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# **Expert Meeting**

## **Zero Tolerance for Domestic Violence**

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**Asian Women's Fund**

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**IMAGINE A WORLD WITHOUT VIOLENCE:  
Human Rights in the Home and in the World**

Avega Bishop

International Women's Development Agency

**Introduction**

I would like to contribute some reflections and perspectives gained from International Women's Development Agency's work with women's organisations and non-government organisations (NGOs) working to end violence against women in a range of countries. This paper will focus on addressing violence against women in development projects and as a human-rights issue, with the case study of community based project work being undertaken in rural communities in Cambodia.

In preparing to attend this meeting I was pleased to read more about the work that is being undertaken in Australia, and have attached a summary of the situation in Australia (see annex 1). I look forward to sharing some of what I learn here with organisations working on the issue when I return to Australia.

**International Women's Development Agency (IWDA)**

IWDA is an Australian based NGO that was established in 1985 to work in partnership with women in developing countries to address poverty and discrimination against women. The founders of IWDA wanted to create a mechanism for sharing not only resources but also understanding among women and men in Australia and other countries; particularly to increase Australians understanding of development issues from women's perspectives overseas.

IWDA works with partner organisations which implement projects with funding from IWDA and, as needed, other support. IWDA's overseas program has five areas of focus:

- women in decision-making
- livelihood issues (credit schemes, skills training in various areas to increase income or grow food)
- health (particularly sexual and reproductive health)
- natural resource and environmental management
- human rights.

### **IWDA's Approach to Human Rights**

Human rights is a priority area in IWDA's overseas program. The objectives of the human rights program is to work for the elimination of injustices and human rights abuses and to ensure that women and girls are able to enjoy all human rights. The right of women and girls to live free of violence and sexual assault is one of the key issues addressed by IWDA. We see this issue as integral in work to advance women's equality and status.

From a woman-focused perspective, it is clear that violence against women, particularly domestic violence, is a major constraint on women's participation in development and other activities. The participation of women in decision-making in community and public life, in the workforce and in politics cannot be achieved fully if women are not able to be treated with respect and enjoy a life free from violence in the home. As acknowledged in the Platform for Action developed at the Fourth World Conference on Women:

*"In all societies, to a greater or lesser extent, women and girls are subjected to physical, sexual and psychological abuse which cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women."* (Beijing Platform for Action, para 112)

The priority given to violence against women in our human rights program reflects the abuses and concerns identified by women in the countries in which IWDA works. IWDA seeks to support initiatives controlled and identified by women working to counter violence

against women. Many of IWDA's project partners are working on a range of innovative activities, often in very difficult environments, providing:

- counselling and referral services to women and girls who are survivors of violence
- community education activities with women, men and children
- advocacy and lobbying for law reform and improvements in the criminal justice system
- training for women to work with the media to challenge stereotypes and the depiction of violence against women in the media.

IWDA has been supporting development activities addressing violence against women in our overseas program since 1989, at a time when it was not recognised as a development issue by many agencies, governments or the United Nations system.

### **Awareness in Human Rights Circles**

It is only relatively recently that domestic violence was recognised as a development issue and a violation of human rights. It has taken a long time for women's perspectives to start to be addressed even partially in human rights conventions and international law. Women, both as individuals and through women's organisations and NGOs, have been responding to the needs of women experiencing violence and working to change attitudes in order to prevent violence in both practical and innovative ways for many years. Getting the issue of violence against women on local, national and international agendas was only possible due to the foundations laid in the provision of direct services, the development of referral networks, lobbying and other strategies.

Since 1948, when the Universal Declaration of Human Rights acknowledged the human rights of all to *"life, liberty and the security of person... without distinction of any kind"*, significant work has been undertaken by women activists and NGOs to bring gender based perspectives into the discourse about human rights. As a result, over time there has been increasing recognition by the governments at the international level through the United Nations that women and girls face particular gender-based discrimination and infringements of their human rights.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly in 1979 and came into force in 1981. At that time, domestic violence was not considered to be a human rights concern. Thus CEDAW, considered to be the most important human rights document for women, fails to explicitly focus on the problem.

Other significant steps in the international awareness of domestic violence as a human rights issue include:

- The United Nations Conference on Human Rights was held in Vienna in 1993 which recognised that violence against women is a violation of women's human rights, whether the violence is perpetrated in the public or private sphere.
- The Declaration on the Elimination of Violence Against Women was adopted by the UN General Assembly in December 1993.
- The Special Rapporteur on Violence Against Women was appointed by the United Nations in 1994.
- The Platform for Action, adopted at the Fourth World Conference on Women in Beijing in 1995, identified violence against women as one of the 12 critical areas of concern. Governments were committed to “*take urgent action to combat and eliminate all forms of violence against women in public and private life*” (para 224).
- At the Special Session of the UN General Assembly to review the outcomes of the Fourth World Conference on Women in June 2000, the importance of action by governments at the national level to address violence against women was reaffirmed, and for the first time marital rape was recognised as domestic violence in the Outcome Document: “*establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating to all forms of domestic violence, including marital rape and sexual abuse of women and girls, and ensure that such cases are brought to justice swiftly*” (para 103c)

### **Learning from Work Addressing Violence against Women**

Domestic violence is a problem that crosses many barriers – between rich and poor families, between so-called developed and developing countries, across regions. While the extent, forms and social and cultural attitudes that permit violence against women vary (both within countries and regions), there are significant similarities in the problems being addressed by



women in, for example, El Salvador, Vanuatu, Cambodia and South Africa. There is much to share about the approaches, experiences, strategies and barriers encountered.

IWDA has seen at first hand the benefits of sharing the wealth of approaches, strategies and learnings among organisations working on the issue. In November 1997 IWDA facilitated representatives from ten organisations in seven countries to come together at a workshop in the Philippines to share their experiences, strategies and difficulties in their work to eliminate violence against women.

IWDA has learned a great deal from project partners about working to end domestic violence, and wanted to share some of these inspiring strategies with organisations working on the issue in Australia. In 1998 IWDA built on some of our partner experiences by bringing together organisations working on Violence Against Women (VAW) in Melbourne to learn about the 16 Days of Activism Against Violence Against Women. A joint calendar of events was produced. IWDA was able to extend the 16 Days Campaign in 1999, with the network of organisations expanded to include some crisis counselling centres from regional Victoria.

### **Starting with Women**

The barriers to addressing the problem of domestic violence are similar in Cambodia, Australia, El Salvador and Vanuatu. First, survivors and perpetrators must understand it to be an injustice and a human rights issue. If it is regarded as a private matter, by female survivors and male perpetrators, and by the wider society, it will continue without any hope of redress. Women must be able to say violence is not acceptable in their relationships, and then make their suffering known, to make the violation visible and to seek assistance – whether from family, friends, or from NGOs or state institutions such as the police, the courts. Even when legislation is enacted, there are often wide gaps between theoretical legal protections against discrimination and women's everyday realities. Changing laws and structures is important, but it seems to me that the primary constraints are at the level of attitudes, values and beliefs that are held by people as individuals and as members of social/cultural groups.

Understanding people's beliefs, attitudes and experiences is the first step to being able to address the situation. This seems to be fundamental to working from a woman centred approach and community based development work.

## **Terminology**

There are many differences in terminology used – violence against women, abuse of women in intimate relationships, family violence, domestic violence – and a great variety in interpretations of what is included or excluded by using different terminology. In Australia, indigenous women prefer to use the term family violence rather than violence against women. However others are concerned that the Australian government's decision to use the term family violence hides the gender dimensions of the issue. Overwhelmingly the violence is by men against women.

An important consideration in deciding on terminology is what different groups of people understand by certain words. For example, emotional abuse may not be immediately identified as belonging within the ambit of "domestic violence". In El Salvador research carried out by Mujeres por la Dignidad y la Vida (Las Dignas) found that most women were not able to distinguish clearly between delinquent violence and domestic violence and sexual assault. This was therefore a factor to consider in working with these women. Las Dignas materials refer to violence against women in relationships and sexual violence.

It may well be that terminology needs to change over time, as there is greater discussion and awareness of abuses that had previously been hidden.

Another issue in deciding what terminology to use, and for which groups, relates to effective ways of linking women's rights to what are already accepted as (men's) human rights. To continue with the El Salvador example, Las Dignas has developed a strategic approach to insert the issue of violence against women into national and local agendas, using concepts that are not seen as being related to feminism or violence against women. In talking about citizen security for both men and women, Las Dignas aims to open up a space to talk about the fact that women face danger not only in the streets but in their own homes.

Ana Cisneros from Las Dignas has shared that *"one of the most successful strategies that we carry on... is trying to merge the right of women to be recognised as citizens of a country and the right of women to live free of violence... By the recognition of women as citizens we are also talking about local development and we are also talking about political participation, through political participation in all terms, from the local associations of neighbours to whatever... and this is quite closely related to the way we will be able to be freed of violent atmosphere, either at home or in the streets. This is a process of empowering... women's lives."*

### **Action Research**

Violence against women is often hidden, not talked about openly and not accurately reflected in statistics. Marilyn Tahi from the Vanuatu Women's Centre says the first step in addressing violence against women is to talk about it, even *"to shout about it"*. Many of the organisations that IWDA works with have had to undertake research themselves, as data is often not available or it may not be undertaken from a woman-centred perspective.

Research is important in order to have the issue of violence against women taken seriously, and to use as a basis for influencing social policy, the police and justice system, and increase the provision of appropriate services for women. Research contributes to breaking the silence, destroying myths and ignorance, and developing appropriate responses.

### **Community Based Work Addressing Domestic Violence**

While the provision of appropriate services and assistance to women experiencing domestic violence is crucial, addressing the underlying factors in a preventative approach is essential if we are to work towards eliminating violence. In many contexts, such as poor communities, rural or remote areas, there are no crisis centres or shelters available in any case. Both overseas experience and recent directions in research and programs in Australia highlight the importance and significance of community based organising and awareness-raising strategies in addressing domestic violence.

Some key elements of effective community based approaches are that they:

- start from a base of what concerns women and others in the community
- work with women, men, youth and children
- involve and influence local authorities and leaders, including particular professional groups
- develop community-based capacity to intervene in situations of domestic violence to protect women, at the same time as working to prevent domestic violence in the longer term.

To illustrate these elements, I would like to share with you a case study from development work in Cambodia.

### **Case study – address domestic violence in rural Cambodia**

Since 1989 IWDA has been involved with project work in Cambodia that has worked with poor rural women, initially focusing on meeting practical needs related to food security. Assistance has included cow banks and rice mills, pig banks, home vegetable gardens linked to improved water supply, small credit schemes and training in related technical skills, record keeping and management. Over this period work has been undertaken in villages in two provinces, Battambang and Siem Reap, continuing beyond three-year project timeframes.

As relationships have developed in the target communities women have increasingly talked with project staff and among themselves about concerns regarding more strategic gender interests which constrain their capacity to provide for their families and to have more control over their lives. Violence against women emerged as one of their key concerns, along with reproductive health, particularly the desire to space births and limit the number of children they bear, and protect themselves from sexually transmitted diseases.

In May 1998, IWDA conducted qualitative research in seven villages, seeking the views of women on their concerns. Thirty-eight percent of the women interviewed reported experiencing domestic violence, with 76% of those suffering domestic violence experiencing

injuries. Most of these women had sought help from family, friends, neighbours or local officials (village chief or commune chief), but all but one of these requests resulted in little or no change. Many officials were hesitant to be involved in cases of spousal abuse because they believe it is a family problem and for fear of reprisals from angry husbands. The study found that women, men and local officials had little understanding of the dynamics of domestic violence or an awareness of mechanisms available to assist victims.

Many women interviewed had no one to help or turn to for assistance:

*"My husband hit and kicked me until I was unconscious. He always hits my head and I am always injured. Now I feel that I cannot remember so well. He also destroyed things in the house and the kids. My husband is a drunken man who never thinks of others. I am afraid to stay for long at IWDA meetings. I have to cook on time for my husband. I would like an organisation to call my husband to change my attitude, because no one in my village can help me. They are all afraid of him. He was formerly a policeman. I don't want to divorce him... I want others to counsel him. Sometimes I give a knife to my husband and tell him to kill me." (Impediments to the Well Being of Women, A Study Conducted in Seven IWDA Project Villages, Cambodia 1998)*

Based on the research and consultations in villages where IWDA was working, IWDA commenced short-term pilot activities over the period September 1998 to May 1999, as part of a larger AusAID-funded project Food for Change. In this pilot phase, project staff and counterparts from the Provincial Department for Women's Affairs received training themselves from a local organisation with special expertise, the Project Against Domestic violence (PADV).

During the pilot phase 23 village communities each selected three volunteers (both women and men) as village gender promoters and commune gender counsellors. The volunteers participated in a training workshop over five days, and were visited regularly by project staff and involved in arranging community meetings in their own villages. As many of the volunteers had limited formal schooling, the period of training provided was considered too short for in-depth understanding and for sufficient counselling ability. Project staff found that volunteers asked villagers to wait for project staff to visit to talk to erring husbands or settle disputes.

A participatory evaluation at the end of the pilot phase and the larger project found that the pilot activities had led to significant awareness raising with a subsequent change in attitudes. *"Before this training the men thought that if they fight the other people it is illegal, but that striking their wife is not; but now they know otherwise"*. Prior to the training men, including the district governor, did not believe that they could be considered as sexually violating their wives, as such matters are considered strictly domestic and private.

Measuring changes in attitudes and behaviour is difficult. Insulting and cursing a wife and her family, and preventing her from going out, even to see neighbours are common forms of domestic violence. While many women experienced rape by their husbands, sexual violations are spoken of less frequently than battery. Ninety percent of women still reported being afraid of violence in the home. Women reported fearing the following aspects: the pain and suffering involved, shame facing their neighbours, loss of their health, property, money, labour, time and reputations; and negative influence on their children who may follow the same "bad habits". They were also concerned that the problems might drive their children to run away or suicide, fear of abandonment by their husbands (leaving wife and children without support), of a mental breakdown or going mad by being hit on the head.

IWDA provided further project funding for activities addressing domestic violence in the same villages from December 1999 to June 2000. In this period further training was provided to women and men serving as gender volunteers, and some new volunteers were also selected and trained, bringing the total number of volunteers to 27 women and 16 men in Battambang and 14 women and 11 men in Siem Reap.

At the end of this project, a review of progress and achievements was undertaken. Some village volunteers still feel that they lack sufficient knowledge of the law and are therefore insecure about their ability to talk to perpetrators who may be violent. Some mentioned that they know that men have guns or knives. Other volunteers have intervened in situations of DV in the past year. When women come to them for help, they assist them with counselling the women, and counselling the husband to reduce anger and cautioning against future violence. If counselling is not an effective strategy, the volunteers take the case to the village chief. The village volunteers also found places for victims to stay, referred them to

local authorities, secured medical assistance, and prepared documents with the commune leader for a judge in a court of law.

Nearly 1,000 women and men from 19 villages attended half-day workshops in the villages organised by the local volunteers. These village workshops are seen as very influential, because all villagers, including potentially violent men, can attend workshops, where community wide awareness that DV is a crime is raised. However people in the communities thought that the workshops were not held often enough to ensure that everyone had a chance to attend.

Forty-five village and district authorities (four women and twenty men in Battambang, six women and fifteen men in Siem Reap) were also trained. The authorities and the volunteers have received reference booklets with information on Cambodian constitutional law, family law, criminal law and laws related to trafficking. In June a Task Force meeting brought together 108 people from local authorities, Provincial Department of Women's Affairs staff and the project volunteers from five districts.

By raising awareness among village leaders, it is expected that women will be able to obtain greater assistance and support at community level and that the village volunteers will have support in their communities. Women in the villages identified this collaborative work as important to lending legitimacy to the anti DV message and to changing men's behaviours.

The village volunteers collected data in January 1998 and June 2000 on the number of families known to them to currently have problems with domestic violence, and reviewed and confirmed by the village chiefs. In all villages there was a reduction between these two times. For example in three villages in Battambang village, domestic violence reduced from 25% to 8% of families. In five villages of Kranlanh district, the percentage of families experiencing domestic violence reduced from 13% to 4%.

It is important to note that until domestic violence is talked about more openly, statistics may be misleading or partial. For example, in the past year four women in the project communities spoke to a project staff member of experiences of marital rape. No women

would have spoken about this subject two years ago, before IWDA commenced its workshops on DV.

*"My husband ...always made trouble with me and beat me often.... I was beaten again about fifteen days after I gave birth. I was so afraid that I fainted. My neighbour ran to call Sarath (the village gender volunteer) to take me to the hospital. After that Sarath visited me and my husband at home. Sarath talked to my husband and explained a lot of things about the law related to domestic violence. He also showed the posters about domestic violence to my husband and explained about losing property because of domestic violence. Sareth explained as well that if my husband hit me and if I die he will be taken to jail and no one will look after the children."*

*"Now, I observe that my husband has changed his attitude and has stopped to beat me anymore. He still drinks alcohol but not as much as before and I hope that one day he will stop. "*

*"I am glad when IWDA staff and the Village Gender Counsellor and Village Gender promoter visit, I feel warm."*

*"I wish IWDA will continue with local authorities to call abused men and train them about the law, human rights and domestic violence issues, because when there is a meeting about domestic violence in the village these people escape and do not want to attend the meeting." (woman aged 38, Bavel district)*

## **Future Developments**

From 30 June 2000, IWDA no longer has project offices and staff in Cambodia. We are pleased that a new Khmer NGO, Banteay Srei, has been set up by former IWDA staff members, and this new organisation is to continue the work previously undertaken by IWDA. Banteay Srei is looking at how to use the community-based approach to preventing domestic violence outlined above in new villages, as well as continuing work in the current communities. Banteay Srei is also considering how to refine and extend the work into future areas – working with children and youth, and expanding to cover violence against women (sexual assault and rape, trafficking).



## **Annex 1**

### **STATISTICS & INFORMATION ON DOMESTIC VIOLENCE IN AUSTRALIA**

#### **Estimates of the Extent of Domestic Violence**

*The Women's Safety Survey in 1996 surveyed approximately 6,300 Australian women about their experience of actual or threatened physical and sexual violence. Based on the survey results, it was estimated that, in the 12 months prior to completing the survey:*

- 7.1% of the actual female population experienced violence.
- 2.6% of women who were married or de facto relationships had experienced violence perpetrated by their current partner.
- 4.8% of unmarried women had experienced violence perpetrated by their previous partner in the last 12 months.

Of women who had been physically assaulted in the 12 month period, 58% spoke to a friend or neighbour, 53% spoke to a family member, 4.5% spoke to a crisis service organisation, 19% reported to a crisis service organisation, and 19% reported the incident to police.

The survey also recorded women's experience of violence during their lifetime and it was estimated that:

- 2.6 million women (38% of the adult female population) had experienced one or more incidents of physical or sexual violence since the age of 15.
- 1.2 million had experienced sexual violence and 2.2 million experienced physical violence.
- For the majority of women (2.5 million) the violence was perpetrated by a man.
- 8% of women (345,000 women) in marital or defacto relationships had experienced one or more incidents of physical or sexual violence perpetrated by their partner at some time during their relationship.
- Of women who had been in a previous relationship, 42% (1.1 million ) had experienced physical violence by their previous partner.

## **Legal Framework**

*During the 1980s, all States and Territories in Australia have legislated against domestic violence. In the state of Victoria, the Crimes (Family Violence) Act of 1987 provides for Intervention Orders.*

*Until relatively recently, rape in marriage was not illegal in Australia. In 1985 South Australia became the first State to legislate against rape in marriage and a High Court ruling in 1991 addressed the issue nationally.*

It was not until the Family Law Reform Act 1995 that family violence was specifically dealt with under Australia's Family Law Act.

## **Counselling Centres and Services**

Community-based and non-government organisations were set up to provide counselling for domestic violence. It is difficult to obtain Australia wide and state based statistics on the number of centres or clients.

The Women's Domestic Violence Crisis Service of Victoria handled 12,193 client calls in 1998/99. (Women's Domestic Violence Crisis Service Statistics 1999).

Women and children fleeing domestic violence may find emergency accommodation at refuges. Again, it is difficult to access statistics on a national or state level.

## **Police and Court Statistics – Victoria**

- In 1996-97 Victorian Police reported 19,255 family violence incidents. 80% were female victims, while men made up 83% of perpetrators (Victorian Police, 1996).
- In 1995-96 there were 17,055 applications for Intervention Orders in Victorian Magistrates Courts. Of these applications 13,394 (79%) involved women as the victims of domestic

violence, and 89% of applications taken out by women involved males as perpetrators (Department of Justice, 1996).

## **Homicide Statistics**

*A study of Australia-wide homicide data for 1989-91 found that of 150 killings between adults in intimate relationships, 121 victims were female. Of perpetrators of domestic homicides, around 80% were male (Easteal, 1993).*

## **Australian Government Initiatives**

*Partnerships Against Domestic Violence is an Australian Commonwealth Government initiative, working with State and Territory governments and with the community towards the common goal of preventing domestic violence and creating an Australian culture which is free from violence.*

*Partnerships aims to identify opportunities for strategic collaboration between and within governments and the community, to enhance knowledge, develop good practice and find better ways of preventing and responding to domestic violence. It aims to do this by conducting a wide range of research and development projects designed to stimulate new activities and enhance existing work.*

*The Commonwealth Government initially provided \$25.3 million over three and a half years to June 2001. Of this, \$13.3 million is for Government projects and \$12 million for the State and Territory projects and national projects which contribute to knowledge and good practice.*

*In the 1999-2000 budget, the Commonwealth committed a further \$25 million for domestic violence prevention to build and extend the work of Partnerships. Priority areas are children and domestic violence, family violence in indigenous communities, perpetrators of domestic violence and community education.*



## REFERENCES

- *Women's Safety Survey 1996, Australian Bureau of Statistics*
- *Domestic Violence and Incest Resource Centre Information Sheet No 2 (1996)*
- *Week without Violence 1999 Australian and Victorian Statistics on Domestic Violence*
- *State-wide Community Education Campaign Information Sheet 2 (women's Health West)*
- <http://www.dpmc.gov.au/osw/padv/index.html>  
(Australian Government Website with information on the Partnerships Initiative)

## DOMESTIC VIOLENCE AND THE LEGAL RESPONSE IN CHINA

Ma Guo An

Peking University

Since the Fourth World Conference on Women in 1995, the issue of domestic violence has attracted more and more public attention in China. This paper is to deal with the definition, situation of domestic violence and its legal response in China.

### 1. What is domestic violence according to Chinese Law ?

Up to now, there is no national law specially applied to domestic violence. However, there are several local rules and regulations on stop and prevention from domestic violence. According to the Provisional Rule against Domestic Violence of Hunan Province, domestic violence refers to any action which takes place among family member and causes physical, mental or sexual injury and ruin her/his health in the way of beating, binding, confining, cruelly injuring or any other method. And according to the Regulations on Prevention and Stop Domestic Violence of Liaoning Province, domestic violence is that a family member injures another family member or ruin her/his health in physical, mental or sex through beating, binding, corporal punishment or other coercive methods. From the above law-stipulated definitions, we can find the following four characteristics of domestic violence in China. Firstly, domestic violence is limited to family member, that is, intrafamily. Any violence happens extrafamily is not domestic violence. So, in China, violence between a girl and her boyfriend is not domestic violence since such kind of relationship is not regard as family relationship in China. Secondly, domestic violence must be intentional activities. Thirdly, the domestic violence takes the form of beating, binding, confinement, cruelly injuring, physical punishment or other coercive methods. Fourthly, domestic violence in China includes physical, mental and sexual violence.

## **2. How is domestic violence in China ?**

What about the situation of domestic violence in China? There is no national statistics up to now in China. According to a report released on July 13, 2000 by the U.S. Justice Department's National Institute of Justice (NIJ) and the Centers for Disease Control and Prevention(CDC), nearly 25 % of women report that they have been raped and/or physically assaulted by a current or former spouse, co-habiting partner, or date at the some time in their life, and only 7.6% of men report being victims of similar violence. The report estimates that approximately 1.5 million women are raped and /or physically assaulted by an intimate partner annually in the United States. (The definition of intimate partner violence used in the Survey includes rape, physical assault, and stalking. Both same-sex and opposite-sex cohabitants are included in the definition.) These findings provide further evidence that intimate partner violence is perpetrated primarily by men, and strategies for preventing intimate partner violence should focus on risks posed by men. These findings shall be the same in China, expect not so many men suffered from domestic violence. The Survey also finds that Asian/ Pacific Islanders women and men tend to report lower rates of intimate partner violence that do women and men from other minority backgrounds. African-American and American Indian/Alaska Native women and men report higher rates of intimate partner violence.

In recent three or four years, news of domestic violence gradually appeared in China's press. The appearance of these news in newspaper is an evidence that the public awareness of violence has been much increased. In old China, in the traditional families of feudalistic, patriarchal system last several thousand years. And beating wives by the husbands was very common. "Married wives are just like private-owned horses, one can ride on or lash them at will." (By the way, there is similar proverb comes from England, " A spaniel, a woman and a walnut tree, the more they're beaten the better they be." Another from Russia is , " A wife may love a husband who never beats her, but she does not respect him.") No one can tell how many women were actually scolded or lashed by their husbands. " Family scandals can be known by outsides."-----the suffers were not willing to talk of their own " scandals" to others. As a result, domestic violence became an infections disease which nobody could cure. It continuously destroyed women's physical and mental health.

Now, the revealing of domestic violence by the media, on the one hand, it is a proof that the

suffering women are brave enough to make complaints, and on the other hand, it shows that they want the public opinion and the law to speak on behalf of them; and it also shows that in society there is a new understanding of the problem of domestic violence. Some cases formerly viewed as no problem at all are now open to question, and many of them are reported with accusatory pronouncement by women's organizations, among which some are with the results of legal sanction. As for the domestic violence suffered by women, most of them are principally owing to the influence of the traditional idea of "men are senior to women"; in some cases, there are very shocking incidents, reflecting not only the influence of traditional ideas, but also the new tendency in some men's psychology and behavior during the period of rapid social transformation in China, especially when men suffer setbacks in market competition or are reduced to inferiority that they can not "stand out among their fellows", otherwise they are inferior in education, income or position to their wives. In these circumstances, feeling the sense of pride of the man injured, they begin to maltreat their wives as a means of reparation to recover their mental equilibrium.

Domestic violence is sticking out recently in China. The following is the statistics of complains on domestic violence received by a city women federation from 1992 to 1995.

Year	All the cases of complains on women' rights and interests	Cases of complains on domestic violence	Percentage of domestic violence
1992	2234	735	32.9%
1993	3131	1096	35%
1994	4075	2567	63%
1995	3635	2836	78%

The main reason for the increasing domestic violence is duo to husband's love affairs with other women. So the husbands beat their wives in order to get divorced. In 1997, the All China Women Federation conducted a statistics of domestic violence in 15 provinces and cities. It was found that domestic violence cases accounts for 34.5% of all complains from women about family and marriage. And in 1999, the women federation in Guangdong Province conducted a survey by interviewing 1589 families in 11 cities, there is over 19.2% of families with domestic violence, and about 79.4% of husbands beat their wives( Legal Daily, 2000.7.13, <http://www.legaldaily.com.cn> ). According to the statistics from the women

federation in Changsha city, Hunan Province, there were 1936 registered domestic violence cases happened from January 1993 to October 1995. It was only the tip of an iceberg. The non-reported cases is believed to more than 10 times of the number. Among the 1936 registered cases, over 95% of the cases happened with husbands beating wives. ( <http://www.china-avenue.com/shikening/tv/jj12-13.htm> )

### **3: Laws against domestic violence**

#### *National laws*

(1) The Criminal Law of the People's Republic of China stipulates that whoever intentionally inflicts injury upon another person shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance. Whoever commits the crime mentioned in the preceding paragraph, thus causing severe injury to another person, shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; if he causes death to the person or, by resorting to especially cruel means , causes severe injury to the person, reducing the person to utter disability, he shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death (Article 234). Whoever uses violence to interfere with another person's freedom of marriage shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention. Whoever commits the crime mentioned in the preceding paragraph and causes death to the victim shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years (Article 257); and whoever maltreats a member of his family, if the circumstances are flagrant, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance. Whoever commits the crime mentioned in the preceding paragraph and causes serious injury or death to the victim shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years ( Article 260).

(2) The Regulation on Management of Public Security of the People's Republic of China stipulates that for violations that are not subject to criminal penalty the guilty party will be taken into custody far up, to 15 days and fined up to RMB 200 and warned: assault and



battery causing minor injury, or maltreating family member and the victim requests handling.

- (3) The Law on Marriage and Family Affairs of the People's Republic of China now being drafted includes the issue of domestic violence under its general principle. This will provide further legal basis for preventing domestic violence.

#### *Local laws*

- (1) On Jan 10 1996, Stipulations on Preventing Domestic Violence was issued in Changsha city, Hunan province. This was the first local regulation in China on preventing domestic violence. It stipulates that the issue of domestic violence be included into the comprehensive management of social affairs; relevant organizations should mediate disputes in families and between couples before they intensify; abusers should be punished according to the nature of their abuse and the law; the women's federation, trade unions, social groups and employing units should involve them in the investigations and mediations cases of domestic violence cases and make joint efforts to supervise the settling of family disputes.
- (2) The Provisional Rule against Domestic Violence of Hunan Province was enacted. On Dec 31 1996, the Standing Committee of Hunan People's Congress decided to subject to the Provisional Rule against Domestic Violence of Hunan Province for ratification in 1997. In Dec 1999, it went through the first discussion of the Standing Committee of Hunan People's Congress. And on March 31, 2000, it was passed by the Standing Committee of Hunan People's Congress.
- (3) Shanxi People's Congress has passed the Measures to Implement the Law on the Protection of the Rights and Interests of Women in Shanxi Province. These cover seven aspects including politics, culture and education, property, person, marriage and family, and legal responsibilities. It stipulates that anyone using violence against women in the family will be subjected to criticism, administrative punishment, indemnity, public security penalty, or criminal penalty.

- (4) Since 1996, Xi'an city of Shanxi province, Huzhou city of Zhejiang province, and Changzhou city of Jiangsu province have formulated regulations regarding domestic violence. Similar regulations are being drafted in Hainan province.
- (5) Up to now, 13 provinces, regions, cities or counties in China have passed local regulations to prevent domestic violence. These are initial approaches with a limited coverage and much room for improvement. However, they are a firm step forward towards preventing domestic violence by legislation.

#### **4. Actual Practice**

##### *(1) Provide victimized women with injury certification.*

Beijing Court Scientific and Technical Certification Research Institute is the first government authorized and supported medicine clinic for domestic violence. During the past 2 years, almost 1,000 victims have phoned to consult, and over 100 victims have received injury certification of which almost 50 people have brought their cases to court. On April 24 1998, Qingdao City Intermediate Court of Shandong province together with Qingdao Women's Federation set up the Domestic Violence Injuries Medical Certification Center. It offers medical identification and legal assistance through counseling and providing lawyers. Meanwhile, it carries out multiple services to eliminate causes of violence such as parent-child blood relation identification, research and analysis.

##### *(2) Rights-protecting Court*

In 1997, the Rights-protecting Court was created in ShanXi provinces under advocacy of the women organizations. It is also called Joint Court of Marriage and Family. It has made great contributions by hearing and trying relevant cases. On the bench were capable professional judges, police from the courts of law and specially-invited members from the Women Federation, jointly dealing with the lawsuits violated rights women. This kind of court helps women to be able to self-protected by law more easily than before. It also provides services of mediation prior to legislation, legal consultation, follow-up visits and legal information

dissemination. Through this practice of Right-Protecting Court, the Women Federation has changed from their passive rights-protection to aggressive rights-protection, which means that, to a certain degree, the Women Federation has mastered the right of law enforcement. Consequently, within the Women Federation, the enthusiasm of organizing law study has been remained high.

*(3) The judicial system actively promotes women's rights and interests.*

Since the founding of Datong Court of Protection of Women and Children's Rights and Interests on April 25 1995, the first of its kind in Shanxi province, till September 1998, 87 courts of this kind have been set up in the province. Their responsibilities are mediation, instruction and case handling including cases of domestic violence. In the provinces and cities of Shanxi, Hebei, Heilongjiang, Jilin, Liaoning, Henan, Jiangsu and Tianjin, local courts, cooperating with women's federations, have set up juries teams to participate in the handling of cases relating to women's rights and interests. Some local courts have set up special courts, regular courts and mobile courts to strengthen the protection of women's rights and interests. Almost all provinces, autonomous regions and municipalities with only a few exceptions have set up special agencies to protect women's rights and interests. 85-90% of counties have set up legal counseling centers to protect women, providing legal counseling to victimized women and assisting them with law procedures. Ankang Regional Court of Shanxi province has set the prevention of violence against women as a key task by making full use of the existing three-level women's legal complaint stations. In recent years, the criminal court of the Supreme Court has paid great attention to this issue by doing research on and making surveys of domestic violence. The Association of Female Judges has done a lot of work in the prevention of domestic violence. Many of its members have made great efforts in this regard through building public awareness, participating in joint activities, lobbying for legislation, filling suits for abused women. In Beijing, a legal counseling helpline has opened to provide services to victimized women.

## **5. Conclusion and Suggestion**

## **Conclusion**

- (1) Since the 1995, Beijing Conference, China has enhanced its recognition of the issue of domestic violence and taken an affirmative stand in this regard. It has formulated relevant laws and regulations providing a legal basis for the prevention of domestic violence.
- (2) Some local governments have enacted local regulations against domestic violence according to national laws. They have not only effectively prevented domestic violence at the local level, but also provided useful experience for the national campaign.
- (3) Judicial departments have made a positive effort both taking the lead and cooperating to prevent domestic violence and protect women's rights and interests through publicizing the laws, handling cases, and so on.

## **Suggestion**

Domestic violence against women is not only a matter of bodily harm to women individually, but also is to the dignity and human rights of women as a whole. Local government staff should cast off the idea that a husband beating a wife is a family matter and outside interference is inappropriate, and that even a good officer cannot possibly resolve family matters. There should be a clear definition of domestic violence. It is not a normal family matter, but harm done by one person to another. When a person's safety is endangered no matter where or by whom, the government is obliged to offer protection.

### ***(1) To promulgate a special law against domestic violence***

Though Chinese laws stipulate penalties for personal injuries and abuse to family members, there are no specific regulations on domestic violence and its punishment. For instance, there is no crime defined as domestic violence in the Criminal Law, and the Civil Law does not clarify the legal responsibilities of those who encroach on the personal rights of their spouses. The lack of legal reference makes the prevention and punishment of those guilty of domestic violence difficult. Therefore legislation in this regard is imperative. Discussion and formulation of a special law to prevent and stop domestic violence should be listed among

the legislation priorities in the next few years. The formulation of special laws in this regard will provide a legal basis for the prevention of domestic violence at national level. The Law on Marriage and Family Affairs, which has been discussed for a few years, should include domestic violence as a key point and define it in details so as to facilitate implementation of the law.

*(2) To strengthen gender awareness in judicial procedures*

When an abused woman divorces her husband or a woman divorcing her husband is abused, the court should consider appointing a female judge and a female lawyer and increase female jurors so as to better protect victimized women's rights and interests. Based on this, the jury system should be developed to include a certain number of female jurors especially representatives from women's organizations. Female representatives to the People's Congress can be invited to supervise during the process and carry out follow-ups in specific cases. The Association of Female Lawyers and Committee on the Protection of Rights and Interests of Women in various places should play a bigger role in this effort.

*(3) To punish abusers*

At present, the country lacks relevant detailed laws on the punishment of abusers. However, with its responsibility for social order, the government can coordinate the relevant departments to punish the abusers using administrative or criminal penalties. This can also serve as a warning to other people.

*(4) To offer practical assistance to abused women*

When the abused women face financial difficulties in bringing a case to trial, there should be some authorized government agencies to help with the procedure and reduce or cancel the fees so as to punish abusers and help victimized women. To help and support women victims of domestic violence should become a task of the Legal Aid Centers of local judicial departments. Qianxi county of Hebei province has done so and such centers will soon be extended to the whole province. Communities should provide mental support and counseling to abused women, decrease the occurrence and degree of abuse and help women learn ways of preventing domestic violence as well as ways of self protection when they are threatened.

## **VIOLENCE AGAINST WOMEN IN THE PACIFTC REGION**

Shamima Ali

Fiji Women's Crisis Centre

### **Background of the Fiji Women's Crisis Centre**

The Fiji Women's Crisis Centre (FWCC) was established in 1984 as the result of concern at the frequency of sexual assaults on women in Fiji, and the total lack of support services for the victims of rape, however, the more FWCC looked into the issues involved in rape in Fiji, the more aware it became of the magnitude of violence against women generally. FWCC broadened its charter and services are now available to all women and children who are victims/survivors of violence.

In 1992, FWCC facilitated and hosted the 1<sup>st</sup> Pacific Regional Meeting Against Violence Against Women, which was held in Suva and attended by women from eleven Pacific Island countries. At this time, Fiji (FWCC) and the Cook Islands (Punanga Tauturu) were the only countries which had focused programs to address violence against women. The inaugural meeting recognised that violence against women denies women freedom of expression, freedom of association, and participation in a wide range of activities, including employment, property ownership and political organising. The 1992 meeting led to the establishment of the Pacific Women's Network Against Violence Against Women, which would serve as a support mechanism for women in the Pacific who will be working on the issue of Women, Violence and Human Rights.

The 1st Regional Meeting generated a lot of awareness on issues such as domestic violence, sexual assault and child sexual abuse, which is reflected by the emergence of several new

counseling centres in the Pacific Region, including Vanuatu, Papua New Guinea, the Solomon Islands, Niue, Western Samoa, Tuvalu, Kiribati and Pohnpei.

The 2<sup>nd</sup> Pacific Regional Meeting on Violence Against Women was held in 1996 and facilitated by FWCC, primarily to review existing programs on violence against women, develop a four-year regional plan of action to address the distributing trends of violence against women in the Pacific and to strengthen the Pacific Women's Network Against Violence Against Women.

As Secretariat of the Pacific Women's Network on Violence Against Women, FWCC plays a critical role as clearinghouse for information to the Network. FWCC produces the Pacific Women Against Violence Newsletter which is a critical means of maintaining communication between Network Members and has also established a Regional Training Program (RTP) for people who are interested in establishing Centres or running program to address violence against women in the Pacific. The RTP is also for community workers, police, health and religious personnel. FWCC also conducts in-country training on request.

### **Nature of Domestic Violence against Women and its Prevalence in the Region**

Domestic Violence - this includes both physical and psychological abuse, deprivation and marital rape. Domestic violence stems from the assumption that once a man marries a woman he has absolute control over her. Violence occurs when one person assumes the right to dominate another and decides to use violence or abuse as a means of ensuring that domination. Violence can be defined as the use of force, implied or actual, to achieve control over another person.

Statistics from various crisis centres and services in the region show that violence against women continues to be a tremendous problem and the incidence reported to Centres and police across the Pacific region continue to increase every year. FWCC counselors have seen a total of 9890 new clients and 10880 repeat clients from 1984 to July of this year. A national research which was conducted by the Fiji Women's Crisis Centre on the incidence and prevalence of domestic violence indicates that 67% of women in Fiji have been victims of abuse from their partners. Fiji Police Force statistics show that domestic violence cases increased by 149% over

a five year period from 1992 to 1996, at an average of 30% per annum. The FWCC research also shows that less than 10% of women who are victims of domestic violence reported to the police. The number of clients seen at the Vanuatu Women's Centre has risen from 26 seen in 1992 when the Centre was first established to 712 seen in 1999. In PNG, 67% of wives report having experienced marital violence. Domestic violence is further aggravated by the issues of bride price and polygamy. Statistics received from Samoa show that from 1990 to 1995, a total of 2313 cases of violence against women were reported to the police. And research conducted in by Mapusaga O' Aiga indicates that 50% of women suffer from partner abuse in Samoa. A similar study conducted in the Solomon Islands indicated that 59.6% of urban females and 51.2% of rural females were victims of domestic violence.

I would just like to share with you some examples of the cases of domestic violence from Fiji.

A woman is in hospital with severe burns after setting herself alight. The attempted suicide was the result of an inability to cope with the constant domestic violence that she was subjected to by her husband - December 1998.

A young mother and her children were starved and physically abused by her husband, a doctor. Her health had deteriorated so badly as a result of the beatings and starvation that she contracted tuberculosis and later died. While she was in hospital her husband was free to enter her hospital room to pressurise her to drop charges and give him custody of their children. Charges were never laid against him as the police said the medical report indicated she died of tuberculosis.

A man cuts off the ears of his de-facto wife with a razor blade and then repeatedly punches and kicks her. After the incident the 18-year-old woman hung herself.

A woman is unable to move on her own after a various attack by her father-in-law. He slashed her with a knife at least 10 times, leaving her without an arm and severely damaging her leg.



These cases are very real and all of them have occurred just recently in the Pacific paradise. Such cases do not reflect the full extent of the problem of domestic violence in Fiji the Pacific. Many cases remain unreported and will continue to remain behind closed doors as long as society continues to regard domestic violence as normal, or to dismiss it as a private or cultural matter. If these very same crimes occurred outside the 'sanctity of the home' the hue and cry would be unimaginable. As long as domestic violence is tolerated publicly; is not recognised as a specific crime in law; is legitimised by custom and blamed on the victim herself, the crime of domestic violence will continue unabated, and many women and children in Fiji and the Pacific will continue to suffer gross violations of human rights within their homes.

Violence against women has gained increasing recognition as a human rights issue, as a reproductive health issue, and as a developmental issue that affects not just women themselves, but society as a whole. Violence results in injury to the victim/survivor, who also bears the costs of seeking medical treatment, the inability to supplement the family income due to a loss of productivity or employment due to having to take time off work because of the violence. Women who are victims/survivors of violence are unable to participate politically or in development of their communities and ultimately their nations.

Violence also leads to loss to employers and decreased productivity caused by absenteeism, and poor performance in the workplace by both the abuser and the victim/survivor. The community bears the cost of provision of health care, law enforcement costs and the costs of the legal process. Violence against women will continue to take lives, destroy families and affect society at large. As long as it continues unchecked, we will continue to channel scarce resources into our health, legal, law enforcement and welfare systems to address what is a largely preventable social illness.

### **Existing Services/Programs and Difficulties Faced**

At present there are several non-government organisations in the Pacific region that are designed to help survivors of violence and educate communities on the need to eliminate

violence against women and children. The majority of these organisations are part of the Pacific Women's Network Against Violence Against Women which comprises 24 agencies in 11 Pacific Island countries. These organisations provide a range of services which include crisis counseling and crisis management services, providing para-legal advice and practical support such as accompanying clients to court and welfare agencies and giving them referrals, as well as conducting telephone counseling and liaising with other relevant organisations. Other services include running community education and public awareness raising programs, providing library and resource services, lobbying for law reform and advocacy for women's human rights.

The Pacific Regional Human Rights Resource Team (RRRT), a British funded program based in Fiji conducts human rights education and legal literacy in countries in the Pacific. RRRT is able to provide commentary on draft legislation for domestic violence and are also able to help solicit consultancies to draft legislation for these areas. However, in order to respond to this, the request needs to come from either the government or quasi government agencies like the Human Rights Commission.

With the exception of services provided by these organisations, services for women and children who are victims/survivors of violence against women remain grossly inadequate. At the 2<sup>nd</sup> Regional Meeting on Violence Against Women, Delegates agreed that their respective organisations faced mutual problems that contributed to the inadequacy of services. These problems included the lack of government support for Violence Against Women programs, lack of inter-agency co-operation, lack of gender sensitivity within institutions and agencies such as the police force, judiciary and welfare organisations as well as traditional, religious and cultural justifications for violence against women.

Other problems that were identified include the lack of inadequacy of laws and policies to address violence against women, which is regarded as a major constraint to addressing the issue. There was a recognition of the discriminatory effects that the laws and their interpretation has had on women and quite a number of women's organisations in the Pacific are lobbying for the need to reform these laws.

The lack of consistent funding available to organisations running programs to address violence against women is also a serious impediment to addressing the issue. Government recognition through endorsement or funding will enable these programs and projects to work more efficiently and to have a greater impact.

The poverty situation of women in the Pacific is of critical concern when considering the issue of violence against women. Many women continue to live in abusive relationships because of financial dependence, the lack of alternatives, and the lack of cheap housing. The improvement of women's education and access to Credit Schemes are an important part of the solution to violence against women in the Pacific.

The inaction and failure to seriously address the issue of violence against women by the churches, who play such a powerful role in Pacific society, also reinforces the acceptability of violence against women in the Pacific. In the past three years there has been a WCC/PCC consultation resulting in the Apia Declaration which recognises violence against women as a serious issue and makes recommendations on how it should be addressed. In 1997,

At the Pacific Conference of Churches General Assembly in Tahiti, a presentation was made on violence against women in the Pacific. Though it was received with a great deal of hostility, the paper was accepted by the Meeting. Although these are commendable actions on the part of the church, we have yet to see any serious action.

### **Inadequacy of Current Laws and Procedures on Domestic Violence**

In terms of the legislation on Domestic Violence, I will be focusing on the Fiji situation.

#### **1. Domestic Violence as a Reconcilable Offence**

Both common assault occasioning actual bodily harm are reconcilable offences ***under s163 of the Criminal Procedures Code (CPC)***. This allows the Magistrate to promote reconciliation and facilitate a settlement between the parties. If reconciliation occurs, the Magistrate has the power

to dismiss proceedings. S163 of CPC is open to considerable debate, with one view being that reconciliation allows the parties to resolve their differences and repair the relationship without damaging the reputation of the offender or hurting the family by fining or sending the offender to prison. FWCC believes that this view has merit provided the reconciliation is genuine, and that the offender is undergoing some sort of counseling again. However, in our experience, there are many cases where the reconciliation is not genuine and the victim has been pressurised by the accused, the family or magistrate to accept reconciliation, even though it is against her wishes.

## **2. Protection Orders**

Women who have been given Non-Molestation Orders (restraining orders) by the Courts for protection from domestic violence, are required to go back to court if the Non-Molestation Order is breached and they wish to press charges for the breach. The Police do not have the jurisdiction to arrest anyone in breach of a non-molestation order unless directed by the courts. This is a lengthy process and leaves the woman exposed to danger for considerable amounts of time.

Legislation on domestic violence should specify the consequences of breaching protection orders such as these and mechanisms must be put into place to ensure that police are able to deal with breaches of protection orders immediately and effectively.

## **3. Bail**

Bail conditions is one of providing protection to victims within criminal proceedings. Both the police and courts have the power to grant bail in Fiji. If a domestic violence towards the victim, then the nature of the offence should be considered serious and bail therefore be denied. Courts have the power to grant or deny bail as well as the discretion to impose any limitations or conditions it thinks appropriate. Therefore there is no bar to the court being able to make bail conditions in the forms of protection orders that the accused does not assault, threaten or harass the victim. In practice this does not happen very often.

#### **4. Sentencing**

The current legal situation in Fiji is such that domestic violence cases that do go to court rarely warrant custodial sentences. Most sentences for domestic violence are minimal, ranging from suspended sentences to six months to a year's imprisonment, depending on the severity of the violence.

#### **5. No Drop Policy**

In September 1995 the Fiji Police Department introduced the "No Drop" Policy which requires all reported cases of domestic violence to be investigated. Prior to the introduction of this policy, the police force tended to put emphasis on reconciliation of cases involving domestic violence. Since the policy was introduced it is required that these cases be heard in the Magistrate's Courts before charges can be dropped.

Despite the introduction of the 'no drop' policy, the experiences of FWCC counselors show that attitudes of investigating police officers towards women who are victims/survivors of domestic violence lack sensitivity and there are considerable delays in the investigating process. The 'no drop' policy has frequently been found to be ineffective in that cases of domestic violence are still treated as trivial. There is still a reluctance to charge perpetrators of domestic violence because of the expectation that the woman will not want to pursue the complaint when the incident has passed or the parties may reconcile before or during the court process, thereby causing the case to be dismissed.

It is important that the implementation of the 'no drop' policy is monitored in order to gauge its efficiency in deterring domestic violence. As there are no penalties involved if the policy is breached, there is no effective way of ensuring that the "no drop" policy is observed by investigating officers. The best way to ensure this is to legislate the policy and introduce penalties for investigating officers who fail to observe it.

## **Changes that Need to be Made to Reduce and Prevent Violence in Domestic Relationships:**

- Legislative reform that recognises that domestic violence in all its forms is unacceptable behavior and ensures where domestic violence occurs, there is effective legal protection for its victims
- Access to courts should be speedy, inexpensive and simple
- Counseling and appropriate treatment programs for victims/survivors and offenders must be put into place as essential support services to legislation and policy on domestic violence.
- Training of members of the judiciary and police who play a critical role in implementing domestic violence legislation, policies and procedures
- Effective enforcement of Non-molestation Orders



## **WOMEN AS VICTIMS OF CRIME IN DOMESTIC VIOLENCE**

Purnianti

The Foundation for Elimination of Violence against Women

### **Introduction**

The principle that equal status is accorded to all Indonesian citizen without exceptions is clearly embodied in the 1945 Constitution as well as in other subsequent regulations and legislative acts. The Penal Code further provides protection of violence victims and punishment of offenders, either women or men. Other subsequent regulations and legislative acts reinsure the full enforcement of the Penal Code. On the basis of the above principle, violence Against Women is legally protected in Indonesia's Penal Code.

However, obstacle are encountered in the enforcement process of the law, particularly in the prevailing traditional, social and cultural life attitudes which view women as being subordinate to men. As a country that has ratified the Declaration on the Elimination of Violence against Women by Law No. 7/1994, it is a necessity for Indonesia to take part in providing real and effective measures to overcome this problem.

What must be reviewed seriously is the criminal justice system. It should be well recognized that the exercise of an act of violence on women result in women as victims. In this regard, there are at least two crucial issues that may be taken as a working target of the criminal justice system, particularly, which relate to an act of crime and the emanation of a victim for reason of a criminal action.

By looking at the way of working of the police as the frontline component of our criminal justice system on cases of violence Against Women, domestic violence in particular, one may later detect issues of the police's perception, attitude and willingness nowadays in enforcing various rules and regulations on violence Against Women.

### **Valuable Experience**

Discrimination of legal information plays an important role in the effort to eliminate violence against women and children, which is considered to be contradictory to the essence of the equality principles. In a strong patriarchal society, violence against women is often not considered as violence. Furthermore, discriminating legislative measures remain in its implementation. Recognizing that violence against women is not the women's fault, or part of her education, it is essential to affirm that all form of violence against women is unacceptable.

Violence against women has recently been taken into account as a serious social problem that demands serious consideration from various parties. The Declaration on the Elimination of Violence against Women strongly declares that violence against women is considered as a violation of and on act of obstructing women or eliminating women's opportunity to have access to their human rights and their fundamental freedom.

It is also important to note the fact the victimization of women through violence is hardly ever brought to criminal court. The main problem is the society's perception, as a whole, or by the women themselves, that violence against women is better to be concealed, like *"the skeleton in the closet"*, as it may *"put dirt on your forehead"* (and Indonesian idiom that means to bring disgrace to one's family). As for why the society carries such perception is apparently related to the traditional values about women's position that has developed in the community.

According to the research on fear of crime, women are also recorded as those with the most negative reaction as to their likeliness to report the case of crime they experience to the police. As far as the law is concerned, it is clear that these types of crimes against women are not



sufficiently elaborated in the Penal Code. They only fall under the category of "*penganiayaan*" (maltreatment: Article 351-355 of the Penal Code) without explicit distinction between different types of violence (such as beating, screaming, psychological torture) or, as a matter of fact, between domestic and organizational violence. Moreover, even if domestic violence would be clearly defined in law, it is questionable whether all forms of violence against women by their partners would be taken into account.

One of the most important steps that must be taken is dealing with victims of rape and battering. The victims of these assaults tend to view policeman as members of the "aggressor". Policewomen officers are not viewed in this way and are usually able to go into the examining room with the victim. On the whole, policewomen are likely to treat women victims and offenders more sympathetically. It is almost two years that we provide a special service room ("*Ruang Pelayanan Khusus*") or a policewoman's desk to assist women victims/offenders in Jakarta Metropolitan Police Office.

So far, the Department of Law and Regulation has established a Judge Committee and Women Judges who will be involved in violence-related and rape cases against women. Furthermore, there has also been an intensive cooperation between the Government and the Non Governmental Organization to prepare the National Plan of Action to eliminate violence against women on the basis of the "Zero Tolerance Policy".

A Number of Crisis Centers have been established as an indicator that women activist are aware of the level of violence and the need to aid victims. Legal assistance institutions have also begun to undertake defense actions using a woman's perspective.

With respect to the abuse of women, there are several women organizations, which deal with this problem. The most vocal are "*Mitra Perempuan*" (Women Friends) and "*Asosiasi Perempuan Indonesia untuk Keadilan on APIK*" (the Association of Indonesian Women for Justice).

A new definition has been given for violence and rape with reference to the Declaration of the Elimination of Violence against Women in draft amendments to the criminal. This definition is being socialized to the public through seminars, workshops and training Indonesia.

A National Commission on the Elimination of Violence against Women has been established in October 1998 as a reflection of Indonesia's awareness to eliminate all forms of violence against women.

As a matter of fact, despite existing regulations are relatively sufficient, but if they are not followed by the effort to improve the apparatus and its institution, they will never bring satisfying results. Therefore, there is a need for a systematic program to achieve a change in law, which in turn can be expected to initiate social change.

The same goes with society's attitude and perception of the problems of violence, which is crucial in the implementation of the law. The attempt to change the regulation should also be followed by an attempt to make law enforcers more responsive and sensitive towards women's interest. Including gender issues and women's rights in education curricula, especially for law enforcers, are something that must definitely be done.

## **Main Agenda**

The Five Main Agenda of the Development of Women's Role, covers:

1. **Empowerment of Women**; on three strategic fields;
  - 1) Integrated education that includes spiritual, intellectual, and practical education;
  - 2) Reproductive Health;
  - 3) Creation of Women's Access to Development Sources.
2. **Realization of Gender Equality and Justice**; on three strategic fields, which are:
  - 1) Integrating gender into the mainstream of development (GAD)
  - 2) Catching up with women's backwardness in the development process (WID);

- 3) Accommodating women's aspirations, interests and roles into the various aspects of development (WAD).
3. **Elimination of Violence Against Women;** as part of the Elimination of All Forms of Discrimination Against Women, which is carried out by setting up a National Plan for Action by developing a "Zero Tolerance Policy", which means "Zero Tolerance towards any single tiny violence against women" in principle.
4. **Advancement and Increase in the Protection of Women's Rights;** as a part of Human Rights. For this, attempts are developed for respect of the women's dignity rights reproductive rights.
5. Facilitation of institutions that support the management of the increase of women's role.

### **Core Strategy**

Attempt to implement the five main agenda of development of women's role is carried out through the use of three core strategies, which are:

1. Increasing the COMMITMENT of related Department/Agency, the private sector, mass organization on Central and Regional level, and grass-root community in the increase of the quality of women's role through the creation of various functional network alliance and partnership.
2. Increasing PROGRAM IMPLEMENTATION INTEGRATION, for special programs (WID), general programs (GAD), and integrated programs (WAD), followed by commitment that women can also participate in the processes of planning, control and monitoring to implement gender equality and justice.
3. Increasing GENDER AWARENESS among policy makers and decision-makers and planners within the executive, legislative and judiciary bodies, including community and religious leaders.

## DOMESTIC VIOLENCE IN MALAYSIA

Ivy N. Josiah

Women's Aid Organisation, Malaysia

*He hit me with his fists, feet and bottles, smashing me to the floor; then he started to kick, sometimes with repeated blows to the face and other parts of the body. He has kicked me in the ribs and broken them, he has tried to strangle me and taken me by the shoulders and banged my head against the floor. During my marriage of nearly four years I have received constant bruises all over my body, this has been more during pregnancy. I have received black eyes, cut lips and Swollen nose. Most of my bruises have been to the scalp where they do not show. On one occasion I had bruises to the throat and abdomen and was unable to speak; on admission to hospital I was found to have multiple injuries and broken ribs.<sup>1</sup>*

The family should be the safest space for a person to turn to times of trouble. The family is an institution where one should get emotional support, comfort, care, food and shelter. Yet this institution can be the most dangerous of places for women and children. In fact it can be battle Zone, full of conflict and strife. Because it is perceived as a closed and private space, the home allows for atrocities to continue undetected and sanctioned by the community. Domestic Violence is one such atrocity.

### Introduction

The issue of violence against women (VAW) in Malaysia has largely been centered on domestic violence, that is wife abuse. This paper attempts to present a herstory of domestic

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<sup>1</sup> WAO case files 1995

violence responses by the women's groups and the Malaysian government, i.e. the State, and will focus on the campaign for the enactment of the Domestic Violence Act, Malaysia 1994 (DVA). The legislation of the DVA is seen as a progressive move, as we were the first country in Asia Pacific with a specific legislation to address domestic violence. The paper will also discuss the workings of the DVA and the monitoring of its implementation including lessons learnt.

### **The WAO Refuge**

In September 1982 the first women's shelter for battered women and their children, **Women's Aid Organisation (WAO)**, was opened in Malaysia. For the first time in Malaysia the issue of domestic violence was highlighted as a hidden problem, as more and more women sought shelter at WAO. Within the first year, WAO had given refuge to 57 women. At present every year, WAO shelters an average of 100 women and 130 children, (the children come with their mothers), handles 1,800 counselling calls and renders face to face counselling to 50 women.

Centering on direct services for women who are abused, WAO established a second centre in 1991. The WAO Child Care Centre, to house children of women who have decided to live independent lives. WAO has developed a scholarship programmes for children of the ex-residents and a small loans programme for the women who seek our help at the Refuge.

It is because of this direct and intimate experience of women in crisis who have shared their lives with us, that WAO have developed our public education, legal reform, monitoring and advocacy programmes to promote and protect women's rights.

### **Incidence of Domestic Violence**

Malaysia has a population of 22 million; women account for slightly less than one half of the population and it appears that we have a high incidence of violence. In a 1989 national survey commissioned by WAO and conducted by Survey Research Malaysia,

revealed that 8 million or 39% of women above the age of 15 years are estimated to have been physically beaten by their husbands or boyfriends.

Statistics released by the Police reveal that in 1995 there were 1409 reported cases of battering and in 1996, soon after the implementation of the Domestic Violence ACT 1994 in June 1996, there were 2319 reported cases. In 1997 there was an increase, 5736 police reports and in 1998 a 5 % increase to 6, 041 cases. However in 1999, there was a drop to 3195 cases.

### **What kinds of violence do battered women suffer?**

Based on our experience at WAO, the battered woman who seeks shelter at the WAO Refuge experience repeated and systematic physical, sexual and mental violence. As a result of the physical abuse, the women have suffered bruises, cuts, broken bones, burns, scalding usually on parts of their bodies that are not visible to the public eye.

As part of the WAO national survey, in -depth interviews with 60 women were conducted in 1990/91. Of the 60 women interviewed, 92% had been kicked punched or slapped, 22% had suffered attempts of strangulation, and 10% had been stabbed or threatened with a knife or instrument. What is even more disturbing is that 68% had been beaten when pregnant. Furthermore, Sexual coercion was frequent, 50% of the husbands had used physical force during sexual intercourse.

The majority of the women describe the violent events as being almost always preceded by verbal fights related to money, jealousy, in-laws, children etc. the fights centered on different expectations from each partner. The arguments were not trivial but long standing issues that escalate into physical abuse.

### **Agency Response to Domestic Violence**

In 1982 when WAO was first opened, domestic violence was assumed to be a small problem. We now know different and recognize it as a huge problem that must be tackled by all sectors. Women's groups in lobbying for a Domestic Violence Act did initiate the opening up of more shelters and services and new women groups to deal with the issue of VAW.

Shelters: We have 3 shelters in Malaysia including WAO's which are run by women's groups. In the state of Selangor where WAO is situated, there is a shelter run by the YWCA Klang, and The third NGO shelter is in the northern state of Penang, called the Women's Crisis Centre Penang. (There are 13 states in Malaysia)

Government shelters also receive victims of domestic violence, however these shelters are homes for other women or girls who are destitute, handicapped, aged or abandoned. There is no specific government shelter for victims of domestic violence.

Counselling lines. Besides WAO, there are 4 counselling lines for women in crisis in Malaysia. The government toll free hotline for reports of child abuse is also open to women, but the hotline merely directs them to a welfare office based in all states and districts throughout Malaysia.

Social Welfare departments: With the enactment of the DVA in 1996, the government welfare offices have to assist the victims of wife abuse by helping them get Interim Protection Orders (IPOs) and providing shelter if necessary.

One-Stop Crisis Centres: Established at the Accident & Emergency Units of the government hospitals in 1994, with specific protocols to assist battered patients also puts us somewhat ahead of other nations in defining domestic violence as a health issue.

## **Malaysian Women's Campaign for the Domestic Violence Act<sup>2</sup>**

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<sup>2</sup> "Monitoring the Domestic Violence Act (1994) Malaysia, a report by WAO, Research by Laura Hebert, Dec. 1997

Malaysia's Domestic Violence Act, 1994 (DVA) was implemented in June of 1996. The campaign by women's groups for a domestic violence bill, however, was initiated eleven years earlier, when in March 1985, the Joint Action Group against Violence Against Women (JAG), comprising individual women and five organisations—Women's Aid Organisation, Association of Women's Lawyers (AWL), Malaysian Trade Unions Congress Women's Section, University Women's Association (University Malaya) and the Selangor and Federal Territory Consumers' Association--organised a two day workshop-cum-exhibition on Violence Against Women in Kuala Lumpur. The JAG conducted workshops and discussions on sexual harassment, rape, women battering portrayal of women in the media and prostitution.

The JAG workshop on women battering declared domestic violence as a societal concern, and concluded with women's groups calling for the enactment of a Domestic Violence Act. Following the workshop, JAG drafted a "Proposed Bill on Domestic Violence."

Between 1985 and the passing of the Act in March 1994 women's groups campaigned for the Act by organizing signature and postcard campaigns, seminars, workshops, exhibitions and using a very cooperative press to lobby for the enactment of the Act.

However it was not until 1993 that the Women's Affairs Department (HAWA) in the Ministry of National Unity and Community Development formed a consultative committee. The Department facilitated meetings between women NGOs, police, social welfare, Muslim religious department and the Attorney General office, which was re drafting the Bill.

HAWA facilitated meetings between women's NGOs and the Attorney General's office during 1993 and 1994. Problems in seeking a criminal and civil domestic violence law, applying to both Muslims and non-Muslims, delayed negotiations. "Datuk Alex Lee (Deputy Minister in the Ministry of National Unity) opined that the Bill is too hybrid in nature and suggested that the Bill be criminal in nature for expediency purposes, i.e. for the tabling in early 1994."<sup>3</sup> The groups renegotiated and the Domestic Violence Act was prepared for the cabinet in March of 1994.

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<sup>3</sup> Sisters in Islam. April 1994. "A Working Document on the Domestic Violence Bill: campaign for law reform 1985-1994."



The Act was passed by parliament in 1994, but two years later had yet to be implemented. In February of 1996, the All Women's Society of Malaysia (AWAM) initiated a meeting between Sisters in Islam, AWL, and WAO to come together again as JAG and to plan the handing over of a memorandum calling for the immediate implementation of the DVA. On 8 March 1996, International Women's Day, JAG organised a large gathering of women outside the opening ceremony of a seminar at the University of Malaya officiated by the Minister of National Unity and Social Development, YB Datin Paduka Zaleha. The women held a peaceful demonstration and delivered the memorandum to the Minister. The event received wide press coverage. For weeks afterward, articles on domestic violence and the need for the implementation of the DVA regularly appeared in Malay and English newspapers. WAO acknowledges the important role of the press in keeping the issue of the DVA alive.

On 26 March 1996, Pusat Islam ruled that the DVA did not conflict with Syariah law, and should not be used as an excuse to delay the Act's implementation. On 27 March, WAO, on behalf of JAG, made a press release stating that the enforcement of the Act was not dependent on the regulations, but on the Minister who had the power to set the date of implementation. On 10 April 1996, the Minister announced that the DVA would be implemented effective 1 June 1996. After eleven years of workshops, campaigns, and negotiations, the DVA was at last implemented on 1 June 1996.

This is, of course, a much simplified historical account of a lengthy and complex process. What is of primary concern to this report is the effect the implementation of the DVA has had on the mass base of Malaysian women with and for whom the campaign was staged.

### **The issue of double jurisdiction**

The women's groups had envisaged and proposed a domestic violence bill that will grant both civil and criminal remedies for victims of domestic violence, irrespective of religious or cultural considerations. Civil remedies were to include issues of maintenance, custody, and divorce, while criminal measures were to expedite protection order procedures and empower police to arrest the offender and/or have him removed from the home. However,

quasi-civil law is not acceptable under Malaysian law as there has never been a law of this nature and the willingness to test out such a law is absent.

Furthermore, it was argued that there was a conflict of jurisdiction where Muslims were concerned between the Syariah Court and the Act Under the Federal Constitution Muslims are governed by Syariah law in all matters relating to the family. In 1988, the Federal Constitution was amended to include Article 121(1A), in which "the High Court shall not have jurisdiction in respect of any matter where the Syariah Court has jurisdiction."<sup>4</sup> Efforts to include civil remedies in the DVA met with objections that, for Muslims, domestic violence proceedings fall under Syariah jurisdiction. Furthermore, Islamic authorities claimed that Syariah Law provides adequate remedies and protection to Muslim victims of domestic violence. Section 127 of the Islamic Family Law (Federal Territory) Act, 1984 (Act 303), makes ill treatment or cruelty to a wife an offence punishable with a fine or imprisonment or both.<sup>5</sup> Section 52(h) of the Act specifies cruelty to a wife as grounds for a fasakh divorce.<sup>6</sup> Given these provisions, Islamic authorities argued that a domestic violence bill applicable to Muslims was not necessary.<sup>7</sup>

Women's NGOs maintained, however, that limitations to the Islamic Family Law existed, evidenced by "frequent complaints from women and even Syariah lawyers seeking redress in cases of divorce, polygamy, maintenance and harta sepencarian (common property)."<sup>8</sup> Women's groups also argued against having one law for Muslims and one law for non-Muslims based on the experiences of legislation governing polygamy. If one law applies to Muslims and another law to non-Muslims, states are given the power to enact their own statutes, limiting uniformity among states and creating potential loopholes for circumventing the law. In the case of polygamy, individuals wishing to avoid restrictive polygamy regulations frequently move to another state where the law is more lenient.<sup>9</sup> Although Syariah Law has jurisdiction over all family matters for Muslims, criminal matters fall under

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<sup>4</sup>Ahmad: 314.

<sup>5</sup>*Islamic Family Law (Federal Territories) Act 1984 (Act 303)*. 1996. Kuala Lumpur: International Law Book Services.

<sup>6</sup>*Ibid.*: 33-34.

<sup>7</sup>Othman: 6.

<sup>8</sup>*Ibid.*

<sup>9</sup>*Ibid.*

the administration of the federal government, with criminal law applying equally to both Muslims and non-Muslims.

Therefore, attaching domestic violence to the Criminal Procedure and Penal Code enabled domestic violence to be classified as criminal behavior while ensuring applicability of the Act to all Malaysians.

After eleven years of advocating for a domestic violence bill, women's groups were successful in applying the Act to all Malaysians. However, the achievement of the DVA required concessions, which have proven to be critical to the implementation of the Act.

Under the DVA, domestic violence is not defined as a specific crime punishable by new penalties, but remains attached to definitions and procedures for hurt, criminal force, and assault. The original drafters of the Act "wanted to classify domestic violence as a crime in itself rather than simply an attachment to the Penal Code because they felt that a crime against a family member was in some ways more serious than that against a stranger."<sup>10</sup>

In the final draft of the DVA, however, this consideration was rejected, and the DVA remains attached to the Penal Code i.e. all provisions of the DVA are therefore to be read together with the provisions of the Penal Code.

This has of course serious implications on the implementation of the DVA with regards to definition and classification of the crime and the procedures for police investigations.

### **Definition of Domestic Violence in the DVA:<sup>11</sup>**

The definition of domestic violence as recognized by the Domestic Violence Act includes the following acts:

(a) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury.

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<sup>10</sup>Othman: 6.

<sup>11</sup> "Monitoring the Domestic Violence Act (1994) Malaysia, a report by WAO, Research by Laura Hebert, Dec. 1997

- (b) causing physical injury to the victim by such act, which is known or ought to have been known would result in physical injury;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (d) confining or detaining the victim against the victim's will;
- (e) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim.<sup>12</sup>

by a person against:

- (i) his or her spouse;
- (ii) his or her former spouse;
- (iii) a child;
- (iv) an incapacitated adult; or
- (v) any other member of the family.

## Marital Rape

The DVA recognises as domestic violence "compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain."<sup>13</sup> When this section of the DVA was originally drafted, women's NGOs endorsed the inclusion of the phrase "from which the victim has a right to abstain." The implications of this wording was not fully understood, as it was assumed that women had a legal right to abstain from sexual relations under any circumstances. Under the Penal Code's definition of rape, however, "sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognised in the Federation as valid, is not rape."<sup>14</sup> Therefore, a woman does *not* have a right to abstain from sexual relations unless she is divorced or judicially separated, or if she has "has obtained an injunction restraining her husband from having sexual intercourse with her."<sup>15</sup> When

<sup>12</sup> Section 2, *Laws of Malaysia: Domestic Violence Act, 1994 (Act 521)*.

<sup>13</sup> Ibid.

<sup>14</sup> Section 375, *Laws of Malaysia: Penal Code (F.M.S. Cap. 45)*. 1995. Kuala Lumpur: International Law Book Services.

<sup>15</sup> Ibid.

women's groups realized the wording of the Act contradicted efforts to achieve legal protection against marital rape, they attempted to change the wording of Section 2(C). The Attorney General, however, would not reconsider the wording of this section. Therefore, due to the DVA's attachment to the Penal Code, married women are not able to seek legal remedies for sexual violence under the Act.

## **2. Classification & Procedures for Domestic Violence:**

The implementation of the DVA did not establish domestic violence as a specific crime punishable by new penalties. Rather, criminal remedies for domestic violence are available under Malaysia's Penal Code for hurt, grievous hurt, criminal force, and assault. Section 319 of the Penal Code defines *hurt* as causing "bodily pain, disease, or infirmity to any person." *Grievous hurt* includes offences such as emasculation, hurt endangering life, fracturing or dislocation of a bone, and permanent disfiguration.<sup>16</sup> *Criminal force* is using force against any person, without that person's consent; intentionally or with the knowledge that such force is likely to cause injury, fear or annoyance to the person against whom the force is used.<sup>17</sup> *Assault* is the making of "any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person."<sup>18</sup>

Under the DVA, domestic violence offences are classified according to the following Penal Code sections:<sup>19</sup>

323 - Punishment for voluntarily causing hurt.

324 - Voluntarily causing hurt by dangerous weapons or means.

325 - Punishment for voluntarily causing grievous hurt.

326 - Voluntarily causing grievous hurt by dangerous weapons or means.

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<sup>16</sup>Section 320, Penal Code.

<sup>17</sup>Section 350, Penal Code.

<sup>18</sup>Section 351, Penal Code.

<sup>19</sup>Begum, Fawziah. 7 October 1996. "Implementing the Domestic Violence Act, 1994" Paper prepared for the "Workshop on Gender Perspectives in Family Violence" organized by HAWA.

341 - Punishment for wrongful restraint.

342 - Punishment for wrongful confinement.

352 - Punishment for using criminal force otherwise than on grave provocation.

354 - Assault or use of criminal force to a person with intent to outrage modesty.

355 - Assault or criminal force with intent to dishonour a person, otherwise than on grave provocation.

357 - Assault or criminal force in attempt wrongfully to confine a person.

376 - Punishment for rape.

426 - Punishment for committing mischief.

506 - Punishment for criminal intimidation.

Police procedures for all criminal cases are determined by the classification of a case as a **seizable** or **non-seizable** offence. According to the Criminal Procedure Code, the classification of a case as a seizable offence requires an officer to conduct immediate investigations into the facts of the case and "to take such measures as may be necessary for the discovery and, where not in-expedient, arrest of the offender."<sup>20</sup> In the event of a seizable offence, police officers may arrest an offender without warrant. For non-seizable offences, however, police may not proceed with a case without orders to investigate from the Deputy Public Prosecutor (DPP) and are not able to arrest an offender without warrant.

Of the offences offenders may be charged with under the DVA, four are classified as non-seizable offences: 323, 352, 355, and 426. Most domestic violence cases in Malaysia are classified by police as 323 offences. According to a *New Straits Times* article, of 340 cases investigated by police in Kuala Lumpur between 1 June 1996 and 1 March 1997, 268 of the cases, or 78.8%, were classified as 323 offences.<sup>21</sup> Therefore, before police may proceed with an investigation into the majority of domestic violence cases, officers must first receive an order to investigate (OTI) from the DPP. This requirement has serious implications for women seeking legal remedies under the DVA.

Criminalising domestic violence "has a powerful symbolic value as it is a clear indication of society's abhorrence of the abuse."<sup>22</sup> However important issues emerge, with the

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<sup>20</sup>Section 110, *Criminal Procedure Code (F.M.S. Cap. 6)*. 1986. Kuala Lumpur: ILBS.

<sup>21</sup>"340 reports of Domestic Violence," *New Straits Times*. 13 March 1997.

<sup>22</sup>Dairiam.

attachment of domestic violence to existing classifications and procedures for hurt, grievous hurt, criminal force, and assault.

### **Does the DVA work in reality?**

Generally, the DVA has improved the protection and state response to victims of domestic violence. The marked increase in police reports, the media interest in domestic violence and public support can be indicators that the DVA has brought about a social change. At the WAO Refuge, we have seen for ourselves the sense of safety a woman feels that she can receive protection from the courts.

Nevertheless, the WAO's monitoring of the DVA has surfaced the following issues:

#### **1. Non physical abuse of Domestic Violence**

The classification of domestic violence as assault does not take into account the differing dynamics of domestic violence. Unlike situations of common assault, women who come forward to report domestic violence have frequently endured long-term, systematic violence in the form of physical, sexual, and psychological abuse, at the hands of someone with whom they share an emotional relationship. Assault victims are generally not forced to repeatedly face their offenders, whereas domestic violence victims most often share a residence with their abusers.

#### **Case Study #1: Sarah<sup>23</sup>**

*Sarah has been married for four years. Almost immediately following the marriage, Sarah's husband began isolating her from her family and confined her to the home. Every day when the husband went to work, he locked the front gate of the house so Sarah could not leave. Sarah was never given a key to her own home. The home does not have a telephone,*

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<sup>23</sup> "Monitoring the Domestic Violence Act (1994) Malaysia, a report by WAO, Research by Laura Hebert, Dec. 1997

*despite Sarah's insistence that she be given access to a telephone. Her husband restricted her use of the television and radio, as he did not want her receiving too much information about what was going on outside the home. He also humiliated her by telling her "you mean nothing to me, you are nothing."*

*In September 1997, Sarah's husband forced her out of the house, locking the doors and refusing her entry. Sarah had no money, food or I.C. She called the police and was told to go to the nearest police station to make a report. The police accompanied Sarah to her home, but the husband wouldn't answer the door. Since the husband would not willingly permit officers to enter the home and Sarah was not under the threat of physical violence, the police told her they were unable to take action. By this time, it was getting late in the evening. The police did not offer to take Sarah to a safe place, but instead told her to sleep outside the front gate of her home. Sarah was forced to stand outside the gate all night, as the mosquitoes were very bad and she was unable to sleep. She had only the clothes that she was wearing when her husband kicked her out of the home. She was not given any food or water.*

*The next day, Sarah's husband still would not let her into the house. When she returned to the police station, officers advised her to stay with relatives and contact a lawyer. Through the advice of the Legal Aid Bureau, Sarah spoke with a counsellor at AWAM who suggested she stay at the WAO Refuge. Sarah arrived at the WAO Refuge on 17 September 1997. While at WAO, Sarah again sought the assistance of police in order to recover her belongings. When Sarah arrived at her home with the police, her husband refused to allow her entry. Police did not take action as they said that it is not within their rights to forcibly open the door. Sarah was told that since her husband did not physically abuse her, officers could only accompany her to her home or assist her in getting out of her home if she were confined. However, they are unable to assist her in forcibly re-entering her home to recover her belongings.<sup>24</sup>*

Interpreted broadly, the Act's definition of domestic violence includes physical, sexual, and psychological violence. Despite the Act's wide definition of domestic violence, the Act's attachment to the Penal Code limits legal protection to cases in which visible signs of physical injury are absent. Reports of domestic violence from victims who do not have

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<sup>24</sup>WAO case documentation, 14 September 1997.



signs of physical abuse are rarely considered serious enough to warrant criminal proceedings. Consequently, victims of psychological abuse are ineligible for IPOs in the absence of physical violence.

For women such as Sarah, remedies under the DVA are largely restricted to counselling services and relationship mediation with Social Welfare. WAO realizes that it is much more difficult for enforcement officers to verify domestic violence cases in which physical injury is absent. However, even if injuries resulting from domestic violence are slight or not apparent, "the trauma of fear, anxiety, and domination repeatedly experienced has damaging psychological effects."<sup>25</sup> WAO's experience in counselling and sheltering battered women has shown that mental distress in the form of jealousy, harassment, and isolation from family and friends often precedes or accompanies physical violence. It is not uncommon for abusive husbands to cut off access to telephones, to disallow their wives to meet with family members, and to close off access to information about the outside world, as in Sarah's case. The fact that police officers did not inform Sarah of her right to safe shelter and transportation is of concern to WAO, as it reflects a lack of seriousness accorded to non-physical acts of domestic violence. In addition, the fact that officers encouraged Sarah to return to her husband despite the likelihood that she would again be confined reflects a lack of understanding among police officers of the nature of violence, and the humiliation and fear domestic violence victims must live with. At a minimum, when women make police and welfare reports of domestic violence, it must be standard procedure to inform women of their rights under the Act, regardless of the nature of the abuse.

In addition, the classification of spousal abuse as assault seriously limits the role of the police investigations under the DVA. Procedures governing orders to investigate has led to inconsistencies and a prolonged process in obtaining an IPO.

## **2. The role of the Department of Social Welfare<sup>26</sup>**

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<sup>25</sup>WAO. 1995. *Battered Women in Malaysia: Prevalence, Problems and Public Attitudes. A Summary Report of Women's Aid Organization Malaysia's National Research on Domestic Violence*: 10.

<sup>26</sup> "Monitoring the Domestic Violence Act (1994) Malaysia, a report by WAO, Dec. 1997

In addition to the DVA's attachment to the Penal Code, a consequential development in the enactment process was the designation of the Department of Social Welfare as the principal facilitator of the Act. Due to the concerns of authorities that the DVA would be publicly perceived as tearing families apart, the role of Social Welfare was expanded to ensure that the promotion of reconciliation and preservation of the family is a priority of the DVA. In the past, expensive legal counsel was required to obtain injunction protection. Although the DVA eliminated this requirement, women are still unable to apply to the courts directly for protection. All requests for injunction orders must first be initiated by a welfare officer. Such a policy treats women as children, and takes away the power of women to make decisions appropriate for their own lives. Nowhere in the Act does it state that Social Welfare is the facilitator of the Act. The process by which the Department assumed this role, and the actors involved in the decision, is unclear. When analysing the experiences of women following the Act's implementation, the evaluation examined the implications of Social Welfare's prominent role in the enforcement of the DVA.

#### **Welfare Officer Administrative Procedures:<sup>27</sup>**

1. The officer receives a complaint of domestic violence, registers the case, and opens a file.
2. The officer interviews the complainant and receives all the relevant information Regarding the case.
3. The officer counsels the complainant.
4. If the complainant is hurt, the officer is to refer her to the police and hospital.
5. The officer is to call in the partner (pasangan) to investigate the complaint. If the partner refuses to come to Social Welfare, the officer is to visit the partner at home. The officer to compile relevant facts, verify information and begin counselling with the couple. The interview with the couple is to be recorded.
6. If necessary, the case is to be referred to a reconciliation panel (Bandan Pendamai) with a copy of the report.
7. Third-party interviews are to be called (i.e. family members). The interviews are to

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<sup>27</sup>Ibid.

be recorded.

8. If the complainant does not wish to seek an IPO, the officer is to give advice to the couple and conduct a social diagnosis. The officer holds additional discussions with the couple to try to find the root cause of the problems. A plan of action is formulated and the case is settled.
9. If the complainant needs an IPO, the officer is to provide the information regarding IPOs and, at the same time, go through steps 1-5. The officer helps to file an appeal with the magistrate's court, provides necessary documentation, and accompanies the complainant to the magistrate's court. The case is then settled.

While some women genuinely seek welfare mediation in the hopes of "changing" the behavior of her spouse or boyfriend, others have endured as much suffering as they can mentally and physically tolerate. By trying to preserve the shell of a harmonious family, the authorities end up making a deal with the abuser. Relying on reconciliation alone sends the signal that the abusers will be let off with talking to, at worst.

Social Welfare's definition of "family harmony" is unclear. Is the existence of a husband, a wife, and children under the same roof considered harmony? When encouraging reconciliation, do welfare officers take into consideration the dysfunctional nature of families in which domestic violence occurs, which not only affects the adults who are beaten but the secondary victims, such as children, who witness the abuse? Existing research strongly links experiencing or witnessing abuse as a child with being an abuser as an adult.<sup>28</sup>

Clearly, this has strong implications for the welfare of future generations. The pervasive, chronic nature of domestic violence as a source of control over women has yet to be fully understood by the state and administrators of the DVA. It is critical that when women come forward seeking protection enforcement officers are sensitive to the trauma already experienced by the victim, and do not pressure women into returning to a dangerous or oppressive environment which is harmful to themselves and their children.

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<sup>28</sup>Woroll. "Children of Battered Women: The Impact of Domestic Violence." University of Kentucky.

## **Case Study #7: Shamala**

*Shamala has been married for 13 years, and has six children. During the last three years of her marriage, her husband became very abusive, triggered by his increasing use of alcohol. The husband routinely beat Shamala and her oldest son, who tried to protect his mother from the abuse. In 1997, the domestic violence worsened in frequency and intensity. In March 1997, the husband tied up his son to keep him from running away and beat him severely. Shamala was also beaten, even though she was eight months pregnant at the time. Her injuries included a bruised eye, which was swollen shut. Shamala first made a report of child abuse against her husband. Child abuse charges stemming from this incident are still pending against Shamala's husband. Shamala also made a police report of domestic violence. However, despite her visible injuries, police closed the case for lack of evidence.*

*On 11 April 1997, Shamala arrived at WAO. On 22 April 1997, a WAO social worker accompanied Shamala to make another police report. At this time, however, police were occupied with a serial rapist case and put Shamala's case on hold. In July, Shamala returned to her father's house with her children. One evening, after Shamala's departure from WAO, her husband showed up drunk at the WAO Refuge gate, shouting, crying, swearing, and trying to climb over the wall. It is not known how Shamala's husband discovered the location of the WAO shelter. WAO called the police and the police arrested the husband, putting him in lock-up for 1 1/2 days. When the police released her husband, they told him that Shamala was staying with her father. The evening of his release from jail, Shamala's husband showed up at her father's house drunk. He was able to break the first gate to the house, and tried to enter the home. Shamala was able to escape out the back entrance of the home to get help. The police arrived, but the husband had already run away.*

*In August of 1997, Shamala and her children moved into a new home. Someone informed her husband where the family was living, and on 1 September, the husband arrived at the home drunk and yelling. He managed to enter the house and severely beat Shamala and her two oldest children. Injuries sustained by Shamala included bruises and cigarette burns*

to her arms. Eventually, the husband passed out from the alcohol and the family was able to leave. The same evening, Shamala and her children came to stay at the WAO Refuge.

On 4 September 1997, a WAO social worker accompanied Shamala to the police station to make another domestic violence report. On 12 September, the same social worker accompanied Shamala to the Subang Jaya Social Welfare office to request an IPO. The welfare officer explained the procedures and function of an IPO to Shamala. The officer took down Shamala's details, then advised Shamala to give her husband another chance. Shamala said no, since she had given him many chances over the past three years and the situation never improved. She was very scared that if she reconciled with him, he would beat her and the children again. The welfare officer then told Shamala that she must give her husband another chance because there are children involved. The same welfare officer has been handling charges of child abuse against Shamala's husband. The social worker who accompanied Shamala to Social Welfare later inquired of the welfare officer if an IPO would be obtained. The welfare officer said she would look into it only after receiving the OTI. The WAO social worker did not believe the welfare officer would have pursued an IPO if she had not specifically requested it.

On 18 September 1997, Shamala received a copy of the OTI dated 5 September 1997. Her IPO, however, was not issued until 10 November 1997.<sup>29</sup>

### **3. The Length and Cost of securing an Interim Protection Order**

The IPO process can take one day to four months during which time the women are left exposed to continued harassment and threats of violence. In monitoring these cases, WAO has found that women have been made to go up and down between the police stations and the welfare offices unprotected and at her own cost. WAO documented the average cost of getting an IPO at RM 100 ringgit - the cost of transport, food, time off from work.

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<sup>29</sup>WAO case documentation, 16 October 1997 and 11 November 1997.

Providing women with immediate protection from further injury or mental trauma must be a priority of enforcement officers and the courts. The period of time between the registering of a complaint and the court hearing is often the most dangerous and frightening for women.

A slow response also meant that the state and the community tolerated the violence and the perpetrator is even more secure in the knowledge that he can get away with his acts of abuse.

#### **4. The impact of an IPO**

Among the 15 cases WAO had monitored in 1999, 10 of the perpetrators had stopped harassing or threatening the women. This may be a good sign that that a warning does work to remind abusers that they may end up in jail. However, the 5 cases of women whose husbands continued to harass them physically and mentally, is a sober reminder of the danger and fear and the power that abusers have to wield against their wives.

The IPO reads that the named perpetrator "shall not use domestic violence" against the named woman. The IPO does not define domestic violence or the specific acts that the man may take. In one case the husband walked into the house and ripped off the telephones, in another situation, he stood every day outside her office at a "safe" distance, in most cases they call the wives and threaten them or remain silent. All of which are acts of domestic violence familiar to all victims of DV and its advocates.

Police inaction is a great concern. Upon violations of the IPO, the police do not perceive threats and non physical acts of violence as a violation. Some magistrates have started attaching powers of arrest to the IPOs, but here again it depends on the police to act on the police report by victims. WAO spend a fair amount of our time, chasing up on the police, i.e. the investigating officers to take action quickly. Besides police attitude towards domestic violence, there is a serious lack of police officers.

#### **4. Marital Rape**

##### **Case study of Annie<sup>30</sup>**

*On 25 July WAO received a call from a lawyer whose client, Annie, was just 2 weeks away from securing a divorce from her husband. Annie had moved out of the matrimonial home. The divorce was in fact a joint petition, however the husband changed his mind and started to harass and threaten Annie, culminating in holding her at knifepoint and raping her. Unfortunately a judicial separation was not filed in court, during the divorce proceedings, and thus when the wife made a police report, the police did not classify this violation as rape, because technically they were still married with no legal support of a judicial separation.*

*Annie was still under constant threat and fear, and was thinking of abandoning the divorce proceedings. WAO advised the lawyer to get an Interim Protection Order under the DVA, so that she will be able to send out a message to the husband that he cannot come anywhere near her, and that it was a court order. The lawyer was able to get a letter from a welfare officer, who was sympathetic, and see the magistrate in chambers and secure her an IPO within a day.*

While the DVA does not recognize marital rape and neither does the Penal Code, the DVA does recognize the need for a protection order. In this instance the magistrate not only issued an IPO to protect Annie, but also her children and parents. The speed in which this lawyer was able to secure an IPO is not the experience of other victims who may not have access to layers. The women groups in fact did not want to the DVA to be an ACT which requires the services of a lawyer but had wanted both the welfare and police to facilitate the protection, if not the women herself to be go to court and see magistrate with a police report and secure an IPO.

##### **Response by Women's groups to the DVA**

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<sup>30</sup> WAO case files 2000

Women's groups have acknowledged the DVA is not as far-reaching as was originally intended, due to the concessions and limitations which were agreed upon to realise the Act's implementation. However the women's groups have been monitoring and voicing their concerns as problems and obstacles emerge.

As for WAO, the organisation sits in the interagency committee on the DVA, has contributed in formulating a Memorandum<sup>31</sup>, elicited a response from the Deputy Prime Minister who is in charge of the police to review the Act, convinced the Social Welfare Department to put up our WAO pamphlets and soon to be designed posters in every Welfare office in Malaysia and have had one meeting with the Police.

WAO will continue the monitoring process and recommendations will be translated into action by further lobbying for:

- Change in the substance of the law and procedures: to include domestic violence as a specific crime in the Penal Code with separate procedures, and to institute standardized and coordinated procedures between the police, welfare and the courts
- Protection for a victim of domestic violence within 24 hours
- Increase in the police personnel dealing with Domestic Violence
- Mandated Training and sensitization programmes for the police, welfare and courts
- Lobby for budget allocations for NGO shelters.

### **Lessons learnt**

- ✓ Planners, legislators and activists who are developing services and advocating for effective criminal justice responses for victims of DV must walk through the process as if you are the victim yourself. (fill up that form, take that bus, go to court, go to the police station, try and find housing, etc)
- ✓ In formulating strategies to confront domestic violence it is vital for us to understand that in responses to assist battered women, we must emphasize the need for

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<sup>31</sup> The WCC Penang Memorandum, Reviews and Proposals for Amendments, March 1998



immediate and continuous protection for the victim (in most cases the wife, children and family members).

- ✓ While reconciling the family is not an undesirable aim, it must not be at the expense of the safety of the wife. Keeping the family unit intact must not take precedence when members are being victimized.
- ✓ Understand that victims of domestic violence will not always come to you readily, and if they do they may change their course of action.
- ✓ Welfare officers, police officers and medical personnel who face victims of violence hold the same values as others in the community, and may not believe that the family unit can be challenged and women have a right to leave.
- ✓ Protocols must be mandated, do not leave these protocols to discretion especially for the police.
- ✓ Special allocation of the national budget must be allocated to state agencies dealing with services for abused women
- ✓ Understand that violence against women is an abuse of power and control, and that women have a right to free themselves, is a life long process of education.

## **A Resource**

### **Goals of Service Delivery for Abused Women<sup>32</sup>**

#### **Direct Service**

1. To deliver services which contribute to keeping women and their children safe.

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<sup>32</sup> Framework for services for abused women, Ottawa- Carleton

2. To provide all of the information required that allows women to:
  - receive validation and emotional support
  - Develop realistic plans for their own futures
  - Receive the practical and emotional assistance required to implement their plans
  - Gain access to the practical resources they require to help themselves and their children break free from the effects of past and present abuse
3. To advocate for and create, as needed the required supports for the children affected by abuse in the family.
4. To value and build in opportunities in all aspects of service planning and delivery for peer support and self-help for:
  - survivors
  - volunteers
  - paid staff
5. To maintain a system of service delivery which is accessible to all women living in a specific community.
6. To maintain a service delivery strategy that values and promotes both experiential and professional knowledge in a balanced and respectful way.

#### **Coordination of Service and Policy**

1. To build strong reciprocal links with other community services and coordinating bodies working on the issue of violence in the family so as to continually promote and develop a complementary network of choices for women survivors of violence.
2. To ensure the coordination, consistency and compatibility of policies and practices within the agency and all of its programs.

#### **Training and Development:**

1. to ensure an ongoing education process for board members, volunteers and paid staff which:

- to critically examine personal values that contribute to violence against women
- that regularly updates the skills and knowledge base
- that supports creativity and flexibility in program design and implementation
- that keeps women's experiences central to the process
- that values and promotes both experiential and theoretical knowledge

## **Community Education**

1. To design and implement initiatives that place the issue of ending abuse in the family on everyone's agenda
2. To include a gender and power analysis of abuse in all community education initiatives
3. To involve all members of the community in the process of social change through education.

## **Advocacy**

1. To advocate with and for survivors in order to:
  - remove barriers which are preventing their escape from abusive relationships
  - change systems which do not serve the needs of women survivors of violence and their children
  - identify and strengthen the systems which do not serve the needs of women survivors of violence and their children
  - insist upon offenders accepting responsibility for their violence

## **Evaluation**

1. To ensure that all agency services remain responsive, supportive and accountable to women survivors of violence and their children.
2. To ensure that the organization is supportive and accountable to staff and volunteers.
3. To ensure that the agency involves and represents the community in which it operates.

## REALITIES OF AWIR IN THE PHILIPPINES

Roselle Leah K. Rivera  
University of the Philippines



I come here to attend this meeting as a feminist in the movement against violence against women, specifically, the abuse of women in intimate relationships (AWIR). I feel uncomfortable using the title "expert" since this term sometimes connotes some concentration of knowledge which feminists are very wary about. I remember someone said that the women who are survivors of violence, who care about the women and children being victimized, who have been active in building this movement for many years, are the experts.

Our country has a diverse population of almost 71 million people living in a land of 300 thousand square kilometers. Our archipelago of more than 7000 islands has 3 major clusters of islands, Luzon in the North, Visayas in the center and Mindanao in the South. Our diversity is seen in our more than 70 languages and an estimated 111 linguistic groups. Appreciating this context of diversity is necessary in order to better understand how complex AWIR is in the Philippines. AWIR is not only complex, it is also very difficult to address. As many advocates and direct service workers lament, addressing the problem can be really frustrating. Social change with regards to AWIR also takes a long time and we cannot expect overnight changes. Yet we work hard to make sure that the relevant steps we take today contribute to those big changes we envision in the long run.

My presentation will attempt (1) To see the social context of AWIR by sharing data of the 'big picture' affecting the lives of many marginalized Filipino women (2) To cull some insights from

these instances which can help us better understand AWIR (3) To cite the potential of initiatives in the Philippines in addressing AWIR.

*Paper presented at International Expert Meeting 2000 organized by the Asian Women's Fund, Tokyo, Japan, 7-9 August 2000.*

*Prof. Rivera is faculty member of the Women and Development Program, College of Social Work and Community Development, University of the Philippines, Diliman, Quezon City, Philippines.*



### **Defining AWIR**

In 1995, women's organizations from different parts of the Philippines involved in direct service work with survivors of violence gathered together to discuss their experiences and see possibilities in working together in addressing this serious social problem. It was then that we collectively saw the need to define domestic violence in terms of violence against an intimate partner or AWIR.

AWIR is the abuse of women in intimate relationships. In AWIR, there is the element of moral ascendancy which means that what one says, thinks or feels about the other is important and means a lot to the other. The element of trust is also an important element in this relationship.

In AWIR, there is a sexual relationship. There is an emotional connection. This is to stress that a person is whole, not only skin and bones, but also feelings and emotions.

Because of this holistic viewpoint, AWIR includes not only physical harm done by a partner in a relationship, but AWIR also sees the emotional, mental, sexual and psychological dimensions of this physical abuse.

AWIR involves physical assault, emotional violence directed to the survivor, indirect emotional violence, emotional violence using children, economic abuse, verbal abuse, and sexual abuse. It is rarely a one-time occurrence, and it usually increases in frequency and severity over time. Intimate partners may mean not only couples who are legally married. Intimate partners means partners, legally or not married, including former partners, partners whether male or female, or two persons in or in what was a dating relationship. This may include boyfriend-girlfriend relationships and couples in common-law marriage.

### The Social Context of AWIR

When we talk about AWIR, we must necessarily look at the imbalance of power between men and women. How does the Philippines fair in terms promoting gender equality? A glimpse into some data can give us an idea:



- In terms of the gender related index of the United Nations, the Philippines ranks number 70 among 104 member nations. We rank number 39 in terms of gender empowerment rank.
- The Philippine government created a Philippine Development Plan for Women in 1987-1992 and a Philippine Plan for Gender Responsive Development in 1995-2025 which were major steps in implementing the Convention for the Elimination of Discrimination against Women (CEDAW).
- Female membership in labor unions increased to 60 per cent in 1996 from 43 percent in 1993.
- Filipino women are considered to be among the most literate in Asia. The literacy rate for women in the mid nineties was 94 percent.

- The Philippine Government, through the General Appropriations act of 1995, mandates an automatic appropriation of a Gender and Development budget of 5 percent of the total budget of all government agencies and local governments.

While the Philippines is lauded internationally in the enactment of laws and policies that address women's concern, reports of both government and non-profit organizations, and even official statistics show that weak implementation render them literally inutile in protecting women and promoting gender equality.

(Philippine Baseline Report on Government Compliance to the CEDAW, 1999)

To illustrate the state of affairs, consider the following disturbing facts affecting survivors of AWIR:

The Philippine National Police Women and Children Concern Department reported a 15% increase of the total number of cases reported in 1996 during the 1<sup>st</sup> quarter of 1999 alone. The Policewomen's Desk (PWD) experience shows the poor quality of service provided to women. In 1997 alone, only 13 out of 40 policewomen went through gender sensitivity training. Only 10 PWD out of 27 even had its own logbook and 20 out of 27 PWD shared a space with other departments. ( Arugaan ng Kalakasan, 1997) How can one expect a woman to report to the police about a very experience of intimate abuse in a room full of strangers? When she is seeking assistance from someone who is not even trained in basic gender sensitivity?

Another example is the Department of Social Welfare and Development which has 11 temporary shelters nationwide. In 1997, less than 25% of the 2,430 women who sought assistance from the Bureau of Women's Welfare of the Department of Social Welfare and Development were served in government institutions. 40% were served by the community. In 1998, it was reported that only 1, 135 out of the 6,541 victims of violence against women were provided substitute home care. The concern here is that survivors of AWIR are put together with prostituted women, migrant vagrants, women from cases of trafficking and the like. It must be stressed that survivors of AWIR and their traumatized children require attention different from these other cases.



The poor quality of care is not surprising given that the total monthly cost of medical and psychiatric treatment for Filipino females is estimated to be 6 billion pesos yearly which is three times the budget allocation of the DSWD in 1997. Running shelters in a poor country is a drain in the limited resources of the government. The Philippine government spent around 48.5 million pesos in 1996 in expenses incurred for medical and psychiatric treatments at shelters. This is an amount equivalent to twice the 1997 budget allocated for the NCRFW (Yap, 1998)

In the Health sector, the Department of Health has Administrative Order 97-1B which calls for the establishment of the women and child protection units. Up to now, accounting and monitoring the cases of VAW and AWIR is invisible even if 28 units have been set up.

Many survivors of AWIR have little control of their own bodies. While there is no hard statistics to cite, many direct service workers who have been with women survivors of violence in the hands of their intimate partners share that unwanted pregnancy is found during the honeymoon phase of the cycle of violence. ( Arugaan ng Kalakasan, 1997) Thus we have women who get pregnant 6,7, or 8 times as the wheel of the cycle turns from pursuit phase, violent phase, remorse and honeymoon phases.

Figures indicate that unsafe abortion is widespread but remains hidden and ignored as a serious threat to the lives of many women. A study of the Philippine Obstetrical and Gynecological Society attributed 24% of maternal deaths in 78 hospitals nationwide to induced abortion. In 1994, records from the Philippine General hospital show that almost 10% of listed abortion were cases of induced abortion.

We cannot reduce the cost to the government, the community and the individual in terms of economic indicators alone as the most tragic and costly, not only in monetary terms, is the social cost of violence. Due to the absence of meaningful parameters to measure the social costs, this is more often than not, a neglected field.



## **AWIR and the Legal Arena**

In the Philippines, there is no specific law on Domestic Violence. However, we have the Revised Penal Code where an abuser can be held criminally liable for acts of slight physically injuries to murder to parricide, using various articles under this law.

Feminists have for a long time now been very vocal against this law as not only limiting but even dangerous for AWIR survivors. This law was not meant to address AWIR in the first place, thus, it is unable to protect women victims against their abusers and it is also unable to prosecute partners who violate women. Unlike two strangers engaged in a fight in a street corner, a battered woman requires emotional support, support systems for herself and her traumatized children. These two cases are definitely very, very different cases.

Another instance is that in the Family Code of the Philippines, one-time incidents of physical battery are dismissed since the courts often require more than 1 incident to be proven. "Repeated physical violence" is one drawback. Are we saying that a woman who was beaten black and blue once needs to be beaten a second time to be able to get justice?

In 1997, the interpretation of psychological incapacity in the Family Code was further made complex. A psychologist or a professional was required to testify to prove cases of the broad term 'psychological incapacity'. Many women cried foul to this move. How could a poor unemployed woman kicked, slapped, boxed in the face for many years, whose children had not eaten for many days, stigmatized by her neighbors as a home breaker, afford the services of an 'expert witness' like a psychologist? Taking petitions to court and sustaining legal action, the transportation costs, child care costs, the litigation costs are all mind-boggling as all these require considerable resources for an ordinary woman in the community. The law becomes a law for those who cannot afford justice.

Republic Act 8369 or The Family Courts Law specifies the creation of a special court whose jurisdiction includes cases of Domestic Violence. It is now year 2000 and similar to many

Filipino laws passed, the implementing rules and regulations of this Act has not been fleshed out.

### Efforts to Push a Progressive Agenda



At present, there are many bills on domestic violence pending in both the Senate and Congress. One bill which progressive women's groups are pushing is the Anti-AWIR Act (Senate Bill No.1458 and House Bill No. 6750). The Anti-AWIR bill recognizes the prevalence and distinct nature of abuse against women in intimate relationships such as marriage, cohabitation, sexual or dating relationships. It emphasizes that every act of

abuse has various dimensions. For example, if a man wastes income of the family on cigarettes, vices, alcohol instead of the needs of the family like food, it may be at the surface economic abuse.

However, if we look closer, the disruptions this irresponsibility causes in the family makes it also have dire psychological and emotional consequences. These various dimensions are interrelated and not separate.

Every act of abuse has various dimensions. For many Filipinos, sex is not separate from love. A woman's body is not separate from her brain. Our brains are not separate from our hearts.

As was mentioned earlier, most women survivors of violence in intimate relationships are intimidated by the court system as poor women cannot access the courts because of the costs for an unemployed and powerless woman. The Anti-AWIR bill has a provision for a Barangay Protection Order (BPO) issued by a Conciliation Committee after due hearing and this may last for 6 months or permanently. This is seen as an opportunity for the hundreds of women in poor communities who we have seen to shuttle back and forth seeking for assistance and are unable to because the Barangay Captain ( the elected leader in the community) is a drinking buddy of the batterer, the police station are all men who send women back to the barangay, or the police station is very inaccessible and so on.

At present, all the pending bills on Domestic Violence have been consolidated into a "Substitute Bill" entitled the "Anti-DV Act of 1999." According to a report by the Women's Legal Bureau (WLB, 1999), KILOS KABARO, a network of women's groups who work closely with battered women in various arenas, criticized this other bill heavily mainly because the intimate relationship factor was swept under the rug meaning that this substitute bill covers spouses, former spouses, relatives including step parents and step children, even household help as well as relatives living together or not. The needs of women in this kind of violence are different from the needs of other victims because of the character and context of the abuse, too. The WLB report also stated that covering other forms of violations, especially those happening against men, confuses the context of gender inequality.



### Current Responses and Gaps

To date, the Philippine women's movement, a very vibrant movement in the world, has been attacking AWIR on all fronts. When I say women's movement, I mean feminist NGOs, grassroot women's organizations, women in academe, women politicians in elected posts and women leaders in the communities. These fronts, in a nutshell, are: (1) research (2) direct services as shelters and crisis centers (3) policy advocacy and legal reform and (4) consciousness raising efforts.

It is the last front that is wanting. Consciousness raising efforts is one arena which only a handful of progressive feminist groups are pushing. These include efforts to conscientize women, organize and build leadership among women in communities, build networks, and mobilize women around the issues for public interest such as the safety of women in their homes. Consciousness raising includes feminist counseling for survivors of AWIR and incorporating a constellation of services for women in communities, i.e. women-friendly clinics, building community-based support groups and using popular theatre and other art forms to conscientize women (Rivera, 1999).

The limits of government bureaucracies are clear. Efforts to address AWIR become inutile because of the tendency to isolate violence against women such as AWIR from other forms of oppression such as poverty and powerlessness, the inability to see the structural roots of VAW and AWIR in anti-women socio-economic policies as well as the lack of depth in understanding the interconnections of culture and seeing and treating women as sex objects.

In this age of high technology, microchips and laser beams, e-mail and internet, fast cars and movies with special effects, voyages to Mars and the moon, it is indeed disturbing that human behavior has not evolved at a parallel pace.

Prevention, and in the long run, elimination of AWIR means not simply increasing logistics or budgets. It requires a transformation in thinking, in consciousness, in perspective. This perspective listens not in a token way, to the voices of vulnerable sectors. This perspective is essential in demystifying the relations between men and women and seeing the need for human-centeredness in relationships. Then, we can remove our rose colored glasses and wear a better lens to see the realities of AWIR.



## DOMESTIC VIOLENCE - A CASE STUDY ON SRI LANKA

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This paper is based on a study on domestic violence done by Kamalini Wijayatilake and Camena Guneratne for the Centre for Women's Research (CENWOR). The study was undertaken for International Women's Rights Action Watch – Asia Pacific (IWRAP-AP) for the project *Monitoring Progress in the Elimination of Discrimination against and the Achievement of Equality for Women*. The author would like to thank the Centre for Women's Research for permission to use this report.

### Introduction

Sri Lanka is an island situated to the south east of India with a population of around 17.6 million people. It is a multi-ethnic and multi religious country. The main ethnic groups are Sinhalese, (74%) Tamils (18%), and Muslims (7%). A majority (more than 75%) are below 40 years and around 22% of families are female headed.

Progressive social sector policies have had a considerable impact on reducing the infant mortality rate (19.3 per 1000 live births) and the maternal mortality rate (5 per 1000 live births) within the past five decades. Life expectancy for women (71.7 years) is higher than that for men (67.8) and the sex ratio of the population is 104 males to 100 females. Higher levels of education and employment aspirations have contributed to the low birth rate. However, 10.4% of maternal deaths are caused by abortions which are mostly carried out illegally. Abortion is a crime in Sri Lanka, unless the pregnancy appears to endanger the life of the mother. Therefore most abortions are self inflicted or conducted under poor

supervision and insanitary conditions by unqualified persons and are detrimental to the mental and physical health of the women.

Sri Lanka has a high literacy rate (83% for women and 90% for men) mainly due to progressive education policies and parents' ambitions to educate their children irrespective of their sex. More boys than girls are enrolled at primary levels, but girls outnumber boys at secondary and higher education levels. However a sector wise analysis shows that in the plantation sector literacy levels of women fall far below that of men.

However, these high levels of literacy and education have not translated themselves into greater participation of women in political and management spheres. Despite obtaining universal adult franchise in 1931, and women entering politics the same year, there is no significant increase in women's participation in Parliament which remains at 5%. Their participation is even lower at local government politics (less than 2%).

Similarly, less women tend to occupy management positions than men, both in the government and private sectors. Gender stereotyping of professions and vocations have served to marginalise women into 'feminine' spheres of employment or to being under employed, remaining in unskilled or semi-skilled jobs. Although the female labour force is half that of males, women are employed in greater numbers than men in the tea industry, middle east employment, in domestic service and in the garment industry where they make a greater contribution than men in these three key areas of foreign income generation. One fifth of the female labour force are unpaid family workers, while a large number of women workers are represented in the informal sector where their economic contribution is invisible. This limits their access to credit, technology and training while their rights as workers are not recognised thus making them vulnerable to exploitation by unscrupulous employers and sub contractors. In the agro - based economy, Sri Lankan women play a vital role and more than 40% of the workers are women. However, agricultural extension services are not easily accessible to women farmers, and due to the discriminatory laws which apply in this regard, women in State land settlement schemes are denied the equal right to land that is enjoyed by women elsewhere in the island.

## **The legal and institutional framework**

The Sri Lankan Constitution in Article 12 guarantees equality for women, declaring that all persons are equal before the law and are entitled to the equal protection of the law. It also says that no citizen shall be discriminated against on certain grounds including sex. The Constitution also provides that special provision may be made by law, or executive action for the advancement of women, children and disabled persons. The Article 11 of the Constitution says that no person shall be subjected to torture, or to cruel, degrading or inhuman treatment. These constitutional guarantees are legally enforceable, but only against the State. Therefore in the private sphere, whether it be within the family or in employment, these rights cannot be enforced.

Sri Lanka, being a multi-cultural society, is governed by several personal laws which apply to different ethnic and religious groups. Since these laws pre-date the Constitution, they cannot be challenged as being contrary to these constitutional principles. Therefore, women whose rights within the family are governed by their personal laws often do not receive treatment that is equal to the men. For instance, Muslim women do not have the same inheritance rights as their men, while a Sinhalese widow governed by Kandyan law does not have the same right to inheritance as that of other Sinhalese women or men, and a Tamil woman governed by the Thesawalamai law, unlike her male counterpart needs her husband's permission to transfer her property. Efforts to bring about a uniform code of personal laws have failed due to pressure from religious groups.

In the public sphere too, the guarantee of equality enshrined in the Constitution is often not applied to women. For instance, due to patriarchal concepts entrenched in the legal system, administrative regulations on citizenship obstruct the foreign spouse of a Sri Lankan woman from obtaining citizenship, although the same condition does not apply to the foreign spouse of a Sri Lankan man. A Sri Lankan woman is not entitled to pass on her citizenship to her children who must take the citizenship of their father. These limitations are clearly unconstitutional and must be addressed.

Sri Lanka ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1981. It is also a Party to the Vienna Declaration on the Elimination of Violence Against Women (1993) and has subscribed to the Beijing Declaration and the Platform for Action (1995). Therefore the Sri Lankan government has incurred international obligations to address all aspects of violence against women.

In 1993 the Government of Sri Lanka adopted the Women's Charter as an expression of State policy with regard to women. The Charter states that "gender based violence is a violation of human rights and fundamental freedoms". Further, Article 16 of the Charter states that "The State shall take all measures to prevent the phenomenon of violence against women, children and young persons in society, in the workplace in the family as well as in custody, in particular such manifestation of it as rape, incest, sexual harassment and physical and mental abuse, torture and cruel, inhuman or degrading treatment." Therefore it is obvious that the State has acknowledged its position vis-à-vis violence against women. However, the Charter is merely a policy document with no legal force and is limited to this extent.

### **The problem of violence against women in Sri Lanka**

During the past several years there has been a significant increase in the incidence of violence against women. This could be due to several factors. For instance, the continuing civil war in the north and east of the island and the southern insurrection of the late nineteen eighties has contributed to making Sri Lanka an increasingly turbulent and violent society. Violence against women has become an aspect of this environment. It has been observed "Sri Lanka suffered the ravages of a civil conflict in the South of the island during the years 1987 to 1990. In addition the on-going armed conflict in the North and East of the island for the past decade is leaving its indelible mark in terms of changing social attitudes to the value of life itself. It is inevitable that women and children would be adversely affected by situations of such conflict. These civil and armed conflicts have helped to create an environment where the violation of women's human rights in terms of violence against women is marginalised and submerged in the light of the right to life



itself."<sup>1</sup> A disturbing factor in the recent past has also been the violence and sexual harassment of women in the context of political activity in the country.

Under the circumstances the issue of violence against women began to surface as one which requires urgent and consistent action. Public activism regarding the issue and the creation of greater consciousness raising has allowed for more space and opportunity to articulate the problem, thus leading to increased reporting than before. It could also be the result of more incidents taking place than before. Lobbying by activists and concerned groups resulted in significant changes being made to the century old Penal Code in 1995. These amendments created the new offences of incest, trafficking and sexual harassment. They also increased penalties for rape and recognised the offence of grave sexual abuse which does not amount to penile penetration. However, the new law failed to recognise marital rape and to legalize abortion (at least in circumstances of pregnancies through rape and incest and foetal abnormalities). Marital rape was made justifiable only in cases of judicial separation and it has been observed that "this again is seen as a result of the strong religious lobby which has always had clout with whatever government that has been in power."<sup>2</sup> Although ad hoc research has highlighted the prevalence of domestic violence, the criminal law is yet to recognise domestic violence per se as a crime.

### **Domestic violence**

Unlike offences such as rape, sexual harassment, incest and trafficking which are visible and obviously impinge on society as a whole, domestic violence is a problem which is usually hidden from the public view. It is therefore an issue which is largely unrecognised and unacknowledged in Sri Lanka. Studies have been conducted on the problem by several NGOs including CENWOR and Women in Need and also by individual researchers. NGOs have also provided assistance to battered women in the form of shelters, counselling services, etc. However, no steps have been taken to address the issue at

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<sup>1</sup> See, Kamalini Wijayatilke, *Violence against Women, Review of a Decade*, in Facets of Change: Women in Sri Lanka 1986 – 1999, CENWOR, 1995 at page 296.

<sup>2</sup> Kamalini Wijayatilke, *The response of the SAARC countries to international efforts to combat abuse of women and children – the Sri Lankan experience*, (1998)

macro level either by the State or by NGOs, and recognition has not been given to the fact that the problem is one which impinges on society as a whole.

Reports of domestic violence have been consistently increasing over the years as can be seen from both Police statistics and the incidents reported in the media. The following police statistics indicate the rise in reported levels of domestic violence.<sup>3</sup>

Offence	1990	1991
a) Total number of cases of assault by husbands on wives	13,368	19,656
b) Total number of cases of harassment, insult and intimidation by husbands of wives	27,611	32,512

Domestic violence is a form of violence which disproportionately affects women rather than men, and results in a further violation of other basic human rights such as the right to life, to personal security and liberty, and freedom from cruel, inhuman and degrading treatment. Although the Constitution guarantees equality between the sexes, the ground reality does not reflect this position. Social and financial independence is still an unrealised dream for most women, particularly those from the more disadvantaged socio-economic strata of society, thus making them totally dependent on a male member of the family, be it a father, brother, husband or even a son. This dependence in turn traps them in situations of violence from which they are unable to break away for many reasons. As a result of social norms which condone such violence and accept it as an unfortunate but inevitable aspect

<sup>3</sup> Source – Canagaretnam I T (Deputy Inspector General of Police) 1992. *Role of the Enforcement Authorities in the Prevention of Violence against Women*, paper presented at the Women's Bureau workshop on Violence against Women, Colombo – quoted in Wijayatilake, *op cit* note 1 above.

of a woman's life, there is also a lack of support, if not sympathy from family members, law enforcement agencies, social service organisations, and others, which further aggravates the dilemmas faced by the latter.

The NGO sector has taken some steps to address the problem of violence against women, particularly domestic violence. Women in Need, the first centre for battered women was set up in 1987 to provide legal aid and counselling to victims, and other NGOs such as the Women's Development Centre have also followed up with similar support services. However, NGO activism alone is insufficient to appropriately address the problem and it is necessary to lobby the State to fulfil its national and international commitments to protect from all forms of violence. In order to do so the depth of the problem must also be investigated and documented. It is for these reasons that CENWOR embarked on a comprehensive study of the issue which began with the report on which this paper is based.

### **The definition of domestic violence**

For the purposes of the study which was carried out, however, domestic violence has been defined as follows. It is violence which takes place primarily within the home and among members of a particular household. It includes both sexual and non-sexual forms of violence. The sexual violence can range in degree from rape (both marital and non-marital) to other forms of sexual abuse, molestation, harassment and incest. The non-sexual violence can take the form of physical, verbal and psychological abuse.

It must be emphasised that for the purposes of the study verbal and psychological violence was specifically excluded, although it surfaced in some of the primary and secondary data. The reason for this is that incidents of psychological violence have not been consistently reported and some of the researchers who conducted the studies quoted in this report also commented that it is difficult to identify and analyse.

## **Methodology and scope of the study**

The study was done on the basis of an analysis of both statistics and previous reports done on the issue by others. Statistics were compiled from key institutions where victims of domestic violence would seek help and redress, particularly state-sponsored institutions. ie. hospitals, police stations, courts and also NGO maintained crisis centres. Statistics were obtained on the incidence of domestic violence, its nature, the conditions under which it was inflicted, etc. The researchers collaborated with other NGOs to obtain the statistics.

The data was taken from a particular administrative district, i.e. the Kandy District of the Central Province. This District was deemed appropriate as there is an ethnic representation reflecting the island's overall population and there is an urban-rural mix including the plantation, agriculture, industrial and service sectors of the population as well.

The study also made use of several ad hoc studies on domestic violence done by sociologists, a psychologist and a physician. These studies are cited at the end of this report.

## **The frequency and nature of domestic violence**

### *The primary data*

As was stated earlier, the study focused mainly on physical violence, although verbal and psychological violence is also addressed to a certain extent. While the latter is also a reality, we were unable to obtain sufficient data on the matter. The data that was made available to us by the health authorities carried only information regarding physical injuries. There was an item from one category of hospitals termed "mental strain" which could be caused even by verbal or psychological abuse, but this is unclear. The police data carries an item defined as "scold and threaten" which seems to cover the other forms of violence.

The statistics obtained from these institutions covered a wide range of mild to serious physical injury and included a category termed "mental strain". The causes of the injuries have been identified as assault, pushed, stabbed and slashed, burnt, drank poison, rape, marriage without approval, suspicion, not reported. This classification based on the information available is rather ambiguous as some of the items describe the way in which the injury was inflicted and others focus on the possible reason why it was inflicted. The perpetrators identified cover a wide range of people, both male and female. However, in most of the cases the perpetrator is either the husband or not reported.

In the month under review, 39 cases were instituted in courts in which women were the complainants or victims. In four of the cases the women had cited spousal violence as grounds for wanting divorce.

The previous studies used for this report which consist to a great extent of narratives and interviews with victims gives us a picture of the environment in which the violence takes place.

One study begins by commenting on the difficulty of interviewing women on the issue of domestic violence. It observes that there was reticence and hesitancy on the part of the women to reveal the truth to an investigator. They were unwilling to discuss an issue which they considered extremely private and there was also a tendency to protect their husbands/partners. Further, although at the beginning, the study was intended to cover women from all income groups, the final study had to be confined to women of a low income category, as middle class women generally refused to participate in the survey. The reticence of women due to shame and embarrassment and/or the fear of becoming involved in the legal process is a factor to contend with and which contributes to the perpetuation of the problem.

This study which covered a sample of 200 women found that 60% of the total number of women interviewed had been subject to violence during their marriage or co-habitation and 98% of these women had been battered more than once.

Another study which was carried out in four locations throughout the country and covered 515 households, states "If the responses of the women were indeed accurate, there would be an incidence of domestic violence of 54% in Colombo, as much as 71.2% in Halmillewa, of 60% in Nochchiya and 72.2% in Pitakanda. These percentages are outrageously high and cannot be taken as correct but also must not be entirely ignored".

A third study is a study of battered wife syndrome by a general medical practitioner and covered 800 married women. This report defined a battered woman as "any woman who reported having been physically struck by her spouse" and further divided this category into two sub-categories, namely, women whose battering was regular and frequent and those whose battering was a one off occurrence. Here too verbal and psychological abuse was not specifically addressed though it was touched upon. Eight hundred married women were included in the study. Some of the important points in the report are highlighted below.

The study found that 27% of women had experienced battering in their marital relationship. Of these 9% had experienced severe battering and 18% had experienced it as a one off occurrence. The author points out that "these results show that battering as a marital experience of married women is fairly common. It should also be highlighted that this experience could exist at two levels of severity. For each woman with severe battering, there were two with battering whose experience was that of one-off occurrence". It was also found that nearly half of the sample was battered almost daily while the rest had been battered either weekly or monthly in equal proportions. Having discussed the statistical data the author observes that there is a "possibility of a certain degree of marital violence as a statistical norm in the community..."

A study which covered over 1000 persons both female and male, addressed the frequency of the abuse in the first stage of the opinion survey and says that "As for wife beating *per se* what the statistics seem to suggest is a generally high incidence of it in the society. The fact that 67% of the sample knew at least one victim, 55% had knowledge of a minimum of three and 33% could think of at least six can be interpreted as a fairly serious situation, given the fact that wife beating is "classified" information which many women keep to

themselves". The study further observes that "the fact that 83% of the sample said that there were at least one or two wife beatings in their areas shows that very few communities were free from this malaise. It is worthy of note that of the 16.5% which said that it was not prevalent in their areas, 10% was from the two middle class communities of the sample. Attention has been drawn to the fact that these people are the most successful in pursuing a 'closed door' policy with regard to wife beating".

Both the primary and secondary data gives a picture of the kind of violence inflicted on women. The data obtained from the hospitals, police and courts cited above indicate the kind of injuries suffered by women. The secondary data gives us some idea of how such injuries may have been inflicted.

According to one study, 51% of the women said that weapons were used on them. These include bits of wood, broken furniture, knives and daggers.

This study also looked into the issue whether domestic violence took place when women were pregnant. It found that 95% of the women interviewed had children and of these, 42% said that they had been battered when they were pregnant. Analysing the cases cited, the study concludes that the beating appeared to be the result of the man's unwillingness to accept the fact that pregnancy and child caring gave his wife less time to perform her traditional duties towards him. On the other hand another study concludes that "pregnancy induced battering was rare".

The studies also found that verbal abuse was reported more frequently than physical abuse. However, as mentioned earlier none of the four studies focus comprehensively on psychological and verbal abuse. Therefore we are unable to find out the levels of occurrence or intensity of such forms of violence. However, this is no less a reality and it is probable that the frequency of occurrence and intensity are as great or greater than physical abuse.

## **The causes of domestic violence**

### *Immediate causes:*

The statistical survey provides some of the causes for the violence inflicted on the women.

- Marriage without approval
- Suspicion
- Family dispute
- Illicit relationship with boy friend
- Alcoholism
- Breach of promise
- Nothing
- Not reported

This data indicates the immediate cause for the violence or the factor which precipitated it and provides some insights into social and family attitudes towards women. For example, "marriage without approval", "illicit relationship with boy friend" and "breach of promise" reflect social norms regulating the sexual behaviour of women. It is not clear what "suspicion" and "family dispute" really indicate but here too it is probable that there was suspicion that the woman was behaving in a manner inconsistent with social and family expectations or that she was at the receiving end of some other kind of dispute. Alcoholism of the husband or the male figure in authority is also a significant cause of violence. "Nothing" has also been cited as a reason, indicating that arbitrary and irrational violence could also be inflicted. It is significant that "not reported" is cited in many instances indicating that women are reluctant to reveal and talk about either the reason for the violence and/or the perpetrator. Therefore in the environment of a formal institution, women are often not articulating the complete picture relating to their injuries to the institutions concerned. A significant factor to be noted is that dowry does not appear to be a major cause of domestic violence.



The other studies also report similar causes for the violence:

- women's household chores
- financial matters
- matters concerning children
- extended family situations
- sex
- low self esteem of the man
- no specific reason
- overcrowded living conditions and the stress caused by this
- lack of education of the victim – it is said that “this study cannot conclude that a relationship exists between lack of education and the presence of domestic violence”.
- Alcoholism – it is said that “alcoholism seemed closely associated with violent behaviour”.
- Employment outside the home –one study suggests that employment of women outside the home and the breakdown in the traditional family pattern and changes in gender roles may also be a factor in precipitating gender violence.

### **Underlying causes**

Although the immediate precipitating causes for violence inflicted on women have been provided in the primary data and to some extent in the secondary data, it does not give us a complete picture of the underlying environment which condones and perpetuates domestic violence. This includes social, community and family attitudes towards women and what was expected of them, perceptions of marriage and the role of husband and wife within that marriage. The secondary data provides some insights into these factors for it goes beyond the mere compilation of statistics and includes narrative accounts and the perceptions of the people involved in the situations. These underlying causes which are by and large rooted in socio-cultural norms will be discussed in this section.

**Expectations in regard to marriage, children and family** - The studies indicate that violence can be triggered off when a woman fails to live up to the man's stereotyped expectations of her role as a wife. Examples of this are when the men believe that the women were not performing their household tasks, mis-managing the household money, or not caring for their children. The extended family situation and sexual relations between the woman and her husband could also precipitate violence.

**Unequal power relations within the family** – Perceptions of gender roles within the marriage were also a factor in regard to domestic violence. Social norms maintain that the man is the head of the household and the figure of authority. A challenge to this authority could precipitate violence. In Study A one woman describes her tendency to “talk back” to her husband and being beaten as a result.

**Socially accepted forms of violent behaviour** – It is anomalous that acts of violence which would not be tolerated outside the home or which, if directed at any other person than a wife or partner would incur severe legal sanctions, appear to be quite acceptable in a domestic context. Such behaviour is tolerated by the community and by society at large. Many women described how neighbours and relations came to their rescue or gave them support in other ways, but do not mention that any form of disapproval was expressed by them. There is also a perception that domestic violence is a purely private matter which does not invite intervention by outsiders. These factors will be further discussed in the sections below.

**Perceived biological needs of men** – The discussion above, of violence inflicted on women as a result of male demands for sex or because of sexual jealousy reflects society's tolerance of the biological “needs” of men. Similarly, male resentment at lack of attention from their wives during the latter's pregnancy also triggered off violent behaviour. This notion of a man's “right” to sex and control over women's sexual behaviour is reflected in the criminal law of the country which refuses to recognise marital rape as a crime.

The dependency of women on men – Most of the women in the studies either could not or would not leave their abusive spouses/partners for various reasons. It is generally assumed that women do not break free of domestic violence primarily because of financial dependence on the man. However, this assumption has been questioned since the studies found that women who were financially independent were also not making attempts to break free of the violence.

**General patriarchal attitudes and practices** - The general patriarchal attitude which exalts the male as the superior and dominant figure is probably the underlying reason for a great deal of domestic violence. In Study A, for instance, a woman described how her husband was unable to work due to a heart ailment. She stated that the depression caused by this disability made him violent. Another woman stated that she felt that her husband beat her because he felt intellectually inferior to her. Further, a large number of women stated that they were beaten for no specific reason or for a variety of reasons.

## **Conclusion**

In conclusion, from a study of the information available it appears that there are a diversity of reasons and factors which precipitate such violence either by the husband or some other male relative. However, it must be noted that assault and battery are crimes, which carry heavy penalties. If the men involved in the situations discussed in the various studies and the primary data had inflicted such violence on anyone other than their wives or partners or other female relatives, the legal processes would have been immediately activated. The fact that they can subject these women to such gross abuse with impunity constitutes a serious breach of the fundamental rights of the latter. The rights of the women are violated not only by the men involved, but also by the State which fails to give them the equal protection of the law. These women are excluded from the legal protection which is afforded to others. A society and community which condones such violence and accepts it as justifiable is also guilty of the violation of the rights of women.

## **The effects of violence on women**

The impacts which the violence has on the victims is documented in the studies. The physical impacts can be inferred from the nature of the physical injuries suffered by the women as reported in the studies. The mental and psychological impacts are recorded in the secondary data which contains interviews with the victims. However, the statistical data too provides some insights into the effects on women. The data from both the hospitals and the police cite "mental strain" as one of the injuries suffered by the women. "Drank poison" is also cited as an injury in the hospital data indicating that women have been driven to suicide as a result of being abused. The following table provides statistics in this regard.<sup>4</sup>

	1987	1988	1989	1990	1991
Number of cases of suicides and attempted suicides by women due to disputes involving their husbands / partners	172	197	201	204	210

The psychological impacts on women as reported in the studies show that most victims considered tolerance and silence to be the most appropriate response to the situation and they rarely confided in anybody about it. There are several reasons for this reaction. Firstly, they did not expect to be believed. If it was a question of their word against the man's they felt that the man's word would be accepted. It was also found that women were ashamed to talk about their experiences and were also afraid of further violence if they did. Therefore fear of the abuser is a significant factor.

The presence of the children was also a significant factor in ensuring the silence of the woman. There was a general feeling that children should grow up with both parents. The study observes that a "sincere concern for the children was brought out quite clearly in the study".

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<sup>4</sup> *Op cit* note 2.

Social norms instilled in the woman also played a significant role in her reactions. Women felt that they were judged by the way they performed their functions as wife and mother and they were concerned about the way in which they were viewed in these roles.

These studies show that by and large women are unable to break free of the violent conditions under which they live. As pointed out in the studies financial dependence on the man is not the only or even the main reason for this. Social pressures imposed on them and their own perceptions of their roles as women and as wives and mothers appear to prevent them from reacting affirmatively to the situation. Further, their own personal feelings towards their abusers also inhibit them from taking action which may impact adversely on the latter. Reticence out of a sense of loyalty to the marital partner was among the reasons for their acceptance of the situation.

#### **Legal, social and institutional problems in addressing the issue of domestic violence**

At all levels there are barriers in place which prevent women from receiving adequate attention, assistance or redress in regard to domestic violence. Some of these are discussed below.

#### **THE FAMILY, COMMUNITY AND SOCIETY**

The sections discussed above illustrate the socio-cultural norms which condition all segments of society into accepting a hierarchical system of gender relations in which the male is the figure of authority, dispensing discipline and justice towards women. Study D has found that these perceptions cut across all boundaries of class, education and income levels, and employment status. It is ironic that women often appear to subscribe to these views even more than men do. The perceived obligations of women towards their family, the community and society at large also play a part in trapping them in these conditions.

The problem of domestic violence cannot be addressed, unless and until these social attitudes and perceptions towards the problem undergo a radical change. At the micro level women are not receiving support, whether moral or otherwise, or protection from violence, at the point at which they need it most, i.e. from their families and communities. Study C found that "moral support was not forthcoming for the majority of victims and parents and siblings were the commonest sources. Material support was not available for the majority of the victims and where it was available parents and siblings provided that too".

At the macro level, society at large is perpetuating the predicament of women by its tacit acceptance, both in the abstract and in concrete instances, that being beaten is an inevitable aspect of a woman's life.

## **HOSPITALS**

As mentioned earlier cases of serious injuries continue to be referred to the main hospitals. However, even if a severely injured woman is given health care by the State, there does not seem to be any special attention being paid to the cause of her injury particularly if it appears to be one which would amount to domestic violence. The level of awareness of the issue among medical practitioners appears to be inadequate. Further, given the constraints under which doctors in the State hospitals work, it is unrealistic to expect them to do very much more than treat a woman's physical injuries. They do not have the time, training or facilities to address the root cause of her problems except to refer her for psychiatric treatment. None of the health care institutions provide counselling for women victims of violence, except in the case of the psychiatric ward of the General Hospital. Here too, a woman would be given assistance only if she is referred to as a psychiatric patient. Hence, women victims of violence who do not conform to this "definition" will have no trained counselling support from the State health sector. Our primary data also reveals that hospitals do not maintain adequate records and this hinders progressive action that could be taken if the situation is properly documented and thereby understood

Support for victims of domestic violence must be provided not only by hospitals but also by individual practitioners. Medical assistance to treat both physical and emotional injuries, counselling and legal advice should be made the responsibility of hospitals in order to give effective help and support to victims. Further, medical officers should be the first link in the chain which provides legal redress and assistance to such victims..

## THE POLICE

The problems which have been identified with the Police in relation to domestic violence is that of ineffective law enforcement. Although the law does not deal with the issue of domestic violence *per se* the criminal laws of the country as set out in the Penal Code contains provisions which would address the situations. These legal provisions will be discussed below.

However, in spite of the laws which can be invoked to handle this problem, the Police do not appear to be perceiving domestic violence in the same light as violence committed in a non-domestic context and are downplaying its significance and gravity. Further, unlike other acts of violence which are a public issue, the Police view domestic violence as an essentially private matter in which they should not interfere. They do not seem to recognise that violence in any context is a breach of the criminal laws of the country and must be dealt with in the same way. This explains their tendency to "mediate" between the parties and persuade them to "make up their quarrels". They fail to understand the dangers, both physical and psychological, which are a reality in the lives of victims and as a result the necessary support is not forthcoming. This factor must be addressed by educating and sensitising the Police to begin with, as no progress can be made without a drastic change in attitudes. Strengthening the institutional infrastructure of the Police, by training them to effectively handle the situation and by setting up special units in Police stations to deal with them is also vital. The Women and Children's Desks in Police Stations were in fact set up for this purpose but there is much room for improvement.

## THE LEGAL SYSTEM AND THE COURTS

In keeping with State commitment at international level, and in response to activists' lobbying, amendments were made to the century old Penal Code in 1995. This exercise criminalised incest, trafficking and sexual harassment while enhancing penalties for rape. (this will be discussed further in this report). However, as observed by one researcher<sup>5</sup> "The law in its present application affords no protection for women victims of spousal abuse. Although the abuser could be prosecuted under the Penal Code for causing grievous bodily harm, domestic violence per se is not identified as a punishable offence. There is no provision under the existing law, for the recognition of the offence of marital rape either. Only in instances where divorce proceedings have been instituted can a wife obtain a restraining order against the abusive husband. As such, a married women has no protection against the violence of her husband. She is prey to battery, physical and mental abuse without any hope of redress. Most often such women feel humiliated and inadequate and thereby refrain from seeking assistance." The researcher further observes "On the other hand even if recourse to justice is available, most women lack the opportunity or the awareness to seek relief. Very often, women perceive that the underlying cause for violence lies with them or that the fault is theirs. Deeply ingrained social norms, attitudes and patriarchal values serve to perpetuate these perceptions, thereby undermining a woman's right to be free from violence in her own home environment."<sup>6</sup>

There is currently a debate among NGO activists, the Ministry of Women's Affairs, the UN Rapporteur on Violence against Women and other concerned groups as to whether domestic violence legislation should also be introduced either as a separate piece of legislation or as an amendment to the Penal Code. However, there is a need to address the issue not only as far as legislation is concerned but also in spheres such as legal and other forms of aid to victims, public education and awareness of the problem. Apart from legislation mentioned above, no other positive action has been taken by the State to do so. The primary reason for this inertia is the fact that domestic violence is considered to be essentially a "private" family matter which is not the concern of the State or society at large.

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<sup>5</sup> *Op cit* note 1 at page 297.

<sup>6</sup> *Op cit* note 1 at page 298.



This attitude overlooks the fact that, violence in any context is covered by the criminal law of a country, domestic violence is no less an infringement on the rights of women than any other form of violence and the State has both national and international obligations to protect its female population and uphold their rights.

As mentioned above the law does not criminalise domestic violence *per se*. However, the Penal Code contains several provisions which would cover the offence of domestic violence, for example, those of causing hurt, wrongful restraint and wrongful confinement, criminal force and assault. The Penal Code was amended in 1995 and the issue of sexual violence against women was specifically addressed in the amendment. The offence of rape was re-defined and punishments enhanced, and offences such as incest, sexual harassment and grave sexual abuse were introduced. To some extent these new offences can also be used to address the problem of domestic violence and bring to book several categories of offenders.

However, the proposal that marital rape should be introduced as a specific offence was strongly resisted at the time this legislation was enacted. This is rooted in the perception that relations between husband and wife are an exclusively private matter and should not be made a subject for the criminal law. This is the same perception that obstructs meaningful action to combat domestic violence. The civil law on marriage relations, on the other hand, is stronger in this respect. Cruelty of one spouse towards the other, although not specifically a grounds for divorce, is an accepted reason for obtaining a marital separation or divorce. In all of the divorce cases filed in the month under review, domestic violence was cited as the reason for the divorce.

The lacuna in the law is tied up with the non-interventionist stand taken by the Police towards domestic violence. We suggest that a specific offence of domestic violence should be introduced into the criminal law to facilitate and encourage the Police and the courts to recognise and focus on the problem.

The Constitution gives all person the guarantee of equality and specifically states that no person shall be discriminated against on the basis of sex. There are also provisions

relating to torture and cruel, inhuman and degrading treatment which are directly relevant to the point in hand. However, the fundamental rights provisions of the Constitution are only enforceable against the State and cannot be directly used against the perpetrators of domestic violence. Therefore, where domestic violence is concerned, in effect, these provisions are not having a positive impact on women. At the most, action could be brought against the Police compelling them to enforce the existing provisions of the criminal law and to prosecute the offenders. Further, in the long term, other laws, as for instance, those relating to employment, equal pay for equal work, land ownership, which adversely impact on women's economic independence, must also be amended to ensure equality for women.

The attitudes of the judiciary has also proved problematic in the area of women's rights. Even where rape and other forms of sexual violence against women are concerned, judges have been known to hand down suspended sentences, settle cases, and also overtly trivialise the problems that relate to the domestic sphere. These same attitudes prevail in the case of domestic violence, possibly to a larger extent. Education of judges and sensitising them must be done concurrently with similar programmes for the Police. Enactment of even the most enlightened legislation will prove useless if those implementing it have not appreciated its purpose.

## **CRISIS CENTRES**

In keeping with the international commitments made by the State at various fora it would be salutary for the State to provide crisis centres for women victims of violence where counselling/befriending services could be provided.

Currently, State run homes for women (i.e. those who have been charged and/or convicted under the Vagrants Ordinance, Brothels Act, etc) are termed detention homes. These detention homes lack the physical and health care facilities which some of the women who may be victims of domestic violence would need. There are no facilities in these State run

institutions to address the psychological and medical problems of these women. Such women are perceived as offenders rather than as victims. This highlights the fact that a new approach has to be made even to the currently functioning State run centres for women while taking into account the need to professionalise and streamline the services.

For over a decade the NGO sector has been focussing on victims of domestic violence by providing them with counselling/befriending, health and legal services in order to address the psychological, physical and legal needs of women victims of violence. However, in terms of capacity, they are unable to provide services to all who may be in need of them.

This also shows the need for more crisis centres in view of the escalating rate of violence against women which continues unabated. It should be borne in mind that the State should not abrogate its duty towards its citizens and leave it to the NGO sector to perform these functions. This is particularly so in view of the Constitutional provisions which guarantees equality and freedom from cruel, inhuman and degrading treatment to all its citizens.

## ***Recommendations***

### **The State**

As discussed earlier the State has obligations under international conventions as well as national documents to address the problem of domestic violence, and to ensure that women receive the equal protection of the law. First and foremost a legal framework has to be put in place which deals specifically with domestic violence. However, the most enlightened laws will be of no avail if the law enforcement authorities do not implement them effectively. This includes both the Police and the judiciary. At a macro level, people, communities and society at large must be sensitised and made aware of the problem of gender based violence prevalent in Sri Lanka, and attitudes towards social structures and male female relationships need to be re-evaluated. To achieve these goals the following courses of action are recommended.

- **Law reform:** The first step toward dealing with the issue of domestic violence is to create a legal framework under which it can be addressed. Views have been propounded that offences under the Penal Code conforming to assault, hurt and causing bodily harm, could be interpreted so as to be made applicable in cases of domestic violence. However, while this is possible, it does not focus adequate attention on the issue. It is recommended that it would be preferable to have a specific offence of domestic violence incorporated in the law with its own penalties. This would give greater recognition and emphasis to domestic violence as a specific offence which distinguishes it from the other forms of violence covered in the Penal Code.
- **Hospital/medical services for victims:** The State has an obligation to provide support services for victims at all levels. To begin with, services available in hospitals would have to radically enhanced to give women not only medical treatment for physical injuries, but counselling as well. The recommendations made by the author of Study C cited above would be relevant in this regard. Trained staff should be made available for the latter aspect. If it is believed that the woman is in physical danger or that it is detrimental to her physical or mental well being to return to her home, provision should be available to send her to a shelter. It may be necessary to have social workers in the hospitals for this purpose.

The major hospitals in Sri Lanka have Police posts to which suspected crimes are reported. Therefore if a patient is admitted to the hospital with, for instance gunshot and knife injuries, the matter is reported to the Police post. No data is available as to whether this procedure operates in cases of female patients injured in situations of domestic violence or whether here too it is considered a "private matter" which is not reported. The studies also indicate that women often do not reveal the true cause of their injuries which they claim is due to a domestic accident. This is an aspect which should be addressed and for this purpose trained personnel would be necessary in the hospitals and in the Police posts.

- **Police:** Certain steps have been taken in recent years to enhance the capacity of the Police to combat violence against women. Women and Children's Desks have been

set up in 31 Police Stations throughout the country. A hot line operating 24 hours of the day has also been set up in Police Headquarters to receive complaints of child abuse. However, Wijayatilleke observes <sup>7</sup> "yet the lack of genuine commitment towards issues that are perceived as 'peripheral' have placed constraints upon these units in fulfilling their mandate. A recent survey highlighted the lack of adequate training with a special focus on gender based violence for those who are tasked with the running of these units. Resources in terms of infrastructure facilities as well as personnel provided for these units were also found to be inadequate. Given the increasing number of incidents of abuse of women and children, the paucity of the special units to address the issue is obvious. Similarly, efficient service cannot be expected of the law enforcement authorities in the context of an inadequate support structure. In addressing only women officers on the issue of gender based violence will not help overcome the need to create a 'community friendly' atmosphere within the law enforcement machinery." She also observes that there is a need to create general awareness among the Police on the issue of gender based violence which would offset the patriarchal views they appear to hold.

These are problems which should be addressed. Special training for all Police officers, both male and female, is essentially if the special units are to serve their purpose. Further, sensitisation programmes must be instituted to overcome the attitudinal problems prevalent among the Police and to instil in them the gravity of the issue. A hot line for domestic violence should also be set up at Police headquarters similar to the one dealing with child abuse and these facilities must be made known to the general public.

- **The Judiciary:** The other institution which is a key player involved in enforcing the law is of course the judiciary. The judiciary in Sri Lanka has a record of trivialising violence against women. Even in cases of rape, judges have been known to hand down suspended sentences, settle cases by persuading defendants to pay compensation to victims for "loss of their virginity and marriage prospects" and even "persuade" victims to marry their alleged rapists. The Penal Code amendments on rape and other forms of

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<sup>7</sup> *Op cit* note 2.

sexual violence have not had as much impact as they should have as judges still appear to be ignorant of the new laws. It is no wonder then that domestic violence is given even less significance. It is therefore imperative that judges should be firstly educated with regard to the issue, with regard to new legislation if any, and also be sensitised as to its need and importance.

- **Counselling and rehabilitation services:** The State must provide such services counselling and rehabilitation services for victims of domestic violence. Free legal aid should also be provided where it is required. At present this is a function which is being carried out by NGOs which have limited capacity to do so adequately. The State cannot however, leave the NGO sector to carry the burden of doing so.
- **Awareness raising:** Awareness raising is an aspect which can be most successfully carried out by the State which has the optimum resources at hand to do so. To begin with, society at large must be educated on the fact that domestic violence is a social issue and not a private one. Awareness raising can begin at school level and can be carried through by targeting specific sections of youth
- **Media:** Awareness raising necessarily includes addressing the issue of the way in which women are portrayed in the print and electronic media. Advertisements and television drama which depict women as objects of pleasure or as playing a subordinate role to men and the male as the dominant character always in control, will necessarily reinforce the negative image of women in society. Television dramas which often include scenes in which women are subject to violence without any censoring of the male who inflicts such violence, will also convey messages to viewers that such acts are legitimate and acceptable. It is essential that a code or guidelines should be drawn up for the media to control the way in which women are depicted.
- **Administrative departments:** The State must also take steps to upgrade the facilities and functions of administrative departments such as the Department of Probation and Child Care Services and the Department of Social Services. Their functions must be expanded to include the issue of domestic violence, If this is done these departments

can be given the task of establishing and maintaining shelters and homes for battered women and children and providing counselling and rehabilitation services and legal aid for them.

- **Resource allocation:** Wijayatileke says that<sup>8</sup> "another crucial factor that emerges is the lack of adequate resource allocation by the State for addressing abuse of women and children. There is no specific information available as to whether budgetary allocations have been made in this regard. It is declared that financial allocations towards health and social welfare would 'obviously include the needs of women'. This surfaces the perception of the State, which considers women as part of the domestic/social service sphere, despite the efforts of the women's groups and individuals to influence a gender sensitive approach within the State policy". While efforts will have to be made to change these perceptions, a greater problem will be to ensure that the necessary budgetary allocations are made in a context where welfare services are being drastically cut back.
- **Maintenance of records and documentation:** State institutions where victims of domestic violence go for redress and relief should be encouraged to maintain proper documentation. On the one hand the institutions such as hospitals and the Police should maintain accurate records that may become necessary for instance in court, so that individual victims would be able to provide evidence when seeking redress. On the other hand maintaining data on the issue of domestic violence as a whole is also necessary to study the problem at a macro level so that the problem could be addressed not only from the perspective of the victims themselves but from that of society as a whole. The lack of proper records and documentation was unfortunately apparent to the researchers who were involved in this report and proved to be a drawback in a study of the issue.

In conclusion, it is imperative that the various actors in the prevention of domestic violence co-ordinate their procedure and have close links and inter-actions with each other. From the moment a woman visits a hospital for injuries caused by suspected domestic violence,

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<sup>8</sup> *Op cit* note 2.

the hospital, the Police, social workers and counsellors should work together to address the various aspects of her situation. Where necessary, the courts would also be brought into the picture to provide the necessary legal protection and redress for the victim. It is this type of co-ordinating effort which is lacking in Sri Lanka.

## **NGOs**

Wijayatilleke says that "The NGO sector has been active in addressing the issue for more than a decade. A few women's organisations in the capital as well as in the Central province, have been running shelters and counselling /befriender services for abused women and children for some time. However, considering the number of cases that are being referred to and are addressed by these crisis centres and refuges, it is evident that many more mechanisms such as these should be set up. Although there are some State run 'remand homes' for women and girls, there are no government sponsored shelters for women and child victims of abuse." She goes on to say that "several NGOs have been conducting awareness programmes on abuse of women and children, while some have been successfully carrying on advocacy campaigns to bring it onto the public platform. Some have collaborated with state sector attempts to address the issue by providing resources in terms of their expertise and inputs to planning and documentation on the issue."

Apart from the currently run special programmes for victims of domestic violence, NGOs could also explore the possibility of linking up with State agencies and institutions which may have a direct impact on the issue. For example, the Women's Development Centre in the Kandy District has initiated a process which involves such state and non-state co-operations. Monthly meetings are held under their guidance with representatives from the Police, medical and psychiatric practitioners in the State hospitals, lawyers, psychologists, counsellors and other concerned persons. The group reviews cases that have come up before the Women and Children's Desks and different aspects of the case studies are taken up by relevant parties. This provides a support mechanism which shares



responsibility in taking up the domestic violence issues and addressing the specific needs as the case may be.

NGOs must also strengthen their skills and capacity to continuously carry on lobbying and advocacy campaigns in regard to the State to ensure not only that laws and enforcement mechanisms are put in place, but also that they are effectively enforced and carried out. In the recent past NGOs have been doing so quite effectively as far as sexual violence against women and children are concerned, and in many instances it has been due to such pressures that specific incidents of such violence have received prominence and been appropriately addressed. Such activities should also extend to the area of domestic violence.

This brings to mind the need for both the State and non State sectors to continue to collaborate in addressing social issues particularly those that are critical to vulnerable groups such as women victims of domestic violence. In addition to working with the State sector they should carry out continuous lobbying campaigns to ensure that the obligations and undertakings of the State are carried out and fulfilled. NGOs should also continue their work in areas such as monitoring the incidence of domestic violence, compiling data, carrying out studies etc. Another area in which their input would be of crucial importance would be in education campaigns and media programmes to raise general awareness among the public of the issue of domestic violence.

## **Conclusion**

This study was carried out to demonstrate that domestic violence is a widespread and deep rooted problem in Sri Lankan society, as in perhaps all or most societies. It is a problem that has gone largely unnoticed and unacknowledged, although it is perhaps one of the worst forms of violence that can be inflicted upon a woman since it jeopardises her right to security in her own home. Due to the acknowledged limitations of the data available, it was not possible to provide detailed statistics on the prevalence and nature of the problem. It must also be pointed out that the paucity of available data is in itself a

reflection of how little the problem has been addressed. However, the information we have managed to compile has enabled us to build up a picture which substantiates not only the fact that the problem exists and is a wide spread one, but also that victims of domestic violence have to contend with their abusers as well as with the legal system, the law enforcement machinery and society at large which either condones or ignores their plight. In the context of an environment which is now recognising women's right to equality, this is an appropriate issue to be identified and worked upon.

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**DOMESTIC VIOLENCE AGAINST WOMEN**  
**Focusing on Masculinity and Male Perpetrators**

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I would like to bring to your attention the significant documents dealing with the issue of violence against women and their implications on strategies to eradicate the problem as guideline for further discussion.

**I. Beijing Platform for Action and Domestic Violence**

Emphasized in the Beijing Platform for Action in Section D. 112 that "Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed.

Knowledge about its causes and consequences, as well as its incidence and measures to combat it, have been greatly expanded since the Nairobi Conference. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women.

Section D. 113. The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or **private life**. Accordingly, violence against women encompasses but is not limited to the following:

- (a) Physical, sexual and psychological violence occurring in the **family**, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Section D. 115 “Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.

Section D. 117 “ Acts or threats of violence, whether occurring within the **home** or in the community, or perpetrated or condoned by the State, instill fear and insecurity in women’s lives and are obstacles to the achievement of equality and for development and peace. The fear of violence, including harassment, is a permanent constraint on the mobility of women and limits their access to resources and basic activities. High social, health and economic costs to the individual and society are associated with violence against women. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. In many cases, violence against women and girls occurs in the **family** or within the **home**, where violence is often tolerated. The neglect, physical and sexual abuse, and rape of girl-children and women by **family members** and other **members of the household**, as well as incidences of **spousal and non-spousal** abuse, often go unreported and are thus

difficult to detect. Even when such violence is reported, there is often a failure to protect victims or punish perpetrators.

Section D. 118 “Violence against women is a manifestation of the historically **unequal power relations between men and women**, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement. Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the **family**, the workplace, the community and society.

## **II. The Review of Beijing Platform for Action: the Outcome Document**

The outcome document adopted at the Twenty-third Special Session of the General Assembly (UNGASS) Entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-first Century” calls for further actions and initiatives to implement the Beijing Declaration and the Platform for Action.

Section II. D.10, on Achievements and Obstacles in the Implementation of the Platform for Action on the area of violence against women pronounces that “It is widely accepted that violence against women and girls, whether occurring in public or **private life**, is a human rights issue. It is accepted that violence against women where perpetrated or condoned by the state or its agents constitutes a human rights violation. It is also accepted that states have an obligation to exercise due diligence to prevent investigate and punish acts of violence whether those acts are perpetrated by the state or private persons and provide protection to victims. There is increased awareness and commitment to prevent and combat violence against women and girls, including **domestic violence**, which violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms through inter-alia, improved legislation, policies and programmes. Governments have initiated policy reforms and mechanisms such as interdepartmental committees, guidelines and protocols, national, multidisciplinary and co-ordinated programmes to address violence. Some Governments have also introduced or

reformed laws to protect women and girls from all forms of violence and laws to prosecute the **perpetrators**. There is an increasing recognition at all levels that all forms of violence against women seriously affect their health. Health care providers are seen to have a significant role to play in addressing this matter. Some progress has been made in the provision of services for abused women and children, including legal services, shelters, special health services and counseling, hot lines and police units with special training. Education for law enforcement personnel, members of the judiciary, health care providers and welfare workers is being promoted. Educational materials for women and public awareness campaigns have been developed as well as research on the root causes of violence.

There is increasing research and specialized studies being conducted on gender roles, in particular on **men's and boys' role**, and all forms of violence against women. The active support of civil society in particular women's organizations and NGOs has had an important role, inter-alia in promoting awareness-raising campaigns and in the provision of support services to women victims of violence. Efforts towards the eradication of harmful traditional practices, including female genital mutilation, which is a form of violence against women, has received national, regional and international policy support. Many Governments have introduced educational and outreach programmes, as well as legislative measures criminalizing these practices. In addition, this support includes the appointment of a Special Ambassador for the Elimination of Female Genital Mutilation by the United Nations Population Fund (UNFPA)."

Section II. D. 11 delineates on obstacles that "Women continue to be victims of various forms of violence. Inadequate understanding of the root causes of all forms of violence against women and girls hinders efforts to eliminate violence against women and girls. There is a lack of comprehensive programmes dealing with the perpetrators, including programmes, where appropriate, which would enable them to solve problems without violence. Inadequate data on violence further impede informed policy making and analysis. Socio-cultural attitudes, which are discriminatory and economic inequalities, reinforce women's subordinate place in society. This makes women and girls vulnerable to many forms of violence, such as physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and

other traditional practices harmful to women, non spousal violence and violence related to exploitation. In many countries, a co-ordinated multidisciplinary approach to responding to violence, which includes the health system, work places, the media, the education system, as well as the justice system is still limited. **Domestic violence**, including sexual violence in marriage is still treated as a private matter in some countries. Insufficient awareness of the consequences of domestic violence, how to prevent it, and the rights of victims still exists. Although improving, the legal and legislative measures, especially in the criminal justice area to eliminate different forms of violence against women and children, including **domestic violence** and child pornography are weak in many countries. Prevention strategies also remain fragmented and reactive and there is a lack of programmes on these issues. It is also noted that in some countries problems have arisen from the use of new information and communication technologies for trafficking in women and children and for the purposes of all forms of economic and sexual exploitation."

Section III. 51 on Current challenges affecting the full implementation of the Beijing Declaration and the Platform for Action addresses that "Violence against women and girls is a major obstacle to the achievement of the objectives of gender equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. Gender based violence, such as battering and other domestic violence, sexual abuse, sexual slavery and exploitation, and international trafficking in women and children, forced prostitution and sexual harassment, as well as violence against women, resulting from cultural prejudice, racism and racial discrimination, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism and terrorism are incompatible with the dignity and worth of the human person and must be combated and eliminated."

Section 123 a. recommends for actions to be taken at the international level by the United Nations system, international and regional organizations, as appropriate " to support activities aimed at the elimination of all forms of violence against women and girls, including providing support for the activities of women's networks and organizations with the United Nations system."

Section 123 b. is to “consider launching an international “**zero tolerance**” campaign on violence against women.”

Section 130 d. is to “provide support to NGOs, in collaboration with the UN system, inter alia through regional and international cooperation, including women’s organizations, and community groups in addressing all forms of violence against women and girls, including for programmes to combat race and ethnic-based violence against women and girls.”

Section 130 e. is to “prosecute the **perpetrators** of all forms of violence against women and girls and sentence them appropriately and introduce actions aimed at helping and motivating perpetrators to break the cycle of violence and take measures to provide avenues for redress to victims.”

Section 130 g. is to “encourage and support public campaigns, as appropriate, to enhance public awareness of the unacceptability and social costs of violence against women and undertake prevention activities to promote healthy and balanced relationships base on gender equality.”

### **III. Measures and Action to Combat Violence against Women**

#### **a. Thai Government Policy<sup>1</sup>**

The National Commission of Women’s Affairs (NCWA) has released a National Plan for the Elimination of Violence Against Women and Children addressing policies as follows:

1. The Government must stress the importance of the problem and continuously promote the protection of children and women in families and society. It should promote the development of individuals, families and communities to bring about gender equality and peace as well as the reform of protection laws.
2. The Government must help, financially and /or technically, the children and women who are survivors of violence by supporting all GOs and NGOs involved in the care, remedy

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<sup>1</sup> A Report by the Office of the National Commission on Women Affairs, Out of the Silence: Fighting Violence against Women in Thailand, March 2000.



and rehabilitation of women and children who have been physically and mentally abused, and providing assistance for shelter and the law process. Any organization or agency that ignores this responsibility should be punished.

3. GOs must promote and support all citizens, particularly women, to participate in the prevention of violence and the care of survivors in their community as well as other areas up to the national level.
4. GOs must promote and support the development of the body of knowledge, personnel and information systems in order to have effective response mechanisms that work toward maintaining stable and secure families.
5. GOs must promote the integration of plans, budgets and cooperation for programs focused on the prevention and care of children and women, who are victims of violence.
6. GOs must support works to reduce factors contributing to violence against children and women.
7. GOs must support information, Education and Communication (IEC) programs on child rights, women's rights and human rights and foster a sense of protection of those rights.

The National Plan subdivides the above into the following:

#### 1. PLAN ON PREVENTION AND PROMOTION

Proposed recommendations include:

- GOs, NGOs workers, witnesses, or others who fail to take action when a violent incident occurs should face legal and social punishments.
- Promote responsible media that respects survivors' rights and protects their confidentiality.
- Censor controls on media, programming and advertising that reinforces or normalizes violence.
- Promote and support the elimination of sexism and other forms of discrimination.
- Provide child welfare and day-care for high-risk children.

## 2. PLAN ON LAWS

Proposed recommendations include:

- Enact alternative punishments to imprisonment, such as community service work and/or a minimum of nine months of rehabilitation.
- Reform criminal justice procedures to be gender-sensitive and respect issues of confidentiality.
- Promote enforcement of law on bodily harm.
- Enact laws to punish parents or family members who fail to report any knowledge of violence against children and others in the household.
- Authorize police to remove children from abusive parental custody.
- Provide funding support to existing safe houses, Increase the development of additional safe houses and provide economic assistance to the clients.
- Enact a law to compensate survivors of violence; funds provided by the Government of perpetrators.
- Promote public awareness of violence laws and survivors' rights under the laws.

## 3. PLAN ON PROTECTION AND WELFARE

Proposed recommendations include:

- Develop manuals to guide work related to legal, social and medical response services.
- Build capacity of legal, medical, social personnel.
- Support GOs and NGOS to work free of political influence in the protection of women and children.
- Integrate pre-marital, marital and family counseling services into existing district level organizations.
- Create community centers for shelters, counseling and other referrals.

#### 4. PLAN ON EDUCATION AND RESEARCH

Proposed recommendations include:

- Integrate issues on women, child and human rights, gender roles, family education, self-defense, life skills, and sex education into curriculum at all levels, including non-formal education and media.
- Support social research on violence.
- Develop indicators for monitoring effectiveness and follow-up of interventions related to violence programming.
- Support academic study on changing cultural attitudes and values and use findings to develop policies and planning.
- Educate media, particularly radiotelephone counselors, on the dynamics of violence, human rights and gender.
- Enforce the elimination of corporal punishment in schools and monitor teacher compliance.

#### 5. PLAN ON DEVELOPMENT OF MECHANISMS, COORDINATION AND INTEGRATION

Proposed recommendations include:

- Create a coordinating body responsible for the prevention and implementation of activities on violence at the national level and practical level.
- Provide counseling services available and accessible to all, in both urban and rural areas.
- Establish standards of quality assurance in all services rendered by GOs and NGOs.
- Organize a forum for exchanging knowledge and experiences from academic research and service activity.
- Promote and support people networks, especially at the village level, for surveillance, protection and care.
- Establish a special unit that functions as a One-Stop Service within the judicial system and employ gender-sensitive personnel to represent and care for survivors.

## 6. PLAN ON MONITORING, EVALUATION AND INFORMATION SYSTEMS

Proposed recommendations include:

- Establish an information center on violence at central and peripheral levels that will be a resource for statistics, data collection and dissemination.
- Monitor and evaluate services.
- Report findings of monitoring and evaluation activities to the information center and utilize them for policy formulation and program planning.

### b. Strategies/Recommendations in Combating Domestic Violence:

#### 1. The international level: <sup>2</sup>

In making domestic violence known and treating it a public matter, the Economic Commission for Europe establishes that NGOs are recommended:

- to recognize that domestic violence, including sexual violence and rape, is not a private matter but a human rights violation and a criminal act which gives rise to prosecution;
- to organize public campaigns to inform the public of the unacceptability of **men's violence** against women and undertake prevention activities to promote healthy and balanced relationship based on gender equality;
- to disseminate statistics and information on domestic violence and its impact on society, including information concerning relevant laws and possibilities of law enforcement;
- To establish uniform indicators of domestic violence and use them to monitor changes in the magnitude, forms, types of victims and circumstances of this violence.

In developing and enforcing laws against domestic violence NGOs are recommended:

- To work with the criminal justice system to develop policies and protocols that enhance victim safety and encourage victims of domestic violence to report the crimes to the authorities and to start criminal proceedings.

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<sup>2</sup> Guide to the International Women's Human Rights Movement 1995-2000, <http://www.hri.ca/women/geneva.html>

In providing assistance and protection to women and girls victims of violence NGOs are recommended:

- to consider providing free legal and psychological counseling for all victims of violence;
- to develop and implement programmes to support and protect children, especially girls and young women victims of violence;
- to provide shelter, medical assistance and social and psychological support for survivors of violence;
- To secure the safety of victims by enacting and enforcing legal protective measures or by removing the violent offender from the home in which the female victim lives or by providing a secure refuge for the latter.

## **2. The Regional Level: Asia Pacific<sup>3</sup>**

The Asia Pacific Regional NGO Symposium held in September 1999 in Thailand produced outcomes to address overarching concern on the Critical Area of Concern D. Violence Against Women. It reads “ Despite clear and effective actions in the BPFA which, if implemented, would reduce the incidence of violence against women in the Asia Pacific region, there is evidence to suggest that such violence is increasing. There is a lack of political will to implement and support mechanism addressing violence against women.”

Recommendation for action to be taken by Governments, the UN system, and civil society is to “ accelerate implementation of the strategic objectives contained in the Beijing Platform for Action.”

It also stresses that “ the work of the Special Rapporteur on Violence Against Women is a vital part of the UN response to the incidence of violence against women. The mandate of the Special Rapporteur needs to be supported through the development of mechanisms to enable a more systematic approach to monitoring the performance of Governments in preventing and redressing violence against women.”

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<sup>3</sup> “ The Little Blue Book”, A lobbying document for CSW 44 and Beijing+5, Based on the outcomes of the Asia Pacific Regional NGO Symposium, 31 August – 4 September 1999, Thailand, Asia Pacific Women's Watch, nd.

It recommends action to be taken by the United Nations “ to support the work of the Special Rapporteur on Violence Against Women, develop mechanisms to enable comprehensive reviews and monitoring of State responses to violence against women. Such processes should set benchmarks by which Governments and civil society are measured in relation to their responses to violence against women; establish comprehensive definitions of violence; develop strategies for the prevention and redress of past and present violence; provide guidelines to assist Governments in the implementation of policies preventing violence against women.

It pronounces on State Mechanisms to Eliminate Violence Against Women that “ the lack of political will by many Governments in the region to effectively address violence against women is an ongoing concern. There continues to be an absence of resources to support programs or develop mechanisms to address violence against women. Some Governments do still not recognize domestic violence as a form of violence. Gender bias in legal systems acts to deter women from seeking legal redress for rape and other forms of violence against them.

There is a particular need to address violence perpetrated by State actors including sexual violence against women in situations of conflict. Violence against rural and indigenous women and violence based on real or perceived sexual orientation also need to be specifically addressed. There is also a need to develop culturally appropriate responses to violence against women.”

It recommends action to be taken by Government to

- ensure that punitive legal measures are taken against the perpetrators of violence against women;
- develop, resource and support comprehensive national action plans to eliminate violence against women;
- implement systems to monitor national progress in eradicating violence against women;
- ensure effective victim protection programs for women survivors of violence;

- ensure that national action plans to eliminate violence against women include strategies that are culturally appropriate

It calls for action to be taken by Governments, UN agencies and funding agencies to

- provide funding to programs which support women survivors of violence and assist the work of NGOs working in this area;
- support the conduct of research into adoption of culturally appropriate strategies to eliminate violence against women in culturally diverse communities

### 3. The National Level:

A report by the Office of the National Commission on Women's Affairs (ONCWA) on Fighting Violence Against Women in Thailand, has addressed issues to explore for **Criminal Justice** to

- Amend the definition of rape to include forced sex with anyone, including within marriage;
- Improve the investigation process and prosecution procedures to encourage victims to exercise their legal rights and impose penalties on abusers;
- Enact a service establishment law and a witness protection law;
- A legal officer within the Labor Ministry should be the one to receive sexual harassment complaints, investigate and mediate a resolution within six months rather than involving the police;
- Broaden gender-sensitivity training to reach all judges and law enforcers and improve the internal guidelines observed by the court to bring them more in line with principles of the new acts.

#### For NGOs :

- to recognize impacts of violence, such as battered women's syndrome and the health burden, on society and on development;
- To improve collaboration between NGOs and GOs to develop gender-sensitive laws with social protections.
- To recognize other forms of violence against women, such as marital rape, incest, etc.

- To address the causes and consequences of violence against women using both legal and social measures.

#### **Health sector to**

- Integrate Domestic Violence (DV) Coordinators or student advocates to assist women in health systems during no-working hours of One-Stop Service Center;
- Provide internships in health settings for Public Health and Social Work Masters' students;
- Broaden gender-sensitivity training to reach all health professionals and adopt new protocols for dealing with women who experience abuse, in addition to the training for One-Stop Service Center;
- Move away from reliance on self-reported cases of violence to standardized interviewing procedures in health and hospital settings for all patients to incorporate identification of abuse cases.

#### **Education sector to**

- Develop gender-sensitive materials, texts, toys, etc., for dissemination to the public;
- Train teachers in peer mediation and conflict resolution;
- Organize classes for boys and girls to develop an egalitarian approach to marriage and parenting, such as sharing chores, resources and respect for each other. Emphasize that a husband is a partner, not an owner or an employer.

### **IV. Not Merely About the Female Victims But also about Male Perpetrators <sup>4</sup>**

Often enough, violence against women is referred to as "gender based" violence because it evolves in part from women's subordinate gender status in society. Many cultures have beliefs, norms and social institutions that legitimize and therefore perpetuate violence against women.

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<sup>4</sup> UNIFEM, Bangkok, Gender Issue Fact Sheet: Masculinity and Gender Violence, June 2000



When one uses the term “gender based violence” it provides a new context to examine and discuss violence against women. It shifts the focus from women to gender and the unequal power relationships between women and men created and maintained by gender stereotyped.

As addressed by Michael Kaufman the founder of the White Ribbon Campaign...

#### *Violence*

*It is the individual Man, raising his fist against his wife.*

*It is the gang of boys, cheering on the fight in the middle of a tight circle.*

*It is the young man on a date, acting without regard for the desires of the young woman he is with.*

*It is the man pushed by rage and fear, driving his car to his death.*

*It is the physical or verbal attack, on another man, because of his sexual orientation or religion or skin colour.*

*It is the gangs of men – we call them armies – who have been commanded to view each other as less than human, and to view citizens as something even less.*

*It is violence on the playing field.*

*It is, perhaps metaphorically, perhaps not, our relationship to our natural environment.*

*It is men's violence in a myriad of forms.*

## **V. The Approach to Gender Based Violence**

The approach to gender based violence is changing that:

- The topic is no longer merely about the victims, the women who have been and are being abused, but also about those who abuse.
- The issue is now discussed by men who until recently have not wanted to recognize the violence within masculine culture.
- The tone is now one of questioning rather than blaming.

- The questions asked are not only why he batters his wife, partner or child but also why he hits another man, and why the male world is so violent.
- The topic now focuses not just on the individual man but also on masculinity, on being a man in general, and male culture.
- It is now admitted that gender-based violence is an issue that concerns all men and not just those that behave violently; in this way the roots of male violence, which is the foundations of patriarchy, can be explored.
- It is now recognized that, starting in childhood, a preconceived mould of masculinity is imposed upon boys and men just as stereotypes of femininity are imposed on girls and women;
- The approach recognizes that violent men can be helped through therapy and violence can be prevented; men can be empowered to define and live masculinity in a new way;
- Men are encouraged to view themselves as individual human beings and not just as representatives of masculine culture;
- As men change, entire cultures can begin to change, laying the foundations for a culture of peace, equality and a richer lifestyle.

## **VI. Masculinity and Gender Based Violence**

Instead of just focusing on each case of violence or even just on men's acts of violence against women, the entire culture creating the current male role and identity – defined as 'masculinity' - is under analysis.

Defining masculinity, as there are different forms of masculinity that manifest itself in different ways – is complex. Masculinity is often associated with characteristics such as: aggressiveness, competitiveness, dominance, strength, courage and control. These characteristics result from a combination of biology, culture/social development, and as a discourse of power. Although it is difficult to determine the extent to which each influence has influenced current gender inequalities and causes of gender based violence, an understanding of all three provides a framework within which to challenge and change the status quo.

By focusing on masculinity, gender becomes visible to and for men. It makes men more conscious of gender as it does affects their lives as well as those of women, and is a first step towards challenging gender inequalities and eliminating violence against women.

## **VII. What Needs To Be Done To Challenge Gender Based Violence?**

- Analyse the different forms of masculinity; reveal the violent forms, and work towards changing them;
- Reveal and question the values promoting or glamorising violence- competition, hardness, insensitivity, idolising the winners at war, sports and business life;
- Analyse and question male roles and ideals, "the male honour" prevailing in the male culture;
- Profoundly change the upbringing of boys- and girls;
- Develop and value fatherhood; develop the skills and qualities of fatherhood among men and boys;
- Integrating a gender perspective into school education to create awareness of the different positions of boys and girls within the family, in culture and reproduction, and to promote their development into balanced personalities and into men and women in a relationship of equality and mutual respect;
- Develop legislation on violence against women to criminalise gender violence in all forms and provide women with all protection when facing violence or being threatened by it;
- Increase the number of shelters for women and support the work of shelters and counseling service – they will remain necessary for quite sometime.
- Help men to abandon their violent behavior by establishing support and therapy services and providing appropriate therapies;
- Encourage men to establish their own groups and voluntary activities to combat men's violence against women, and support such movements; reveal violent and aggressive sports – such as boxing, ice hockey, car racing – protest their promotion in the media and in the upbringing of boys, both in the home and at school;

- Develop and strengthen security structures based on cooperation, interaction and mutual trust to replace security policies based on the military and arms;
- Abolish obligatory military service, adopt voluntary military training and develop alternative forms of community service as steps towards a culture of peace where soldiers will not be needed;
- Increases the proportion of women in politics, foreign policy and international decision making;
- Promote and further secure equality between women and men both through legislative and administrative means and through changing public opinion and shaping attitudes and values, thus building a culture of equality and peace.

#### **VIII. A Pilot Project to Tackle Domestic Violence Against Women:**

##### **The Center to End Domestic Violence against Women Project(CEDVAW)**

#### **EXECUTIVE SUMMARY**

**Project Description:** Capacity building; Institutional Development; Action-oriented research; Policy advocacy; Direct service providing and, Public awareness raising

**Implementing Agency:** Thailand Criminal Law Foundation; Thailand Criminal Law Institute, Office of the Attorney-General; Women's Studies Center, Chiangmai University; Teeranat Kanjana-uk-sorn Foundation; Office of the National Commission on Women's Affairs

**General Objectives:**

1. To eradicate domestic violence against women
2. To minimize adverse effects towards victim of domestic violence
3. To create an anti-domestic violence network of concerned state and non-state organizations working in the public health, law enforcement, and education sectors

4. To mobilize and facilitate use of state resources and mechanism to prevent and intervene domestic violence in order to serve the currently unmet needs of victims of domestic violence
5. To document and advocate for state recognition of women's rights in Thailand's legal and judicial system

- Specific Objectives:
1. To implement a corrective approach to domestic violence by creating an alternative punishment for first-time offenders in domestic violence cases by implementing a domestic violence correction program as a pilot project in the Muang District of Chiangmai Province
  2. To organize capacity building and human resources development in domestic violence perpetrators' intervention program and other domestic violence intervention and prevention program
  3. To correct societal attitudes toward domestic violence and appropriate responses from society at large, family members, and state authorities
  4. To raise societal awareness and solicit greater public engagement in efforts to end domestic violence

- Strategic Activities:
1. Establish the Center to End Domestic Violence (CEVAW)
  2. Build and activate a network of organizations from the state and non-state sectors to implement the pilot Domestic Violence Correction Program, action-oriented research, and public campaign against use of violence in the home
  3. Identify and document currently unmet needs of perpetrators and victims of domestic violence
  4. Advocate for appropriate policy change at the national and provincial levels
  5. Organize capacity building and skill development workshops for staff of network members
  6. Raise gender-sensitive awareness on domestic violence

- Anticipated Outcomes:
1. The Center to End Domestic Violence against Women will be established and assist organizations working in the areas of domestic violence intervention and prevention.
  2. The network of state and non-state organizations working toward eradicating domestic violence will be formed and collaborate in providing treatment services to domestic violence perpetrators.
  3. The Domestic Violence Correction Program will be implemented and a selected number of domestic perpetrators receive professional treatment for their uncontrollable use of violence in domestic settings.
  4. Forty staff members of network organizations will attend capacity-building workshop and receive technical assistance for the first 2 years.
  5. A baseline data on domestic perpetrators facing criminal charges and violence-prone men who seek professional help will be created and used as a basis for appropriate policy recommendations.
  6. An emergency telephone hotline for violence-prone men and self-identified domestic perpetrators will be operated.
  7. An appropriate reform in laws and judicial procedures governing domestic violence cases from punitive focus to corrective focus.
  8. A public campaign to correct societal perceptions of domestic violence, its victims, and its perpetrators.

Project Site: Chiangmai, THAILAND

**1. Project title:** The Center to End Domestic Violence against Women Project (CEVAW)

**2. Project Rationale:**

Incidents of home-based violence against women respect no national, cultural, social, and economic boundaries. It is one of the most persistent issues subverting women's ability to contribute to national growth. It wounds on human rights and dignity of women. It comes in various forms: verbal and sexual abuse; physical tortures; rape; battering and, murder. Its consequences affect not only the victims but also other family members and non-family members who have witnessed and thus have a tendency to internalize and accept use of violence in intimate relationships, in particular, and, violence against women, in general.

While no one defends the use of violence in the home, a few organizations and individuals have taken action against domestic violence. In Thailand, the state's long-standing "no-action policy" regarding domestic violence has perpetrated and legitimated men's use of violence against women in the home. Family members, neighbors, police personnel, therapists, and friends who have consoled victims of domestic violence to learn not to incite violent action from their husband have inadvertently underwritten violence against women. Women who suffer beating and battering themselves and who have internalized societal attitudes toward domestic violence, themselves, play a part in nurturing the use of violence in the home.

Against the backdrop of this pervasive culture where perpetrators of domestic violence receive legal, judicial, and cultural impunity, a handful of individuals and organizations have recognized the need for concrete and effective means to end domestic violence. The Constitution of 1997 gives ammunition for Thai society to demand state intervention in domestic violence: Safety from home-based violence is now a citizenship right. Judicial personnel and other concerned state authorities have increasingly expressed interest to intervene in cases of domestic violence. However, these laws can be utilized only when they are invoked.

The most significant barrier against public efforts to end domestic violence is, unexpectedly but understandably, the unwillingness of women victimized by domestic violence to press charges against their perpetrators.

Why is it that the population most vulnerable to domestic violence is the one that is the least cooperative and the most silent in state intervention of domestic violence?

Thailand's criminal laws and judicial system are by design exclusive of women's specific interests and socio-cultural conditions. The country's criminal laws, if applied at all, treat the use of violence, both mental and physical violence, as a criminal act and thus impose punitive measures. If found guilty, the perpetrator will receive criminal punishment, i.e., imprisonment. But the women, who are victims of the violence and whose rights and safety have been severely damaged by the act of violence, have to endure the socioeconomic consequences of that punishment. They will have to stand up against societal criticisms against their having reported the crime and thus having their husbands arrested; to assume the role of the lone breadwinner for the family after the arrest of their husbands; to suffer psychological trauma of seeing their loved ones serving the terms; and, to risk the chance of another episode of violence after the release of their husbands, whose violent behaviors have not been corrected during their jail terms. Attention must be drawn to the fact that in most cases complaints of women are not taken up by the police. Rather, complainants will be discouraged or pushed into compromising situation. Domestic violence has been treated as a private matter not of social concern and thus not to be interfered by any "outsiders."

In the meantime, for women who choose not to report and do not request state intervention in incidents of domestic violence, they are knowingly waiting for an explosion of violence, which can progress from minor physical battering to murder. The women may take assurances in their ability to learn the rope to avoid inciting violence because, at least, they can occasionally rely on the husbands' contribution to family's finances and thus prevent impoverishing the family further. At least, they don't have to face societal criticism of having destroyed the family and thus depriving their children of father-mother family life. And most importantly, they protect



their beloved husbands from having criminal records, which could jeopardize his career and future livelihood.

Thailand's punitive approach to domestic violence is not capable of addressing and solving domestic violence at the individual or societal level. The majority of women who have suffered home-based violence have chosen not to report incidents of domestic violence in their lives. As a result, domestic violence is one of the most underreported crimes in the country. Yet, at the same time it is one of the most widespread and dangerous. By leaving the spread of domestic violence unattended, the state and society is condoning the culture of violence, which has women and children and the country's socioeconomic well being as its hostage.

A key promising approach to end domestic violence against women lies in soliciting individual cooperation, modifying and enforcing laws, and having gender-sensitive judicial system devoted to protect women's rights to safety from domestic violence.

Domestic violence is a special crime. It takes place in intimate settings. The co-dependent relationship between the victims and the perpetrators serves as the context to which design of state intervention must take into consideration. Existing research findings and experiences of agencies working with victims of domestic violence show that the victims do not want to press charges against their violent husbands/partners. They want to preserve the relationship while wanting to end the violence.

Thailand's punitive approach to domestic violence is not capable of serving this particular interest of domestic violence victims. Perpetrators of domestic violence are subjected to jail terms but not to any programmatic activities that would put an end to their violence-prone nature. In the medical and psychiatric professional fields, services for violent men are limited. Rather, available services concentrate on servicing victims of violence: they receive counseling on how to cope with the violent nature, not of their own, but of their partners. Such an approach to domestic violence cannot put a stop to the recurrence of violence in the home. It is a Band-Aid approach, which emphasizes the traditional view that women should take care of the wrongdoing of others.

The analysis above identifies two key areas for improvement in state's efforts to end domestic violence:

1. A women-centered reform in the legal and judicial system by taking into account the specific interests of victims of domestic violence
2. Availability of psychiatric/medical assistance to perpetrators of domestic violence and change in societal attitudes toward domestic violence as a means to uproot domestic violence at its root causes.

CEVAW proposes a pilot project to implement the DV Correction Program, which will enhance the capacity of concerned state officials; mainstream women-centered perspectives in laws, policies, and their implementation; and institutionalize state's commitment to address and improve women's issues, i.e., domestic violence.

### **3. Project Objectives:**

CEVAW has the following:

#### **General Objectives:**

1. To eradicate domestic violence against women
2. To minimize adverse effects towards victim of domestic violence
3. To create an anti-domestic violence network of concerned state and non-state organizations working in the public health, law enforcement, and education sectors
4. To mobilize and facilitate use of state resources and mechanism to prevent and intervene domestic violence in order to serve the currently unmet needs of victims of domestic violence
5. To document and advocate for state recognition of women's rights in Thailand's legal and judicial system

#### **Specific Objectives:**

1. To implement a corrective approach to domestic violence by creating an alternative punishment for first-time offenders in domestic violence cases by implementing a

domestic violence correction program as a pilot project in the Muang District of Chiangmai province

2. To organize capacity building and human resources development in domestic violence perpetrators' intervention program and other domestic violence intervention and prevention program
3. To correct societal attitudes toward domestic violence and appropriate responses from society at large, family members, and state authorities
4. To raise societal awareness and solicit greater public engagement in efforts to end domestic violence

#### **4. Project Activities:**

CEVAW will serve as a facilitating and coordinating organization for the recently formed network of state and non-state organizations concerned with domestic violence prevention and intervention. The network has met twice and designed a plan of action for CEVAW. The network has proposed the Domestic Violence Correction Program, which seeks to encourage victims of domestic violence to seek assistance from state personnel by creating an alternative to mandatory imprisonment of perpetrators of domestic violence, namely psychiatric treatment for perpetrators of domestic violence in the pre-trial process. CEVAW will motion towards its nationwide replication if the application of this program shows satisfactory results—a higher rate of domestic violence report to law enforcement officers.

The Domestic Violence Correction Program has the following step-by-step components:

##### **A. Pre-Trial Procedures:**

1. Identification of users of violence in intimate settings (UVIS) by police officers, hospital emergency room personnel, and community authorities.
2. Women, who have been victimized by their partners, will receive encouragement to file charges against UVIS. They will be informed of the Domestic Violence Correction Program and receive legal counseling from legal aids that have participated in training organized by CEVAW. However, victims of severe domestic violence cases, which

need adjudication, will receive immediate legal assistance.

3. Victims and perpetrators of domestic violence will have to consent to participating in the Domestic Violence Correction Program

**B. During-Trial Procedures:**

1. Review of violent behaviors of UVIS by designated psychiatrists and submission of treatment plan to the office of public prosecutors for approval.
2. If desired by the victims of domestic violence, a treatment plan will be prescribed by public prosecutors and/or the judges
3. If necessary, a treatment plan for the perpetrators will be prescribed by public prosecutors and/or the judges
4. UVIS will receive probation sentence and undergo psychiatric treatment provided by member organizations of the Domestic Violence Network.
5. Social workers and probation officers make home visits and monitor the UVIS's behaviors for a period of time as recommended by the psychiatrists and the judge.
6. Re-evaluation by the psychiatrists and completion of probation terms.

For self-identified potential UVIS who request help through the emergency telephone hotline service, they can participate in this correction program at no or nominal expenses depending on their eligibility.

To prepare for the implementation of this pilot Domestic Violence Correction Program, CEVAW will carry out the following plan of action, as suggested by the network:

1. Capacity building and skill development workshops for public health officials, law enforcement personnel, and public prosecutors.
2. Production of step-by-step manual for implementation of the domestic violence correction program for use by network organizations.
3. Emergency hotline devoted to providing telephone counseling and referral services to users of violence in intimate settings
4. Public awareness raising campaign on violence against women targeting at users of

violence in intimate settings

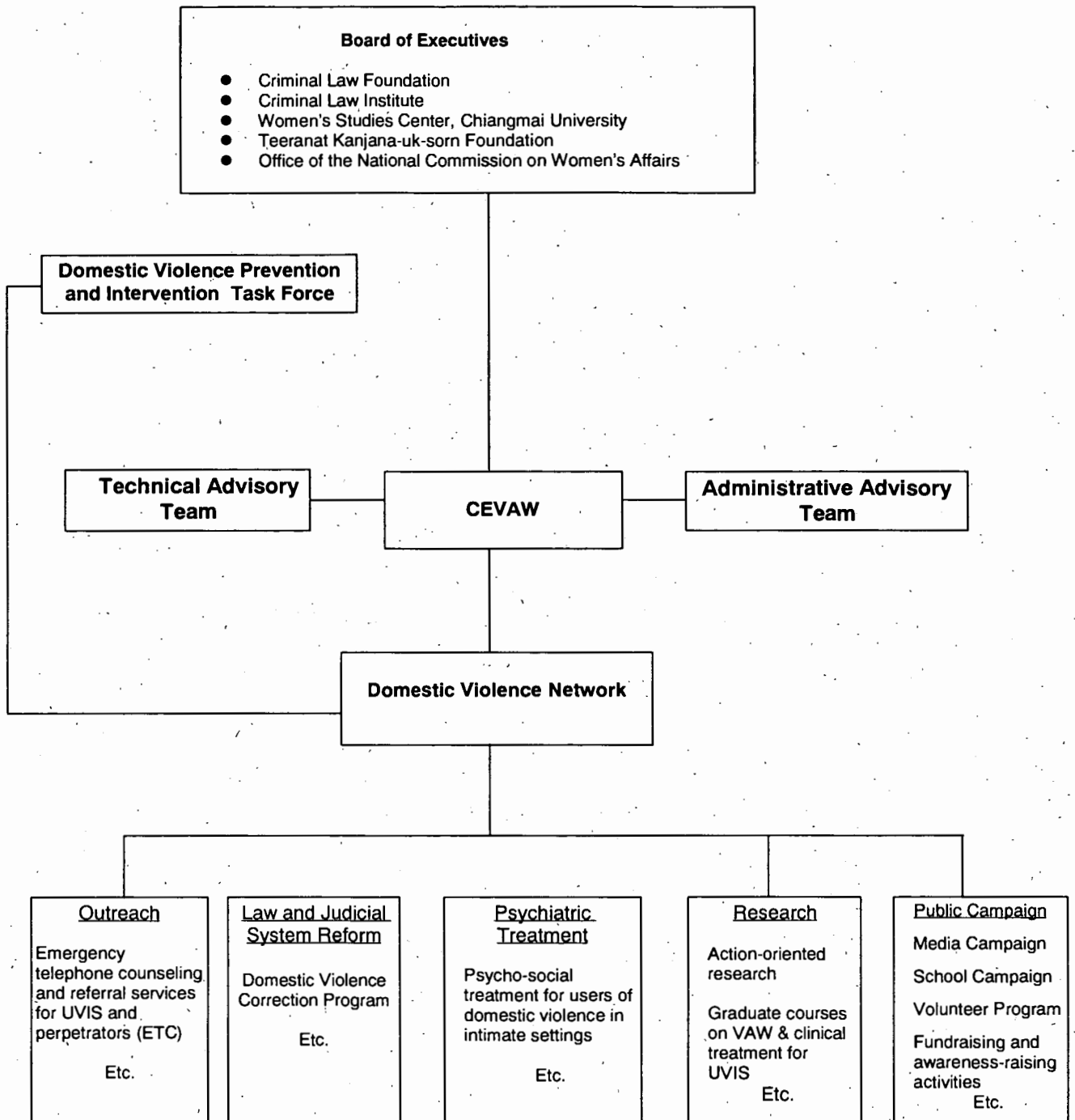
5. Documentation and monitoring of the domestic violence correction program

**5. Implementing Agency:** The Center to End Domestic Violence against Women (CEVAW), an independent agency under the joint-supervision of Thailand Criminal Law Foundation; Thailand Criminal Law Institute, Office of the Attorney-General; Women's Studies Center, Faculty of Social Sciences, Chiangmai University; Teeranat Kanjana-uk-sorn; and Office of the National Commission on Women's Affairs, CEVAW will also work in close partnership with the Domestic Violence Prevention and Intervention Task Force.

Located in Chiangmai, CEVAW will facilitate and monitor the application of the experimental Domestic Violence Correction Program. It will be in charge of fundraising; administering network collaboration and coordination; delegating CEVAW activities to appropriate network organizations; organizing workshops and training for members; producing DV Program Manual, coordinating network activities; documenting the trials; and assisting the steering committee in fundraising; preparing policy recommendations; and reporting to funding agencies.



## Organizational Structure



**The Project Network:**

State and private hospitals servicing mental and mother and child health;

Women's Hotline

Women's ngos working with different groups e.g. minorities and general women;

Women's Studies Center, Faculty of Social Sciences, Chiangmai University;

Division of Law, Faculty of Social Sciences, Chiangmai University

Department of Psychiatry, Faculty of Medicines, Chiangmai University

Department of Sociology and Anthropology, Chiangmai University

Chiangmai Police Department

Center for the Protection of Children's Rights

Office of Public Prosecutors

Probation Office, Ministry of Justice

**Domestic Violence Prevention and Intervention Task Force**

Department of Psychiatry, Faculty of Medicines, Chiangmai University

Department of Sociology and Anthropology, Chiangmai University

Faculty of Nursing, Chiangmai University

Women's Studies Center, Faculty of Social Sciences, Chiangmai University

Chiangmai Police Department

Center for the Protection of Children's Rights (Chiangmai)

Chiangmai Office of Public Prosecutors

Office of the National Commission on Women's Affairs

Teerarat Kanjana-uk-sorn Foundation (Bangkok)

Thailand Criminal Law Foundation (Bangkok)

Thailand Criminal Law Institute (Bangkok)

## **ZERO TOLERANCE FOR DOMESTIC VIOLENCE: The Case of Thailand<sup>1</sup>**

Wanee B. Thitiprasert  
The Research Project for Women

### **Introduction**

Economic and social changes before the end of the millennium caused by globalized organizations e.g. the World Bank, the International Monetary Fund (IMF) have affected on the social impacts of the world and of Thailand creating waves of social problems and unrest. These complex structural violence had caused the situation of violence against women and especially the domestic violence in Thailand to be worse off. Statistics of limited sources had confirmed this implication especially after the economic crisis in 1997 when the Thai government had to request for a bail out package from these globalized organizations. For example, women workers comprised of more than 80% and 90% in some industries e.g. textiles and garment, toys and food industries were the first to be laid off. The family tension stemmed from the expectation of gender roles and economic crisis cost a number of these laid-off women for battered and fragiled families. Despite the new constitution of 1997 and policies that intended to protect women from domestic violence Thai women still had to struggle and take risk for their family daily survival on their own and even in their own house without any access to such law and policies.

Attaining zero tolerance for domestic violence can be our goal in struggling to eliminate factors concerning domestic violence and the domestic violence itself. In order to achieve our goal we have to study the nature of the problem, the points that need to be improved and varieties of strategies. Thus, I will discuss, in this paper, the definition of domestic violence, the seriousness of the domestic violence situation in Thailand from the available

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<sup>1</sup> Paper presented for the *2000 International Expert Meeting on "Zero Tolerance for Domestic Violence"* organized by *Asian Women's Fund* in Tokyo between 7-9 August 2000.



statistics, the causes of the violence against women and domestic violence as well as some recommendations.

## 1. Definition of violence against women and domestic violence

### *Declaration on the Elimination of Violence against Women*

The UN General Assembly of 20<sup>th</sup> December 1993 adopted the Declaration on the Elimination of Violence against Women and defined violence against women as

*“....any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” . (the UN Declaration on the Elimination of Violence against Women, 1993 p. 3)*

According to this Declaration, violence against women (VAW) covers physical, sexual and psychological violence occurring **in the family, within the the general community and the violence perpetrated or condoned by the State**. They are for example, battering, sexual abuse of female children in the household, dowry-related violence, rape, sexual abuse, sexual harassment and intimidation at work, in educational institution and elsewhere, trafficking in women and forced prostitution.

The domestic violence as a form of violence against women are given the details as follows :

*“.....(a) Physical, sexual and psychological violence occurring **in the family**, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;.....”*  
(ibidem)

### *The Beijing Platform for Action*

The Beijing Platform for Action approved by the Fourth World Conference of Women in September 1995 adopted the definition and details of the UN Declaration on the Elimination of Violence against Women and added the violation of human rights of women in situations of armed conflict as well as violence of female's fertilization e.g. forced sterilization and forced abortion, coercive/forced use of contraceptives.

In Thailand VAW has occurred at all the three levels **in the family** such as the physical, sexual and psychological violence, the sexual abuse to female children, **in the community** such as rape, sexual harassment and violence at work and in the educational institutions as well as **by the State** such as the case of sexual abuses of female prisoners and defendants. The violence occur in the family or domestic violence in Thailand also include marital rape, non-spousal violence and violence related to exploitation as well as traditional practices harmful to women and forced abortion in recent happening .

## **2. The situation of domestic violence (DV)**

According to **Judge Praphapan Udomchanya**, a former Judge of the Central Court for Child and Youth Cases, **there is no statistics of official records** providing details of many forms of DV (Udomchanya, P n.d.:4). In the newspaper only serious cases or cases of well-known persons are oftenly reported and paid attention to. Thus, statistics may be under-reported and are limited to only some sources apart from the newspaper reports e.g. women and other organizations which take care of VAW and DV. The statistics of these sources are as follows :

### *The statistics of the newspaper reports*

Since 1995 the **Information and Academic Centre, the Friends of Women Foundation (FOW)** has been compiled reports of rape and sexual abuses within the family as well as other forms of sexual violence from 5 Thai daily newspaper. The sexual abuse and incest cases in the family are as follows :

• ***The report of sexual violence between 1995-1997 and in 1999***

There were 556 cases of sexual violence between 1995-1997 with 654 victims<sup>2</sup>. **The sexual abuse cases of female children and members in the family by close relatives accounted for 40% (39.81%) of the 276 cases of acquaintances to the victims or 18%(17.9%) of all the cases. The number increased to 53% (52.94%) of the 85 cases of acquaintances to the victims or 22%(22.27%) of all the 202 cases in 1999.** The relationship of the close relatives included father-daughter, step father-step daughter, grand-father, uncle and nieces.

It is noted that

a) **the incest cases increased** especially that of the step-father from 3 and 2% in 1995 to 4 and 10% in 1997.

	1995	1996	1997
The relationship of father-daughter	4(3%)	8(3.6%)	8(4.1%)
The relationship of step-father-step-daughter	3(2%)	14(6.3%)	19(9.6%)

b) The sexual abuses of female children and members in the family is also related to the economic and social status of the family. This is due to the fact that a number of victims were from the low income family and were neglected by the parents who had to go out for job to make ends meet or had to stay with some other relatives. In case they are looked after by some other relatives e.g. grand-mother or step-father (in case their parents were separated) they might oftenly be sexually abused by male-relatives who shared the same house or by their step-fathers.

<sup>2</sup> The 556 cases were divided into 5 categories as follows ;

- 329 raped cases or nearly 60%;
  - 123 raped and killed cases or 22%;
  - 55 gang raped cases or 10%;
  - 16 gang raped and killed or 3%; and
  - 33 cases of molested and sexual harassment or 6%.
- It should be noted that the murdered cases were 25% altogether.

c) According to the statistics of 1999 there were 99 cases or nearly 50%(49%) of sexual violence cases occurred in the home. Thus, nearly 50% (45 cases violated by close relatives) of this number is DV cases (FOW, 2000 : 4).

- ***The compilation of domestic violence in 2000 by FOW***

In the first half of 2000 FOW started documenting 47 domestic violent cases. It should be noted that most of these cases were murdering, suiciding and battering cases and the cases of abandoned wives requesting for nurturing fund for their children or participation in the property rights from their husbands who were well-known persons (singers and high level civil servant). The 47 DV cases could be categorized as follows :

- 1) the highest number of cases were 17 cases of **husbands murdering their wives** which were 36%(36.17%) of all the cases,
- 2) the second high number of cases were 9 cases of **wives murdering their husbands** which were 19%(19.14%) of all the cases,
- 3) the third high number of cases were 8 cases of **fathers (and step-fathers) or mothers (and step-mothers) murdering their children** (and step-sons or daughters) which were 17%(17.02%) of all the cases,
- 4) the fourth high number of cases were 4 **battering cases** or 8.5%(with a wife being beaten to dead) if other 4 cases were also included the number would be 8 cases. The other 4 cases had caused wives to murder their husbands, son (14 years old) to murder his father, a case of a husband who oftenly battered his wife and killed her in the end.
- 5) there were 3 **suicide cases of wives** (whose husband had other women, was not responsible for family (the wife was 2 months old pregnant) which were 6%(6.38%) of all the cases.

There were two cases each of husbands having other women and of wives being abandoned by their husbands. There was one case each of wife being psychologically harm and of a son shot dead his father because he had oftenly beaten his mother.

*The statistics from counselling centres of women organizations*

**1994 :** *The Women's Rights Protection Centre (WRPC)*, a counselling and legal aid centre of the *Friends of Women Foundation*, in 1994 documented that of the 534 counselling cases (80% of which were family cases) there were 54 cases which women were battered and faced other forms of violence in the family. The number was accounted for 10% (10.1%). (Thitiprasert, W., 1995 : 15)

**1998 :** *WRPC* documented that of the 862 counselling cases in 1998 there were 86 cases which women were battered and faced other forms of violence in the family. The number was accounted for 10%(9.97%). (*WRPC*, 1999 : 1)

*The Foundation for Women (FFW)* documented that of the 373 counselling cases in 1998 there were 83 cases of domestic violence or 22%(22.25%). They were battered, abandoned, threatened to force for sexual service by their partners. *FFW* reported a case about a wife who was lured by her own husband for sexual service to the Southern province but managed to escape from him. There were also marital rape, rights to take care of the child cases as well cases of husbands had other women. (Thitiprasert, W. 1999 : 7)

*FFW* noted that there was increasing number of women in distress due to the economic crisis. Most of them would like to get fund for some business. But they could not have access to the government service because they lack information of the government service agencies or they lack adequate documents to request for help services.

*FFW* also noted that the counselling cases has been increasing every year respecially in the past 2-3 years. The number increased to two folds in both organizations. (ibidem)

**1999 :** *WRPC* documented that of the 758 counselling cases in 1999 there were 37 cases which women were battered and faced other forms of violence in the family. The number was accounted for 5%(4.88%).

FFW documented that of the 301 counselling cases there were 43 **cases of domestic violence or 14%**. They were battering cases and cases of wives being abandoned and the husbands had other women.

FFW, in 1999, set another category of the counselling cases **for violation by parents** which also involve violence in the family. There were five cases in this category or **2%** of all the cases. They involved, for example, forcing for sexual service, custodying the disabled child, forcing to divorce and to marry.

If the two categories are combined the number of DV cases dealt by FFW will be 16%.

The recent available statistics of NGO women organizations mentioned above can be summarized as follows :

- a) **The sexual abuses in the family has been increased to 22% in 1999** comparing to 18% of combined cases between 1995-1997.
- b) **Nearly 50% of the sexual abuse cases occurred in the home is DV cases committed by close relatives in 1999.**
- c) **The physical and other forms of violence in the family reported in the counselling cases of NGO women organizations is between 10-20%(22%) in 1995 and 1998. The statistics dropped down to between 5-16% in 1999.**
- d) **The most recent report of DV cases compiled from newspaper showed 36% of husbands murdering their wives in DV for the first half of 2000.**

However, the dimension of **mental impacts** of the survivors still need to be further explored. **Dr. Pimphawan Bunyamongkol**, director of Policy and Health Care Centre and a lecturer of Mahidol University emphasized the importance of the health aspect and impacts of DV to the survivors and its relation for health service management. She showed, for example, the result of a research of DV situation in Bangkok in 1993 (by Pornphen Petsuksiri) indicating that the number of survivors who were seriously injured was 19%, and number of survivors who were injured and lost their consciousness was 7% and another 2% was killed. She also showed the number of survivors who completely lost their mental health (17%) and the number of survivors who became scared and lost self-confidence (7%). (Thai Women Watch, 1998 : 77)

### 3. Causes of DV

#### *Political, economic and social factors and impacts*

It has been nearly four decades that the Thai government has promoted the changing of agricultural based of economy to that of industrialization with export-led industrialization in the later period. The agricultural sector, thus, has not been adequately paid attention to. The industrial development took advantage over the agricultural sector and seized natural resources from the rural sector for the benefit of the urban sector. This has damaged the rural economy and the self-reliance system of the rural sector. The industrial development and the more hardship in the rural areas had pushed a large number of men, women and children to migrate from their rural home to explore the "new opportunities" for the well-being of the family. More women than men had migrated to Bangkok and other industrial cities to trying to get jobs in the last decade of development in the export-led industrialization and the service sector which emphasized female labour. However, these women and young girls migrated to the urban areas with little information and knowledge on their own or with the job procurement agents, who in many cases were their relatives or acquaintances. They, thus, took risks of their safety, and had to face violence in the cities in different forms. The violence against these women are for example, being raped by the procurement agents, being lured into forced sexual service and prostitutes in Thailand or in foreign countries, being forced labour, or faced sexual violence in the workplace.

In many cases married women would also face violence in the family out of economic and social stress i.e. the job security problems which occurred in different forms at different time and the recent massive lay off in the last few years of economic crisis since 1997, the inadequate income, the changing of life style from rural to urban society with the influences of consumerism which effected the gender relationship and sexual behaviours e.g. the night life style, having other women. However, a lot of women and children may have to depend economically on their husbands or fathers to be survived. This is due to the fact that these women and children may earn less income than their husbands or even lack of income. Thus, when the husbands committed violence cases in the family they do not dare to complain to the police or to the justice system. Or if they did they might reverse their complaints.

In a research on the economic crisis impacts on women workers who were laid off conducted by FOW in 1997, three out of 5 cases faced the problems that their husbands lack of responsibilities. They, thus, had to look after the whole family including their children by themselves. Two cases could even manage to have their houses built by their savings. But their husbands committed violence to them physically and psychologically by having other women and even brought them into the house while these women workers demonstrated and demanded for their compensation in front of the government house. (Kokij, 1997)

#### *Cultural and legal factors and impacts*

Most Thai male still have the attitude that **their wives and children belong to them and can be punished by them. They even have the attitude that wives and children are their property.** This attitude carries the past legal implementation since the Ayuddhaya<sup>3</sup> period (since that period up til the present time is more than 600 years) which allowed the husband or the father to sell, pawn or punish their wives and children (Rujanawong, W. n.d.). Moreover, it is a tradition to keep any family's affairs within the family and thus, one should not reveal them outside the family. This is according to the Buddhist teaching that *"One should not bring any internal fire out (of the family) and also should not bring any external fire in."* Therefore, most people take any domestic violence as a personal and internal family's affair and are not willing to involve or deal with them. DV is, thus, usually kept silence within the home and is under-reported to the public.

Another cultural factor that contributes to the sexual abuse in the family and sexual violence in the society is the double standard of sexual behaviour between gender. Though the family law encourages a monogamy family system Thai society practically allow for men to have more than one woman. According to historical practice men were allowed to have up to four wives since the Ayuddhaya period. They are also praised to be able to bind many women with their personal charm like a number of heroes in the Thai classical literature. But society, on the contrary, emphasizes the control of female's sexual behaviour. Young girls have been taughted and socialized to this control and attitude. For example, they should keep their virgin and dress properly and not provocatively. Thus, when sexual

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<sup>3</sup> Ayudhaya is the former capital of Thailand.



violence occur to them women are the one who should bare all the blame and assaults. They usually also blame themselves, feel ashamed of themselves and their families and of impurity (after being raped) and regarded themselves as a valueless person. The event will become their sin for life.

Such situation, thus, do not encourage most women to report their cases and defend for their rights.

*Political mechanism :*

**Laws and policies concerning DV : the problems of enforcement and practice**

### **The problems of enforcement of laws concerning DV**

Though there are the new Constitution of 1997 and some other laws which apply or can be applied for VAW and DV but there have been many factors that contribute to the problems of enforcement and the prevailing of DV.

A. **The new Thai Constitution of 1997 : Section 53** states, *"Children, youths and persons in the family have the right to be protected by the state from violence and abuses....."*

This Section is the result of months long campaign by women's groups who played an instrumental role in assuring that it would be included in the new Constitution.

B. According to Judge Praphapan Udomchanya, there are some laws that apply or can be applied for DV. For example,

- **The Criminal Code : Section 295** prescribes fine and punishment to *".....anyone who harms others and cause them physical or mental injuries....."*
- **The Civil and Commercial Code : Section 1516** considers DV as one of the twelve grounds for divorce.

**The Civil and Commercial Code : Section 1530** allows a spouse to ask for "immediate measures" on financial matter during trial procedures.

But the implementation of these laws are up to the interpretation and practice of the judicial authorities (as in the case of Section 295), or to the evidence of the abuses e.g. the police or the hospital reports (as in the case of Section 1516) and also to the practice of the lawyers defending for family cases in exercising financial support, or freezing of assets (as in the case of Section 1530) (Udomchanya, P. n.d. : 1,2). These laws, however, are rarely used by the judicial authorities and lawyers. The battered women also often lack of reports to apply for the Section 1516 due to the investigator's attitudes and practice and in some cases women are not willing to expose their bodily injuries (to male investigators).

#### **The inadequacy of the law on sexual offense in protecting women and children who are survivors of violence**

A. There are, however, some laws that can encourage for DV and do not protect women and children who are victimized of violence. For example,

- **The Criminal Code : Section 276** states that

*"Whoever has sexual intercourse with a woman **who is not his wife**, against her will,....."* is guilty of a crime.

Thus, this law denies to protect the rights of a wife, but instead allow men to rape their wives legally. This law can cause a wife who are on trial for divorce to suffer from rape by her husband. This law also does not cover sexual violations by other means or with other devices.

- **The Civil and Commercial Code : Section 1516 (1)** allows a man to sue his wife on ground of adultery but a woman cannot enjoy the same right. She has to prove that her husband accepts the role of concubine in public as his another wife. (ibidem)

Then, the women have to try very hard to get any evidence to prove for her course.

Moreover, **the law also allows for the abandonment of the case if the survivors are above 15 years old**. This means that the survivors, especially the young girls, can be persuaded to drop the charges in exchange for

compensation which oftenly occur. The laws, thus, provide no safe protection, preventive measures and social welfare for the survivors.

### **The attitude and practice of judicial authorities are not gender sensitive**

- A. The attitude of judicial authorities, like most Thai, usually views DV as family's and personal affair that should be settled within the home. The investigators, instead, prefer to do little enforcing and to mediating. They also know that women oftenly back out their complaint by cultural and economic reasons. Thus, there is a general trend of practice among the investigators not to report the DV cases in the daily records and try to mediate. In so doing they can also reduce the paper work and minimize the problems in investigating and on trial process (ibid : 4, op.cit). The women, then, oftenly face the problem that the investigators are not willing to report their cases in the daily record and this causes them the lacking of the investigator's report to defend for their case.
- B. There are different steps of the judiciary procedures in dealing with the sexual violence and sexual abuses in the family. This caused repeating investigating and questioning for the cases. They also face gender biases in the questions and attitudes from the investigators who view female survivors who dare to defend themselves as sexual aggressive. The investigating process, thus, can be the second "rape" for the survivor. Though there was **an amendment in the Code in Investigating Criminal Cases in 1998 for investigating and questioning the survivor only for once** and using devices .e.g. video recording equipments for recording the investigation for further use, creating special room for investigating and questioning the witness. The amendment is only for girls under 18 and does not apply for women.

Thus, the survivors oftenly do not feel confident enough to dare defending their rights. This, then, causes the violators to repeatedly committ the crimes creating more violence in the family and society. In many cases this leads the murdering of husbands or male partners when the last straw ends.

**The lack of adequate mechanism and strong commitment to gender issues including VAW in society and especially in the implemented government agencies concerned**

The government has developed

- **the Women's Development Plan in the 8<sup>th</sup> National, Economic and Social Development Plan (1997-2001)** (hereinafter referred to as "the 8<sup>th</sup> Plan") with the vision and strategy to eliminate and protect women from violence in the family, community and society. Measures to cope with the problems include improving the laws, organizing social campaigns and expanding phone consultations (National Commission on the Women's Affairs (NCWA), 1997 : 33).

- **Drafted Policy/Plan to Eliminate VAW and children (1999)**

The campaign of women organizations in the past several years on VAW has contributed to the Drafted Policy/Plan to Eliminate and Children (1999) of the government which includes six plans covering measures and services concerning VAW including the one-stop service centre proposed by NGOs concerning VAW. The policy also sets November as a month for national campaign on VAW which has been carried out by NGOs concerning VAW in the past several years.

**The Bangkok Metropolitan Authority (BMA)** complying to the government campaign on VAW set a "**Committee Executing Centre to Protect Children's and Women's Rights**" to look after the **Centre to Protect Children's and Women's Rights** in the Medical Office of BMA in 1999. There are seven of these Centres in the Medical College and the BMA hospitals.

Despite all this efforts there are still gap between the policies and practice in many cases because of the lack of adequate mechanism and the commitment of the government agencies to execute the policies that will enable us to witness concrete results.

#### 4. Recommendations

Despite efforts of GOs and NGOs, there are still many limitations and short comings in coping with VAW and DV. Thus I would like to propose for the following recommendations :

4.1 The local and national governments carried out the policies and plans drafted and issued should carried out strong committment to their policies and plans. Adequate mechanism should be created to execute effective and adequate services without which they will be only policiies and plans in papers and only for lip service.

4.2 The improvement of laws and legal procedures

- I think that a **special law on VAW** covering different forms of violence including DV sexual harrassment should be issued to effectively counter VAW and DV. Comparative studies among different VAW and DV acts of different countries should be carried out, with special attention to the New Zealand Domestic Violence Law of 1995. This new law should provide safe protection for women and children and remedies to the problems as well as social welfare for women in distress particularly occupations and child support.
- There should be improvement of the following laws :
  - A) **Section 276 of the Criminal Code** should include the protection of women against marital rape.
  - B) **Section 277 of the Criminal Code** should protect both girls and boys from sexaul violence.
  - C) The increase of punishment for the harm committed to the family members in **the Section 295 of theCriminal Code**. The proposal of increased punishment is for another 2 years. (Thai Women Watch, 1998 :78)
  - D) The government should withdraw the reservation of Section 16 in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and improve the national family law e.g. the alternative for married women in using their own family name.
  - E) The govern,ment should support for the social welfare including occupations and child support of the survivors by different means.

#### 4.3 The mechanism to enhance and protect women's rights

Women investigators should be increased for adequate service to women and gender sensitivities training should be conducted for all professionals and parties concerned.

#### 4.4 The roles of urban and rural communities should be supported and strengthened to actively prevent and counter VAW and DV and especially in management and distribution of resources.

#### 4.5 The government should allocate adequate budget for the implementation of all agencies including NGOs concerned.

In doing so, the government should have a strong political will and commitment while the communities should be empowered to contribute to play active roles in protect women and children against all of violence.



## DOMESTIC VIOLENCE: HOW TO ERADICATE IT

Kay Fusano

International Women's Year Liaison Group

### Preface

"You are not wrong!" This is what I would like to say to many Japanese women who are enduring the agony of domestic violence. According to a survey<sup>1</sup> conducted in 1995, 199 out of 304 battered women had endured violence for more than 10 years, 40 for 5 to 10 years and another 40 for 3 to 5 years.

What prevents women from leaving their abusive partners? Situational factors that are barriers to women leaving are:

1. Fear of greater physical danger to themselves and their children.
2. Fear of emotional damage to their children.
3. Lack of alternative or affordable housing.
4. Lack of job skills.
5. Social isolation resulting in lack of support from family, friends, or community.
6. Lack of information regarding alternatives.
7. Cultural and religious constraints.
8. Fear of retaliation.

Emotional factors are:

1. Fear of loneliness.
2. Insecurity over potential independence and lack of emotional support.
3. Guilt over failure of marriage.

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<sup>1</sup> Yokohama Women's Association for Communication and Networking. Yokohama Women's Forum. No.7. p.5. 1996

4. Fear that the partner is unable to survive alone.
5. Belief that the partner will change and the violence will stop.
6. Ambivalence and fear over making important life changes.

The factors that are the greatest barriers to Japanese women are “guilt over failure of marriage” and “fear of emotional damage to their children.”

### 1. View on Divorce

According to a survey conducted by the Management and Coordination Agency in 1998,<sup>2</sup> the percentages of people who think “once married, you should not get divorced for any reason” are high in the Philippines and Korea. In the Philippines 37% of women and 40.8% of men think so, while in Korea 19.9% of women and 39.1% of men think so. In Japan the percentages are 6.5% for women and 13.1% for men.

#### VIEW ON DIVORCE

		Should not divorce	May divorce if no children	May divorce regardless of children	Should divorce if no love
Japan	women	6.5	39.3	40.0	11.4
	men	13.1	36.7	31.9	14.1
U.K.	women	7.6	8.4	46.4	33.4
	men	10.3	9.9	34.2	39.3
U.S.A.	women	2.7	13.2	42.4	40.5
	men	6.4	16.0	43.7	31.8
Germany	women	6.5	15.5	39.3	34.0
	men	6.6	16.4	38.0	30.4
France	women	5.7	13.1	44.1	36.7
	men	6.6	16.4	38.0	36.0
Sweden	Women	1.2	3.0	43.7	50.0
	Men	1.8	7.5	44.5	44.3

<sup>2</sup> Office for Gender Equality, Prime Minister's Office. Women in Japan Today. p.3. 2000.



Korea	Women	19.9	26.5	40.8	11.6
	Men	39.1	21.6	23.7	14.5
Philippine	Women	37.0	20.7	27.3	14.5
	Men	40.8	25.4	21.4	12.2
Thailand	Women	17.8	21.1	14.3	46.4
	Men	23.0	19.3	15.9	40.3
Brazil	Women	10.8	4.0	21.0	62.5
	Men	11.6	5.8	14.0	66.3
Russia	Women	3.3	18.4	33.1	40.9
	Men	4.8	15.4	27.4	41.1

However, the percentage of people who think “you should not get divorced if you have children” is highest in Japan. The percentage of people who think “you may divorce if you have no children” is also highest in Japan. 26.5% of women and 21.6% of men in Korea and 20.7% of women and 25% of men in the Philippines think so, while in Japan 39.3% of women and 36.7% of men think so.

The data also show that the percentages of people who think “you should divorce if you have no love” are lowest in Japan and Korea. Only 11.4% of women and 14.1% of men in Japan, and 11.6% of women and 14.5% of men in Korea think so, while 62.5% of women and 66.3% of men in Brazil and 50% of women and 44.3% of men in Sweden think so. This shows we, East Asian people, regard marriage as an institution which individuals do not have the right to disintegrate, while many Western and Latin American people regard marriage as a matter of individuals.

On June 18<sup>th</sup> this year, headlines of a local newspaper,<sup>3</sup> which say “Increasing Lawsuits for Divorce” and “What Should a Family Be Like? – Scrambling for Children,” drew my attention. According to the article, in most lawsuits for divorce the couples concerned easily agree to divorce but the problem is which of the two can exercise parental authority and who should pay the expenses of bringing up children.

In one case, the newspaper reports, the father who was refused his parental authority by the

<sup>3</sup> Kanagawa Shimbun, June 18, 2000. p.1.

court on the ground of his wasteful habits (economic violence) , did not agree to pay expenses of bringing up his twin children. Moreover, he disappeared with one of the twin brothers. The other twin lives with his mother but the four-year-old twin brothers have been separated for three years.

In another case, the wife who had run away from her abusive husband with her four-year-old daughter, won the suit and the court ordered the husband not only to divide up the property with his ex-wife but also to pay the expenses of bringing up the girl on the condition that he was allowed to see his daughter once a month. The lawsuit took them for two years and the girl is now six years old.

In this way, the newspaper reports, children are always victims in the disintegrated family. The newspaper criticizes selfish parents who sacrifice their children. However, are children happy in the family full of violence?

The press comments coincide with what the Japanese public think of. Japanese society usually gives divorced women the cold shoulder. That's why many women suffering from domestic violence are afraid of social isolation resulting in the lack of support from family, friends, or community after divorce.

## **2. An Economic Barrier**

Another factor that prevents women from leaving their abusive partners is an economic barrier. The expressions such as "a hen-pecked husband" or "a husband tied to his wife's apron strings" are used to ridicule a husband when his wife is taking the lead in the family, while the expression of "petticoat government" is used to blame a wife who is taking the lead in the family.

These expressions reflect the idea that unconditional obedience to a husband's rights is a virtue under the traditional patriarchal system. However, in Japan, it is often said that wives in general hold the purse strings and the status of wives in the family is relative high. I would like to consider whether it is true or not.

Our Civil Code was revised in 1947 and all the discriminatory provisions related to patriarchal system were removed. In our old civil law wives must obey their husband in all aspects of life including the management and use of their property and the exercise of their parental rights. Under the new Civil Code the equality between husband and wife was established as a basic principle.

However, it prohibits a couple to take their respective family name. It does not stipulate that a couple should choose a husband's family name, but 90% of women are forced to take their husbands' family names. Women members of the Diet are trying to revise this part of the Civil Code, but they are not successful because of women's underrepresentation in the Diet.

According to the Family Registration Law, the head of the family is usually male. I am now the head of the family, because I am a widow and I live alone.

Another problem is a practice that women call their husbands "my master." The antonym of "master" is "slave," as you know. Therefore, it is often pointed out that the relation between husband and wife in Japan is the relation between master and servant.

The stereotypical Japanese idea is that men work and women stay at home. The smallest unit of Japanese society is a family consisting of a man, his wife and his children not an individual. We have many social systems which strengthen the idea. For example, according to Japanese taxation system, a wife who works as a part-time worker or a contingent worker is exempted from paying an income tax and her husband is given an allowance for dependents, if her annual income does not exceed 1,030,000 Yen (approx. US\$9,700.) A woman says as follows: "I earn only 1,300,000 to 1,400,000 Yen annually. However, my husband was refused a tax exemption for dependents and a family allowance. Moreover, the taxes and social insurance premiums he has to pay have been increased. The ceiling of 1,030,000 Yen is too low."<sup>4</sup>

Another example is Japanese social security system. A wife whose husband is a salaried-worker does not have to pay premiums but are entitled to receive a pension. If her husband

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<sup>4</sup> A response to a questionnaire survey on contingent work conducted by the Working Group on Labor of Kanagawa Women's Council, in 1999.

dies, she is entitled to a survivor's pension. Then, who bears the premiums which she should pay? It is working men and women who bear the cost of her premiums.

In this way Japanese housewives are discouraged to work in the labor market. As a result, most Japanese wives are dependent on their husbands in livelihoods. This strengthens the stereotypical relations between husband and wife described as the relations between master and servant. The imbalance of economic power between husband and wife in the family, which laws, customs and socially accepted ideas reinforce, is the hotbed of domestic violence as well as a barrier to women's independence.

### 3. Forms of Violence

According to the Domestic Violence Action and Research Group, forms of violence can be classified under 2 categories:<sup>5</sup> ①physical violence, and ②non-physical violence. If physical violence is the front, non-physical violence

#### PHYSICAL VIOLENCE

N=467

	Number	%
Hit or punched	398	85.2
Kicked or pushed down	315	67.5
Grabbed or had my arm twisted	264	56.5
Hit by thrown objects	262	56.1
Dragged about by hair or had my hair cut	177	37.9
Almost strangled	146	31.3
Hit by bats, golf clubs or belts	62	13.3
Threatened at knife-point or cut	61	13.1
Burnt with a cigarette	24	5.1
Others	70	15.0

<sup>5</sup> The Domestic Violence Action and Research Group. Domestic Violence ~ Otto, Koibito kara no Boryoku o Nakusu Tame ni. pp.14-18. Yuhikaku Co., Ltd. 1998.

would be called the back. The front and back reinforce each other and control women's lives. As to what forms of physical violence are done to women, look at the above table.<sup>6</sup>

Non-physical violence includes social isolation which limits or forbids women going out, meeting their friends and relatives, or making phone calls; psychological violence which includes verbal violence; economic violence which hinders women from being employed, makes them quit their jobs or refuses to give them living expenses; sexual violence which includes marital rape and refusal of contraception; exploitation of children which includes violence to children and all forms of subjugation utilizing the existence of children; threatening or coercion; insisting of men's privileges; and underestimation which minimizes the violence done to women or putting the blame for it on women..

#### **4. What Triggered the Worst Physical Violence and What were the Aftereffects**

The Domestic Violence Action and Research Group also conducted a survey on what triggered the worst violence. The results are on the next page.<sup>7</sup>

46 women answered what triggered the worst violence was his character disorder or his upbringing.

In 1995, members of Kanagawa Women's Council which I belong to obtained information through a questionnaire from men including students, teachers, public officials, businessmen, self-employed men, specialists, etc. 600 responses were received out of 900 copies distributed. The response rate was 67%.<sup>8</sup>

One of the findings of the survey was that those who suffered from violence in their childhood tend to be violent themselves toward their family members or other closely related people. Those who were brought up without parental love and with unfilled desires and those who have been discriminated against and oppressed often fail to develop good human relations and tend to use violence on others.

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<sup>6</sup> Ibid. p.30.

<sup>7</sup> Ibid. p.77.

<sup>8</sup> Kanagawa Women's Council. Report at the NGO Forum, Beijing, 1995.

## WHAT TRIGGERED THE WORST PHYSICAL VIOLENCE

N=463

	Number	%
He didn't like what I did or said.	387	83.6
He was irritable or tired due to overwork.	221	47.4
His ego was hurt and he wanted to assert his authority.	206	44.5
He was drunk.	145	32.1
I refused to have sex.	129	27.9
I was having an affair with another man or he suspected so.	92	19.9
I paid too much attention to my work or children.	82	17.7
He is not good at expressing love.	51	11.0
I don't know.	49	10.6
Others	124	26.8

## AFTEREFFECTS OF VIOLENCE

N=285

	Number	%
Bruises	186	64.9
Lacerations or cuts	57	20.0
Bone fractures and other damages to bones	44	15.4
Damages to ears	28	9.8
Sprains	25	8.8
Pains without bruises or internal bleeding	24	8.4
Damages to eyes	14	4.9

Damages to teeth	14	4.9
Nosebleeds	9	3.2
Damages to nerves	3	1.1
Faints	3	1.1
Burns	2	0.7
Others	17	6.0

The Domestic Violence Action Research Group also made the aftereffects of violence public:<sup>9</sup>

It is often said that it is unwise to interfere in a couple's marital affairs. Therefore, the police used to be indifferent to domestic violence. The attitudes of police officers have been improved to some extent recently, but they are not sufficient. As the result, 130 women were killed by their partners in 1995, according to the National Police Agency.<sup>10</sup>

## 5. Cycle of Violence

The man who uses violence on his partner is not always abusive. He may actually show remorse for his violence, promising that he will change. His partner understandably hopes for such change. Their relationship probably involves a cycle of good times (Honeymoon Phase), bad times (Acute Battering Phase), and in-between (Tension Building Phase).<sup>11</sup>

Honeymoon Phase is a period of relative calm when he has temporary feeling of control and shame and guilt, and is afraid of his own behavior. He may deny abuse, minimizes abuse, and is afraid she will get police or courts involved. He promises he will never do it again and may believe he won't have to hit her now that he feels in control again. He may drink or drug to escape the pain.

<sup>9</sup> The Domestic Violence Action and Research Group. Op. cit. p.51.

<sup>10</sup> Kanagawa Prefectural Women's Center. "Jose e no Boryoku" ni Kansuru Chosa Kenkyu Hokokusho. p.13. 1999.

<sup>11</sup> The Annapolis YWCA Women's Center. Leaflet. 1996.

During this period she wants to escape the abuse and feels guilty about leaving. She wants to believe his promises and feels depressed and helpless. She feels trapped and views her partner as Dr. Jekyll.

Tension Building Phase is a period of arguments and threats. He feels like a non-person and denies that he is feeling hurt, frustrated and disappointed. He feels insecure, put down, jealous and distrustful. He feels caught between a rock and a hard place, powerless in his own home. He feels victimized by the courts and thinks she should make him feel better. He drinks to reduce the tension.

She feels like nothing she does is good enough for him and feels she is walking on eggshells. She is angry that he does not trust her and that he is not keeping his promises. She feels powerless to prevent the next beating.

Acute Battering Phase is a period of beating, choking, punching, and use of weapons. He feels out of control and wants to prove his manhood. He wants to control her, put her down, or punish her for not making him feel better. Excessive use of drugs or alcohol is used as an excuse to be violent. He feels he has solved the problem.

She is terrified and wrongly blames herself. She is ashamed and humiliated. She is hurt, shocked, degraded and angry. She views her partner as Mr. Hyde.

The longer the violent relationship continues, the faster the cycle revolves and the more the violence escalates. The problem will not be solved by just enduring violence.

## **6. How to Eradicate Domestic Violence**

### ***(1) Legal and Legislative Measures***

In order to eradicate domestic violence, the most urgent and effective measure is to establish legislation. The outcome document adopted at the 23<sup>rd</sup> United Nations General



Assembly Special Session held in New York in June this year states:<sup>12</sup> "Establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating all forms of domestic violence, including marital rape and sexual abuse of women and girls, and ensure that such cases are brought to justice swiftly."

In Japan the provisions of the Penal Code are not properly applied to domestic violence,<sup>13</sup> and they condone or fail to protect women from domestic violence. The idea is: "laws should not intervene in a private sphere." This comes from an old idea that a wife is a husband's possession. Laws intervene in a private sphere only when murder is committed.

In 1994, Argentina, the province of Saskatchewan in Canada, Chile, and Malaysia, and in 1995, Saint Lucia passed laws providing protection against violence occurring in the family.<sup>14</sup> After Beijing a lot of Latin American and Caribbean countries passed laws to protect women from domestic violence: Bolivia (1995), Colombia (1996), Costa Rica (1996), Dominican Republic (1997), Ecuador (1995), El Salvador (1997), Guatemala (1996), Honduras (1997), Jamaica (1995), Mexico (Federal District, 1996), Nicaragua (1996), Panama (1995), Peru (1997), and Uruguay (1995).<sup>15</sup>

According to the Center for Reproductive Law and Policy, the new law in Colombia implements a constitutional mandate to provide comprehensive treatment for different forms of domestic violence. The law provides that physical, psychological, or sexual abuse against a family member is a crime. Furthermore, this law empowers the Colombian Institute of Family Welfare to develop programs to establish "Family Prevention Councils" to study and promote activities to prevent domestic violence. In addition, the National Development Plan provides that the government must improve the training of law enforcement personnel and justices of the peace that deal with this issue. Since 1997, the National Office on Equality for Women has coordinated a task force concerning "Revisions in Procedures for Victims of Sexual Abuse." The main goal of this task force is to improve protection and assistance to

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<sup>12</sup> The United Nations. Further actions and initiatives to implement the Beijing Declaration and Platform for Action - Unedited final outcome document as adopted by the plenary of the special session. para.103c.

<sup>13</sup> The Domestic Violence Action and Research Group. *Op. cit.* pp.160-162.

<sup>14</sup> Reed Boland. Promoting Reproductive Rights: A Global Mandate. p.39. The Center for Reproductive Law and Policy. 1997.

<sup>15</sup> The Center for Reproductive Law and Policy. Reproductive Rights 2000: Moving Forward. p.48. 2000.

domestic violence-abuse victims by integrating and coordinating the institutions responsible for such cases.

The Republic of Korea passed the law against domestic violence in 1997<sup>16</sup> and in 1998 in Turkey,<sup>17</sup> after years of lobbying by women's advocates, the Parliament approved a law on domestic violence permitting any member of a family subject to domestic violence to file a petition for a protection order against the perpetrator of the violence. Protection orders may direct the violent family member to cease all threatening behavior, leave the family dwelling, and surrender weapons to the police. An order may also instruct an abuser not to approach the dwelling or place of work of family members, damage family property, cause distress using means of communication, or arrive at the shared dwelling while under the influence of alcohol or other intoxicating substances, or use such substances in the dwelling.

Now we have many good examples which furnish us with information. We have to establish a law against domestic violence as soon as possible.

## *(2) Support for Shelters*

When Kanagawa Prefectural Women's Center was established in 1982, a publicly-run shelter was set up in the Center at the citizens' request. Since then a total of 287 abused women took refuge in this shelter with their children. Kanagawa Prefecture has 4 publicly-run shelters and 4 privately-run shelters.

The aims of these shelters are to provide women with emergency relief, to heal them of mental and physical injuries and to help them gradually become more independent. However, the financial situations of these shelters are very tough and all of them are suffering from a shortage of staff. Therefore the scale of these shelters is very small.<sup>18</sup> For example, both Kanagawa Prefectural Women's Center and Hills Suenaga in Kawasaki City (publicly-run) have a capacity of only two families.

Privately-run shelters in Yokohama City, MsLA, Women's House 'Saalaa' and Casa de Santa

<sup>16</sup> Kanagawa Prefectural Women's Center. Op. cit. pp.126-136.

<sup>17</sup> The Center for Reproductive Law and Policy. Op. cit. p.55.

<sup>18</sup> Kanagawa Prefectural Women's Center. Op. cit. p.57.

Maria, have a capacity of 8 people, 10 people, and 3 families respectively. Only Prefectural Fujinsodansho has a capacity of 30 people.

Prefectural Fujinsodansho was established in 1955 based on Anti-Prostitution Law and its original aim was to provide protection and rehabilitation for a woman who had either committed or might possibly be involved in illegal prostitution. That's why it has a relatively large capacity.

Support provided by shelters includes food, clothing, immigration procedural support for foreign women, pre- and post-natal care, and other medical support, legal support in court cases, child-care, and job-hunting assistance.<sup>19</sup>

At present shelter staff are busy enough just meeting the immediate needs of abused women, but it is necessary to offer training that empowers these women and enables them to be independent after they leave the shelters, because they are financially and socially disadvantaged.

However financial difficulties and a shortage of shelter staff prevent them from giving these women quality care and training. Not only the expansion of facilities but also an increase in staff, allocation of resources, and vocational training are what shelters urgently need now.

### *(3) Mental Care for Abusive Men*

The outcome document of the UNGASS states:<sup>20</sup> "in some cases, persistent gender stereotyping has led to a lower status of male workers as fathers and to an insufficient encouragement for men to reconcile professional and family responsibilities." Men's lower status in the family is one of the factors that triggers violence. The outcome document calls for family-friendly policies that encourage men to reconcile professional and family responsibilities.

Alcohol, drugs, and wasteful habits including gambling and debts are another factors that trigger violence. According to Prefectural Fujinsodansho<sup>21</sup> 22.8% of violence was triggered

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<sup>19</sup> Yokohama Women's Association for Communication and Networking. Op. cit. p.3.

<sup>20</sup> The United Nations. Op. cit. para.15.

<sup>21</sup> Kanagawa Prefectural Women's Center. Op. cit. p.59.

off by quarrels, 20.3% by alcohol, and 13.9% by wasteful habits.

As the 'cycle of violence' shows domestic violence is triggered off by mental ill health, as well as bad habits and stress in life. In order to prevent an abusive situation from happening again and to rehabilitate abusive men, it is necessary to develop programs for men to change their abusive behavior and learn how to solve problems without violence. However, we cannot expect men to attend such programs voluntarily. It is necessary to obligate them by law to take rehabilitation courses for a fixed period of time.

## Conclusion

I have proposed three measures to eradicate domestic violence: enactment and implementation of law which punishes perpetrators and protects women and children, support for shelters and mental care for abusive men.

It is needless to say that Governments in collaboration with NGOs should "encourage and support public campaigns to enhance public awareness of the unacceptability and social costs of violence against women and undertake prevention activities to promote healthy and balanced relationships based on gender equality"<sup>22</sup> and "provide gender sensitive training to all actors, including police, prosecutors and the judiciary in dealing with victims of violence"<sup>23</sup> as the outcome document of the UNGASS calls for.



<sup>22</sup> The United Nations. Op. cit. para.130g.

<sup>23</sup> Ibid. para.130f.

**THE SIGNIFICANT LINK WITH CHILD ABUSE:  
For Further Studies of The Rights of The Women and Children**

Keiko Irisawa

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The subject of my study is the issue of child abuse, and I have been working on my thesis, which examines the influence of cultural norms on understanding the phenomenon of child abuse in Japan. As a part of my work, I was led to concern about the link between children's rights and child abuse and indirect abuse towards children with domestic violence.

**Introduction**

In general term, domestic violence means partner abuse, spousal assault or spouse abuse, it is defined as violence between adults who are intimates, regardless of their marital status, living arrangements, or sexual orientations<sup>1</sup>. In Japan, domestic violence combined with child abuse was not discussed as one of the cause of child abuse. I suggest that this is because, in Japanese current circumstance, even male violence towards female partner within the family has not yet been discussed openly in public.

If a man assaults a woman in the public, this is of course a crime. The police would intervene this case. Also the female victim has rights to bring this case to the court if necessary. However, it is quite difficult to establish that male violence within the family is a cause of concern. As Kumagai point out "public exposure of private problems is quite alien to Japanese tradition, and keeping family problems within the family is considered a virtue." <sup>2</sup> This may be due to the belief that the wife belongs to a husband as well as the child belongs to the parents. "The welfare of children is in general a clouded area with respect to the distinction between the public and the private sphere. Children tend in our society to be seen

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<sup>1</sup> Page 139 Kaplan, S. et al. (ed.) *Family Violence: A Clinical and Legal Guide* 1996 American Psychiatric Press, Inc.

<sup>2</sup> Page 85 Kumagai, F. *Unmasking Japan Today* 1996 Praeger

as 'belonging' to their parents – specifically, as owned by the father but serviced by the mother – and the rhetoric of the 'family' makes what happens to children a private matter."<sup>3</sup>

Children who live with domestic violence, mostly experience this as negative externality bi-product. For example, witnessing a fight and /or violence between the parents is a painful experience for children. Even if this happens just a few times in their entire life, these memories stay a long time with the children. Moreover, if this is happening almost everyday in the family, it could be said that witnessing violence could cause psychological sufficient to last in children's adulthood. (C, Black. *It will not happen to me*) However, commonly the definition of child abuse excludes stress and pressure on children by parental violence.

### **Impact of domestic violence on children**

If 'traditionally accepted' behaviour or practice makes defining **what abuse is** unclear, it could be very difficult to recognize the relationship between child abuse and domestic violence. Controversy and/or difference in the perception of child abuse have also been highlighted by Hooper who states: "Children and women have relatively little power over such definitions, and they have often been blamed for the abuse perpetrated by men." (1992, p.1). Issues of 'abuse by whom', and 'whose responsibility it is' may tend to be undermined by the persistence of traditional social attitudes towards children and women, which attribute certain stereotyped characteristics to them.

During interviews with a child caseworker (female) when I was doing my fieldwork in August 1997, at the Tokyo Child Guidance Center in the Metropolis of Tokyo, I asked her if there is 'indirect abuse' towards children living with domestic violence without entering into consideration of the definition of child abuse. Her answer was that this sort of thing happens everywhere, because male violence within the family has long been a common phenomenon in Japan. Her answer implied that this is not important.

It could be said that male violence within the family might be a common phenomenon in Japan as well as other countries. However, to say that it is a 'common phenomenon' does not mean that the society does not have to take care of the child who has been trapped

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<sup>3</sup> Page 320 Muncie, J. et al. (ed.) *Understanding the Family* 1995 SAGE Publications

between the parents, and has been suffering from the fear of violence every single day.

"Attacks on children during domestic violence incidents and on pregnant women constitute examples of the way in which the abuse of women and children may be inextricably intertwined. Additionally, children are frequently used and abused by violent men as a vehicle to manipulate, control and physically abuse their partners during the relationship and after separation. ... And just as men may use children as a vehicle to abuse mothers, so they may abuse mothers as a means of gaining access to and abusing children. The Strathclyde study of child sexual abuse, for example, found evidence that men abuse mothers to hide their sexual abuse - by isolating and/or otherwise incapacitating the mother so that she is not available to the child as a source of help (Forman, n. d., p.30)."<sup>4</sup>

Keplan et.al. also observe that domestic violence implies emotional neglect of children, as does parental alcoholism and frequent separations of parents from children. They also refer to the somatic, psychological, and behavioural dysfunction in the child witnesses of domestic violence. "Behavioural problems reported among young children include stuttering, school phobias, enuresis, and insomnia. Insomnia has often been reported to be accompanied by intense fear, screaming, and resistance to going to bed at night."<sup>5</sup> Likewise, some researchers view domestic violence as relating to abusive relationships between spouses. Kelly (1994: 44) carried this idea one step further:

"Children may also be being abused, either in a situation where the man rules the household by open and deliberate terrorization of everyone, or secretly and separately from the abuse of their mother. All children have to find ways of making sense of and coping with the reality in their household and its effects on their relationships with parents or carers, siblings, relatives, and friends. There may be far reaching consequences in their lives of the abuse and their mother's struggles to end it, ranging losing possessions, pets, friends, and

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<sup>4</sup> Page 33 Morley, R and Mullender, A. (ed.) 1994 "Domestic Violence and Children: What Do We Know From Research?" in *Children Living with Domestic Violence* Whithing & Birch Ltd.

<sup>5</sup> Page 149 M, Lystad., M, Rice., S, Kaplan., 1996 "Domestic Violence" in *Family violence - A clinical and legal guide*

possibly contact with one of their parents or carers.”<sup>6</sup>

It should be pointed out that such violent relationships between spouses could affect their role as parent. “The parenting capacity of women who are intimidated and abused by their partners can be seriously impaired, and as a result they may be unable to meet their children’s basic needs.”<sup>7</sup> This still raises the question as to whether and how many parents are aware of those connections:

### **Boundaring between Domestic Violence and Child Abuse**

There will be strong objections against examining the impact on children of male’s abuse of women. For instance, usually, thinking about domestic violence apparently means how to help abused women but abused children. Probably, this is a common idea that there will be no use of discussing the issue of child abuse at the stage of talking about domestic violence. Yet, according to a structured interview in which I administered in August 1997 at Child Guidance Center in Kanagawa-prefecture in Japan, some caseworkers pointed out the link between child abuse and domestic violence. Although I omit to summaries all questions asked, I shall quote one feedback of the question **Why do you think child abuse occurs?**

“It could be because of a marital relationship, or also could be because of a parent-child relationship. In many cases, both are related to the case. There are many cases that the main perpetrator is only one [of the parents]. However, the other one cannot prevent it. Most frequent case is that the father or the stepfather is a perpetrator, and the mother cannot stop him. .... Although this is my presumption, perhaps, the abuse begins from when the mother has a strong wish to preserve the marriage or mother gives precedence to her marital relationship. If the mother gives priority to her mother-child relationship, she must escape from there, I believe. I think she will prefer to ensure the child’s safety, but she keeps staying without making

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<sup>6</sup> Page 44 Kelly, L. 1994 “The Interconnectedness of Domestic Violence and Child Abuse: Challenges for Research, Policy and Practice” op cit.

<sup>7</sup> Page 129 Hendry, E.B. 1998 “Children and Domestic Violence: A training Imperative” in *Child Abuse Review* Vol. 7



only red effort for that. ... Violence is also a part of the relationship. I don't know, but probably, she prefers her position as wife and cares about her social position rather than her child." (Male case worker)

Furthermore, as a result of sending a postal questionnaire to British social workers and counselor that were selected through the University of Bristol during November and December 1997, I got some interesting answers back to the question

**"Is Domestic Violence any different from child abuse?"**

/ female counselor answers that 'No. It harms a child. ' / male social worker states that: "Domestic Violence relates to child abuse – any child who witnesses and/or lives in an atmosphere of domestic violence is affected by this experience in an adverse and sometimes frightening way."

Also, I shall cite some answers to another question that I used for those postal questionnaires.

**"Examples to test actual definitions of violence: This is an example of Domestic Violence.** The father ill-treats the mother and the child. The child cannot avoid listening to shouting or seen blood. Additionally, the mother always asks the child to protect her from the father because she is afraid of her husband. **A) Have you worked with a case like this? B) Would you say this is common in your work? C) Would you define this case as child abuse? ❶Why? -Would you define this case as violence?"**

/ female social worker answers to a question; **A) "No"** she has not worked with as case like this. **;B) "Yes"** she would say this is common in her work, also she says "Domestic violence is very common." **;C) "Yes"** she would define this case as child abuse. **❶Why?** She answers "Strong research link between domestic violence and abuse against children - also I believe that the behavior described constitutes emotional abuse with short and long term emotional costs for the child concerned." She also answers she would define this case as violence. "Yes - against partner."

J male social worker says A) "Yes" B) "It happens." C) "Yes" **Why?** "Child's experience of violence and inappropriate to have to protect mother in this way." He also says that he would define this case as violence. "Actual violence."

Even though my fieldwork was confined to an exploratory research, the feedback shows that it might be meaningless to separate entirely a case of child abuse from the issue of domestic violence. There is always a risk to narrow down the definition of the issue. It will be the case that legislation and professional practice in relation to domestic violence could also protect children from further abuse.

## CONCLUSION

It should be noted that it is highly possible that men will abuse children when he violates women's rights within the family. In the process of forming a plan for preventing domestic violence, the safety of children should be of concern. My suggestions may be criticized that they are useless since it seems theoretical. However, there must be some reasons why many abused women are not keen to make use of shelters, law, and organizations to help them from abusive men, even if they knew about this sort of support. Moreover, the lack of social policy in Japan indicates that societal attitudes toward family are dominated by male power. That is to say, one of root problems is a social norm.

Providing practical support is of course important and will be a main concern for working with domestic violence. Still, it could be said that professional practice would be far from reaching abused women when her mind is arrested by cultural/social norms and morality that brings a negative fact to a family relationship.

## WHAT WE LEARNED THROUGH SHELTER ACTIVITIES

Teruko Maeda  
Sister Provincial

I have been working at a shelter privately operated in Japan for almost 15 years. Today, I would like to share with you several matters that I have felt and learned in my daily work.

- 1) In Japan, the issue of violence against women or domestic violence (DV) has been taken up only after the Fourth World Women's Conference in Beijing. In fact, the issue of violence against women by husbands or common-law partners, had been existed long before 15 years ago. Why the issue was not paid any attention? Because male-supremacy has been the public tendency in general and people did not think DV as a serious problem even though they knew the fact of violence.
- 2) The women who sought refuge to our shelter include victims of domestic violence (by their husbands or partners) as well as victims other forms of violence, from sexual abuse by fathers or step-fathers, violence by their own brothers, violence by sons against mothers, to rape. All of these acts could be classified as "violence against women."
- 3) In Japan, women in general are not economically independent, which is expressed as "feminization of poverty." As a result, many women cannot flee from their violent husbands. Abandoned women and their children by their husbands and fathers often come to our shelter, only after having a hard time financially. Also, it is quite difficult for them to become self-supported from shelter.
- 4) As for shelter activities in general, the numbers of shelter has increased since 1995, through voluntary activities by women in the non-governmental sectors. And yet, the numbers are still around 20 totally throughout the country. As a result, almost all the shelters are always full, and women in need are not necessarily accepted. We could say

the shelter shortage is serious.

- 5) In addition, most of the existing shelters are in a very difficult situation financially. Some shelters cannot hire full-time staff. Even when some full-time staff could be secured, it is not possible to provide them with necessary training and education. In fact, most shelters are struggling hard to maintain its operation every month. They have to devote their energies and times to fund-raising.

So far, support for the privately operated shelters from government is very little.

Although a few local governments offer small amount of subsidy, this is not general trend.

As the government claims that there are no legal grounds for subsidy to shelters; we are now engaged in promoting to enact basic law to suppress violence against women.

- 6) As to the public-run shelters, we would say that there is no public shelter for exclusively woman victims of violence. Currently, either temporary protection offered by Consultation Center for Women under the Anti-Prostitution Law, or a home for mothers and children in need are used for the victims of violence. In other words, the Japanese government has done nothing to take specific measures to support woman victims of violence based on protection of human rights. While it is important to punish male perpetrators, it will be too late if a woman suffers from damage physically and psychologically. Security of women and children should be put first priority.
- 7) Both men and women do not understand the importance of "gender perspective" fully in Japan. The lack of awareness, prejudice based on gender role, reinforce the lack of policy toward violence against women and delay fundamental solution for this problem. Unfortunately, universities in Japan offering women's studies are not many. If we aim for "gender-equal society," genuine, "gender-free" human integrity should be respected for both men and women as a first step. Thus, we should urge those who are in educational areas to teach the importance of human dignity.
- 8) Several surveys conducted recently, by either Prime Minister's Office or Tokyo Metropolitan Government, show that many women in Japan are actually suffering from violence. The fact that there are women and children who seek shelters also is a proof that

violence is existing in our daily life. Therefore, the Japanese government is urged to present its own position toward this issue. Each local government will surely follow suite. While NGOs should co-operate as much as possible, they cannot take all the responsibility for the urgent issue that threatens the life of woman victims and their children. At the same time, so-called "bureaucratic way of working" operated publicly is not able to pay close attention to the victims for 24 hours. Truly effective support system is possible only when partnership between public and private sectors will be established.



## **POLICIES AND CHALLENGES FOR DOMESTIC VIOLENCE IN JAPAN**

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### **Introduction**

It was only after the Fourth World Women's Conference in 1995 that the issue of domestic Violence (DV) has become a national concern in Japan. The Platform of Action adopted at the conference includes the issue as a major concern and calls for effective measures. In response to this, national action program called "Gender Equal Plan for the Year of 2000" was set up, in which elimination of DV was clearly declared. Since then, the issue has been paid much attention by media, encouraged by women's activities such as setting up shelters. DV as violence against women is attributed to the social structure in which women are forced to be subordinated to men, as Declaration on the Elimination of Violence against Women adopted at UN General Assembly in 1993 clearly stipulates. And yet, this analysis is not widely accepted here.

Here I would like to look at briefly what has been done to deal with DV at national level, referring to women's movement that impelled the government to address this issue. I myself participated in conducting a survey on domestic violence in Kyoto City, from drafting questionnaire, analysing the results to compiling report. Based on this experience, I will share my view on what should be done regarding the issue. Lastly, I hope to consider the issue in terms of international protection of human rights, since I myself major in the International Law on Human Rights.

### **I. The Government's Response to DV in recent years.**

As mentioned earlier, in Japan violence against women was first included in the national

program of action in 1996, stimulated by the Platform of Action adopted in Beijing Conference. In June 1997, the Prime Minister referred the issue to the Council for Gender Equal Society and requested to draft basic policy appropriately. A working group to deal with the issue was set up within the framework of the Council. In October 1998, after a series of investigation and discussion, the working group published its interim report. Then, in May 1999, the group submitted another report, "For the society without violence against women," which recommended to conduct comprehensive survey on the current situation of VAW.

Thus, the "Survey on Violence between Men and Women" was conducted from September and October in 1999, the result of which was publicised in February 2000. Total number of 4,500 men and women selected by a random sampling method participated in this nation-wide survey. The result shows that 4.6% of female participants had felt in danger because of violence, while 4.0% had to see a doctor. Meanwhile, only 4.0% of those who suffered from violence reported to either public or private service agency, which tells that victims of violence are mostly invisible.

In December 1999, the National Police Agency proposed the Implementation Guidelines to Protect Women and Children" which admitted that "police should actively deal with the situation even if they are nothing against the criminal law." This is the Police response to the increasing criticism that the police with its principle of "non-intervention toward civil affairs" have not dealt with victimization of women and child abuse such as stalkers and murder cases caused by domestic violence.

In April 2000, the working group on violence completed the "interim report on basic policy regarding violence against women," which included: (1) to provide counselling for victims, (2) to set up shelters for victims, (3) to prosecute perpetrators under criminal law, (4) to issue interim order from court against violent acts or making approach promptly, (5) to bring the issue to court and settle the case at family court, and provide information as to legal procedure, (6) co-ordination and co-operation among shelters, police, court and lawyers to help victims to be independent, (7) consciousness raising effort so that DV as violation of criminal law would be publicly recognized.

Thus, it is noticeable that in Japan DV has been addressed to actively at the national level.

Although this is partly because the violence against women has become a major concern in the international community, women's movement addressing the issue within the country has definitely played a big role.

## **II. Activities of NGO shelters in Japan**

In 1992, the first survey on DV was conducted in Japan. It was carried out by a private group called "Study Group to Free from Violence of Husbands and Partners" which was comprised of female social workers, academicians and lawyers. Through this survey, the situation of the victims of DV was revealed and women victims could tell their own experiences and emotions for the first time.

Meanwhile, shelters for DV victims began to be set up by women in private sectors in 1993. In five years since then, the number of shelters increased to more than 20, which counted less than 10 until 1995. It is evident that setting up shelters has become a trend in the country. Nevertheless, the lack of shelters is still seen in the predominant regions and districts. This is mainly because there is no financial support for shelter activity. Continuous efforts by women themselves have compelled some local government to provide certain subsidy for the operation of shelters. However, many shelters are still operated by women's voluntary work.

Generally speaking, most NGO in Japan are so small that they cannot employ full-time staff. Japan does not receive any financial support from other developed countries or UN agencies, and very few Japanese corporations are eager to support NGO activities. Most NGO shelters in Japan are financially maintained by their members and donations. Often staff members themselves have to raise the fund to launch shelters and to rely on their voluntary work to keep the shelter going on.

Meanwhile, in 1997, The National Shelter Networking to Protect Women from Violence was formed. This network conducts nation-wide symposium annually since 1998. Women's groups that intend to open their own shelter join the symposium, and the meeting is always vigorous spirit. In 1999, legislation of Anti-DV Law has become a main objective of the



movement and a questionnaire was sent to those who are involved with shelter activities and other related groups regarding the contents of the law to be established. And at a working session at the symposium held this year, the central points for Anti-DV Law was reported based on the results of the survey. It is noted that woman Parliamentarians and members of the Council for Gender Equal Society participated in this symposium, who are expected to urge the movement to establish Anti-DV Law working with existing Shelter Networking.

### **III. Current Problems for DV Victims**

In November 1999, I co-operated with the survey of citizens' awareness and current situation of DV conducted by a Foundation called Kyoto City's Woman's Association. A questionnaire was sent to 3000 women above 20 years old selected through random sampling. Around 1000 women out of 3000 sent back the form after filling out. The questionnaire included if they have experience of DV, the form of violence they suffered, whether they have heard of DV from other people, how much they are aware of the DV problem and how to deal with DV. Also they were allowed to say anything they want regarding DV. This is the second survey conducted by a local government following Tokyo Metropolitan Government in 1997. In 1998, Sendai City commissioned a NGO group to carry out the similar survey.

Results of the survey on Kyoto City shows that 32.1% of respondent have suffered from certain form of violence by husband or partner. And 36.8% of them said they were beaten, thrown or broken something, while those who had to see a doctor also reached 12.9%. These victims wrote their experience and trauma in detail. At the same time, DV is not recognized fully in general, as 22.2% expressed that victims also partly are to blame for violence. One out of five thinks women themselves helped to employ violence in some way. The number of those who did not report their own experience of DV reached 56.6%. When they reported their victimization, they went either to their family (77.6%) or friends and acquaintances (51.0%), and public institutions or agencies are not popular for them to go to. One of the reasons is that they don't know where to go, as about one out of five said they couldn't find any such organizations. Regarding the question why they cannot separate from perpetrators, 53.9% replied children is the major reason, i.e. the parental rights. In some cases children do not want to separate from parent or dislike the change of environment; and

48.6% said they were not be able to become independent without stable income. Among the most needed measures to solve the DV problem, providing shelters where woman victims can seek refuge how late at night was supported by 65.7%, while 63.9% expressed that the law to prevent DV is necessary.

Thus, the survey in Kyoto City shows clearly there are many woman victims of DV and shelters for temporary protection for them as well as legal instrument to prevent DV are urgently needed. I am convinced that these are not specific needs only for women living in Kyoto, but for women in general in Japan.

As a publicly operated shelter, there is the Women's Counselling Centre which provide temporary protection for woman victims of DV. The Centres were set up in every prefecture and district in compliance with the Anti-Prostitution Law enacted in 1957. The women can stay at the Centre up to two weeks. Originally, these facilities were established to protect women who have worked as prostitute and needed protection, or those who are likely to engage in prostitution. That is, the main objective of the centres is to prevent prostitution. However, as increasing number of women who have never engaged in prostitution began to seek refuge, government issued an order to the centers in 1992 to accept women faced with difficulties such as dysfunctioning of family, the poor, victimization. For example, at Women's Center in Osaka, 119 out of 231 cases in 1998 were providing temporary protection for women victims of DV. Now, more than half of women who sought refuge were DV victims. The fact that there is no other public facilities except Women's Counselling Centres based on Anti-Prostitution Law suggests complete lack of ideas to protect legally women with public resource in Japan. This is why establishment legal system to protect women's human rights are strongly called for.

#### **IV. Elimination of DV based on International Instrument of Human Rights**

In fact, after the Beijing Conference, both national and local governments in Japan have begun to recognise the necessity to take measures to address effectively to DV. The Beijing Platform of Action has given significant impact on government policy on DV in Japan. This Platform provides analysis of violence against women as well as the measures to be taken

by State, based on the Declaration on the Elimination of Violence Against Women adopted at UN General Assembly in 1993. The Article 1 of the 1993 Declaration defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." And in Article 4 it also clearly urges States to adopt policy appropriately and promptly to eliminate violence against women that occurs in their private life. The preamble of the Declaration provides that effective implementation of the Convention on the Elimination of All Forms Discrimination against Women would contribute to the elimination of violence against women, and this declaration could reinforce the process.

DV is a typical violence against women which occurs in private life called family. Women and children account for majority of victims of human right violation occurs in private life. After the Universal Declaration of Human Rights was adopted, the United Nations has made every effort to strengthen the international protection of human rights, through adopting International Covenants on Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and so on. However, the fact that violence against women, especially which occurs within family life, is also a serious violation of human rights and fundamental freedoms which both men and women are equally to enjoy has not been fully recognized. What happened within family has long been considered as privacy that the State should refrain from intervening. The voice demanding elimination of violence against women has got bigger since 1990s, which indicates that international instruments to protect human rights in public life are not relevant to women who live mostly in private life. The boundary between public and private life in terms of protection of human rights is itself part of the social structure to force women to be subordinated to men.

Although the Convention on the Elimination of All Forms Discrimination against Women (CEDAW) itself does not include any explicit provision on elimination of violence against women, the Committee of CEDAW adopted general recommendation on this issue twice which clearly states that any State Party has obligation to eliminate violence against women in accordance with the Convention. Not just the CEDAW, but also International Covenants on Human Rights (both for social rights and civil rights) obliges State Party to

eliminate violence against women. In fact, the Committee on Human Rights expressed that the Government of Columbia violated the Article 6 of the Covenant of Civil Rights on the right to life as well as Article 9 on the right to liberty and security of person, because it failed to take effective measures to prevent forced disappearance. State party is obliged not only to prevent direct violation on individuals by state powers, but also to prevent, investigate, persecute individual perpetrators and to offer redress for the victims. It is necessary to urge states to take obligation to protect human rights in the framework of existing international instruments so that protection of women's human rights could further be promoted.

Currently, the Committee of CEDAW requires state parties to report on the measures were taken to eliminate violence against women when the committee examine implementation of CEDAW. Thus, any government is required to include information of the national policies and measures on the issue of violence against women in their national report. In October last year, Optional Protocol of CEDAW was adopted. It contains two procedures: individual communication procedure and inquiry procedure. It helped to promote further protection of women's human rights. It is quite likely that elimination of violence against women, one of the major concern at Beijing Conference, will be seen more and more important issue that should be addressed by international community as a whole.

On the process, it is hoped that more people would feel it necessary to have a legal binding international instrument which obligates State Party to eliminate violence against women, based on the Declaration on the Elimination of Violence against Women. Most probably, the Declaration could be adopted as the second Optional Protocol of the CEDAW. I strongly believe that setting up such a international instruments will greatly contribute to eliminate violence against women throughout the world.

## **Conclusion**

In Japan, specific measures and legal framework to prevent DV and to protect its woman victims have just started to be introduced. Some other countries in Asia and Pacific region have already enacted Anti-DV Law, and taken more progressive policies compared to Japan. I hope to learn as much as possible from these advanced countries in terms of DV policy at

the expert meeting.

In particular, women who work at around 20 private shelters throughout Japan or being engaged in support work for DV victims strongly demand early enactment of Anti-DV Law. I wish to learn how women in other Asia-Pacific countries could succeed to enact Anti-DV Law in their countries. There are other things I could learn: what are the major problems with existing law.; what kind of measures to protect DV victims and help them to support themselves they have; how NGOs such as shelters working to eliminate DV and protect victims co-operate with government or local government, and so on.

I would suggest to form some kind of regional network which helps to eliminate violence against women in Asia-Pacific as well as to promote the governments to address this issue. Also, women in this region could work together in solidarity so that international community will establish a human rights treaty effective for elimination of violence against women. After the Beijing Conference, women's empowerment has become a common goal for women in the world. DV basically contradicts to women's empowerment and presents serious violation of human rights by depriving women of their power by nature. Many women are fully aware that protection of human rights within family is vital to women's life. We are required to exchange our own experiences in our countries and work out effective strategy to eliminate DV.



## Summary of the Discussion

### DAY I, National Report

#### AUSTRALIA - Avega

- Looking at DV as a development issue. IWDA has found that the issue is similar across regions. Perspective of a NGO development agency and the human rights of women. New for such an agency to take human rights issue as a priority issue. The idea still stands that you can segregate the rights of women. But Women's' rights has to be taken as a whole – economic, etc.
- The example in the paper of the work of IWDA in Cambodia – people's attitudes, values and beliefs that can make the difference. Involve the community to make change.
- Discussion about terminology – this can change over time. But must start with what people understand
- Look at the El Salvador example – look for ways to talk about it, as a way of taking it out of being an issue but it is a rights issue.
- Community based approaches – work with women, men, youth and children. Community-based capacity to take action
- Take action to work with the perpetrators
- Cambodia – example of project based work which the women themselves identified and undertook
- Similarity in the problem and the perspectives of women in countries such as Cambodia and Australia

WE often forget about the struggles and how recently the law has changed to reflect these problems. 1995 – law changed. 1996 – survey undertaken by the govt. On physical and sexual assault – ¼ of women in a relationship experienced violence. Young women most vulnerable. Federal govt. and the local state govt. works together to get the information.

Comments: Sjamsiah/Ivy

IWDA approach is building capacity – that is good

The Terminology is important – this can make a difference [ ef. Female circumcision and FGM – change the terminology to “Family Violence” because other members of the family may also

be abused though it starts with the wife abuse. But must keep in mind that the females are more vulnerable.

Building expertise in dealing with the issues

### CHINA – Mark

In the language it is family violence. Must be intentional. Can be physical, mental or sexual. No national survey . getting attraction after Beijing. 30% of families have DV. Cultural concept that the wife is owned by the husband.

Even women who reported the cases don't actually want divorce.

Criminal law has provisions about causing injury – but it is difficult to get the evidence. There is a new regulation. And local laws – 13 provinces and cities have passed such laws. More like a declaration. And difficult to take it to court. Injury certificate? – only 100 women got the certificate but only half brought the case to court.

The court – gets a women's organisation to be the jury in the court case??

Give the Police the power to intervene.

Legal aid centers are popular – there is a need for them.

### Comments:

Purnianti – Do you have economic abuse – husband controlling the money and not giving the wife?

Mark - In the rural area yes – but in the cities the wife controls the money

Shamima – from the pacific experiences economic abuse is often accompanied by DV. Even when there is not physical abuse there is economic abuse

Roselle – difficult to generalize on the relations between men and women in countries.

Sjamsiah – does the definition of DV only include family members. What about domestic workers? They also get abused.

Mark – DV includes violence between lover and partner - that is not included under DV.

Husbands abuse their wives to get divorce to marry someone else.

### ISSUES:

Economic Abuse

Domestic Workers

Can the husband be a victim

### FIJI - Shamima

- Co-ordinate work in the Pacific – deal with all issues of VAW
- see paper for statistics
- most women gave reasons for abuse as withholding of sex from their husbands – problem of marital rape
- Draft legislation – RRRT gives help
- Fiji drafted DV legislation – based on Malaysian, Australia, New Zealand
- Inadequacy of laws and law enforcement. Some success in Police procedure – no drop policy. But depends on attitudes.
- Lack of opportunities for education
- Lack of shelters – problems with running them – lack of funding
- Fiji – instead of looking for shelter started working with the community where the community looks after the women
- Churches play a powerful role – very fundamentalist and sexist – dangerous trend. Suppresses the issue.
- Armed conflict contributes to the VAW – a real setback to the gains that had been made
- Inadequacy of current laws and procedures

### INDONESIA - Purnianti

- Legal framework – details given
- Difficult to estimate – hidden problem
- Social structures, traditions favour gender inequality
- DV generated by money problems or the inferiority of the husband
- Victims do not report incidents – shame, loyalty, acceptance of the problem
- Difficult to go to the police as the police do not have a good attitude
- There is a Police women's desk from last year – they are more sympathetic
- Lack of shelters
- Tried to organize training of journalists on the issue
- Workshops
- Govt. has signed the Declarations and the Optional Protocols
- National Plan of Action – still in the process
- Draft of a DV Act
- Religion – causes problems



- Perception of gender issues still limited
- Dating violence also increasing
- Domestic workers – the media covers this – rape of domestic workers
- Archaic penal Code – this is covered by “maltreatment” only. Here too lack of evidence

Comments:

Mark – Problem of getting the evidence?

Answer – in the case of physical abuse this can be obtained. Most women go to the crisis centres rather than to the Police.

It is a good idea to collect the medical evidence even if the women do not want to go for legal action immediately. Check Evidence Laws in this regard – these laws may also need to be changed. You can not bring evidence of past acts. Also evidence for protection orders.

Shamima – confidentiality of the victims. Cannot put pressures on a women to report. Give her options.

Sjamsiah – the strategy now is to be hospital based?

Community based

Training Police women

Reconciliation center or unit – DV is done mostly by the husband. Most women do not want to split. They depend on them – economic, social status, etc.

Women must have a choice. It must be with a family perspective also.

Avega said that the men must be made to take responsibility for the violence. That must be emphasized. This reconciliation must be very carefully done. It must not be considered as therapy for the husband.

Question: Has a doctor an obligation to report when he finds a victim?

Answer: We try to network with the doctors. The doctors are now aware of the problem. But they have their ethics of confidentiality. Promote the medical legal linkage. IT is not a legal obligation to report.

IVY Don't make it obligatory for the doctor to report. This takes away the choice of the women as to whether she wants to report it or not. The woman may not want to go back to the doctor.

Shamima - WE also found that women go underground if they are forced to report. Also sensitise the medical schools with the students and the young doctors.

## MALAYSIA - Ivy

Paper centers on the DV Act. Also gives a description of the incidence of the DV in Malaysia. WE found that many women were being turned away by the Police. SO in 1985 the ideas of the Act was started.

Looked at the Penal Code and existing law. Social norms also said that a man has the rights to beat his wife. Penal code has provisions on hurt but did not specifically address issues of fear, mental stress, etc. Other laws also discriminate against women, (inheritance, guardianship, etc).

Felt that there should be a DV Act. Looked at issues of protection and duties of the various agencies - welfare, police etc.

Muslim women are governed by Muslim law. Others are governed by the Civil Code. But criminal law is common. Muslim authorities felt that this a family issue not criminal. So the law had to be a common one. So the DV Act was attached to the Penal Code. The definitions of the crime come under the Penal Code but the roles of the agencies come under the Act.

Implementation was not being done properly. Emphasis was on reconciliation before protection. Extensive monitoring efforts to get the protection order.

Originally the welfare officer only could get the PO for her. Now she can do it herself.

Now the emphasis is on improving the procedure.

Public Education has been consistently done by women's organization – about the law and about DV itself. Disprove the myths. Pamphlets, etc. Public education programme very successful.

## JAPAN – Kay

See the paper which was read out.

Social perceptions on marriage and divorce. Japan has high rates of people opposed to divorce. Makes it difficult for women to break away.

Social security system

Law on DV needed

JAPAN – Masumi

See the paper

JAPAN – Teruko

The shelters – public run shelters. Originally it was a house or institution for sex workers. Also homes for mothers and children. They are using these for victims of DV. But there are no shelters specifically set up to protect the human rights of women. These shelters have financial problems. No full time staff – only volunteers, sometimes not even that. The priority is to ensure the safety of the woman. Other factors come later. Counseling system is very expensive so women and children who suffer abuse cannot get help. Also it takes a long time. Staff have to work themselves to raise funds.

Govt. and private companies must support this system. Even the network of shelters have different perspectives and it is difficult to work together. We don't distinguish between violence by the spouse or other male relatives.

Only a few lawyers are working on this issue. But most lawyers refuse.

The restraining order comes from the civil law. It is available in the lower court but you have to go through a lawyer.

## Japan – Keiko

Focuses on child abuse. The social norms prevent women from getting help. Must also look at the effects on children.

### Comments:

Many lawyers in Japan don't know how to utilize the civil law to protect the victims. The victims also don't know how to apply for help. They need a lawyer to file a District Court action. That costs money. Lack of knowledge a barrier. Must overcome this. Give information to the centers. Also training and education for lawyers. Also for police officers.

Problem with the PO in Japan is that even if the abuser violates it there is no punishment. However, there are psychological pressures to obey the law so even so there is some good to getting the PO.

Law and the culture of the law – there is a gap.

Sjamsiah – child abuse and DV are directly related. The two go together. This must get into the law schools

Triggering factors – the cause of the violence is the unequal status between the man and woman. Other immediate factors trigger it off. The interim PO must spell out every action the perpetrator may take.

## PHILIPPINES – Roselle

Began by playing a song – “No more” a song about survival of violence.

Women who are survivors have been active, at the all experts. In the Philippines we like to differentiate intimate violence i.e. AWIR- Abuse of Women in Intimate Relationship from domestic violence – because of the element of trust and sexual relationship | AWIR

Phil – made up islands, 100 linguistic groups, diverse cultures. The Gender related index rank, rank of 70. Gender empowerment, at rank 9

Read out her paper.

### Main points

1. Weak implementation in policy and laws for e.g. in health, 27% of maternal deaths. Social costs on women are high.

A battered women face many obstacles – no specific law, however there is a policy of women development, but no implementation. Family Courts law – not in action.

Repeated violence is a problem – the fear, mental violence, is hidden. The use of psychologists to show proof of mental violence only the rich can afford this.

ANTI AWIR Bill – includes all relationships, and all forms of violence, including economic abuse, gambling and misuse of family income. Every act of abuse has various dimensions. Some challenge on this, some groups want to include other forms of violence in this bill.

Long term issues – in reaching out to survivors, organizing communities and

DV is complex, changing systems take a long time but practical choices have to be addressed.

### Comments

#### Sri Lanka - Camena

Ran through her paper.

A paper done for IWRAW AP project. – on elimination of DV.

Status of women – low participation in all sectors. The Constitution states that men and women are equal. Special laws can be enacted. But not in reality. Sri Lanka has ratified most treaties. The Women's Charter – national obligations.

Violence has risen as the society is in a civil strife, increase in rape, dv has increased, as police records show.

For the purpose of this study- violence in the home within members of a particular household. The household may have an extended family- cousins, relatives more than the nuclear family., including domestic worker. Thus, whoever claims it is a family.

Includes all forms of violence; but the study could not explore psychological violence. Great difficulty in getting information.

Went through the findings

Causes, Incidence, from other studies. Although the study was unclear gave the group a basic data.

Cause – studied the deeper causes., underlying causes. Women who do not fulfill expectations got beaten. Alcohol – in both situations, i.e. drunk or sober got beaten.

At present addressing- institutional, legal and agency response.

The notion of family and rights of men is strong.

Hospitals- poor records, Police – a major problem, DV is not considered a crime. Police mediated, almost 1/3 the police mediated and send the women back.

Legal Redress

No specific law on DV, judges are not sensitive,

Crisis centers- none.

Comments

Clarifications on incidence.

## **DAY 2**

### **ISSUES TO BE ADDRESSED**

- The terminology, the definition, the culture of silence, attitudes, perspectives, social norms, etc.
- Support services – what kind of shelters, counseling, funding
- Rehabilitation services for men
- Legislation / legal reform – definition, what kind of laws, the institutions, i.e. the mechanisms, the roles of the various agencies (police, judges, etc)
- Access to justice and the law

- Public education – continued public education to clarify issues and myths; the need to teach young people (medical / law schools)
- Data - information of incidence of DV; how do you compile this information; what perspectives are you going to use; methodology; ethics (confidentiality)
- Social and religious values which impact on the issue – possible backlash from conservative elements
- Other agencies – medical, welfare, judicial, workplace
- Causes – the role of men

Important issue is the culture, the social norms, the perspectives on DV.

Legislation:

This was important for the Japanese participants since the Japanese Parliament is looking at this aspect.

Sjamsiah - How do we make sure that our governments legislate adequately to address the issue of DV – they all have international obligations in this regard.

## PERSPECTIVES

*Definition of DV*

*Myths and facts*

*Culture of silence*

### *Definition of DV*

The definition of DV depends on the relationships, the members of the household, etc

Look at DV as a violation of human rights – the root cause is inequality of status of women. It is also a crime.

The division of labour

Not devaluing the women's roles – often the women do the housework plus the work in the fields etc. The woman's role as an equal partner in supporting the family must be recognized. The woman is not a subordinate. It is an equal division of labour.

Concept of work – multiple burden of woman

It is gender equality and justice.

Victims are afraid to split the family

What is the "Ideal family" not the so called "normal family"

### *Myths and Facts*

What are the myths connected to DV – look at the myths and arguments which you will come up against when lobbying

- Violence is normal and an expression of love
- It does not exist
- It only happens in "poor" families
- The woman asked for it
- Men as victims – must get the statistics on this to counter this argument. Very often it is a one off incident not a continuous state of affairs. Also the incidents when women kill their husbands.
- Alcohol as a cause – the excuse is that the alcohol caused the men to lose control which they would not normally do. This is not an excuse – the act of violence is a "chosen act".
- Frustration and pressure – but why do they take it out only on people with whom they are in "Intimate relationships"
- It is a temporary state of affairs – women are expected to tolerate it

### *Cultures of Silence*

The culture of silence – it is a non issue or a family issue. Recognizing human rights within the home is very difficult. Both men and women are socialized to maintain this silence. The low



self esteem of the women also contributes to this culture of silence. The silence of the religious institutions.

## **DV AND THE LAW**

### *Problematic areas /dilemmas*

Chaired by Camena

How we address the problem. First we have to identify the different situations. DV – 3 kinds --- Economic Physical Psychological - Women may chose to Stay or leave.  
Identify the different kinds of choices one may make.

Civil law– women who want to stay– might opt to use the civil law to get a remedy within the marriage.

Criminal law –may be used by women who are prepared to end the relationship, want to get out, to punish and to stop, and the woman to opt out.

Physical violence – wants to stay and get protection.

Pretrial and during trial situations

The first step is a report by the woman or a 3<sup>rd</sup> party.

Even if a neighbor reports the woman has to make a report and verify it.

Then the protection- orders the process may start.

One important issue – how far we give woman options and do we take the options out of their hands

Charges – to give the women the choice whether to charge or not. If it is mandated, the police must charge this may be dangerous, to take away the choices.

### **ACCESS**

1. women go directly to court.
2. women to have the information

A separate act addressing the duties of all concerned

The countries have to decide the options. Do we compel women to give evidence.

Discussion on should woman have the choice to report. If others make a report this may stop the women from coming forward.

Violations of protection orders is a contempt of court. The woman have to make the report and there will be separate punishments.

We need to consider all these issues when we think about what kinds of laws we want. But we need to be certain when we lobby.

Civil law – this has a different purpose. It can be used for divorce, maintenance and custody. In cases of economic abuse where it can be difficult to prove in a criminal case one may be able to get a remedy through this. E.g. maintenance, cite cruelty of spouse to obtain a divorce. Fear – this is a difficult issue to address in the criminal law and difficult to prove. Threats are addressed in the penal code. A clause on cruelty may help.

#### SUMMARY:

Identify the situations which the law will have to address. These may be very diverse.

- Different forms of violence

- What the victim may want – to continue or opt out of the relationship

Civil law and criminal law has different purposes

#### Criminal law:

- Protection orders/restraining orders

- Compulsory counseling for the man /Rehabilitation

- Sanctions for the violence/for violations of court orders

#### Civil law:

- Adequate divorce laws which recognize cruelty as a grounds for separation or divorce with maintenance /alimony

#### Administrative support:

- Support/medical/counseling services

Charges: Is the women given the choice to file charges or do police/medical personnel go ahead with or without her consent

The role of the Police, welfare services, medical services must be clearly defined.

Should domestic workers be put into a DV law? Is this good strategy? Should it be confined to spousal abuse? Will it confuse the issue if more people are included in the "household"? But the issue of domestic workers is very real in many Asian countries. In Malaysia they took domestic workers out of the Act for strategic reasons.

## **LOBBYING STRATEGIES**

*National/regional*  
*International conventions*  
*Local level participation*

Women groups to come together work together, and strengthen our own organizations

Look at the possible issues which may be raised and be prepared to counter them:

- It will take away the rights of men
- It is an interference with people's private life

### ***Experiences of countries which already passed an Act***

#### ***Malaysia:***

Malaysia began with a joint action group on VAW in 1985. Started getting the data and decided that they needed a Bill. Study group was formed and formed a joint action group. Came up with a Bill. Women's groups came together to thrash out the issues. Special committee of lawyers and social workers etc drafted the bill. Looked at other countries. The JAG came together every year to take joint action to promote the Bill. Also brought in govt.

people. After the Bill was drafted the media was brought in to give publicity. This took 10 years because they were not organized enough. One or two organizations took responsibility for lobbying for the Bill – Members of Parliament, etc. There was a supportive Minister. She had a lot of trouble in passing the Bill.

One strategy which helped was that an Islamic group covered the Islamic aspects. The media and sympathetic female editors helped a great deal. After that the monitoring process began. Every March 8<sup>th</sup> there was an activity on VAW. The media was very supportive and very important. There was also public support.

*Fiji:*

The Sexual Assaults bill – they talked to the women, the Police, etc. Got the feed back from all those directly involved. Also lobbied for change of attitude by the Police. Here too the media was very important. Radio also. Here too the dilemma of whether to take it out of the hands of the women if the women want to drop charges.

DV bill – govt. took it over. But they never let go and insisted that they must be a part of the process.

Can the Internet be a useful lobbying strategy. Create the website if you can't get media support.

The US model. The Minnesota Act. – these are good.

## **SUPPORT SERVICES**

Ask women who work in shelters as to why they are doing this work – what motivates them. This could also give perspectives on DV. Virada said that many women are those who have been abused themselves. Ms. Maeda said that many volunteers are not get directly in touch with the victims. They have good will, they are well off and want to do social service. They also have sympathy for the victims.

Ivy said she got involved because she felt that her life was tied up with the woman's movement. She too could be a victim of violence.

## ***List of Participants***

<b><i>Australia</i></b>	Ms. Avega Bishop	(International Women's Development Agency)
<b><i>China</i></b>	Mr. Ma Guo-an	(Tokiwa University)
<b><i>Fiji</i></b>	Ms. Shamima Ali	(Fiji Women's Crisis Centre)
<b><i>Indonesia</i></b>	Ms. Purnianti	(The Foundation for Elimination of Violence against Women)
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<b><i>Malaysia</i></b>	Ms. Ivy Josiah	(Women's Aid Organisation)
<b><i>Philippines</i></b>	Ms. Roselle Rivera	(University of the Philippines)
<b><i>Sri Lanka</i></b>	Ms. Camena Guneratne	(Open University of Sri Lanka)
<b><i>Thailand</i></b>	Ms. Virada Somsasdi	(Chiang Mai University)
	Ms. Wanee Thitprasert	(Thai Development Support Committee Research Project for Women, Friends of Women)
<b><i>Japan</i></b>	Ms. Makiko Arima	(Yokohama Women's Association for Communication and Networking)
	Mr. Takashi Ebashi	(Hosei University)
	Ms. Kay Fusano	(International Women's Year Liaison Group)
	Ms. Hiroko Hashimoto	(Jumonji Gakuen Women's University)
	Ms. Yoko Hayashi	(Attorney-at-Law)
	Ms. Keiko Irisawa	(Post-graduate Student)
	Ms. Yuka Ishikawa	(Asia-Pacific Human Rights Information Centre)
	Ms. Teruko Maeda	(Former Director of the shelter "MICHAELA", Sister Provincial)
	Ms. Ayako Nakamura	(Post-graduate Student)
	Ms. Sachiyo Ohnishi	(Post-graduate Student)
	Ms. Mikiko Otani	(Attorney-at-Law)
	Ms. Yasuko Takemura	(A member of the House of Councilor)
	Ms. Masumi Yoneda	(Kyoto Women's University)
	Ms. Mizuho Matsuda	(Asian Women's Fund)
	Ms. Reiko Yamazaki	(Asian Women's Fund)

## *Asian Women's Fund*

The Asian Women's Fund was established in July 1995 by prominent citizens who were concerned about continued suffering of the former "comfort women", victims by Japanese military during the World War Second, with the support of the Government of Japan. The primary aim of the Fund is to extend atonement and support to those victimized women. The victims have suffered in silence for so long and are now of an advanced age, and it is therefore the Fund's sincere wish to act urgently, in accordance with their needs, to alleviate their pain in whatever small way it can. At the same time, recognizing that prevailing attitudes of discrimination and violence against women is a part of the background to the suffering inflicted on the "comfort women". The second pillar of the work of the Fund is to actively address contemporary issues of violations against the dignity and rights of women.

The Fund's activities include:

- hosting international forums on contemporary issues on women;
- financial support to NGO projects addressing contemporary women's human issues;
- research and analysis into the causes and prevention of violence against women, and other contemporary women's human rights violations, and;
- training and development of new counseling approaches for women victims of violence and human rights violations.

For further information, or a list of publications, please contact the Fund at the address below, or visit its site on the world wide web.

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