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# **Domestic violence policy and legislation in the UK: a discussion of immigrant women's vulnerabilities**

## **Abstract**

The desire to prevent domestic violence and support its victims has driven a number of changes in governmental law and policy in the UK, particularly since the 1970s. This culminated with the implementation of a multi-agency approach in the 1990s that is still used today. The specific needs of immigrant women, however, have not always been taken into account when introducing these changes. This article assesses whether and how current UK legislation and policy on domestic violence address immigrant women's added vulnerabilities. It does so by reviewing this legislation and policy against the socio-economic, cultural and individual barriers that immigrant women are most likely to experience in accessing justice in the country of destination. It suggests that the current provision does not adequately support immigrant women to overcome these barriers, and that greater awareness of their experiences and socio-cultural positioning is needed to better assist them when seeking help to escape domestic violence.

## **Introduction**

Immigrant women often present a set of vulnerabilities that require that specific strategies are in place to support them in situations of domestic violence. These are linked to social, structural and individual variables that determine whether women see events as abusive or not, and their ability to escape violent relationships. Women migrate for a variety of reasons, including socio-economic, personal, political, and a mixture of all these. Some women have insecure immigration status, others may not speak well the language of the country of destination. These women may find themselves in situations of domestic violence for which they need help to escape. However, legislation and policies on domestic violence in receiving countries tend not to account for immigrant women's added vulnerabilities, or do so in limited ways. In addition, in some instances, policies that are seemingly unrelated to domestic violence have a negative impact on the women escaping it. Policies on immigration are an example of this, with women sometimes left unable to

access the support that they need due to fear of deportation or other aspects related to an insecure immigration status.<sup>1</sup> Even if immigration status were not an important barrier, there are a variety of other aspects that make it difficult for immigrant women to access support in situations of abuse. These added barriers to accessing justice result from the intersection of cultural, social and individual factors that shape women's understanding of relationships and violent behaviour, their configuration of appropriate responses to it, and their ability to seek help.

In March 2016, the UK government announced its latest policy on violence against women and girls; in it, it pledged £80 million to services for Black and Minority Ethnic (BME) Women in an attempt to ensure that those who are most vulnerable are duly supported by the system. The year before, a crime of coercive and controlling behaviour in an intimate or family relationship was introduced under the Serious Crime Act 2015, in an attempt to acknowledge the repetitive and insidious nature of domestic abuse. This was preceded by a number of initiatives aimed at giving victims more protection against abuse, such as the Domestic Violence Disclosure Scheme, Domestic Violence Protection Orders and Domestic Violence Protection Notices. At an international level, in 2011, the Council of Europe adopted the 'Convention on preventing and combating violence against women and

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<sup>1</sup> This has been particularly well documented in relation to South Asian women and Latinas; see Sundari Anitha 'Legislating Gender Inequalities: The Nature and Patterns of Domestic Violence Experienced by South Asian Women With Insecure Immigration Status in the United Kingdom, (2008) *Violence Against Women*, 17(10) 1260-1285; Jenny Tonsing 'Complexity of Domestic Violence in South Asian Context in Hong Kong: Cultural and Structural Impact' (2016) *Social Work Education*, 35(1) 18-30; Ruth Belknap and Leona VanderVusse, 'Listening Sessions with Latinas: Documenting Life Contexts and Creating Connections' (2010) 27 *Public Health Nursing* 337; Stavroula Kyriakakis, Subadra Panchanadeswaran and Tonya Edmond 'Mexican Immigrant Women Searching for a Solution to Intimate Partner Abuse: Common Breaking Points and Type of Help Needed' (2015) *Journal of Immigrant & Refugee Studies*, 13(1): 1-18; Guadalupe Vidales, 'Arrested Justice: The Multifaceted Plight of Immigrant Latinas who Faced Domestic Violence' (2010) 25 *Journal of Family Violence* 536-544.

domestic violence' (also known as the Istanbul Convention) to enhance and harmonise responses across Europe.

In the face of such changes, it is important to understand how current policy and legislation impact immigrant women. This is the main focus of the present article, which will assess the ability of legislation and policy in the UK to provide immigrant women with ways to overcome the added vulnerabilities that they are most likely to experience when confronted with domestic violence. This will entail a discussion of the current approach to domestic violence in the UK, which is based on state-directed, locally implemented, multi-agency intervention. Key legislation and policy on domestic violence will be reviewed in this context, followed by an analysis of common barriers that have been found to exist among immigrant women in various parts of the world. The latter part of the article will consist of a discussion of whether legislation and policy address specific barriers for immigrant women, linking the two previous sections together. It will also consider ways in which women could be better supported, when experiencing domestic violence.

## **Legislation**

### ***Civil Law***

The first attempts to implement specific legislation on domestic violence in the UK consisted of the Domestic Violence and Matrimonial Proceedings Act 1976 (repealed in 1997), which set up, amongst other things, the ways in which injunctions could be granted by a judge to restrain one party from using violence against the other,<sup>2</sup> and the Domestic Proceedings and Magistrates' Courts Act 1978, which dealt mainly with aspects of financial

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<sup>2</sup> Domestic Violence and Matrimonial Proceedings Act 1976, ss 1-2.

support of one party by another.<sup>3</sup> This legislation, while attempting to improve the judicial responses to domestic violence, lacked an overall underlying rationale; for example, although removal orders were available, these were hard to obtain and there was no protection for former cohabitants.<sup>4</sup> Moreover, judges tended to be conservative in the application of the legislation, especially when property rights were involved.<sup>5</sup>

In order to address the lack of underlying coherence of existing legislation, Part IV of the Family Law Act 1996 (FLA) was introduced and, since then, updated by the Domestic Violence, Crime and Victims Act 2004. Proceedings under the FLA are brought to court by the parties involved in the dispute; it is also possible to apply for an order without the other party being present (*ex parte* order),<sup>6</sup> although research has found that judges are reluctant to attach powers of arrest to *ex parte* occupation orders, reducing the practical value of this mechanism.<sup>7</sup> The two main ways of addressing domestic violence in terms of civil law consist of non-molestation and occupation orders. A non-molestation order is an order by a court for one party not to molest the other. Molestation is not defined in the Act but has been found to include harassment of the applicant.<sup>8</sup> The parties who can apply for a non-molestation order are described as ‘associated persons’; these include spouses or ex-spouses and civil partners and current or former cohabitants.<sup>9</sup> Non-molestation orders aim to protect applicants from future violence, rather than punishing offenders for past

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<sup>3</sup> Domestic Proceedings and Magistrates’ Courts Act 1978, s 1(c).

<sup>4</sup> Susan Edwards, *Policing Domestic Violence: Women, the Law and the State* (Sage 1989) 58; Jonathan Herring *Family Law* (3rd edn Pearson 2007) 263.

<sup>5</sup> Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008), p.11.

<sup>6</sup> Family Law Act 1996 s 45(1).

<sup>7</sup> Lynne Harne and Jill Radford, *Tackling Domestic Violence: Theories, Policies and Practice* (Open University Press 2008) 98.

<sup>8</sup> *C v C (Non-Molestation Order: Jurisdiction)* [1998] 1 FLR 554 [70].

<sup>9</sup> Family Law Act 1996 s 62(3).

violence.<sup>10</sup> If a person is aware that a non-molestation order exists, and without reasonable excuse, violates it, that person is committing a criminal offence.<sup>11</sup> The situation thus becomes a criminal matter and the decision whether to prosecute the offender is not the victim's but the Crown Prosecution Service's (CPS). Because the breach of a non-molestation order is a criminal offence, the proof of this violation must be beyond reasonable doubt and not on the balance of probabilities.<sup>12</sup> Should the CPS decide not to prosecute the abuser, the victim may seek a remedy through contempt of court,<sup>13</sup> leaving the victim uncertain about the future of the proceedings until the CPS decides whether or not it will take action. An occupation order is an order to remove occupants (the abusers) from their homes, allowing victims to remain in their homes free from further violence. Because these orders collide with rights of property of the respondent, they have been found to be more difficult to obtain than non-molestation orders.<sup>14</sup> The procedure to determine which part of the legislation is applicable to a specific case can be lengthy, something which may make the order useless for victims seeking a quick form of protection from abuse.<sup>15</sup>

For cases falling under section 33 of the FLA, before the order is granted, the court must apply a balance of harm test. This means that there is a need to assess whether the applicant is likely to suffer significant harm as a result of the actions of the abuser, if the occupation order is not granted.<sup>16</sup> The term 'significant harm' is not defined by the FLA, but

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<sup>10</sup> Mary Welstead and Susan Edwards, *Family Law* (2nd edn Oxford University Press 2008) 106.

<sup>11</sup> Family Law Act 1996 s 42A.

<sup>12</sup> Claire Bessant, *Domestic Violence, Crime and Victims Act 2004: A Guide to the New Law* (Law Society 2005).

<sup>13</sup> Crown Prosecution Service, 'Policy for Prosecuting Cases of Domestic Violence' (Crown Prosecution Service 2009) 35 <<http://www.cps.gov.uk/publications/docs/DomesticViolencePolicy.pdf>> accessed 15 February 2010.

<sup>14</sup> Jonathan Herring *Family Law* (3rd edn Pearson 2007), 270; Welstead and Edwards (n 10) 100.

<sup>15</sup> Herring (n 14) 271.

<sup>16</sup> Family Law Act 1996 s 33(7).

the definition has been held in *Chalmers v Johns*<sup>17</sup> to mean an exceptional form of harm. When considering the balance of harm test, the case law has tended to focus on the welfare of the children affected by the orders rather than that of the women suffering the abuse (see *B v B*<sup>18</sup>, *Re Y (Children) (Occupation Order)*<sup>19</sup>, *G v G*<sup>20</sup>). Coupled with this is a general sense in the courts that an occupation order should only be granted exceptionally and after careful consideration of its implications. *Chalmers v Johns* is often quoted for considering this type of order 'draconian',<sup>21</sup> while in *Re Y* it was described as 'a last resort in a (*sic*) intolerable situation',<sup>22</sup> something which only adds to the difficulty in obtaining occupation orders in cases of domestic violence, even if the applicant has an entitlement to the property.<sup>23</sup>

Unlike the breach of a non-molestation order, the breach of an occupation orders is not a criminal offence, but is subject only to a penalty for contempt of court, at the instigation of the applicant. There is, however, the possibility to attach a power of arrest to an occupation order.<sup>24</sup> This would come into force if there were a breach of the order that was not coupled with a criminal offence (in which case the police would already have the power to arrest for the criminal action though not for the breach of the order itself). It is somewhat surprising that if someone breaches a non-molestation order, they commit a criminal offence and the matter is then in the hands of the police and CPS, but if they breach an occupation order, which is much harder to get and usually involves more extreme

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<sup>17</sup> [1999] 1 FLR 392.

<sup>18</sup> [1999] 31 HLR 1059.

<sup>19</sup> [2000] 2 FCR 470.

<sup>20</sup> [2000] 2 FLR 36.

<sup>21</sup> [1999] 1 FLR 392 [18]; *Burton* (n 1) 274.

<sup>22</sup> [2000] 2 FCR 470 [46].

<sup>23</sup> *Burton* (n 5) 41.

<sup>24</sup> Family Law Act 1996 s 47(1).

situations, there is not an automatic offence, but the court has to grant the power of arrest to the police.

More recently, two new orders were introduced by the Crime and Security Act 2010: Domestic Violence Protection Notices (DVPN) and Domestic Violence Protection Orders (DVPO). Their aim is to enable the police to act quickly to protect victims, and to allow victims time to resort to other forms of safeguarding their interests (such as non-molestation or occupation orders), without interference from the abuser. As such, a police officer of at least superintendent rank may issue a DVPN, which prevents the abuser from having contact with the victim or returning to the victim's home for a maximum of 48 hours. Within these 48 hours, the police must apply for a DVPO, which is a civil order issued by a magistrates' court that will set a period of no contact between victim and offender of between 14 and 28 days.<sup>25</sup> Neither order depends on the victim's wishes to be issued. DVPOs and DVPNs should be seen as complementary to existing legal provisions; they should be used when, for example, there is not enough evidence to arrest a suspect, but there is still a sense that he may pose a risk to the victim.

DVPOs and DVPNs can be useful as speedy responses to victims' immediate needs. As they can prevent a person from molesting another through a prohibition of contact, or even the removal from their home, they could overcome some of the difficulties associated with non-molestation and occupation orders. They should, however, not be seen as a replacement for these, due to their temporary nature. Their potential impact on the suspect should also not be discarded, particularly the potential for creating situations of homelessness. The fact that DVPNs and DVPOs were designed to provide victims with some respite to decide to apply for non-molestation and occupation orders should not shift the

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<sup>25</sup> Crime and Security Act 2010 ss 25, 27-28.



onus of protection from the state to the victim. DVPNs and DVPOs are civil orders, and should not be used instead of the criminal law provisions discussed below, or replace the need for gathering evidence and conducting a thorough investigation. Nonetheless, the fact that the orders can be made without the victim's support should be considered also as potentially problematic, an issue that will be reprieved in the Discussion section of this article.

### ***Criminal law***

The Domestic Violence, Crime and Victims Act 2004 (DVCVA) was described by the Home Office as the 'the biggest overhaul of the law on domestic violence in the last 30 years'.<sup>26</sup> Despite making numerous changes to civil law, the DVCVA did not have as great an impact on criminal law as the claim would indicate, and for years the general provisions of criminal law continued to be the only resort to address domestic violence.<sup>27</sup> The applicability of this legislation to cases of domestic violence has not been straightforward. For example, courts tend to associate the conduct foreseen by the Offences Against the Person Act 1861 as including only that which amounts to physical injury, excluding behaviour that would be interpreted as coercive and controlling.<sup>28</sup> The lack of a specific crime of domestic violence was partly addressed with the introduction of the offence of controlling and coercive behaviour in an intimate or family relationship by the Serious Crime Act 2015. The new offence was designed to address the repetitive nature of the behaviour and its cumulative effect on victims, which arguably did not always fit the law

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<sup>26</sup> Home Office, 'The Domestic Violence, Crime and Victims Act 2004' (Home Office Circular 9/2005) <<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/009-2005/>> accessed 30 September 2009.

<sup>27</sup> Such as those covered by the Offences against the Person Act 1861, which include homicide and assault, and the Protection from Harassment Act 1997, which considers actions to amount to harassment if they cause alarm or distress to the victim, on two or more occasions.

<sup>28</sup> See *R v Chan Fook* [1994] 1 WLR 689 and *R v Dhaliwal* [2006] EWCA Crim 1139.

for common assault or stalking and harassment.<sup>29</sup> This was felt to be more so the case after *R v Curtis*, in which a defendant convicted for harassment had the verdict overturned on appeal partly due to a lack of ‘a course of conduct which amounted to harassment’ as a number of facts occurring during the course of nine months interspersed with ‘considerable periods of affectionate life’ did not satisfy the requirement that it was conduct amounting to harassment according to section 4 of the Protection from Harassment Act 1997. Similar reluctance in acknowledging the existence of harassment in on-going intimate partner relationships can be found in *R v Hills* and *R v Widdows*.<sup>30</sup>

The new law followed a public consultation by the Home Office, in which only 15% of respondents found that the legislation was adequate.<sup>31</sup> Interestingly, although 85% of respondents felt that the legislation needed to be strengthened, only 55% of these thought that this should be done through a new type of crime of coercive and controlling behaviour, with some respondents misunderstanding the question whether the criminal law needed strengthening as whether the Home Office’s definition of domestic abuse was adequate.<sup>32</sup> It would seem that the argument that the criminal law sends a powerful message to society of the unacceptability of coercive and controlling behaviour is less important to participants in the consultation than the need to enhance the mechanisms that are already in place, including better training of criminal justice staff, decrease in the reliability on witness

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<sup>29</sup> Home Office (2014) ‘Strengthening the Law on Domestic Abuse Consultation— Summary of Responses’

<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389002/StrengtheningLawDomesticAbuseResponses.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389002/StrengtheningLawDomesticAbuseResponses.pdf)> accessed on 8 September, 2016, 11.

<sup>30</sup> *R v Curtis* [2010] EWCA 123; *R v Hills* [2001] 1 FLR 580; *R v Widdows* [2011] 175 J.P. 345, para 32.

<sup>31</sup> Home Office (n 29) 6.

<sup>32</sup> Home Office (n 29) 7.

statements for prosecutions and better multi-agency cooperation in the identification and support of victims, which were highlighted by many respondents.<sup>33</sup>

In 2014, the Domestic Violence Disclosure Scheme (also known as Claire's law) was rolled out throughout England and Wales, following a 14 months pilot. The scheme works similarly to the Child Sex Offender Disclosure Scheme and aims to enhance the protection of victims of domestic violence by allowing individuals to discover whether their new partners have a history of violence. The disclosure of information about a former partner can be made under a 'right to ask', in which a member of the public makes a direct application for information to the police or under a 'right to know', in which the police receive information that is relevant to the safety of an individual and, after making the appropriate checks, disclose the information to the person at risk.<sup>34</sup> An evaluation of the scheme when it was first piloted revealed a generally positive perception from the police, services and applicants of its usefulness in supporting individuals making informed decisions about their relationships, results that were generally confirmed in the review conducted one year from the implementation of the scheme.<sup>35</sup> This is a non-statutory scheme that has raised some concerns for its potential oversight of alleged offenders' human rights in the disclosure of not only past convictions, but also arrest, charges and

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<sup>33</sup> Home Office (n 29) 8.

<sup>34</sup> Gill Hague et al., 'Raising Silenced Voices: South Asian Women Immigrating After Marriage' (2010) 31 Ethnicity and Inequalities in Health and Social Care 25, 3-4; Home Office 'Domestic Violence Disclosure Scheme Pilot: Guidance' (Home Office 2012) <<http://www.homeoffice.gov.uk/publications/crime/dvds-interim-guidance?view=Binary>> accessed 21 December 2012.

<sup>35</sup> Home Office 'Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment' (Home Office 2014) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/260894/DVDS\\_assessment\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260894/DVDS_assessment_report.pdf)> accessed 16 September 2016, 3-4; Home Office 'Domestic Violence Disclosure Scheme (DVDS), One year on – Home Office assessment of national roll-out' (Home Office 2015) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/505434/2016-03-08\\_DVDS\\_report\\_final\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505434/2016-03-08_DVDS_report_final_.pdf)> accessed 16 September 2016.

failed prosecutions, and also for a lack of consultation with offenders during its pilot and implementation.<sup>36</sup>

## **Policy**

There has been a systematic effort from British governments to promote multi-agency work in this field. This trend can be seen most clearly in the delivery of support services, since the 1990s. The use of a multi-agency approach reflects an acknowledgement that victims' needs are complex. Indeed, domestic violence is often not an isolated incident and creates a range of problems that are unlikely to be effectively addressed by a single agency.<sup>37</sup> As a result, multi-agency cooperation has been adopted in England and Wales as the preferred way to address domestic violence, especially since 1995 with the Home Office Inter-Agency Circular on domestic violence,<sup>38</sup> and the Crime and Disorder Act in 1998.<sup>39</sup> More recent developments result from changes introduced to the FLA and the implementation of the DVCVA, and the creation of a number of institutions designed to put these changes into practice, such as Specialist Domestic Violence Courts (SDVCs), Multi-Agency Risk Assessment Conferences (MARACs), Independent Domestic Violence Advisors (IDVAs), and MASHs (Multi-Agency Safeguarding Hubs).

A multi-agency approach is not, however, unproblematic and four levels of concern have been raised. These include the fact that differences in power, resources, working ethos and

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<sup>36</sup> Jamie Grace 'Clare's Law, or the national Domestic Violence Disclosure Scheme: the contested legalities of criminality information sharing' (2015) *The Journal of Criminal Law*, Vol. 79(1) 36–45, 37.

<sup>37</sup> Home Office, 'Domestic Violence: Break the Chain Multi-Agency Guidance for Addressing Domestic Violence' (Home Office 1998)

<[http://ec.europa.eu/justice\\_home/daphnetoolkit/files/projects/1998\\_064/domestic\\_violence\\_multi\\_agency\\_guidance\\_uk.pdf](http://ec.europa.eu/justice_home/daphnetoolkit/files/projects/1998_064/domestic_violence_multi_agency_guidance_uk.pdf)> accessed 9 April 2013, 3, 7.

<sup>38</sup> Home Office *ibid* 3.

<sup>39</sup> Crime and Disorder Act 1998 ss 5-6; Home Office *ibid* 3.

practices between the various participating agencies may lead to situations where one agency feels undermined by others and pressured to comply with the 'lead' agency's agenda.<sup>40</sup> The concern is that multi-agency initiatives work as a mere forum for discussion with few practical results, or even as a 'smokescreen' for local government to draw attention away from ineffective practices, and a way to show good will and engagement in finding solutions for domestic violence. There is also a fear that multi-agency work is a way for the police to address a crisis of legitimacy that saw police forces and communities growing apart<sup>41</sup> (this has been especially problematic when dealing with ethnic minorities, as the Brixton Riots in 1981 and the damning McPherson report which accused the Metropolitan Police of being institutionally racist in 1999, confirmed). Finally, there is the concern that, although multi-agency approaches are effective in raising the profile of voluntary organisations, they can also be a way for the police and local authorities to divert accountability for their actions to the multi-agency structure.<sup>42</sup>

The claim by Harwin that the success of responses to domestic violence will be measured not by the number of multi-agency agreements established but by the quality of the services provided to women<sup>43</sup> is a pertinent one to bear in mind when analysing governmental policy on domestic violence. The most recent iteration of the Governmental policy on violence against women was published by the Home Office in March 2016, as

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<sup>40</sup> Pragna Patel, 'The Multi-Agency Approach to Domestic Violence: A Panacea or Obstacle to Women's Struggles for Freedom from Violence' in Nicola Harwin, Gil Hague, and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 65, 72.

<sup>41</sup> Gil Hague, 'The Multi-Agency Approach to Domestic Violence: A Dynamic Way Forward or a Face-Saver and Talking Shop?' in Nicola Harwin, Gil Hague, and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 12, 13-14; Patel *ibid* 67.

<sup>42</sup> Patel *ibid* 62.

<sup>43</sup> Nicola Harwin, 'New Opportunities, Old Challenges? A Perspective from Women's Aid' in Nicola Harwin, Gil Hague and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 44.

'Ending Violence Against Women and Girls Strategy 2016-2020'. In it, the Government proposes a plan to address violence against women in its many forms that relies on four pillars: prevention, provision of services, partnership working and pursuing perpetrators.<sup>44</sup> This approach follows the strategy set out in the 'Call to End Violence Against Women and Girls of 2010' and its 2013 Action Plan.<sup>45</sup> A multi-agency approach is central to making VAWG 'everyone's business', which involves not only the agencies involved in supporting women, but also the wider public.<sup>46</sup>

There is continued emphasis placed on devolving the responsibility to provide support for women to local areas, which are seen to be best placed to determine how services should coordinate their provisions in the ways that best protect vulnerable women living in their designated areas of responsibility.<sup>47</sup> The Home Office will publish a National Statement of Expectations to illustrate to local partnerships 'what good commissioning and service provision looks like' and the launch of a VAWG Transformational Fund is proposed to 'support, promote and embed the best local practice'.<sup>48</sup> The Government pledged £80 million to support its strategy, with specific provision for BME women and 'innovative services' for women with greater vulnerabilities and 'complex needs'.<sup>49</sup> This pledge needs, however, to be read in the context of recent cuts in funding towards domestic violence support services and access to justice, which had a clear negative impact on the ability of

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<sup>44</sup> Home Office, Ending Violence Against Women and Girls Strategy 2016-2020 <  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522166/VAWG\\_Strategy\\_FINAL\\_PUBLICATION\\_MASTER\\_vRB.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF)> accessed 23 October 2016, 8.

<sup>45</sup> Home Office, Call to End Violence Against Women and Girls: Action Plan (Home Office 2011) 43 <  
<http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan-2013?view=Binary>> accessed 14 March 2013, 17, 38, 41, 43.

<sup>46</sup> Home Office (n 44) 12.

<sup>47</sup> Home Office (n 44) 6, 7, 10.

<sup>48</sup> Home Office *ibid* 10, 11.

<sup>49</sup> Home Office *ibid* 11.

services to provide adequate support to victims.<sup>50</sup> The use of an evidence-based approach to prosecuting offenders and managing incidents is also mentioned, as is the aspiration of eliminating VAWG at international level.<sup>51</sup>

As new policies and legislation were introduced, the term 'domestic violence' was replaced, in most instances, by 'domestic abuse' to better reflect the insidious, controlling and coercive nature of this type of behaviour. In this article, domestic violence and domestic abuse are used interchangeably to mean any type of abuse between individuals who are or were in an intimate relationship. The article draws from literature from a variety of jurisdictions and a more restrictive use of terminology would risk losing the nuances in the experiences of immigrant women. Legislation and policy on domestic violence may vary considerably between jurisdiction, as the preparatory works for the Istanbul convention demonstrated, and a broader use of the terminology facilitates comparisons.

### **Structural, Cultural and Individual Barriers**

Immigrant women's experiences of domestic abuse are varied and result from the intersection of structural and individual variables that determine their perceptions of and reactions to events. It is, therefore, important not to treat immigrant women as a homogenous group, informed by cultural practices that lead them to accept and endure abuse. This does not mean, however, that certain recurrent aspects are not present in

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<sup>50</sup> Jude Towers and Sylvia Walby 'Measuring the impact of cuts in public expenditure on the provision of services to prevent violence against women and girls' (2012) < <https://www.trustforlondon.org.uk/wp-content/uploads/2012/01/VAWG-Cuts-Full-Report.pdf>> accessed on 23 October 2016; Women's Aid, 'SOS save refugees, save lives' (2015) < <https://www.womensaid.org.uk/what-we-do/campaigning-and-influencing/campaign-with-us/sos/>> accessed on 23 October 2016; Women's Aid 'Domestic Abuse Services' (2015) <<https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/domestic-abuse-services/>> accessed on 23 October 2016.

<sup>51</sup> Home Office (n 44) 12, 13.

immigrant women's experiences of domestic violence. Indeed, specialised literature from across the world has identified repeatedly a number of interrelated circumstances that have been found to be particularly insidious in determining immigrant women's ability to escape abusive relationships. The analysis that follows traces these circumstances and groups them under seven interrelated themes.

### ***Home Country as a Frame of Reference***

Having one's home country's legal system as a frame of reference has been found to be key in women's willingness and ability to access the justice system in the country of destination. Women who were not likely to access services in their home countries are not likely to do so in the country of destination.<sup>52</sup> This is because the experiences brought from the countries of origin shape women's expectations of the services of the country of destination. For example, Portuguese women living in England are unlikely to seek help from voluntary support services, as they see them as 'toothless' or lacking in use when escaping violence. For some women, they may even be detrimental, leading them to become more passive as the result of accepting the label of victim placed upon them; that is, they fear becoming dependent on these services and lose the drive to change their

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<sup>52</sup> Anitha (n 1) 462, 472; Aisha Gill, 'Voicing the Silent Fear: South Asian Women's Experiences of Domestic Violence' (2004) 43 5 *The Howard Journal of Criminal Justice* 475, 189; Laura Beth Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment' 34 4 *Law and Society Review* 1055, 1085; Cecilia Menjivar and Olivia Salcido, 'Immigrant Women and Domestic Violence: Common Experiences in Different Countries' (2002) 16 6 *Gender and Society* 898, 903-11; Erica Burman and Khatidja Chantler, 'Domestic Violence and Minoritisation: Legal and Policy Barriers Facing Minoritised Women Leaving Violent Relationships' (2005) 28 *International Journal of Law and Psychiatry* 59, 71; Ilze Earner, 'Double Risk: Immigrant Mothers, Domestic Violence and Public Child Welfare Services in New York City' (2010) 33 *Evaluation and Programme Planning* 292; Vidales (n 1) 539; Maria Beatriz Rocha-Trindade, 'Afirmações Identitárias em Quadro Migratório' in J Miranda and M João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006), 9.



situations.<sup>53</sup> Acknowledging that the legal system of the country of origin acts as a powerful frame of reference for immigrant women, shaping their engagement with the justice system of the country of destination, and the assimilation of mechanisms of legality is therefore essential when devising dedicated services to support immigrant women to escape domestic abuse.

### ***Access to Services***

Service providers play a key role as gatekeepers in women's use of the justice system to address domestic violence.<sup>54</sup> Despite the use of a multi-agency approach being defended in governmental policy since the 1990s,<sup>55</sup> and internationally by the Istanbul convention,<sup>56</sup> access to service providers by immigrant women is not in itself unproblematic. There are a number of factors that influence women's use of services to address domestic violence. These include ease of access, for example, whether services are easy to reach personally, by phone or other methods,<sup>57</sup> and the perceived quality of the support received,<sup>58</sup> although some populations perceive quality as more important than cost.<sup>59</sup> Specialised services and information for immigrant women can have a great impact on women's access to these

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<sup>53</sup> Sofia Graca 'Use of domestic violence services by Portuguese women in England' (2015) *Journal of Social Welfare and Family Law*, 37(1), 38-52.

<sup>54</sup> Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing 1999) 68; William Felstiner; Richard Abel and Austin Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claming...' (1980-1981) 15 *3/4 Law and Society Review* 639-648; Ruth Fleury-Steiner et al., 'Contextual Factors Impacting Battered Women's Intentions to Re-Use the Criminal Legal System' (2006) 34 *3 Journal of Community Psychology* 329, 338.

<sup>55</sup> Hague et al. (n 34), 3-4.

<sup>56</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, articles 7(3) and 9.

<sup>57</sup> Jan Bostock, Maureen Plumpton and Rebekah Pratt 'Domestic Violence Against Women: Understanding Social Processes and Women's Experiences' (2009) 19 *Journal of Community & Applied Social Psychology* 95, 103-105; Burman and Chantler (n 52) 65.

<sup>58</sup> Bostock (n 57) 103-05; Genn (n 54) 81, 82.

<sup>59</sup> Graca (n 53) 48, 49.

services, particularly for women whose language proficiency in the country of destination is lacking, and those who experience strong cultural and community pressures, such as fear of bringing shame to the community and the family.<sup>60</sup> In these cases, voluntary organisations have been found to provide a more positive experience for women than non-voluntary organisations, such as the police or courts.<sup>61</sup> However, this is not true for all women, with some immigrant populations having a very low expectation of the usefulness of these services.<sup>62</sup>

It is sometimes proposed that one way to overcome immigrant women's lack of engagement with support services is to promote their integration in the wider community. This would enhance their self-determination and overcome the isolation from the wider community that some women experience.<sup>63</sup> Such an approach needs to be used with care, as the wider community may itself be steering women away from the remedies it provides. An example of this is when service providers are not sensitive to cultural differences and assume that certain cultures bring with them higher rates of domestic violence and will, in essence, 'look after themselves'.<sup>64</sup> Also, previous experiences with people or institutions in the wider community, not related to domestic violence, that are perceived as racist or sexist also steer women away from engaging with service providers.<sup>65</sup> Moreover, women

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<sup>60</sup> Burman and Chantler (n 52) 65; Graca, 2015 (n 53).

<sup>61</sup> Bostock et al (n 57) 103-05; Hague et al. (n 34) 31.

<sup>62</sup> Graca, 2015 (n 53) 48.

<sup>63</sup> Hague et al. (n 34) 29.

<sup>64</sup> Menjívar and Salcido (n 52) 901; Burman and Chantler (n 52) 63.

<sup>65</sup> M Cristina Alcalde 'Migration and Class as Constraints in Battered Women's Attempts to Escape Violence in Lima, Peru' (2006) 33 *Latin American Perspectives* 150; Anahid Kulwicki et al., 'Barriers in the Utilisation of Domestic Violence Services Among Arab Immigrant Women: Perceptions of Professional, Service Providers & Community Leaders' (2010) 25 *Journal of Family Violence* 729; Elisabeth Midlarsky et al., 'Domestic Violence in the Chinese and South Asian Immigrant Communities' (2006) 1087 *Annals of the New York Academy of Science* 285; Helen Wallach, Ziv Weigram and Orli Avitan, 'Attitudes Toward Domestic Violence: A Cultural Perspective' (2010) 25 *Journal of Interpersonal Violence* 1285, 1291; Natalie Sokoloff, 'Expanding the Intersectional Paradigm

may be discouraged from invoking the law for fear of fuelling racism or further prejudice against their community.<sup>66</sup> Fear of sexist attitudes in the wider community, for example fear of sexual victimisation, are also mentioned by some women as a reason not to venture into the wider community.<sup>67</sup>

### ***Relationship with the Family***

Women's relationship with their immediate and extended families has been found to have significant impact on their ability and willingness to seek help, as well as the type of help sought. In some cultures, women are socialised to put the interests of the family ahead of their own. This is usually termed 'familism' and has been found to exist amongst Portuguese, Latina, South Asian, Korean and Chinese immigrants living in a variety of countries.<sup>68</sup> In these circumstances, women will tend to use the help of family members to find solutions for their problems, rather than seeking help from third parties.<sup>69</sup> This behaviour can, however, help or hinder women's attempts to escape domestic violence, depending on whether the family supports taking any action to deal with the abuser or

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to Better Understand Domestic Violence in Immigrant Communities' (2008) 16 *Critical Criminology* 229, 246; Erica Burman et al., 'Culture' as a Barrier to Service Provision and Delivery: Domestic Violence Services for Minoritized Women' (2004) 24 3 *Critical Social Policy* 332, 338.

<sup>66</sup> Carolyn Chew-Graham et al., 'South-Asian Women, Psychological Distress and Self-Harm: Lessons from Primary Care Trusts' (2002) 10 5 *Health & Social Care in the Community* 339, 345; Burman and Chantler (n 52) 63; Vanda Wellock, 'Domestic Abuse: Black and Minority-Ethnic Women's Perspectives' (2008) 26 2 *Midwifery* 182; Hague et al. (n 34) 182.

<sup>67</sup> Chew-Graham et al. *ibid* 343.

<sup>68</sup> Paula Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (2005) 20 *Journal of Interpersonal Violence* 1132, 1134; Midlarsky et al. (n 65) 287; Tonsing (n 1); Sofia Aboim, 'Clivagens e Continuidades de Género Face aos Valores da Vida Familiar' in Karin Wall and Lígia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 44, 67; Vidales (n 1) 536; Catherine Fuchsel et al., 'Domestic Violence, Culture, and Relationship Dynamics Among Immigrant Mexican Women' (2012) 27 *Affilia* 269.

<sup>69</sup> Sokoloff (n 65) 247.

not.<sup>70</sup> In some situations, placing the interests of the family ahead of one's own means that women will prefer to endure violence than to break up the family unit, a decision that may be reinforced by the extended family that will encourage women to stand by their husbands, regardless of the abusive behaviour. In other situations, the family can be a source of material or emotional support, helping women to escape violent situations. The family unit can also help to police women and men's behaviour and ensure that either do not deviate from what are their expected roles.

### ***Shame and Honour***

Shame and honour are also important to understand women's reactions to domestic violence. They feature prominently in literature on immigrant women and domestic violence, especially in relation to women living in societies with more differentiated gender roles, where the preservation of individual and family reputation are deemed essential. Women's purity, chastity and loyalty help to ensure that paternity is secured in societies where power and property are passed through the male family line only.<sup>71</sup> Because men in these societies can be responsible for women morally, economically, socially and legally, women's honour heavily impacts on men's honour. As a result, women's behaviour is tightly regulated. Women are expected to sacrifice themselves for the good of the family, with the added responsibility that leaving a violent relationship can have consequences not only for themselves but also their children.<sup>72</sup> Indeed, fear of the consequences of leaving a violent relationship on children's wellbeing has been found to be relevant in determining women's actions in cases of domestic violence in a number of studies involving ethnic

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<sup>70</sup> Bostock et al. (n 57) 103-104; Fleury-Steiner et al. (n 54) 339.

<sup>71</sup> Kulwicki et al. (n 65) 729.

<sup>72</sup> Gill (n 52) 476; Wallach et al. (n 65) 1285.

minority women with backgrounds as varied as Asia and South America.<sup>73</sup> In turn, male violence is deemed justifiable if used to preserve a man's honour and that of the family.<sup>74</sup> Literature on South Asian victims of domestic violence refers to these factors as *sharam* (shame) and *izzat* (family honour).<sup>75</sup> Similar concepts of honour (*sharaf*) and shame (*ayb*) are used in the literature to refer to the mechanisms that structure Arab family lives,<sup>76</sup> and shame has also been found to prevent the disclosure of domestic violence in some Latina populations.<sup>77</sup> Amongst the latter, this experience is linked to machismo, a concept that encompasses an expectation that men are the heads of households, main providers, tough, dominant and aggressive.<sup>78</sup> As a result, despite living close to the community or the extended family, many women are not supported by either when they experience domestic violence.<sup>79</sup>

### ***Relationship with the Community of the Country of Origin***

Cultural practices are reinforced at community level. Chew-Graham puts forward the notion of a 'community grapevine' as the setting in which shame, honour and a high regard for privacy are best seen at work. The notion of a 'community grapevine' signifies the existence of a space where individual actions are scrutinised, and family status assessed. Because women are awarded a disproportionate role in upholding family honour, their behaviour is more heavily scrutinised than men's behaviour. As a result, the community

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<sup>73</sup> Carolyn Chew-Graham et al. (n 66) 341; Burman and Chantler (n 52) 69; Bostock et al. (n 57) 103; Vidales (n 1) 536; Fuchsel et al. (n 68) 269; Midlarsky et al. (n 65) 287.

<sup>74</sup> Gill (n 52) 476; Wallach et al. (n 65) 1285.

<sup>75</sup> Wellock (n 66) 29; Diya Kallivayalil 'Narratives of Suffering of South Asian Immigrant Survivors of Domestic Violence' (2010) 16 *7 Violence Against Women* 789, 790.

<sup>76</sup> Kulwicki et al. (n 65) 728.

<sup>77</sup> Belknap et al (n 1) 338; Fuchsel et al. (n 68) 269.

<sup>78</sup> Edna Erez, Madeleine Adelman and Carol Gregory, 'Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women' (2009) 4 *Feminist Criminology* 3648; Vidales (n 1) 537; Fuchsel et al. (n 68) 269.

<sup>79</sup> Sokoloff (n 65) 239; Vidales (n 1) 537; Fuchsel et al. (n 68) 270.

grapevine can be used to keep women's behaviour in check.<sup>80</sup> Shame and preservation of family honour pressure families to be seen as 'doing well'. This can be expressed by maintaining traditional cultural values or showing that the family, including children, are succeeding in terms of educational achievement and employment. The pressure to portray an image of accomplishment to the outside world can lead women to hide domestic violence and to avoid seeking help to address it.

There are, however, limited positive aspects to having such tight control mechanisms over individuals, which include the possibility of shaming abusers and offering women avenues to escape abuse.<sup>81</sup> If women are deemed to have been acting honourably and are abused by their husbands, they may be defended by their male relatives and even welcomed home if they decide to leave a violent relationship. Nevertheless, this solution is not always available for immigrant women who either do not have extended family in the country of destination or only the husband's family is available, which will often side with the husband instead of providing women with assistance, even if their behaviour may be irreproachable by the cultural standards of the country of origin.<sup>82</sup> It is also a solution that is far from ideal as it relies on the imposition of strict codes of conduct on women, often derived from traditional and highly gendered perceptions of family life.

### ***Acculturation***

Acculturation, or the assimilation of aspects of a different culture, helps women to develop an understanding of the remedies available for domestic violence in the country of destination. Recent immigrants and immigrants with low levels of acculturation tend to

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<sup>80</sup> Chew-Graham et al. (n 66) 342; Erez et al. (n 79) 48.

<sup>81</sup> Sokoloff (n 65) 244; Anat Ben-Porat, 'Connecting Two Worlds: Training Social Workers to Deal With Domestic Violence Against Women in the Ethiopian Community' (2010) 40 *British Journal of Social Work* 2489.

<sup>82</sup> Midlarsky et al. (n 65) 292; Erez et al. (n 79) 51; Kulwicki et al. (n 65) 729.

live in communities with other individuals with the same background. As the culture of the country of destination is absorbed and becomes easier to navigate, immigrant women start developing a different way of interpreting family dynamics and domestic violence, and are more likely to use the remedies offered by the justice system.<sup>83</sup> Acculturation, however, needs to be looked at in the context of other aspects that inform women's experience with the wider community, and should not be seen in itself as the key for encouraging women to use the justice system to deal with domestic violence.<sup>84</sup> It should not be assumed that women exposed to the culture of the country of destination will integrate well, as they may experience prejudice and discrimination when trying to do so. Moreover, acculturation can be detrimental to women in the sense that, because women often integrate more quickly in the new culture, their husbands may fear losing power over them and retaliate by becoming abusive.<sup>85</sup>

### ***Religious Practice***

Religious practice has been identified in a number of studies as an important cultural factor in women's attitudes towards domestic violence. The concept of Marianism, which is associated with Catholicism and has been found to influence the lives of Latina and Portuguese women, is an example of this.<sup>86</sup> The myth of Marianism promotes maternity, purity and self-sacrifice as positive traits to be incorporated in women's behaviour, in the

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<sup>83</sup> Menjívar and Salcido (n 52) 902; Ben-Porat (n 82) 2488; Mykiong Kim-Goh and Jon Baello, 'Attitudes Towards Domestic Violence in Korean and Vietnamese Immigrant Communities; Implications for Human Services' (2008) 23 *Journal of Family Violence* 653; Belknap and VanderVusse (n 1) 338.

<sup>84</sup> Yick and Oomen-Early, 'A 16-Year Examination of Domestic Violence Among Asians and Asian Americans in the Empirical Knowledge Base: A Content Analysis' 1090.

<sup>85</sup> Menjívar and Salcido (n 52) 904; Barata et al. (n 68) 1134; Kim-Goh and Baello (n 84) 648; Wallach et al. (n 65) 1286.

<sup>86</sup> Barata et al. (n 68) 1134; Alice Yick and Jody Oomen-Early, 'Using the PEN-3 Model to Plan Culturally Competent Domestic Violence Intervention and Prevention Services in Chinese American and Immigrant Communities' (2009) 109 *Health Education* 131; Vidales (n 1) 537.

image of the Virgin Mary. Living up to this myth may lead women to endure domestic violence to show strength and to forgive their husbands as a sign of piety.<sup>87</sup> Also associated with Latinas' and Portuguese women's experience of Catholicism is fatalism, which encourages individuals to accept a pre-determined fate.<sup>88</sup> In doing so, fatalism leads women to interpret domestic violence as part of their destiny and therefore something that they should endure. Religious beliefs that defend the family unit as a central tenet tend to discourage women from using divorce as a solution for domestic violence and so limit their possibilities of escaping abuse.<sup>89</sup>

Religion, however, can also be a source of comfort and support for abused women.<sup>90</sup> For example, a religious representative may be someone women feel comfortable approaching and discussing their difficulties with. Operating in a way similar to the extended family, religion can either support or hinder women when escaping domestic violence. The importance of religion in women's reactions to domestic violence has been recognised for many years, and such recognition is visible in the education of religious leaders towards supporting victims of domestic violence in some religious communities, and the publication by some Catholic bishops in the USA, Canada and New Zealand of advice to the clergy condemning the use of biblical passages to justify domestic violence.<sup>91</sup>

## **Discussion**

Immigrant women experiencing domestic violence will potentially face a number of legal provisions and support structures that reflect the diverse and piecemeal approach to a

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<sup>87</sup> Barata et al. *ibid*; Vidales (n 1) 537; Yick and Oomen-Early *ibid* 131.

<sup>88</sup> Barata et al. *ibid* 1135; Midlarsky et al. (n 65) 286; Vidales (n 1) 537.

<sup>89</sup> Kulwicki et al. (n 65) 730.

<sup>90</sup> Barata et al. (n 68) 1134; Ben-Porat (n 82) 2489.

<sup>91</sup> Barata et al. *ibid* 1135.



subject in the UK. This variety and uniqueness in approaches sometimes clashes with immigrant women's specific circumstances and does not help them overcome the added barriers that they encounter when escaping violence. In this section I identify four areas where this difficulty in conciliating law, public policy and women's needs are more visible.

### ***Law and the Home Country as a Frame of Reference***

The law applicable to situations of domestic violence can sometimes be perceived as complex and contradictory. Civil and criminal solutions often reflect socio-cultural traditions maintained by the judiciary and successive Parliaments on matters such as private property, principles of family law and the protection of vulnerable populations. For example, obtaining an occupation order can be difficult and can leave victims without adequate housing or financial provisions (whether they are immigrants or not). Even if an occupation order is granted, any supplemental orders imposed on the offender are not enforceable, as *Nwogbe v Nwogbe* demonstrated, leaving victims with no guarantee that payments of rent or utilities will continue to be made by the respondent. Also, while, the breach of a non-molestation order is a criminal offence, the breach of an occupation order is not, further contributing to the victim's fragile position. These principles apply to both immigrant and non-immigrant populations; because immigrant women tend to experience added degrees of vulnerability, they are potentially more affected by these when they try to escape violence.

The responses provided by the justice system concerning domestic violence in England and Wales also reflect a common law approach to law-making that contrasts with that adopted in most Western European countries, where a codified approach to domestic violence is adopted and reliance on the coordinated effort of multiple agencies for support is more

recent. As an example, domestic violence in Portugal is a specific type of crime, punishable with imprisonment for one to five years; criminal proceedings do not depend on the victim's complaint.<sup>92</sup> The legal provisions applicable to domestic violence in this country are mostly codified in the criminal code and civil law intervenes only to regulate marriage, separation and divorce. Any orders that the abuser may be subject to (such as not to contact the complainant or not to return to the property where a crime is suspected to have occurred) are included in the Portuguese criminal procedural code,<sup>93</sup> which is a significant difference from the English provisions for domestic violence. Consequently, most of the estimated 175 000 Portuguese nationals living in the UK<sup>94</sup> are more likely to be familiar with a criminal justice-based approach to domestic violence than the mixture between civil and criminal options that the English approach offers.

The literature reviewed here demonstrates that the lack of familiarity with the justice system in England and Wales, compounded with experiences and expectations of the justice system in the country of origin, may have a strong impact on immigrant women's willingness and ability to accept certain mechanisms put in place to support them in these situations. Initiatives such as the Domestic Violence Disclosure Scheme are, therefore, likely to have limited impact on populations where either violence towards women in intimate relationships is deemed culturally acceptable, or where such a scheme does not exist. In this respect, 'ex parte' orders, DVPNs and DVPOs can be seen as welcome addition to the existing legal armoury as they allow mechanisms of protection to be put in place without relying on victims to assert their rights (which is a difficulty that civil law solutions entail), or when there is little evidence to take immediate short term action against a

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<sup>92</sup> Decreto-Lei n° 400/82 de 23 Setembro, Diário da República I Série n° 221/82 1° Suplemento, artigo 152°.

<sup>93</sup> Decreto-Lei n° 78/87 de 17 de Fevereiro, Diário da República I Série n° 40/87, artigo 200°.

<sup>94</sup> Observatório de Emigração 'Reino Unido, A.2 População residente por nacionalidade, 2000-2014' (Observatório de Emigração 2016) <<http://observatorioemigracao.pt/np4/paises.html?id=76>> accessed on 16 September 2016.

potential offender (which is a difficulty encountered by the police and CPS when using criminal law). This approach can, however, also be interpreted as further disempowering women, who went from being controlled by their abusers to being controlled by other external actors, and therefore needs to be used with care and consideration for each woman's particular circumstances.<sup>95</sup>

In the context of furthering support for women, the recent disinvestment in SDVCs seems to be a backwards step in the development of an integrated approach to domestic violence that has been deemed successful in engaging and supporting victims.<sup>96</sup> This is more so the case for immigrant women, who tend to find the system confusing and more burdensome and therefore benefit greatly from the support received by from a range of services working in a concerted effort to help them.

### ***Access to Justice and Immigration Status***

Access to justice and immigration status are two other important areas that particularly affect immigrant women. A distinction needs to be made here between immigrants to the UK from countries within the European Union (EU), and their family members, and those from outside the EU. The first enjoy a number of rights under the principle of freedom of movement of workers, including the right to settle in the UK, providing they meet certain requirements.<sup>97</sup> The second do not enjoy the same rights and freedoms and need to apply for ILR to remain in the UK. The considerations made in this subsection are primarily in

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<sup>95</sup> Kristin Bumiller, 'Victims in The Shadow of the Law: A Critique of the Model of Legal Protection' (1987) 12 3 Signs: Journal of Women in Culture and Society 421, 435.

<sup>96</sup> Home Office 'Specialist Domestic Violence Courts Review 2007-08' (Home Office 2008) <<http://webarchive.nationalarchives.gov.uk/+/http://www.crimereduction.homeoffice.gov.uk/dv/dv018a.pdf>> accessed 16 September 2016, 5; New Economics Foundation 'A snapshot of domestic violence courts in 2013' (NEF 2014) <[http://b.3cdn.net/nefoundation/667bd380bdc5bac599\\_e4m6b0z7o.pdf](http://b.3cdn.net/nefoundation/667bd380bdc5bac599_e4m6b0z7o.pdf)> accessed 16 September 2016, 14.

<sup>97</sup> Article 45 of the Treaty on the Functioning of the European Union and Article 13 of Directive 2004/38/EC.

relation to immigrants who need to apply for ILR and who, as a result of their insecure and dependent status, experience added levels of vulnerability.

Immigration law in the UK recognises the extremely vulnerable status of individuals who came to the UK on a spouse or partner visa by incorporating an exception under the immigration rules in which an applicant can apply for ILR, even after they overstayed their visa. However, they can only do so if they prove that the relationship broke down permanently during the probationary period due to domestic abuse.<sup>98</sup> In addition, since 2012, the criteria for ILR was tightened and the probationary period was increased from two to five years. Evidence that the relationship was genuine at the start of the probationary period is required, in the form of bills, rent or tenancy agreements, or GP registers. A supporting letter from the applicant is also required, detailing the relationship, the domestic abuse and any evidence obtained (or reasons for lack of it). Applicants for ILR are asked to complete a 37 pages application form and pay a fee of £1875 (which will increase if the application also includes children), unless they can prove that they are destitute. Applicants are also required to provide biometric data and enrol at the Post Office (for which they will have to pay another fee).<sup>99</sup>

As already discussed here, the literature on immigrant women and domestic violence identifies ease of access and the cost of services as essential in determining women's ability and willingness to seek help for domestic violence. It is unlikely that immigrant women

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<sup>98</sup> Immigration Rules part 8: family members, para 289A.

<sup>99</sup> Visas & Immigration 'Application For Indefinite Leave To Remain In The UK As A Victim Of Domestic Violence and a Biometric Immigration Document' <  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/504900/SET\\_DV\\_\\_03-16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504900/SET_DV__03-16.pdf)>  
accessed 16 September 2016, 2

experiencing domestic violence are able to complete the ILR form unaided and, should they not be able to demonstrate that they are destitute, the associated costs can have significant deterrent impact on their ability to apply for ILR. Immigrant women without ILR are therefore put in a more vulnerable position than their domestic counterparts (because of cultural and individual barriers) and also other immigrant women with ILR (because of the complexity and costs associated with the application). An immigrant woman who experiences domestic violence and seeks ILR on this basis is also significantly disadvantaged due to the fact of being a victim. Compared to a fee of £811 for an individual application on the basis of family life as a partner or a parent,<sup>100</sup> it would seem that the fee of £1875 for an application based on domestic violence represents a tax on vulnerability. The complexity of the procedure is compounded by the No Recourse to Public Funds [NRPF] requirement, which albeit with the introduction in 2010 of a Destitute Domestic Violence (DDV) concession, excludes a number of women from public funding, for example if they overstayed their visas (a situation which may be the result of no fault of their own, but, for example, an abuser not renewing her visa or withholding her passport).

### ***Cultural and Structural Factors***

The use of a multi-agency approach to supporting vulnerable individuals is not without its critics;<sup>101</sup> however, since its implementation it has become a central part of governmental policy on domestic violence, as is visible in the successive Home Office policies on violence

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<sup>100</sup> Visas & Immigration 'FLR(FP), Version 05/2016, Application for leave to remain in the UK on the basis of your family life as a partner or parent or on the basis of your private life in the UK and for a biometric immigration document' <

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524252/FLR\\_FP\\_\\_Version\\_05-16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524252/FLR_FP__Version_05-16.pdf)> accessed 16 September 2016. p.3.

<sup>101</sup> See Hague (n 41) 12-14 and Patel (n 41) 62, 67.

against women and girls.<sup>102</sup> For individuals coming from a system where multi-agency is either not used or a recently new phenomenon, the reliance of non-statutory actors for support or advice may seem unusual. In the case of Portuguese women living in England, for example, expectations of the quality of the support received through these agencies may be low, even though this perception may change once actual use is made.<sup>103</sup>

Cultural and structural barriers can also influence women's actual access to service providers, which has a profound impact on the ability of a multi-agency response to domestic violence to succeed. These relate mainly to ease of access to the services (due to physical, technological or linguistic constraints); exclusion from the community that women may experience if they report the abuse that they are subjected to; familism which promotes family unit ahead of individual safety or happiness; shame and honour that may be brought upon their close or extended family through the breakup of a marriage and discussing publicly what are deemed to be private matters, fuelled by the existence of a 'community grapevine'; machismo, which promotes a dominant role for men and a submissive one for women in relationships; and the influence of religion, which may prompt women to suffer in silence and accept domestic violence as a burden that they must

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<sup>102</sup> Home Office, Call to End Violence Against Women and Girls

<<http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-paper?view=Binary>> accessed 21 March 2013; Home Office, Call to End Violence Against Women and Girls, Taking Action, The Next Chapter (Home Office 2012)

<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97901/action-plan-new-chapter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97901/action-plan-new-chapter.pdf)> accessed 19 July 2012, 12; Home Office, A Call to End Violence Against Women and Girls: Action Plan 2013 (Home Office 2013)

<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181088/vawg-action-plan-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181088/vawg-action-plan-2013.pdf)> accessed 24 June 2013; Home Office (n 45); Home Office (n 44).

<sup>103</sup> Graca (n 53) 47.

carry (as in the case of Marianism)<sup>104</sup> or to accept their elders' behaviour, including their husbands, who are often older than them (as in the case of Confucianism).<sup>105</sup> Other nuances include the type of service that are in place to support women. For example, Portuguese women living in England, usually prefer not to use voluntary services dedicated to domestic violence, as they perceive them as lacking in practical use. This contrasts with their perception of the police, whom they see as a useful service to escape violence.<sup>106</sup>

To these factors, we should add individual circumstances, such as lack of language proficiency, the cost of accessing services (both direct and indirect, that is the cost of physically accessing services and economic dependence from partners), and varying levels of acculturation. The intersection of these cultural, structural and individual factors influences each woman's perception of domestic violence, as well as her ability and willingness to seek formal help. Indeed, seeking help informally is a common reaction for immigrant women who experience domestic violence<sup>107</sup> that should not be ignored by service providers or taken as a sign of acceptance of abuse, nor taken as a sign of failure of these to meet their roles.

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<sup>104</sup> Barata et al. (n 68) 1134; Alice Yick and Jody Oomen-Early, 'Using the PEN-3 Model to Plan Culturally Competent Domestic Violence Intervention and Prevention Services in Chinese American and Immigrant Communities' (n 87) 131; Vidales (n 1) 537.

<sup>105</sup> Ga-Young Choi and Soo-Jung Byoun 'Domestic Violence Against Migrant Women in South Korea: Addressing the Needs of a Uniquely Situated Victim Population in Domestic Policy' (2014) *International Social Work* 57(6) 645-660, 649.

<sup>106</sup> Graca (n 53) 43, 44; Sokoloff (n 65) 247; Natalie Sokoloff and Susan Pearce 'Intersections, Immigration and Partner Violence: A View from a New Gateway-Baltimore, Maryland' (2011) *Women & Criminal Justice*. 21(3): 250-266.

<sup>107</sup> Home Office (n 44) 10.

### ***Policy and a multi-agency approach***

The Home Office's 'Ending Violence Against Women and Girls 2016-2020' acknowledges the added barriers that certain groups experience in accessing support for escaping domestic violence, such as BME women.<sup>108</sup> To address this, it proposes that part of the £80 million fund dedicated to the implementation of this policy at local level be dedicated to support these populations.<sup>109</sup> The policy is, however, remarkably silent in terms of developing a sustained and encompassing approach to address the structural inequalities that affect women experiencing domestic violence. The policy mentions funding for refuges and accommodation-based services, as well as 'innovative' services for the 'most vulnerable with complex needs'; it does not, however, elaborate on what this means. Access to refuges and accommodation-based services is important in the short-term, however in order for a sustained impact on domestic violence to occur, issues such as poverty, racism, social inequality, unemployment also need to be addressed. Developing prevention and criminalisation strategies that do not address these structural inequalities risks at best the implementation of a framework with limited effect and at worst a further marginalisation of an already vulnerable group.

Immigrant women experience not only the structural barriers identifiable in domestic populations, but also cultural and sometimes individual barriers that could be exacerbated by an approach that emphasises personal responsibility in detriment of a wider social policy and does not allow space for diversity of experiences.<sup>110</sup> Moreover, cuts in funding and local services' dependence on income from state or local authorities makes the

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<sup>108</sup> Home Office (n 44) 11.

<sup>109</sup> Home Office (n 44) 11.

<sup>110</sup> Bumiller (n 97) 164; Margaret Abraham and Evangelia Tastsoglou 'Addressing Domestic Violence in Canada and the United States: The Uneasy Co-Habitation of Women and the State' (2016) *Current Sociology Monograph* 64(4) 568-585, 576.



development of innovative services difficult, except when these meet specific criteria set within a bidding process.

There is also concern that a state-led approach, based on prevention, directed at 'educating' women as potential victims, bringing perpetrators to justice and supporting 'victims' through service providers keeps women in a state of subjugation instead of helping them regain their freedom. The discourse on educating women on healthy relationships may seem paternalistic and places the onus of avoiding the abuse on those who experience the abuse, rather than the abusers.<sup>111</sup> Women who seek help from refuges and other support services are expected to abide by a set of rules in order to receive the protection they 'deserve' as 'victims' of a crime. This imposes limits on their behaviour that certain authors equate to the control that was exerted upon women by their abusers. The same authors criticise a move towards greater criminalisation of domestic violence for disempowering women and making them more dependent from state intervention.<sup>112</sup>

## **Conclusion**

The extent to which provisions to address domestic violence in the UK are used results from a complex process that involves cultural, structural and individual factors. Immigrants to the UK will often find legal and policy responses to domestic violence not only new to them, but very different from what they are used to in their home countries. Although not all immigrant women experience the same barriers when accessing the justice system, or indeed the same levels of the vulnerabilities described in this article, there are some commonalities in their experiences.

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<sup>111</sup> Bumiller (n 97) 95

<sup>112</sup> Bumiller (97) 161-163.

Much of the literature used here refers to women with insecure immigration status, which excludes, for the time being, most EU migrants living in the UK, who do not have to contend with a complex and cumbersome immigration system. This situation may, however, change when the UK leaves the EU, leaving all immigrant women with similar added difficulties in accessing support for situations of domestic violence. Arguably, women from Western European countries have fewer disadvantages as they come from societies with more cultural similarities than immigrants from Africa or South East Asia. This is, however, a misconception, as the discussion surrounding the home country as a frame of reference illustrates. Women from different cultures tend to use the justice system in accordance to the experiences and perceptions of the system in the country of origin, regardless of their geographical provenance. Indeed, as the only common law country in Europe, the UK presents a different approach to justice from the countries of origin of all other European migrant women. It is not so much in the geographic origin or even cultural background of immigrant women that their differences in vulnerabilities lie. As with non-immigrant women, these result instead from an intersection of structural and individual factors that include race, class, education and command of the language. Policies that do not take into account this set of variables fail both immigrant and non-immigrant women.

Lack of information on legal and multi-agency provisions to support women who experience domestic violence only compounds victims' levels of vulnerability. In the case of immigrant women, this can be due to a variety of structural and individual disadvantages, such as lack of language skills or education, or to the abuser's controlling behaviour. Many police forces and local support services offer information and support in a variety of languages, which is a positive way of trying to overcome this difficulty. More wide-reaching information on domestic violence for the population in general, working with potential victims and abusers, and not just those seeking support, are also positive steps towards

addressing this shortcoming. This does not mean that dedicated support services are not essential to address some of the specific vulnerabilities that immigrant women may encounter. Indeed, and as already mentioned, just over half of respondents in the public consultation for the introduction of a crime of controlling and coercive behaviour identified better training and use of existing multi-agency mechanisms as more important to address domestic violence than a new type of crime.

Greater understanding of women's needs is necessary when devising legal and policy strategies to support victims of domestic violence. Particular care must be exercised to avoid ignoring the multiplicity of experiences and structural disadvantages that immigrant women face. Legislation that is complex, inaccessible and offers limited protection to women, and policies that rely on the local delivery of services that do not have the required funding are unlikely to serve immigrant women any better than non-immigrant women, with the added consequence of perpetuating their submissive social and economic status.

