Aug 13, 2004, from the Department of Justice Canada's web site <http://canada.justice.gc.ca/en/ps/fm/familyvfs.html>

- (e) Criminally harassing or "stalking" - which may include threatening a person or their loved ones, damaging their possessions or harming their pets
- (f) Terrorizing a person
- (g) Exposing a child to family violence.

8.19 Psychological abuse can consist of repeated verbal abuse, harassment, confinement and deprivation of physical, financial, personal resources and social activities, humiliation, intimidation, threat, and social isolation.

8.20 The Centers for Disease Control and Prevention, USA²⁷⁷ gives a very detailed definition of psychological abuse:

Psychological or emotional abuse involves trauma to the victim caused by acts, threats of acts, or coercive tactics, such as those listed below. This list is not exhaustive. Other behaviours may be considered emotionally abusive if they are perceived as such by the victim. Some of the behaviours on the list may not be perceived as psychologically or emotionally abusive by all victims. Operationalization of data elements related to psychological/emotional abuse will need to incorporate victim perception or a proxy for it. Although any psychological/ emotional abuse can be measured by the IPV surveillance system, the expert panel recommended that it only be considered a type of violence when there has also been prior physical or sexual violence, or the prior threat of physical or sexual violence.²⁷⁸ Thus by this criterion, the number of women experiencing acts, threats of acts, or coercive tactics that constitute psychological/emotional abuse may be greater than the number of women experiencing psychological/emotional abuse that can also be considered psychological/emotional violence.

8.21 In summary, psychological/emotional abuse can include, but is not limited to:

²⁷⁷ Centers for Disease Control and Prevention, Injury Center. *Intimate Partner Violence Surveillance*. Retrieve Aug 13, 2004, from the CDC web site:
http://www.cdc.gov/ncipc/pub-res/ipv_surveillance/11_Section34.htm

²⁷⁸ At the March 1996 meeting of the 12-member expert panel, participants discussed the importance of capturing these behaviours as one component of IPV. They also recognized that psychological/emotional abuse encompasses a range of behaviour that, while repugnant, might not universally be considered violent. The panel made the decision to classify psychological/emotional abuse as a type of violence only when it occurs in the context of prior physical or sexual violence, or the prior threat of physical or sexual violence. The panel suggested that "prior" be operationalized as "within the past 12 months."

- (a) Humiliating the victim
- (b) Controlling what the victim can and cannot do
- (c) Withholding information from the victim
- (d) Getting annoyed if the victim disagrees
- (e) Deliberately doing something to make the victim feel diminished (e.g., less smart, less attractive)
- (f) Deliberately doing something that makes the victim feel embarrassed
- (g) Using money that is the victim's
- (h) Taking advantage of the victim
- (i) Disregarding what the victim wants
- (j) Isolating the victim from friends or family
- (k) Prohibiting access to transportation or telephone
- (l) Getting the victim to engage in illegal activities
- (m) Using the victim's children to control victim's behaviour
- (n) Threatening loss of custody of children
- (o) Smashing objects or destroying property
- (p) Denying the victim access to money or other basic resources
- (q) Disclosing information that would tarnish the victim's reputation

8.22 Although the law states that harassment is considered and there was a case found in the period from January 2003 to June 2004 that a non-molestation and an exclusion order were granted solely based on psychological molestation (para. 3.66), it is recommended to amend the law to clarify that beyond doubt by including psychological abuse as a type of domestic violence in the DVO (Cap 189).²⁷⁹

8.23 It is not impossible to operationalize the concept of psychological abuse. A well-known scholar Daniel O' Leary stated that: "adequate definitions of psychological abuse in relationships do not exist for legal and formal diagnostic purposes... While measure of psychological abuse exist that are reliable, the measures were not developed for legal purposes to help arrive at what would be an accepted definition of psychological abuse".²⁸⁰ He further pointed out that the absence of such a definition reflects the apparent ease of arriving at a definition of physical abuse.

²⁷⁹ The domestic violence ordinance in Taiwan, Home Office (UK), Australia, Canada, CDC (USA), define domestic violence as physical violence, psychological abuse and sexual violence.

²⁸⁰ Refer to p.22-23, O'Leary, K. Daniel (2001). "Psychological abuse: A variable deserving critical attention in domestic violence". In O'Leary, K. Daniel & Maiuro, Roland D. *Psychological abuse in violent domestic relations*. NY: Springer Publishing Company.

- 8.24 Although it is difficult to come up with a comprehensive definition of psychological abuse, some commonly recognized forms of psychological abuse can be identified first and these forms have already been recognized in the existing laws, for example, intimidation (Cap 200 section 24), harassment (refer to sexual harassment (Cap 480)), threat (Cap 200 section 119) which are common to the measures of psychological aggression.²⁸¹ Daniel O' Leary claimed that psychological abuse can be measured reliably and thus developed into the definitions in both mental health and legal settings. He further argued that physical aggression is often preceded by psychological aggression, which has effects that are as deleterious as those of physical aggression. In short, psychological abuse causes traumatic effect²⁸² and itself is a marker that requires further investigation of physical abuse.
- 8.25 Thus, it is recommended to apply the definition adopted by CDC, USA that psychological abuse involves psychological harm or trauma, caused by physical or sexual violence, or the threat of physical or sexual violence, or coercive tactics.
- 8.26 Some other particular forms of psychological abuse should be included in the definition of domestic violence: neglect, stalking and exposing a child to family violence.

Neglect

- 8.27 In the procedural guideline of the SWD, child neglect is a “severe or persistent lack of attention to a child’s basic needs (such as adequate food, clothing, shelter, education or medical care) that endangers or impairs the child’s health or development (including non-organic failure to thrive) or the avoidable exposure of a child to serious danger (including cold, starvation, a child habitually left unattended or forcing a child to undertake duties inappropriate to his/her physical strength or age).²⁸³

²⁸¹ The reliable measures of psychological aggression recognized are Conflict Tactics Scale, Index of Spousal Abuse, Spouse Specific Aggression and Assertion, Psychological Maltreatment of Women Inventory, Index of Psychological Abuse, The Abusive Behaviour Inventory, Severity of Violence Against Women, the Measurement of Wife Abuse, and the Dominance Scale. Refer to p.22-23, O’Leary, K. Daniel (2001). “Psychological abuse: A variable deserving critical attention in domestic violence”. In O’Leary, K. Daniel & Maiuro, Roland D. *Psychological abuse in violent domestic relations*. NY: Springer Publishing Company.

²⁸² Like Battered Women Symptom, Walker, L.E. (1979). *The battered women*. New York: Harper & Row.

²⁸³ Working Group on Child Abuse (1998). *Procedures for handling child abuse cases*. Hong Kong:

- 8.28 The existing laws provide protection for children and mentally incapacitated persons against neglect or abandonment. Offences related to neglect include the Offences Against the Person Ordinance (Cap 212, section 27)²⁸⁴, the Protection of Children and Juveniles Ordinance (Cap 213) and the Mental Health (Guardianship) Regulations (Cap 136D).²⁸⁵ Exposing child whereby life is endangered and ill-treatment or neglect by those in charge of child or young person, under section 26 and 27 of the Offences Against Persons Ordinance (Cap 212), shall be guilty of an offence. Under the Mental Health Ordinance (Cap 136D), the guardian shares the responsibility to “ensure the safety and welfare of the mentally incapacitated person and to arrange for the provision of adequate care for the mentally incapacitated person”. It is believed that the society and thus the government shall have the responsibility to ensure these dependant persons are properly cared for. Otherwise, the SWD shall assign a guardian or the Director of Social Welfare to be the guardian, to take up the responsibility of care taking. The consultants recommend putting the neglect of children and mentally incapacitated persons as cases of abuse under the DVO (Cap 189).
- 8.29 Neglect of elderly people has its controversy on whether it is an offence. Are all elderly people dependant? Do we need a system of assessment, as for MIP, to diagnose if elderly people lose their capacity to live independently? Who has the primary responsibility to take up the caring role? If they fail, do we wish the SWD to assign a guardian for the elderly people? Is there any legal responsibility on the part of the care-taker or guardian? All these issues should be discussed publicly to reach social consensus, before we can do anything related to legislation.
- 8.30 Neglect, as a type of elderly abuse, is defined in Hong Kong as “intentional or unintentional failure or refusal to provide for the basic needs (e.g. food, water, shelter, heat, clothing, hygiene, safety) and abandonment of an elderly person. Unintentional neglect refers to situations resulting from lack of experience,

Social Welfare Department.

²⁸⁴ S27: Ill-treatment or neglect by those in charge of child or young person.

²⁸⁵ Cap 136D The guardian has the responsibility to “take all reasonable steps to ensure the safety and welfare of the mentally incapacitated person and to arrange for the provision of adequate care for the mentally incapacitated person.”

information or capability.”²⁸⁶

- 8.31 The consultants, in principle, agree that we should include neglect as a type of violence under the DVO (Cap 189). For the definition of neglect in legal terms, it should be carefully studied and publicly consulted.

Stalking

- 8.32 The Law Reform Commission had recommended criminalizing stalking.²⁸⁷ However, the law reform has not yet been enacted because it may impact the freedom of newsgathering activities.
- 8.33 Harmony House²⁸⁸ and the Association Concerning Family Violence (關注家庭暴力問題聯席)²⁸⁹ suggested to do the legislation related to stalking in intimate relationships first. The consultants support the recommendation. It is recommended to criminalizing stalking that happens in the domestic relationships, as recommended by the Law Reform Commission.

Exposing a child to domestic violence

- 8.34 Children witnessing family violence have been an important research agenda in the past twenty years. It has been shown that children who witness violence often suffer psychological and behavioural problems as abused children. They may suffer from a wide range of problems such as low self-esteem, lower school performance, difficulty in concentrating, developmental delays, poor social skills, secret keeping and isolation from peers, few interests to social activities, mixed feelings of anger, shame, love, fear, guilt, disrespect for parents, feeling responsible for violence, or even in extreme cases post-traumatic stress disorder.²⁹⁰

²⁸⁶ Legislative Council Question No. 10: Abuse of elderly people, Replied by: Secretary for Health and Welfare on 1 March 2000. Retrieved Aug 13, 2004 from the Health, Welfare and Food Bureau web site:

http://www.hwfb.gov.hk/en/legco/replies/hw/1998_20020630/OTN/LQ68.HTM

²⁸⁷ Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

²⁸⁸ Harmon House (2004). Paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004.

²⁸⁹ The Association Concerning Family Violence (關注家庭暴力問題聯席). Paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004, CB(2)2131/03-04(08).

²⁹⁰ International and local studies already showed the negative impact on children witnessing family violence. For example: Brandon, M., & Lewis, A. (1996). Significant harm and children's experiences of domestic violence. *Child and family social work*(1), 33-42.

8.35 Using violence against a partner in front of children should be treated as a kind of psychological abuse against children. Making a child witnessing domestic violence by a perpetrator of domestic violence is regarded as a form of criminal child abuse.²⁹¹ In most cases, it would also create pressure or psychological stress on the battered spouse. The battered spouses, especially battered women, are worried about the safety of their children and their emotional reactions during spousal violence. They would also be humiliated by being beaten by their partner before their children. Thus, the perpetrators of family violence should be responsible for exposing children to such violence. The consultants recommend that the making of a child witnessing domestic violence by a perpetrator of domestic violence should be regarded as a form of criminal child abuse.

Recommendation 15

We recommend that:

- (a) Violence, defined in the DVO (Cap 189), includes physical assault, sexual violence, psychological abuse, neglect (for children and elderly), stalking and exposing a child to domestic violence.
- (b) Psychological abuse involves psychological harm or trauma, caused by physical or sexual violence, or the threat of physical or sexual violence, or coercive tactics.
- (c) Neglect should be included as a type of violence under the DVO (Cap 189). For the definition of neglect in legal terms, it should be carefully studied and publicly consulted.
- (d) Stalking in domestic relationships should be criminalized, as recommended by the Law Reform Commission.

Chan, K. L. (2002). *Study of children who witnessed family violence*. Hong Kong: Christian Family Service Centre and Department of Social Work & Social Administration, the University of Hong Kong (Resource Paper Series No. 47). (In Chinese)

Chan, K. L. (2000). *Study of the impact of family violence on battered women and their children*. Hong Kong: Christian Family Service Centre and Department of Social Work & Social Administration, the University of Hong Kong (Resource Paper Series No. 38).

Jaffe, P. G., & Sudermann, M. (1995). Child witnesses of woman abuse: Research and community responses. In S. M. Stith & M. A. Straus (Eds.), *Understanding partner violence: Prevalence, causes, consequence and solutions*. Minneapolis: National Council on Family Relations.

Peled, E., Jaffe, P. G., & Edleson, J. L. (1995). *Ending the cycle of violence : community responses to children of battered women*. (1 st ed.). USA: Sage Publications, Inc.

²⁹¹ Refer to Kantor, G. K. & Little, L. (2003). Defining the boundaries of child neglect: When does domestic violence equate with parental failure to protect? *Journal of Interpersonal Violence*, Apr, V. 18(4), 338-355.

- (e) The making of a child witnessing domestic violence by a perpetrator of domestic violence should be regarded as a form of criminal child abuse.

Definition of ‘family/ domestic’

- 8.36 Under the present law, only married couples or cohabitating heterosexual couples, and their children are under the protection of the DVO (Cap 189), as the law only covers relations within a “Matrimonial Home”. It therefore means that domestic violence other than spousal abuse and child abuse, like elderly abuse, sibling abuse, parent abuse, same-sex partner abuse etc. are not covered by the Ordinance.
- 8.37 The Association Concerning Family Violence²⁹² suggested to the Legislative Council to expand the scope of provision. They suggested re-defining the “Matrimonial Home” to include married or cohabitated couples, ex-married or former cohabitated couples, children and cohabited immediate and in-law family members. The consultants agree with the suggestions proposed by the Association. However, it should further expand to include other possible intimate relationships that may need protection against violence and threat.
- 8.38 Violence in intimate relationships carries specific dynamics that requires special attention. The main principle of providing protection for victims should cover those who are involved in intimate relationships rather than limiting it to those who are living together, have heterosexual orientation or have a marriage certificate.
- 8.39 The Law Reform Commission had given a very meaningful discussion on the scope of provision. It stated that:

“Victims of stalking who have never cohabited or have ceased to cohabit with the stalker when harassment occurs cannot invoke the jurisdiction of the Court. Thus, the remedies are not available once the spouses are divorced. A former spouse cannot apply under the Ordinance unless she and her former husband are cohabiting after the decree. Similarly, in the case of cohabitants, there is no

²⁹² The Association Concerning Family Violence (關注家庭暴力問題聯席). Paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004, CB(2)2131/03-04(08).

power to provide protection once the relationship has ended. More importantly, harassment can occur in other types of domestic relationships. For instance, an elderly member of a family may be abused by those with whom he is living; parents may be abused by their violent child; and a gay or lesbian partner may become irrational or obsessive. The requirement of marriage or cohabitation has deprived these parties of the right to apply under the DVO (Cap 189). Victims who are harassed outside the family and domestic context have to proceed in tort, but this is a more cumbersome procedure and is less effective because of difficulties over the precise scope of the remedies available against harassment or molestation. Further, a child who has been molested has no standing to apply for an order under the Ordinance. An application must be made on the child's behalf by a parent. The child receives no protection under the Ordinance if his or her parent is unwilling to bring an action against the other party. There is also a requirement that the child be living with the applicant. Children not living with their parents could not benefit from the Ordinance.” (para. 4.36-38)²⁹³

- 8.40 The term “domestic” is equivalent to “family” in this context of social and legal discussions. In principle, domestic can include all members living under the same roof. That means it can include domestic helpers and other non-familial cohabitants. However, the consultants do not intend to include these two types because violence in non-intimate relationships displayed a totally different profile in terms of risk factors and impacts.
- 8.41 To meet the new faces of domestic violence discovered in the past three decades by numerous studies, the scope of the domestic is recommended to expand. The definition of family should be extended to cover all possible intimate relationships.
- 8.42 Taking reference of the overseas examples, in South Africa, a domestic relationship is defined by Section 1 of the Domestic Violence Act as ‘a relationship between a complainant and a respondent in any of the following ways:
- (a) They are or were married to each other, including marriage according to any law, custom or religion;

²⁹³ Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

- (b) They (whether they are of the same sex or of the opposite sex) live together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- (c) They are the parents of a child or are persons who have or had parental responsibility of that child (whether or not) at the same time;
- (d) They are the family members related by consanguinity, affinity or adoption;
- (e) They are or were in engagement, dating or customary relationship, including actual or perceived romantic, intimate or sexual relationship of any duration, or
- (f) They share or recently shared the same residence.

8.43 In Taiwan, Act 3 of the Domestic Violence Prevention Act also has a wider definition of 'Family Members', they are:

- (a) Who is commented a spouse or ex-wife or ex-husband;
- (b) Who has or have had on-going marital, or de-facto marital, parental, or dependent relationship;
- (c) Who has or have been related as a lineal-blood or a lineal-blood-by-marriage; and
- (d) Who has or have been related as a lateral blood or a lateral-blood-by-marriage falling within the Relation Rank 4.

8.44 In the UK, the Family Law Act 1996, section 62 defines the relationships as "cohabitants", "relevant child" and "associated persons". The definitions of the three terms are listed in Appendix 10. The meaning of "associated persons" gives a broader possibility of including the major possible types of violence in intimate relationships. The consultants recommend adopting this definition to the DVO (Cap 189). The UK government had passed a Domestic Violence, Crime and Victims Bill [HL] in December 2003 states that cohabiting same-sex couples and couples who have never cohabited or been married are given the same access to non-molestation and occupation orders under the Family Law Act 1996 as opposite-sex couples.

8.45 Based on the above discussion, the consultants recommend that the scope of provision of the protection of the DVO (Cap 189) should include an applicant who is "associated with" the respondent/defendant if:

- (a) They are or have been married to each other; (including married or divorced couple);
- (b) They are cohabitants or former cohabitants; (including heterosexual and same-sex couples²⁹⁴);
- (c) They live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
- (d) They are relatives; (including in-laws, siblings, siblings in-law, parents and grandparents, elderly, guardian of a child and a mentally incapacitated persons etc.)
- (e) They have agreed to marry one another (whether or not that agreement has been terminated); (including engaged couples, dating partners with a certain commitment in the relationship, they are not necessarily current or former cohabitants)
- (f) They are parents in relation to any child; or have or have had parental responsibility for the child; (including parents of an adopted child, guardian).
- (g) They are parties to the same family proceedings (other than proceedings under part iv).
- (h) Relevant child, including:
 - (1) Any child who is or is not living with, or might reasonably be expected to live with either party to the proceedings;
 - (2) Any child in relation to whom an order under the adoption ordinance (cap 290) is in question in the proceedings; and
 - (3) Any other child whose interests the Court considers relevant.

8.46 There is no requirement that the child be living with one of the parties to the proceedings. A child should have the right to apply for an order on his or her own with the Court's permission. If the child finds it difficult to work on his or her own, he or she can be represented by the SWD, with his or her consent, to apply for the restraining orders²⁹⁵.

²⁹⁴ The couple relationship does not exclude the same-sex couples. Violence in homosexual relationship is recognized as an emerging problem. Refer to Chap. 4 "Gay and Lesbian Battering". In Lemon, Nancy K.D. (2001). Domestic Violence Law. St. Paul, Minn. : West Group.

²⁹⁵ In New Zealand, children can apply for their own Protection Orders (with the help of an adult). The Family Court, Community Law Centre, Children and Young Persons' Service office, social worker or guidance counsellor can help. <http://www.police.govt.nz/safety/home.domesticviolence.php>

8.47 For the guardian, it should not be limited to the guardian of a child but also to the mentally incapacitated persons.

8.48 “Cohabiting” in the same household could be used as one of the criteria to identify intimate relationships. However, it should not be the pre-requisite of defining relationships. In some cases, when the battered woman leaves home and moves to refuge, the perpetrator of spousal abuse may contact the parents or other family members who are not living together with the battered woman, and may even invoke threat or harass them. In such case, the victims, other than the battered woman, should have the right to apply an injunction order under the DVO (Cap 189) independently. Family members under disturbance could be the applicant of injunction and enjoy the protection offered by the DVO (Cap 189).

Recommendation 16

We recommend that:

- (a) The scope of provision of the protection of the DVO (Cap 189) should include an applicant who is “associated with” the respondent/defendant if: -
 - (1) They are or have been married to each other; (including married or divorced couple)
 - (2) They are cohabitants or former cohabitants; (including heterosexual and same-sex couples)
 - (3) They live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
 - (4) They are relatives;
 - (5) They have agreed to marry one another
 - (6) They are parents in relation to any child; or have or have had parental responsibility for the child;
 - (7) They are parties to the same family proceedings
 - (8) Relevant child
- (b) A child should have the right to apply for an order on his or her own with the Court’s permission. If the child finds it difficult to work on his or her own, he or she can be represented by the SWD, with his or her consent, to apply for the restraining orders.
- (c) “Cohabiting” in the same household could be used as one of the criteria to identify intimate relationships. However, it should not be the pre-requisite of defining relationships.

Making breach of a non-molestation order and exclusion order a criminal offence

- 8.49 Under the existing DVO (Cap 189), breach of an injunction is not a criminal offence and the respondent would not be arrested by police unless the power of arrest under section 5(2) of the DVO (Cap 189) is attached. According to the Law Reform Commission, “a person who wishes to enforce an injunction usually has to apply for an order of committal by following the procedures prescribed in the Rules of the High Court. Such procedures fail to give speedy and effective redress for breaches of an injunction which might have serious consequences for the victims” (para. 4.40).²⁹⁶
- 8.50 No actual protection for the victims can be promised unless the respondents see the consequence of arrest if they are in breach of order. Many respondents would not bother to turn up for injunction alone, but might attend if the power of arrest is attached to the injunction.²⁹⁷
- 8.51 According to section 5(1) of the DVO (Cap 189), a power of arrest is attached to an injunction if it is satisfied that the other party has caused actual bodily harm to the applicant or, as the case may be, to the child concerned. The Court cannot attach a power of arrest if the other party has merely threatened to cause bodily harm to the applicant or child.²⁹⁸ It does not require the Court to believe that the respondent is likely to inflict actual bodily harm again in the future.²⁹⁹ It does not consider non-physical psychological damage, or non-violent molestation. It does happen frequently that many perpetrators do not necessarily use physical violence to threaten the victims. By using direct or indirect verbal threat, stalking, constant phone calls, waiting around the children’s school etc., in addition to the history of violence, they could create great fear on the victims.
- 8.52 The UK Family Law Act 1996 states that the power of arrest is attached if the respondent has used or threatened use of violence against the applicant or a relevant child. In so doing, the applicant should not have to wait to be injured

²⁹⁶ Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

²⁹⁷ Refer to p.31, Scully-Hill, Anne (2004). *The Annotated Ordinances of Hong Kong: Domestic Violence (Cap 189)*. Hong Kong: LexisNexis.

²⁹⁸ Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

²⁹⁹ Ibid.

before the law can come to their rescue. The safety of the applicant is a major concern in attaching the power of arrest.³⁰⁰

8.53 To increase the legal protection for the victims, the consultants suggested to attach the power of arrest to an injunction if:

- (a) There is actual bodily harm inflicted by the respondent; or
- (b) Molestation (violent or non-violent) is inflicted by the respondent; or
- (c) There is non-physical psychological damage caused by the behaviour of the respondent; or
- (d) The respondent persistently disobeys injunctions and makes nuisances to the other party and to others concerned.³⁰¹

8.54 To take a step further, we should consider making breach of a non-molestation order and exclusion order a criminal offence. The Law Reform Commission³⁰² recommended that a person who, without reasonable excuse, does anything that he is prohibited to do by a restraining order should be guilty of an offence, which is punishable by imprisonment for 12 months. The benefit of having an additional offence of breach of a restraining order is that the victim would not have to bring proceedings himself to enforce the order. It would accord greater protection to battered spouses in domestic violence cases. The Law Reform Commission further pointed out that a single act of stalking (or molestation in the DVO (Cap 189)) would entitle the victim to seek protection from the police and the Courts. Early intervention is essential to the well-being and safety of the victim where the stalker has previously been convicted of harassment (or molestation). The police would not have to wait until the stalker has repeatedly harassed (or molested) the victim before they charge him with harassment (or molestation) again. The effect is that breaches can be dealt with promptly with the assistance of the police before the stalker turns violent.

8.55 Indeed the UK government had passed a Domestic Violence, Crime and Victims Bill [HL] in December 2003. It states that a breach of a non-molestation order under the Family Law Act 1996 is a criminal offence

³⁰⁰ The UK Family Law Act 1996 - Sect 47 (2)(b): "If it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child, it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.

³⁰¹ Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

³⁰² Ibid.

and will be punishable by up to five years' imprisonment on indictment. This makes it an offence for which a police officer can arrest without a warrant.

- 8.56 Thus, the consultants suggested that breach of a non-molestation order and exclusion order is a criminal offence and is punishable by imprisonment.

Recommendation 17

We recommend that:

- (a) The power of arrest is attached to an injunction if:
- (1) There is actual bodily harm inflicted by the respondent; or
 - (2) Molestation (violent or non-violent) is inflicted by the respondent; or
 - (3) There is non-physical psychological damage caused by the behaviour of the respondent; or
 - (4) The respondent persistently disobeys injunctions and makes nuisances to the other party and to others concerned.
- (b) Breach of a non-molestation order and exclusion order is a criminal offence and is punishable by imprisonment.

Effective period of injunction

- 8.57 The longest period of effectiveness of ouster and entry orders under section 3(1)(c)(d) is 6 months. There is no time limit for the non-molestation order under section 3(1)(a)(b). The Association Concerning Family Violence³⁰³ suggested extending the limit to 18 months because it takes a long time to deal with divorce or handle family violence. However, the Association could not demonstrate why 18 months would be enough.

- 8.58 If counselling or a treatment programme for a perpetrator is considered, it may take more than six months.³⁰⁴ It is possible that if the outcome of the treatment programme is not satisfactory, it may be necessary for the Court to order another phase of mandatory counselling to the perpetrator. Thus, in order to fully implement the court-mandated counselling and provide

³⁰³ The Association Concerning Family Violence (關注家庭暴力問題聯席). Paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004, CB(2)2131/03-04(08).

³⁰⁴ The batterer intervention programmes may last from 26 to 52 week.

protection for the victim during the treatment process, the period of effectiveness must be flexible and long.

- 8.59 Referring to the UK Family Law 1996, Sect 42(7), a non-molestation order may be made for a specified period or until further order. It leaves the judge discretion to grant a specified period that could fit each case.
- 8.60 The Law Reform Commission suggested an open-ended order to provide for flexibility. The Courts should have the power to make a restraining order for a specified period or until further order. This would avoid victims having to return to the Courts to have the order renewed. Since the circumstances may change over time, all the interested parties, including the prosecutor, the defendant, the victim and any other persons protected by the order, should be able to apply for the order to be varied or discharged (para 8.31).³⁰⁵ The consultants recommend that the judge have the discretion to grant restraining orders for a specified period or until further order.

Recommendation 18

We recommend that:

The judge has the discretion to grant restraining orders for a specified period or until further order.

Eligible applicant of the injunction

- 8.61 As listed in para 7.45, the associated persons are eligible for the application of an injunction. A child can also apply for an order on his or her own with the Court's permission.
- 8.62 The Association Concerning Family Violence³⁰⁶ suggested allowing a third party to apply an injunction on behalf of the victim who is informed of doing this. Consent or authorization from the victim is not required. The reason is to reduce the burden on the victim and to prevent revenge from the perpetrator

³⁰⁵ Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

³⁰⁶ The Association Concerning Family Violence (關注家庭暴力問題聯席). Paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004, CB(2)2131/03-04(08).

due to the application of an injunction. According to the Association, the “third person” could be anyone like the police, a neighbour, etc.

- 8.63 The UK Family Law 1996 allows the provision for third parties to act on behalf of victims of domestic violence. A representative to act on behalf of another should be a prescribed person, or any person in a prescribed category. The representation should be authorized by the person on whose behalf the representative is acting could have applied for an occupation order or for a non-molestation order.³⁰⁷ In practice, most of the “third parties” are lawyers because the third party should be familiar with the legal system.
- 8.64 We do not reject the idea of the third party to act on behalf of the victim. The third party can be a lawyer, a family member, a close friend, etc. It should be emphasized that consent and authorization of the victim should be obtained to assign a representative. Without the consent and authorization, the system could be abused. It is well understood that victims of family violence have difficulty in decision making at the stage they have been abused. Fluctuation in making decisions is not uncommon and should be understood. However, without an authorization, the representative can hardly act on behalf of the victim and for the case. If the victim changes his/her position subsequent to applying for an injunction due to pressure from the perpetrator, the representative could be placed in a very embarrassing or even illegal position.
- 8.65 Moreover, assuming that the victim of family violence would be incompetent in applying an injunction is a stigma. It would be disempowering. The emotional burden and pressure, as well as the safety should be addressed by simplifying the procedure of applying an injunction and enhance the victim support service.
- 8.66 For cases involving mentally incapacitated persons, dependent elderly and children, special attention should be addressed. As indicated in the procedural guideline, “for cases involving mentally incapacitated persons (MIP), including mentally handicapped or mentally disordered persons, relevant provision in the "Mental Health Ordinance" (Cap 136) e.g. Part IVB on Guardianship provision, could be considered to safeguard the safety and welfare of the MIP. The guardian (if any) should be involved to discuss the

³⁰⁷ Family Law Act 1996 - Sect 60 (1-2)

safety and welfare plan of the victim.”³⁰⁸ The guardian should take all reasonable steps to ensure the safety and welfare of the mentally incapacitated person and to arrange for the provision of adequate care for the mentally incapacitated person.³⁰⁹

- 8.67 For children under the age of 16, the UK Family Law Act allows the provision for separate representation for children in proceedings.³¹⁰ It is also suggested by the Against Child Abuse that every single child should have the right to have an independent counsel for separate representation for children in proceedings.³¹¹
- 8.68 It is still controversial in allowing a third party to act on behalf of the victim. It needs more discussion and study to justify the needs. However, the consultants recommend that support to mentally incapacitated persons, dependent elderly and children should be offered in the application of the restraining orders.

Recommendation 19

We recommend that:

Support to mentally incapacitated persons, dependent elderly and children should be offered in the application of the restraining orders.

Mandatory order for the participation in and successfully complete a BIP

- 8.69 As discussed and recommended in para. 5.6, the consultants recommend that the Court can make mandatory counselling order for the batterers to attend a BIP, as a condition attached to the non-molestation order under the DVO (Cap 189). Their performance in the programme could be considered in assessing the extension of the period of the non-molestation orders.

Status of the DVO (Cap 189): criminal and civil law

³⁰⁸ P.13, Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

³⁰⁹ Refer to the Mental Health (Guardianship) Regulations (Cap 136D).

³¹⁰ Family Law Act 1996 - Sect 64.

³¹¹ Against Child Abuse, paper submitted to Welfare Panel of LegCo, March 11, 2002.

- 8.70 The existing DVO (Cap 189) is basically a civil law. There is not a category of criminal offences named as domestic violence. Recognizing the existence of domestic violence in the DVO (Cap 189), but not saying that it is a criminal offence, makes the attitude of the public towards the crime nature of using violence against a family member or intimate partner ambiguous.
- 8.71 The existing laws in fighting against domestic violence are spreading over different ordinances, from criminal to civil, and the cases are handled in different Courts. There is no clear ordinance defining domestic violence as a crime. Until the domestic violence acts are severe enough up to a level comparative to common assault or offence against a person, the alleged offender would be charged using the ordinances that are applicable to other kinds of violence. That means, the “domestic” violence act itself is not solely considered as a crime. Clear policy and legal definition of domestic violence as a criminal offence is thus deemed necessary.
- 8.72 Under the Criminal Law of the PRC, domestic violence is explicitly expressed as a criminal offence.³¹² In the UK, domestic violence is not a specific criminal offence. Instead, it is charged under a range of offences. A report on the justice system in the UK discussed the need to create a separate domestic violence offence. Nowadays, there are a number of criminal laws to be used for domestic violence cases. The core problem may not be in criminalizing domestic violence, but how to interface the use of these criminal laws in domestic violence prosecution. It is about the prosecutors’ and the judges’ sensitivity.³¹³ The Government believes that a Specialized Domestic Violence Court and a clear set of law that pull together all related domestic violence criminal laws would be useful.
- 8.73 Dr. C.K. Law suggested combining the DVO (Cap 189) with other relevant ordinances like the Protection of Children and Juveniles Ordinance (Cap 213)³¹⁴ in order to expand the scope of protection and make the law comprehensive. The consultants support this idea. We may consider pulling together all relevant ordinances related to domestic violence e.g. the DVO (Cap 189), Crimes Ordinance (Cap 200), Offence Against Persons Ordinance

³¹² Art. 182 and 260 of Criminal Law (PRC).

³¹³ Para. 21-22, The Secretary of State for the Home Department (2003). Safety and Justice: The Government’s Proposals on Domestic Violence. London: Home Office.

³¹⁴ Suggested by Hon. Law, CK. In his paper “Handling family violence” CB(2)1265/01-02(06) submitted to Welfare Panel of LegCo, March 11, 2002.

(Cap212) including rape, marital rape, assault, harassment, stalking etc. and putting them under the Crimes Ordinance. Examples of such jurisdiction are: PRC (Marriage Law), Taiwan (Domestic Violence Prevention Act) and Singapore (Women's Charter). See Appendix 11. It should clearly define the penalty of each offence, be it imprisonment (for summary or indictment conviction) or fines.

Recommendation 20

We recommend that:

All relevant ordinances related to domestic violence shall be pulled together to integrate the criminal and civil laws.

Restraining orders in criminal proceedings

- 8.74 The Law Reform Commission suggested placing the restraining orders in criminal proceedings.³¹⁵ That means, the Court sentencing a person convicted of harassment should have power to make an order restraining him from harassing the victim if the Court believes that the convicted person is likely to commit harassment in the future.
- 8.75 Their report stated that there are no procedures under which the criminal Courts can provide protection for victims of crime who might reasonably expect that the convicted criminal may harm them in the future. Although the victim may seek injunctive relief in the Civil Courts, it would be unfair to him if he were required to go through another hearing in order to obtain an injunction to protect his legitimate interests. This would not only be a duplication of judicial procedure, but would also be an additional burden on the victim in both emotional and financial terms.
- 8.76 The consultants support the recommendation made by the Law Reform Commission that the restraining orders shall be placed in criminal proceedings.

³¹⁵ Law Reform Commission (2000). *Report on Stalking*. Hong Kong: Hong Kong Government.

Recommendation 21

We recommend that:

The restraining orders shall be placed in criminal proceedings.

Chapter 9

Summary of Recommendations

Recommendation 1

We recommend that:

The batterer intervention programmes (BIPs) could be launched under the existing systems.

- (a) Voluntary participation enhanced by the coordinated referral system and public publicity of the programmes;
- (b) A sentencing condition attached to a probation order enhanced by the coordination with the court and the probation officers; and
- (c) Prison-based BIPs enhanced by the coordination with the Correctional Services in providing the structured treatment programmes to the domestic violence offenders. (*Chapter 6*)

Recommendation 2

We recommend that:

The Court can make mandatory counselling order for the batterers to attend a BIP by the following ways:

- (a) As a condition attached to the non-molestation order under the DVO (Cap 189);
- (b) As a condition attached to a bind-over order; and
- (c) Placing a counselling order separately in criminal proceedings. (*Chapter 6*)

Recommendation 3

We recommend that:

To make BIP an order issued by the Court, the laws to be amended include the DVO (Cap 189), the Section 109I of the Criminal Procedure Ordinance (Cap 221), the Section 41 of the Offences Against The Person Ordinance (cap 212), and the Section 61(1) of the Magistrates Ordinance (Cap 227). (*Chapter 6*)

Recommendation 4

We recommend that:

The content of the counselling order in legislation shall include the order for the offender to participate in and successfully complete a BIP, standards for BIPs and the punishment for the breaching of order. (*Chapter 6*)

Recommendation 5

We recommend:

To launch a time-limited pilot project to implement the court-mandatory BIP in Hong Kong. The following strategies are recommended:

- (a) A group including the police, medical practitioners, social service practitioners, probation officers, prosecutors, judges and academia should be formed in preparing, monitoring and evaluating the pilot project;
- (b) The steering group will work out standards for the BIP and consult service providers;
- (c) The steering group will certify a list of piloted BIPs; and
- (d) The steering group will prepare the formation of the Batterers' Intervention Programme Authority. (*Chapter 6*)

Recommendation 6

We recommend that:

A set of strategies required for the implementation of BIP:

- (a) All BIPs should share common goals of reducing the re-offending rate, increasing victims' safety, holding batterers accountable for the violence used and stopping their abusive behaviour.
- (b) Pre-intervention risk assessment and the psycho-social assessment of the batterers is recommended to inform the specific designs of the BIPs.
- (c) The BIPs should have written policies and strategies to secure the safety of victims.
- (d) The BIPs could last from 24 to 52 weeks, with a 1.5 hour session each week. Evaluation of the effectiveness of programmes with different durations should be conducted to provide empirical support for the programme duration.
- (e) Programme evaluation of the effectiveness of the programmes should be conducted, with the criteria of success defined as ending violence as reported by victims, reducing the

re-offence/recidivism rate, increasing victim safety, and reducing drop out or the attrition rate.

- (f) Programme standards should be explicitly stated, with the collaborative effort of service providers and the SWD. *(Chapter 6)*

Recommendation 7

We recommend that:

A governmental domestic violence policy is made to state clearly the commitment of the government to tackle domestic violence, philosophy in combating domestic violence, and the strategies in fighting against and preventing the domestic violence. *(Chapter 7)*

Recommendation 8

We recommend that:

- (a) Education for professionals like physicians, nurses, lawyers, teachers, social workers, psychologists etc. on the risk assessment of suspected cases is needed. Appropriate and prompt referral should be made; and
- (b) More empirical studies on the reporting practice are needed. With the empirical support, strategies in improving reporting from professionals, including mandatory measures, should be examined. *(Chapter 7)*

Recommendation 9

We recommend that:

Improvement on the practice of arrest is enhanced by providing clear policy and practice guidelines on arresting domestic violence crime. Including:

- (a) Evidence gathering;
- (b) Investigation;
- (c) The report of the case investigation should be filed to the Department of Justice for the consideration of prosecution;
- (d) Providing support to victims;
- (e) Information system; and
- (f) Training. *(Chapter 7)*

Recommendation 10

We recommend that:

Improvement on the prosecution practice is made by adopting independent/proactive investigation. (*Chapter 7*)

Recommendation 11

We recommend:

To set up a domestic violence court in Hong Kong that would handle all criminal and civil cases involving allegations of domestic violence or a violation of an injunction order. (*Chapter 7*)

Recommendation 12

We recommend:

To set up a Domestic Violence Serious Injury or Fatality Review to conduct a thorough review on domestic violence serious injury and fatality cases with regards to the causes of death, service provision and psycho-social risk factors. (*Chapter 7*)

Recommendation 13

We recommend that:

Education for the public and training for legal actors is needed as a strategy of prevention of domestic violence. (*Chapter 7*)

Recommendation 14

We recommend that:

The existing support services for victims and witnesses should be well coordinated with and supported by the legal system. (*Chapter 7*)

Recommendation 15

We recommend that:

- (a) Violence, defined in the DVO (Cap 189), includes physical assault, sexual violence, psychological abuse, neglect (for

- children and elderly), stalking and exposing a child to domestic violence;
- (b) Psychological abuse involves psychological harm or trauma, caused by physical or sexual violence, or the threat of physical or sexual violence, or coercive tactics;
 - (c) Neglect should be included as a type of violence under the DVO (Cap 189). For the definition of neglect in legal terms, it should be carefully studied and publicly consulted;
 - (d) Stalking in domestic relationships should be criminalized, as recommended by the Law Reform Commission; and
 - (e) The making of a child witnessing domestic violence by a perpetrator of domestic violence should be regarded as a form of criminal child abuse. (*Chapter 8*)

Recommendation 16

We recommend that:

- (a) The scope of provision of the protection of the DVO (Cap 189) should include an applicant who is “associated with” the respondent/defendant if: -
 - (1) They are or have been married to each other; (including married or divorced couple)
 - (2) They are cohabitants or former cohabitants; (including heterosexual and same-sex couples)
 - (3) They live or have lived in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
 - (4) They are relatives;
 - (5) They have agreed to marry one another
 - (6) They are parents in relation to any child; or have or have had parental responsibility for the child;
 - (7) They are parties to the same family proceedings
 - (8) Relevant child
- (b) A child should have the right to apply for an order on his or her own with the Court’s permission. If the child finds it difficult to work on his or her own, he or she can be represented by the SWD, with his or her consent, to apply for the restraining orders; and
- (c) “Cohabiting” in the same household could be used as one of the criteria to identify intimate relationships. However, it should not be the pre-requisite of defining relationships. (*Chapter 8*)

Recommendation 17

We recommend that:

- (a) The power of arrest is attached to an injunction if:
 - (1) There is actual bodily harm inflicted by the respondent; or
 - (2) Molestation (violent or non-violent) is inflicted by the respondent; or
 - (3) There is non-physical psychological damage caused by the behaviour of the respondent; or
 - (4) The respondent persistently disobeys injunctions and makes nuisances to the other party and to others concerned.

- (b) Breach of a non-molestation order and exclusion order is a criminal offence and is punishable by imprisonment. (*Chapter 7*)

Recommendation 18

We recommend that:

The judge has the discretion to grant restraining orders for a specified period or until further order. (*Chapter 8*)

Recommendation 19

We recommend that:

Support to mentally incapacitated persons, dependent elderly and children should be offered in the application of the restraining orders. (*Chapter 8*)

Recommendation 20

We recommend that:

All relevant ordinances related to domestic violence shall be pulled together to integrate the criminal and civil laws. (*Chapter 8*)

Recommendation 21

We recommend that:

The restraining orders shall be placed in criminal proceedings. (*Chapter 8*)

Appendix 1: List of Offences Related to Spousal Abuse in Hong Kong³¹⁶

Offences	Description
<p><u>Power of District Court to Grant Injunction</u></p> <p>S.3 of the Domestic Violence Ordinance, Chapter 189</p>	<p>(1) On an application by a party to a marriage the District Court, if it is satisfied that the applicant or a child living with the applicant has been molested by the other party to the marriage and subject to section 6, may grant an injunction containing any or all of the following provisions-</p> <ul style="list-style-type: none"> (a) a provision restraining that other party from molesting the applicant; (b) a provision restraining that other party from molesting any child living with the applicant; (c) a provision excluding that other party from the matrimonial home, or from a specified part of the matrimonial home, or from a specified area whether or not the matrimonial home is included in that area; (d) a provision requiring that other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home, whether or not any other relief is being sought in the proceedings. <p>(2) In the exercise of its jurisdiction to grant an injunction containing a provision mentioned in subsection (1)(c) or (d) the District Court shall have regard to the conduct of the parties, both in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any child living with the applicant and to all the circumstances of the case.</p>
<p><u>Intimidation</u></p> <p>S. 24 of the Crimes Ordinance, Chapter 200</p>	<p>Any person who threatens any other person-</p> <ul style="list-style-type: none"> (a) with any injury to the person, reputation or property of such other person; or (b) with any injury to the person, reputation or property of any third person, or to the reputation or estate of any deceased person; or (c) with any illegal act,

³¹⁶ Retrieved from Appendix XV, Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

	<p>with intent in any such case-</p> <ul style="list-style-type: none"> (i) to alarm the person so threatened or any other person; or (ii) to cause the person so threatened or any other person to do any act which he is not legally bound to do; or (iii) to cause the person so threatened or any other person to omit to do any act which he is legally entitled to do, <p>shall be guilty of an offence.</p>
<p><u>Marital Rape</u> S.117(1B) of the Crimes Ordinance, Chapter 200</p>	<p>For the avoidance of doubt, it is declared that for the purposes of sections 118, 119, 120 and 121 and without affecting the generality of any other provisions of Part XII of the Ordinance, "unlawful sexual intercourse" does not exclude sexual intercourse that a man has with his wife.</p>
<p><u>Rape</u> S.118 of the Crimes Ordinance, Chapter 200</p>	<ul style="list-style-type: none"> (1) A man who rapes a woman shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life. (2) A man who induces a married woman to have sexual intercourse with him by impersonating her husband commits rape. (3) A man commits rape if- <ul style="list-style-type: none"> (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and (b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it. (4) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed. (5) In relation to such a trial as is mentioned in subsection (4) which is a trial in the District Court or a summary trial before a magistrate or in a juvenile court, references to the jury in that subsection shall be construed as references to the

	District Court, the magistrate or the juvenile court, as the case may be.
<u>Non-consensual Buggery</u> S.118A of the Crimes Ordinance, Chapter 200	A person who commits buggery with another person who at the time of the buggery does not consent to it shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.
<u>Procurement by Threats</u> S.119 of the Crimes Ordinance, Chapter 200	A person who procures another person, by threats or intimidation, to do an unlawful sexual act in Hong Kong or elsewhere shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years.
<u>Procurement by False Pretences</u> S.120 of the Crimes Ordinance, Chapter 200	(1) A person who procures another person, by false pretences or false representations, to do an unlawful sexual act in Hong Kong or elsewhere shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 5 years. (2) For the purposes of subsection (1), "pretence" or "representation" includes a pretence or representation relating to the past, the present or the future and any pretence or representation as to the intention of the person using the pretence or representation or any other person.
<u>Administering Drugs to Obtain or Facilitate Unlawful Sexual Act</u> S.121 of the Crimes Ordinance, Chapter 200	A person who applies or administers to, or causes to be taken by, another person any drug, matter or thing with intent to stupefy or overpower that other person so as thereby to enable anyone to do an unlawful sexual act with that other person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 14 years.

<p><u>Indecent Assault</u></p> <p>S.122 of the Crimes Ordinance, Chapter 200</p>	<p>(1) Subject to subsection (3), a person who indecently assaults another person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.</p> <p>(2) A person under the age of 16 cannot in law give any consent which would prevent an act being an assault for the purposes of this section.</p> <p>(3) A person is not, by virtue of subsection (2), guilty of indecently assaulting another person, if that person is, or believes on reasonable grounds that he or she is, married to that other person.</p> <p>(4) A woman who is a mentally incapacitated person cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of indecently assaulting a mentally incapacitated person by reason of that incapacity to consent, if that person knew or had reason to suspect her to be a mentally incapacitated person.</p>
<p><u>Wounding with Intent to do Grievous Bodily Harm</u></p> <p>S.17 of the Offences against the Person Ordinance, Chapter 212</p>	<p>Any person who-</p> <p>(a) unlawfully and maliciously, by any means whatsoever, wounds or causes any grievous bodily harm to any person; or</p> <p>(b) shoots at any person; or</p> <p>(c) by drawing a trigger or in any other manner, attempts to discharge any kind of loaded arms at any person,</p> <p>with intent in any of such cases to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for life.</p>

<p><u>Wounding or Inflicting Grievous Bodily Harm</u></p> <p>S.19 of the Offences against the Person Ordinance, Chapter 212</p>	<p>Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 3 years.</p>
<p><u>Assault Occasioning Actual Bodily Harm</u></p> <p>S.39 of the Offences against the Person Ordinance, Chapter 212</p>	<p>Any person who is convicted of an assault occasioning actual bodily harm shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for 3 years.</p>
<p><u>Common Assault</u></p> <p>S.40 of the Offences against the Person Ordinance, Chapter 212</p>	<p>Any person who is convicted of a common assault shall be guilty of an offence triable either summarily or upon indictment, and shall be liable to imprisonment for 1 year.</p>

Appendix 2: List of Offences Related to Child Abuse in Hong Kong³¹⁷

Crimes Ordinance, Cap. 200

Part IV Intimidation

Section 24 Certain acts of intimidation prohibited

Part VI Incest

Section 47 Incest by men

Section 48 Incest by women of or over 16

Part XII Sexual and Related Offences

Section 118 Rape

Section 118A Non-consensual buggery

Section 118B Assault with intent to commit buggery

Section 118C Homosexual buggery with or by man under 21

Section 118D Buggery with girl under 21

Section 118E Buggery with defective

Section 118F Homosexual buggery committed otherwise in private

Section 118G Procuring others to commit homosexual buggery

Section 118H Gross indecency with or by man under 21

Section 118I Gross indecency by man with male defective

Section 118J Gross indecency by man with man otherwise in private

Section 118K Procuring gross indecency by man with man

Section 119 Procurement by threats

Section 120 Procurement by false pretences

Section 121 Administering drugs to obtain or facilitate intercourse

Section 122 Indecent assault

Section 123 Intercourse with girl under 13

Section 124 Intercourse with girl under 16

Section 125 Intercourse with defective

Section 126 Abduction of unmarried girl under 16

Section 127 Abduction of unmarried girl under 18 for sexual intercourse

Section 128 Abduction of defective from parent or guardian for sexual act

Section 129 Trafficking in persons to or from Hong Kong

Section 130 Control over persons for purpose of unlawful sexual intercourse
or prostitution

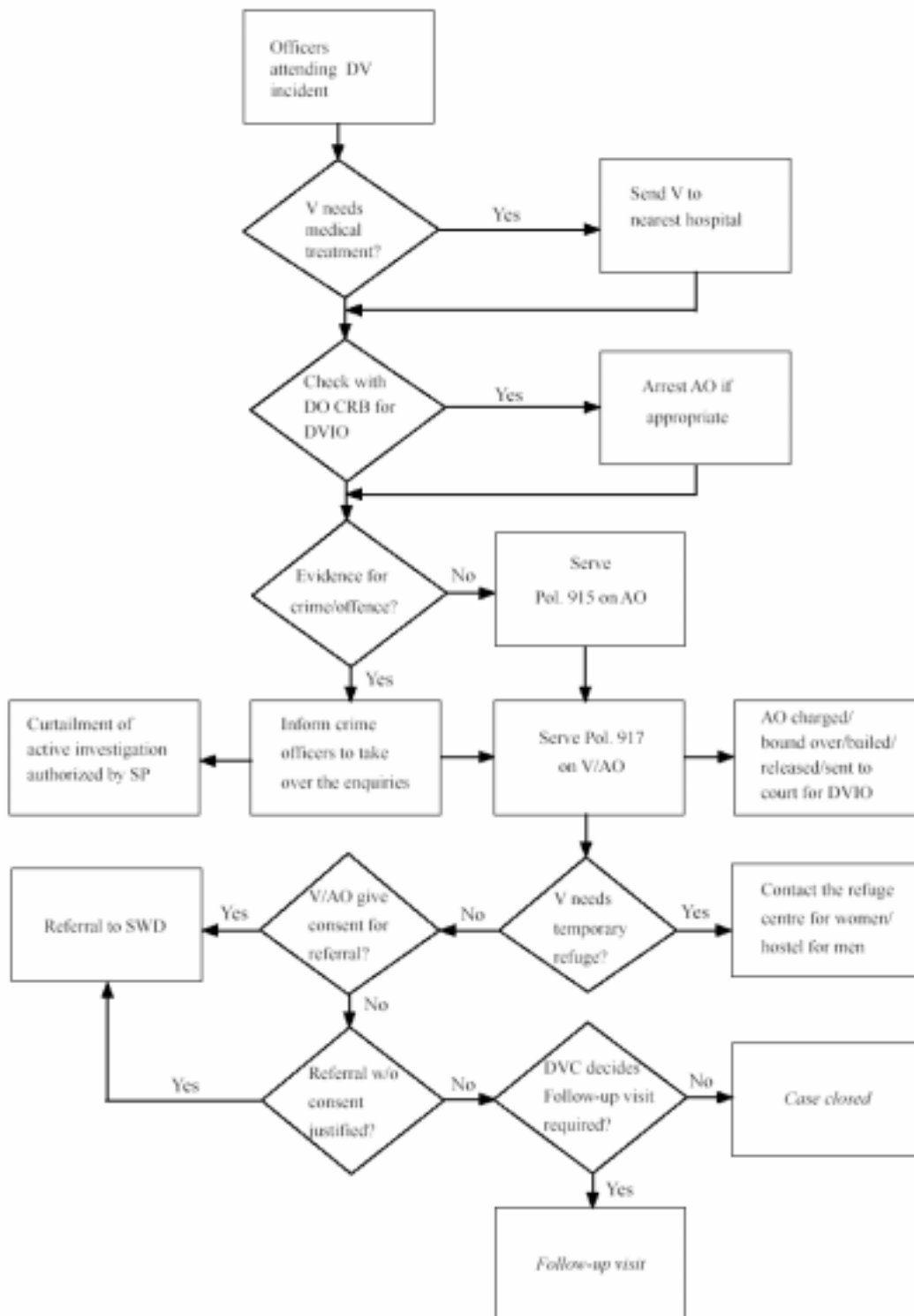
³¹⁷ Retrieved from Appendix XXIV, Working Group on Child Abuse (1998). *Procedures for Handling Child Abuse Cases – Revised 1998*. Hong Kong: Social Welfare Department.

Section 131	Causing prostitution
Section 132	Procurement of girl under 21
Section 133	Procurement of defective
Section 134	Detention for intercourse or in vice establishment
Section 135	Causing or encouraging prostitution of, intercourse with, or indecent assault on girl or boy under 16
Section 136	Causing or encouraging prostitution of defective
Section 137	Living on earnings of prostitution of others
Section 139	Keeping a vice establishment
Section 140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
Section 141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act
Section 142	Permitting defective to resort to or be on premises or vessel for intercourse, prostitution, or homosexual act
Section 143	Letting premises for use as a vice establishment
Section 144	Tenant etc. permitting premises or vessel to be kept as a vice establishment
Section 145	Tenant etc. permitting premises or vessel to be used for prostitution
Section 146	Indecent conduct towards child under 16
Section 147	Soliciting for an immoral purpose
Section 148	Indecency in public

Offences Against the Person Ordinance, Cap. 212

Section 17	Shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
Section 19	Wounding or inflicting grievous bodily harm
Section 25	Failure to provide apprentice or servant with food, etc. whereby life is endangered etc.
Section 26	Exposing child whereby life is endangered
Section 27	Ill-treatment or neglect by those in charge of child or young person
Section 39	Assault occasioning actual bodily harm
Section 40	Common assault
Section 42	Forcible taking or detention of person, with intent to sell him
Section 43	Stealing child under 14 years

Appendix 3: Police Procedures for Handling Domestic Violence Incident³¹⁸



³¹⁸ Retrieved from Appendix XII, Working Group on Combating Violence (2004). *Procedural guidelines for handling battered spouse cases*. Hong Kong: Social Welfare Department.

**Appendix 4: Reported cases of domestic violence and child abuse to police
(Updated 2004-10-05)**

Type of Cases	Year	Total Cases	No. of classified crime cases	No. of Misc. cases#	No. of persons charged in crime cases*	No. of persons bound over in crime cases**	No. of persons bound over in Misc. cases**	No. of persons charged with Common Assault in Misc. Cases	No. of persons charged and bound over
Domestic Violence	2001	1213	505	708#	119 (23.6%)	Not Available	14	17	150^
	2002	1665	647	1018#	135 (20.9%)	Not Available	13	33	181^
	2003	2401	799	1602#	114 (14.3%)	254 (31.8%)	25	20	413
Child Abuse***	2001	1078	N/A	N/A	362 (33.6%)	N/A	N/A	N/A	362
	2002	1044	N/A	N/A	320 (30.7%)	N/A	N/A	N/A	320
	2003	1028	N/A	N/A	255 (24.8%)	N/A	N/A	N/A	255

Remarks:

* Only the cases concluded in court on or before 2004-02-28 are included.

** Application was made to court to bind over the arrested persons without criminal charge being instituted.

Minor domestic violence incidents, mostly reports of disputes and noise complaint etc., with less than 5% resulted in Common Assault and were dealt with by criminal charge or binding over.

^ No. of persons bound over in crime cases are not available

Figures in the brackets refer to the percentage in respect of the number of classified crime cases.

*** The definition of Child Abuse includes:

(1) **Physical crimes against children-** refers to cases of Murder and Manslaughter, Wounding, Serious Assault and Cruelty to Child committed against a victim who is under 14 years of age, irrespective of the nature of relationship between the victim and the offender, such as known or unknown to victim and with or without caring responsibility for victim. Cases where the victims suffered in the course of other crimes are not included.

Sexual crimes against children- refers to cases of sexual crimes, such as Rape, Indecent Assault, Unlawful Sexual Intercourse and Incest etc. committed against a victim who is under 17 years of age, irrespective of whether the victim gave consent and the nature of relationship between the victim and the offender, such as known or unknown to victim and with or without caring responsibility for victim.

Source: Statistics provided by HKPF to the consultants via SWD on October 26, 2004

Appendix 5: Focus group discussant list:

Focus group 1:

Date: a.m. Jan 13, 2004

Harmony House "Third Path Man's Services"
Hong Kong Family Welfare Society
SWD
The Hong Kong Council of Social Services

Focus group 2:

Date: p.m. Jan 13, 2004

Against Child Abuse
Association Concerning Sexual Violence Against Women
Community Education & Resource Centre, Harmony House
End Child Sexual Abuse Foundation
Hong Kong Association for the Survivors of Women Abuse
Hong Kong Family Welfare Society
HK Federation Of Women's Centres
Serene Court, Christian Family Service Centre
Sunrise Court, Po Leung Kuk
SWD
The Hong Kong Council of Social Services
Wai On Home for Women, SWD

Focus group 3:

Date: a.m. Jan 14, 2004

Child Protection Policy Unit, Hong Kong Police Force
Department of Justice, Government
Dept. of Obstetrics & Gynaecology, Queen Mary Hospital
Health, Welfare and Food Bureau
Legal Aid Department, Government
Security Bureau
SWD
Tuen Mun Hospital

Focus group 4:

Date: evening, Jan 14, 2004

Five middle-aged Chinese men were interviewed in a group. They had used violence against their partner and were known cases of FCPSU/SWD.

Appendix 6: Profile of subjects participating in-depth case study

N=41

Characteristics	Subject	Spouse	
Age	28-30	2	0
	31-35	10	2
	36-40	12	5
	41-45	11	8
	46-50	3	10
	51-55	2	6
	56-60	1	4
	61-72	0	6
	Mean	39.7 yrs	49.6 yrs
	<i>SD</i>	6.3 yrs	9.6 yrs
Median	40 yrs	48 yrs	
Educational level	No formal education	0	12.2%
	Primary school	34.1%	36.6%
	Secondary 1-3	39%	19.5%
	Secondary 4-5	19.5%	19.5%
	Matriculated	4.9%	2.4%
	Tertiary or above	2.4%	9.8%
	Occupation	Full-time	17.1%
Housework	63.4%	2.4%	
Part-time job	7.3%	2.4%	
unemployed	7.3%	34.2%	
temporary job	4.9%	17.1%	
other	0	12.2%	
Marital status	single	2.4%	
	married	34.1%	
	divorced	14.6%	
	separated	46.3%	
	widow	2.4%	
No. of children	0	1	
	1	13	
	2	16	
	3	7	
	4	4	
	Mean	2	

Cont'd

Characteristics	Subject	Spouse
No. of years living in HK	0-1yr	26.8%
	>1, 3yrs	12.2%
	>3, 5yrs	9.8%
	>5yrs	51.2%
Perpetrator	husband	85.4%
	ex-husband	12.2%
	boyfriend	2.4%
Perpetrator threatened to hurt		78%
	victim	84.4%
	children	43.8%
	family	15.6%
	himself	18.8%
Fear perpetrator		56.1%
Feel unsafe		26.8%
Being stalked		36.6%
Suicidal ideation		24.4%

Appendix 7: Findings from the household survey

Table A: Use of social services

Q1: Which social service(s) is (are) useful in handling domestic violence?	<u>Useful</u> %
Family counseling	65.65
Individual counseling	53.76
Financial support	46.43
Education from school	36.21
Education from mass media	30.96
Legal-aid-services	22.68

N = 4952

Table B: Referral for perpetrators

Q2: If the perpetrator of domestic violence was unwilling to receive counselling or education programmes, which of the following ways would be helpful?	<u>Helpful or very helpful</u> %
Taking advice from spouse	46.9%
Taking advice from social worker	65.5%
Taking advice from police	52.9%
Compulsory referred by law	56.8%

**Appendix 8: Profile of application of the injunction order under DVO (Cap 189)
from Jan. 2003 to June 2004**

	Characteristics	N= 30
Age of applicant	median = 38	
Sex of applicant	male	10%
	female	90%
Age of respondent	median = 39.5	
Sex of respondent	male	90%
	female	10%
Applicant – respondent relationship	husband - wife	10.0%
	wife - husband	86.7%
	female - male cohabite	3.3%
	male - female cohabite	0
Applicants who have children living with		90.0%
No. of children involved		55
No. of children under 18		44
Unemployment	applicant	10%
	respondent	30%
Applicant as mentally incapacitated person	no	60%
	unknown	40%
Type of molestation	physical only	24
	psychological only	1
	physical + psychological	3
	physical + sexual	1
	physical + sexual + psychological	1
	involving physical	96.7%
	involving sexual	6.7%
	involving psychological	16.7%
Whether the application of DVO was granted		100%
Waiting time for the order to be granted	0 days (i.e. order granted on the same day of the application)	80%
	1 day	3.3%
	2 days	3.3%
	6 days	3.3%
	12 days	3.3%
	18 days	6.7%
Order granted under	S3(1) a,b,c	26.7%
	S3(1) a,b	36.7%
	S3(1) a	26.7%
	S3(1) a,c	10.0%
Age of children among the cases receiving Orders S3(1) a & a,c	Median age = 7 yrs	
	Under 6	6
	6-12	5
	12-17	3
	18 - 25	3

Cont'd

	Characteristics	N= 30
Duration of order	n = 27 mean = 23.2days SD = 32.9days	
	Minimum duration	2 days
	Maximum duration	6 months
	(a) Two days to half month (inclusive)	55.6%
	(b) Half to one month (inclusive)	37%
	(c) One to three months (inclusive)	3.7%
	(d) Three to six months (inclusive)	3.7%
Power of arrest attached		70%

Appendix 9:

Themes	America / USA	Australia	Canada	New Zealand	Singapore	UK
Shared societal value and policy position on domestic violence						
Clear National philosophy / value position about domestic violence	✓	✓	✓	✓		✓
<ul style="list-style-type: none"> Domestic violence as a public health issue 	✓		✓	✓		
<ul style="list-style-type: none"> Domestic violence as a crime 	✓	✓	✓			✓
<ul style="list-style-type: none"> Domestic violence as a gender based issue 	✓					✓
<ul style="list-style-type: none"> Domestic violence as a human rights issue 				✓		
Coordinated community and criminal justice response in tackling domestic violence	✓	✓	✓	✓		✓
Central level coordinating mechanism	✓	✓	✓	✓	✓	✓
Coordinating Government Office	Attorney General & the Department of Health and Human Services	Commonwealth Office of Status of Women	Health Canada	Ministry of Social Development	Ministry of Community Development and Sports	Home Office
Supporting policies / measures in responding to domestic violence						
Supporting law / legislation in mandating perpetrator programme / counseling	✓	✓			✓	✓
Specialized Court and dedicated legal practitioners (e.g. police, prosecutor, judges, probation officers) in handling domestic violence cases	✓ (Specialized domestic violence prosecution & probation units)	✓ (Pilot Family Violence Courts)	✓	✓ (Family Violence Court)	✓ (Family Court)	✓ (5 Specialist Domestic Violence Courts with trained judges, advocates, prosecutors & police units)
Legal advocates / court advocates / victim / witness support service at courts	✓	✓	✓			✓
Pro-arrest policy / mandatory arrest / position action policy	✓		✓			✓
Mandatory reporting		✓	✓			
Mandatory charging			✓			✓
Mandatory Prosecution			✓			
Order of Protections / Injunction orders	✓	✓	✓	✓	✓	✓

Themes	America / USA	Australia	Canada	New Zealand	Singapore	UK
Mandatory programme for perpetrators of domestic violence						
Court-ordered programme for male perpetrator of domestic violence to partners	✓	✓	✓	✓	✓	✓
Court-ordered programme for female perpetrators, who used to be victims of on-going domestic abuse	✓ (CrossRoads Programme)					
Aims of using mandatory treatment as to increasing victims' safety, holding perpetrator accountable for the violence used and to stop their violent acts.	✓	✓	✓	✓	✓	✓
Year of implementation of court-ordered programme	1980s	1990s	1980s'	1990s	1990s	1990s'
Victim support service (shelters, housing, financial, counseling, children support, etc)	✓	✓	✓	✓	✓	✓
Service agency of mandatory programme						
• Correctional Service			✓			
• Probation Office						✓
• Non-governmental organizations	✓	✓	✓		✓	✓
Pre programme assessment before issuing mandatory order	✓				✓	
Alcohol / Substance abuse treatment as part of mandatory programme	✓		✓		✓	
Address and respond to needs of perpetrators of different cultural background	✓	✓	✓	✓		✓
Parallel service for victims (spouse & children)	✓	✓	✓	✓	✓	✓
Session / Period/ Duration / Group size	12-52 weeks but most of the programmes extends across 24-26 weeks for 5-15 men in a group.	24 weeks to 12 months	20 sessions		Customized for individual case	20-120 hours over 10 to 48 weeks. The National Practitioners' Network recommended programs of 75 hours over 30 weeks with a minimum of 50 hours over six months.

Themes	America / USA	Australia	Canada	New Zealand	Singapore	UK
Programme Structure						
Open group	✓		✓			✓
Close group						
Pre-group interview / contract / orientation	✓		✓			✓
Victim contact before perpetrator joining the group	✓					
Programme model / approach						
The Duluth Model -- Psycho-educational approach, use feminist concepts and cognitive-behavioural techniques	✓	✓		✓		✓
Both male and female facilitators in batterer group	✓	✓		✓		
Programme content						
Understanding violence, beliefs and values about violence / attitude change	✓	✓	✓	✓	✓	✓
Confrontation of beliefs and values about violence / attitude change	✓	✓	✓	✓	✓	✓
Anger and stress management			✓		✓	
Accountability and responsibility	✓	✓	✓	✓	✓	✓
Power and control / male privilege value issue	✓	✓		✓		✓
Develop peaceful domestic and community relationship			✓		✓	
Develop empathy towards victims					✓	
Victim safety	✓	✓	✓	✓	✓	✓
Group programme	✓	✓	✓	✓	✓	✓
Individual counseling at the same time					✓	
Partner contact during the ordered programme for monitoring victims safety	✓	✓	✓	✓	✓	✓
Consequences of breaching the mandatory order						
Report to probation officer and bring to the court	✓			✓ (Criminal Court instead of Family Court)	✓	
Restart the programme	✓					

Themes	America / USA	Australia	Canada	New Zealand	Singapore	UK
Put in jail (Maximum penalty)	✓	✓	✓	✓ (6 months). The penalty increases to 2 years in prison when three offences are committed within three years	✓	✓
Fine				✓ \$5,000		
Fee charging of batterer programme	✓	Yes (fee waiver available)			Yes (fee waiver available)	

Themes	America / USA	Australia	Canada	New Zealand	Singapore	UK
Programme Effectiveness						
Stopping violence / Reducing re-offence / recidivism	✓ 53 – 85% (Edleson & Syers 1990) 20% completed program and remained non-violent for 18 months (Gondolf 1997) 67% (Gondolf, 2000)					✓ 67% (Dobash & Dobash 1996)
Remaining verbal abusive	✓ 72% (Gondolf 2000)					
Programme Dropout Rate / Increasing compliance at the programme	✓ 33 - 50% (Feazell et.al, 1984) 48% (Pirog-Good and Stets-Kealey 1985) From 26% lowered to 6% (Mullender & Burton, 2000) Compliance increased from 64% to 94% (Gondolf 2000)					✓ 50.8% (Dobash & Dobash 1996)
Increasing victims' sense of safety	✓ (Gregory & Erez 2002)		✓ Austin & Dankwort 1999			
Mandatory participation reduce drop out and re-offending rate	✓ drop out rate and re-offence rate between voluntary to mandatory = 61%:33%; 44% :29% (Gondolf 2002)					
Source of data for evaluating effectiveness						
Victims report	✓					
Batterers' self-report	✓					

Themes	America / USA	Australia	Canada	New Zealand	Singapore	UK
Official record of re-offence	✓					
Attendance at mandatory batterer intervention programme	✓					
Evaluating the batterer intervention system, rather than batterer programmes is more important	✓					
Mandatory programmes are more effective in the context of enhanced support for victims and a strengthened criminal justice response	✓	✓				✓
Group programmes are more effective / preferable		✓				
Couple counselling is discouraged / not preferable	✓	✓				✓
Anger management, alcohol and substance abuse treatment are not effective measure to stop violence	✓					✓
Partner's report is the most valid and reliable measure	✓					✓
Definition of success						
Expected outcome						
Increased awareness of violent episode	✓	✓				
Ability to avoid abusive behaviours	✓					
Increase acceptance of responsibility for their abusive behaviour, with decrease blaming of partner and life stressors for the violence	✓	✓				
Improved attitude towards women, , improved problem solving, interpersonal and life skills, improved domestic relationship.	✓	✓				
Stop violence for a period of time (6-128months)	✓ Yes, since most re-offences occur within 6 months	✓				✓

Themes	America / USA	Australia	Canada	New Zealand	Singapore	UK
Qualifications of group facilitators						
Meet competency standards / national standards	✓	✓				
Training on domestic violence and working with perpetrators	✓ Yes (for at least 24-48 hours)					✓
Violence and sexist free, not use alcohol or drugs	✓					
Programme in prison		✓ Yes, pilot programme	✓			
Source of programme resource						
Government				✓	✓	
Both Government and Community	✓	✓	✓			✓

Remarks:

Blank box indicates the concerned item was not specified in the literature reviewed during the research period

Box with a tick indicates the concerned item was found affirmative in the literature reviewed during the research period

Appendix 10: UK FAMILY LAW ACT 1996 - SECT 62

Meaning of "cohabitants", "relevant child" and "associated persons".

(1) For the purposes of this Part-

(a) "cohabitants" are two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship; and [Amended on 2 December 2003]

(b) "former cohabitants" is to be read accordingly, but does not include cohabitants who have subsequently married each other.

(2) In this Part, "relevant child", in relation to any proceedings under this Part, means-

(a) any child who is living with or might reasonably be expected to live

with either party to the proceedings;

(b) any child in relation to whom an order under the Adoption Act 1976 or the Children Act 1989 is in question in the proceedings; and

(c) any other child whose interests the court considers relevant.

(3) For the purposes of this Part, a person is associated with another person if-

(a) they are or have been married to each other;

(b) they are cohabitants or former cohabitants;

(c) they live or have lived in the same household, otherwise than merely

by reason of one of them being the other's employee, tenant, lodger or

boarder;

(d) they are relatives;

(e) they have agreed to marry one another (whether or not that agreement

has been terminated);

(ea) they have or have had an intimate personal relationship with each other which is or was of significant duration;". [Amended on 2 December 2003]

(f) in relation to any child, they are both persons falling within subsection (4); or

(g) they are parties to the same family proceedings (other than proceedings under this Part).

(4) A person falls within this subsection in relation to a child if-

(a) he is a parent of the child; or

(b) he has or has had parental responsibility for the child.

(5) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if-

(a) one is a natural parent of the child or a parent of such a natural

- parent; and
- (b) the other is the child or any person-
 - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
 - (ii) with whom the child has at any time been placed for adoption.

(6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

Appendix 11: The Statutory Provisions of Court-Mandated Counselling in Countries

Countries	Related Domestic Violence Laws
USA (Duluth, Minnesota)	<p>(A) Domestic Abuse Act (Chapter 518B.01)</p> <p>Subd. 6. Relief by the court.</p> <p>(a) Upon notice and hearing, the court may provide relief as follows:</p> <p>(1) Restrain the abusing party from committing acts of domestic abuse;</p> <p>(2) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;</p> <p>(3) Exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order;</p> <p>(4) Award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. Except for cases in which custody is contested, findings under section 257.025, 518.17, or 518.175 are not required. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section. The court must not enter a parenting plan under section 518.1705 as part of an action for an order for protection;</p> <p>(5) On the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518;</p> <p>(6) Provide upon request of the petitioner counselling or other social services for the parties, if married, or if there are minor children;</p> <p>(7) Order the abusing party to participate in treatment or counselling services, including requiring the abusing party to successfully complete a domestic abuse counselling programme or educational programme under section 518B.02;</p>

(8) Award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

(9) Exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;

(10) Order the abusing party to pay restitution to the petitioner;

(11) Order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation; and

(12) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff, constable, or other law enforcement or corrections officer as provided by this section.

(B) Domestic abuse counselling programme or educational programme required. (Chapter 518B.02)

Subdivision 1. Court-ordered domestic abuse counselling programme or educational programme. If the court stays imposition or execution of a sentence for a domestic abuse offence and places the offender on probation, the court shall order that, as a condition of the stayed sentence, the offender participate in and successfully complete a domestic abuse counselling programme or educational programme.

Subd. 2. Standards for domestic abuse counselling programmes and domestic abuse educational programmes.

(a) Domestic abuse counselling or educational programmes that provide group or class sessions for court-ordered domestic abuse offenders must provide documentation to the probation department or the court on programme policies and how the programme meets the criteria contained in paragraphs (b) to (l).

(b) Programmes shall require offenders and abusing parties to attend a minimum of 24 sessions or 36 hours of programming, unless a probation agent has recommended fewer sessions. The documentation provided to the probation department or the court must specify the length of the programme that offenders are required to complete.

(c) Programmes must have a written policy requiring that counsellors and facilitators report to the court and to the offender's probation or corrections officer any threats of violence made by the offender or

abusing party, acts of violence by the offender or abusing party, violation of court orders by the offender or abusing party, and violation of programme rules that resulted in the offender's or abusing party's termination from the programme. Programmes shall have written policies requiring that counsellors and facilitators hold offenders and abusing parties solely responsible for their behaviour. Programmes shall have written policies requiring that counsellors and facilitators be violence free in their own lives.

(d) Each programme shall conduct an intake process with each offender or abusing party. This intake process shall look for chemical dependency problems and possible risks the offender or abusing party might pose to self or others. The programme must have policies regarding referral of a chemically dependent offender or abusing party to a chemical dependency treatment centre. If the offender or abusing party poses a risk to self or others, the programme shall report this information to the court, the probation or corrections officer, and the victim.

(e) If the offender or abusing party is reported back to the court or is terminated from the programme, the programme shall notify the victim of the circumstances unless the victim requests otherwise.

(f) Programmes shall require court-ordered offenders and abusing parties to sign a release of information authorizing communication regarding the offender's or abusing party's progress in the programme to the court, the offender's probation or corrections officer, other providers, and the victim. The offender or abusing party may not enter the programme if the offender does not sign a release.

(g) If a counsellor or facilitator contacts the victim, the counsellor or facilitator must not elicit any information that the victim does not want to provide. A counsellor or facilitator who contacts a victim shall (1) notify the victim of the right not to provide any information, (2) notify the victim of how any information provided will be used and with whom it will be shared, and (3) obtain the victim's permission before eliciting information from the victim or sharing information with anyone other than staff of the counselling programme. Programmes shall have written policies requiring that counsellors and facilitators inform victims of the confidentiality of information as provided by this subdivision. Programmes must maintain separate files for information pertaining to the offender or abusing party and to the victim. If a counselor or facilitator contacts a victim, the counsellor or facilitator shall provide the victim with referral information for support services.

(h) Programmes shall have written policies forbidding programme staff from disclosing any confidential communication made by the offender or abusing party without the consent of the offender or abusing party, except that programmes must warn a potential victim

	<p>of imminent danger based upon information provided by an offender or abusing party.</p> <p>(i) The counselling programme or educational programme must provide services in a group setting, unless the offender or abusing party would be inappropriate in a group setting. Programmes must provide separate sessions for male and female offenders and abusing parties.</p> <p>(j) Programmes shall have written policies forbidding programme staff from offering or referring marriage or couples counseling until the offender or abusing party has completed a domestic abuse counselling programme or educational programme for the minimum number of court-ordered sessions and the counsellor or facilitator reasonably believes that the violence, intimidation, and coercion has ceased and the victim feels safe to participate.</p> <p>(k) Programmes must have written policies requiring that the counsellor or facilitator report when the court-ordered offender or abusing party has completed the programme to the court and the offender's probation or corrections officer.</p> <p>(l) Programmes must have written policies to coordinate with the court, probation and corrections officers, battered women's and domestic abuse programmes, child protection services, and other providers on promotion of victim safety and offender accountability.</p> <p>Subd. 3. Programme accountability. The Minnesota Center for Crime Victim Services will consult with domestic abuse counselling and educational programmes, the court, probation departments, and the interagency task force on the prevention of domestic and sexual abuse on acceptable measures to ensure programme accountability. By December 30, 2001, the center shall make recommendations to the house and senate committees and divisions with jurisdiction over criminal justice policy and funding on agreed upon accountability measures including outcome studies.</p>
Singapore	<p>Women's Charter</p> <p>Protection order</p> <p>65. —</p> <p>(5) A protection order may, where the court is satisfied on a balance of probabilities that it is necessary for the protection or personal safety of the applicant, provide for such orders as the court thinks fit having regard to all the circumstances of the case, including any one or more of the following orders:</p> <p>(a) the granting of the right of exclusive occupation to any protected</p>

	<p>person of the shared residence or a specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;</p> <p>(b) referring the person against whom the order is made or the protected person or both or their children to attend counselling provided by such body as the Minister may approve or as the court may direct; and</p> <p>(c) the giving of any such direction as is necessary for and incidental to the proper carrying into effect of any order made under this section.</p>
Australia	<p>Crimes (Family Violence) Act 1987</p> <p>Section 5</p> <p>Restrictions in order</p> <p>(1) Without limiting the generality of section 4, an order may do all or any of the following--</p> <p>(a) Prohibit or restrict approaches by the defendant to the aggrieved family member including prohibiting the defendant from approaching within a specified distance from the aggrieved family member; or</p> <p>(b) Prohibit or restrict access by the defendant to premises in which the aggrieved family member lives, works or frequents and such an order may be made whether or not the defendant has a legal or equitable interest in those premises;</p> <p>(c) Prohibit or restrict the defendant from being in a locality specified in the order;</p> <p>(d) Prohibit the defendant from contacting, harassing, threatening or intimidating the aggrieved family member;</p> <p>(e) Prohibit the defendant from damaging property of the aggrieved family member;</p> <p>(f) Prohibit the defendant from causing another person to engage in conduct restrained by the court;</p> <p>(g) Direct the defendant to participate in prescribed counselling;</p> <p>(h) Revoke any licence, permit or other authority to possess, carry or use firearms.</p>

<p>New Zealand</p>	<p>Domestic Violence Act 1995</p> <p>Section 32</p> <p>Power to direct respondent or associated respondent to attend programme</p> <ol style="list-style-type: none"> (1) On making a protection order, the Court must direct the respondent to attend a specified programme, unless the Court considers that there is good reason for not making such a direction. (2) Where the Court makes a direction pursuant to section 17 of this Act that a protection order apply against an associated respondent, the Court may, if it considers it appropriate in all the circumstances to do so, direct the associated respondent to attend a specified programmes. (3) A direction made under subsection (1) or subsection (2) of this section is a condition of the relevant protection order. (4) Without limiting subsection (1) of this section, there is good reason not to make a direction under that section if there is no programme available that is appropriate for the history and to any other relevant circumstances.
<p>Canada (Alberta)</p>	<p>Protection Against Family Violence Act</p> <p>Queen's Bench protection order</p> <p>4(1) An order under this section may be granted by a justice of the Court of Queen's Bench on application if the justice determines that the claimant has been the subject of family violence.</p> <p>(2) An order under this section may include any or all of the following:</p> <ol style="list-style-type: none"> (a) A provision restraining the respondent from attending at or near or entering any specified place that is attended regularly by the claimant or other family members, including the residence, property, business, school or place of employment of the claimant or family members; (b) A provision restraining the respondent from contacting the claimant or associating in any way with the claimant and from subjecting the claimant to family violence; (c) A provision granting the claimant and other family members exclusive occupation of the residence for a specified period, regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties; (d) A provision requiring the respondent to reimburse the claimant for monetary losses suffered by the claimant and any

	<p>child of the claimant or any child who is in the care and custody of the claimant as a direct result of the family violence, including loss of earnings or support, medical and dental expenses, out-of-pocket losses for injuries sustained, moving and accommodation expenses, legal expenses and costs of an application under this Act;</p> <p>(e) A provision granting either party temporary possession of specified personal property, including a vehicle, cheque-book, bank cards, children's clothing, medical insurance cards, identification documents, keys or other necessary personal effects;</p> <p>(f) A provision restraining either party from taking, converting, damaging or otherwise dealing with property that the other party may have an interest in;</p> <p>(g) A provision restraining the respondent from making any communication likely to cause annoyance or alarm to the claimant, including personal, written or telephone contact or contact by any other communication device directly or through the agency of another person, with the claimant and other family members or their employers, employees, co-workers or other specified persons;</p> <p>(h) A provision directing a peace officer to remove the respondent from the residence within a specified time;</p> <p>(i) A provision directing a peace officer to accompany a specified person to the residence within a specified time to supervise the removal of personal belongings in order to ensure the protection of the claimant;</p> <p>(j) A provision requiring the respondent to post any bond that the Court considers appropriate for securing the respondent's compliance with the terms of the order;</p> <p>(k) A provision requiring the respondent, and any other family member that the Court considers appropriate, to receive counselling;</p> <p>(l) A provision directing the seizure and storage of weapons where the weapons have been used or have been threatened to be used to commit family violence;</p> <p>(m) Any other provision that the Court considers appropriate.</p> <p style="text-align: right;">1998 cP-19.2 s4</p>
--	--