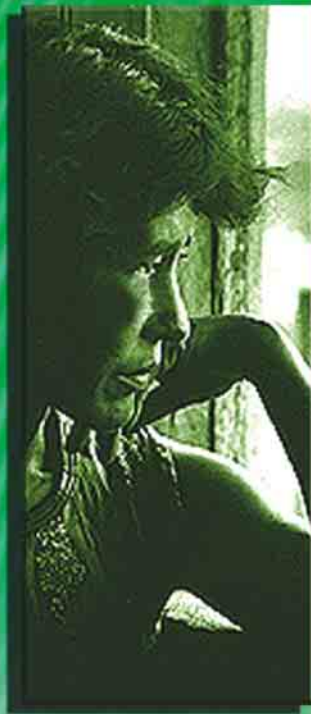
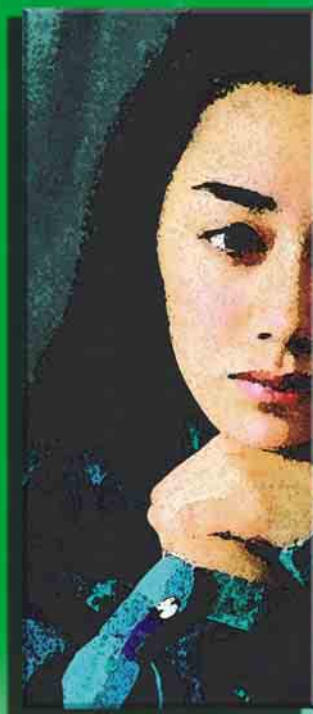


Community Centres for the Empowerment of Indian Women



Proceedings of the **Public Consultation on Violence Against Women**

A project co-funded by



The Friedrich Naumann Foundation



The European Union



Education and Research
Association For Consumers,
Malaysia

Proceedings of the
**Public Consultation
on Violence
Against Women**

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ERA CONSUMER MALAYSIA

(Education and Research Association for Consumers, Malaysia)

ERA Consumer Malaysia is a voluntary, non-political, non-profit organisation working towards a just and equitable society. ERA Consumer focuses on critical issues ranging from consumer, human and women's rights to the environment and food security.

Synopsis of project

The Friedrich Naumann Foundation has obtained financial support from the European Union to establish 10 Community Centres for the Empowerment of Indian Women in Malaysia. The European Union has approved this and other projects to support the implementation of the Declaration of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

A project implemented by ERA Consumer Malaysia and the Friedrich Naumann Foundation, and co-funded by the European Union.



The European Union

The views expressed in this publication do not necessarily reflect those of the European Commission.

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Agenda

Public Consultation on Violence Against Women

Organised by **ERA Consumer Malaysia**

In Partnership with the Friedrich Naumann Foundation

Co-Funded by the European Union

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| 8.30 - 9.00 | Registration of Participants |
| 9.00 - 9.20 | Welcoming Address
<i>Ms Indrani Thuraisingham</i>
<i>Secretary General,</i>
<i>ERA Consumer Malaysia</i>

<i>Ms Jyoti Sachavirawong,</i>
<i>Programme Officer EU-Malaysia,</i>
<i>Friedrich Naumann Foundation</i> |
| 9.20 - 9.45 | Keynote Address
<i>Datuk G. Palanivel,</i>
<i>Deputy Minister,</i>
<i>Ministry of Women, Family and Community Development</i> |
| 9.45 - 10.00 | Tea Break |
| 10.00 - 11.00 | Introduction to Violence Against Women: An Overview
<i>Ms Judith Loh,</i>
<i>President,</i>
<i>All Women's Action Society (AWAM)</i> |
| 11.00 - 12.00 | The Realisation of CEDAW Commitments
<i>Ms Tashia Peterson,</i>
<i>CEDAW Conference Coordinator,</i>
<i>Women's Aid Organisation</i> |



12.00 - 1.00

Protection in Law

- Domestic Violence Act
- Penal Code
- Criminal Procedure Code

*Ms Rasamani Kandiah,
President,
Association of Women Lawyers*

1.00 - 2.00

Lunch

2.00 - 3.00

Case Studies: Cases from the Community Centres for the Empowerment of Indian Women in Malaysia

*Ms Manohary Subramaniam,
Director,
ERA Consumer Malaysia*

3.00 - 5.00

Panel Discussion on the Developments of the Law and Impacts of Court Decisions on Rape Cases and Victims of Rape

*Chairperson,
Dr Rohana Ariffin,
Men in Action*

Panelist

*Mr Stanley Augustin,
Deputy Public Prosecutor,
Attorney-General's Office*

*Ms Puspa Ratnam,
Legal Advisor of AWAM*

*ASP Nor Azilah Haji Junid,
Special Investigation Unit-Sexual Crimes,
The Royal Malaysian Police Force*

5.00 - 5.30

Question and Answers



Welcome Address

Indrani Thuraisingham
Secretary General
ERA Consumer Malaysia



I would like to thank everyone here who has taken time out from their busy schedules to discuss this very important issue of violence against women. In recent times, there has been an alarming increase in violence against women. I am not referring only to the number of crimes but also the degree of the violence committed. I think everyone here will agree with me just how disturbing some of the reported cases are, to the extent that we now even have to censor our young children from reading certain media reports.

ERA Consumer Malaysia has always seen it important to create a space for members of the public to discuss and debate on issues that affect our lives. Cases of domestic and sexual violence are undoubtedly on the increase. We cannot push these incidences under the carpet and hope that they will just go away. As members of civil society, we have to play an active role in addressing the problem and suggesting ways to overcome it.

That, ladies and gentlemen, is the main goal of this consultation. We hope that all of you will take it upon yourself to identify crucial areas that require immediate attention and suggest ways to address the problems. We hope that today's discussion will enable us to put forth policy recommendations to the relevant ministries. We hope the government will consider the suggestions when making amendments to the law governing these issues.

Today's programme is a part of a larger project that ERA Consumer is involved in. Some of you here may be familiar with ERA Consumer's Community Centres for the Empowerment of Indian Women in Malaysia, which were set up with the support of the Friedrich Naumann Foundation and the European Union. Thus far we have set up 10 community centres. They are in Slim River, Ampang, Dengkil, Kapar, Seremban, Semenyih, Taiping, Rawang, Sitiawan and Sungai Petani. These centres serve as a meeting place for women in these communities. These are centres where the women can enrich their lives and knowledge by participating in the various activities

carried out for them, a place where they can go to enhance their skills in certain areas.

The centres carry out an average of two to three seminars, workshops or talks in a month on a multitude of issues that are of concern to members of these communities. They include talks on health, welfare, education and many other relevant issues. Since their inception, these centres also provide psychological counselling services to members of the community. We have also engaged a lawyer to meet these people regularly and counsel them on legal matters.

These community centres have indeed proved to be an eye-opener to us all. Everyday we get cases of domestic violence of varying degrees at the centres. Many of these women are reluctant to speak of the trauma they go through because of the stigma attached to reporting such incidents. It is still prevalent in all societies that one does not talk about what happens at home as it will cause one to “lose face”.

Later on today we will share with you some of the cases that have been reported at the centres. We will take you through the challenges our staff members face in addressing cases of domestic and sexual violence from a grassroots perspective. You will see just how difficult it is for some women to get away from a violent situation mainly because they just don’t know how to go about doing it. Many have such low self-esteem that they just cannot see themselves asserting their rights in a positive way.

Therefore, we in civil society should work towards recommending more changes to the law that we think are necessary to address problems at the grassroots. Any change in legislation affects us all. Many groups feel that the laws on violence against women, whether sexual, domestic or harassment, are archaic and in desperate need of amendment. In fact, a lot has been written and discussed in the media recently on the need to reform the penal code, which has loopholes that can make or break many a criminal case. The government has set up a special select committee to address this and it is indeed a welcomed move.

Therefore we hope that the government will also pay more attention to the amendment of laws on domestic and sexual violence in the near future. Many women’s organisations have pointed out that it is long overdue for laws on rape, for instance, to be amended. It is definitely our role as members of civil society to suggest to the governing bodies the areas that need to be looked at. We are



definitely willing to work together with the government for the greater good of protecting the rights and security of women in Malaysia.

Members of the media are present here today. I thank you for your interest in this event as it is important for us to share with everyone who couldn't be here the significance of addressing this issue of violence against women. I would also like to take this opportunity to thank all our fellow partners in civil society, many of whom are speakers today, for their co-operation and support of this event. I would also like to convey my appreciation to the Attorney General's Chamber and the Royal Malaysia Police for agreeing to participate in our panel discussions.

It would be remiss of me to if I did not thank the Friedrich Naumann Foundation and the European Union for their generous support and guidance in our joint project towards the empowerment of Indian women in Malaysia.

And last but certainly not least, I would like to thank Datuk Palanivel for always showing an interest and supporting the endeavors of non-governmental organisations. Your presence here today illustrates your commitment towards the betterment of women's rights in Malaysia. And for that we thank you Datuk.

With that, ladies and gentlemen, I hope that you will find this consultation to be useful and please voice your thoughts freely as that is certainly the main reason we are all here today.

Building Confidence and Empowering Women

*Jyoti Sachavirawong
Programme Officer EU-Malaysia,
Friedrich Naumann Foundation*



It is indeed with great pleasure that I welcome all of you to this public consultation on violence against women, but I wish for a day when there is no need for such seminars. That will be the day when violence against women has been eliminated from society.

Violence against women and children is one of the most pervasive human rights abuses in the world. Family violence is common, among both the affluent and the poor. Despite repeated calls and lobbying for equal rights of men and women, a disparity still exists, particularly when it involves physical strength. In some societies, this disparity is made worse by misconceptions and misinterpretations of customs and culture to promote the superiority of the male in the family, creating a sense of fear and dependence for women.

Women are more likely to be disadvantaged relative to men and have less access to resources, benefits, information and decision-making, and fewer rights both in the household and in the public sphere.

In the past, these concerns and the struggle for gender equality have often been narrowly perceived as “women’s issues,” and gender programmes have been designed to focus only on women. However, there is now increasing recognition of the need for men to be involved in the movement towards gender equality. In our project, we realise the importance of having the support and cooperation of both genders, particularly of the male population. Our activities in the community centres are designed for both genders. In fact, we seek a minimum of 20 per cent male participation in these activities.

This consultation is not about blaming men but creating understanding. It is about bringing together men and women to work towards changing the stereotypes and unequal power relations. It is also about men’s role and responsibilities and potential to contribute to gender equality.



This is the first in a series of public consultations to be conducted by ERA Consumer and the Friedrich Naumann Foundation under the European Union co-funded project, Community Centres for the Empowerment of Indian Women in Malaysia. The main aim is to improve legislative provisions on women's rights. More specifically, we hope that through various consultations with stakeholders such as yourselves and input from the grassroots, we will be able to propose recommendations to the government for legislation to criminalise gender violence in all forms and provide protection to women being threatened by or facing violence.

It is important that leaders recognise ending violence against women as a policy priority, and that there be public education at all levels – local, national as well as international – to remove the traditions of abuse and violence. Education and awareness, however, are not enough. They need to be supported with legal reforms and stricter law enforcement.

The whole community needs to be engaged in the transformation process to enhance equality between women and men, both through legislative means and by changing public opinion and shaping attitudes and values. We can no longer remain bystanders, but must take action.

The main aim of the community centres is to engage the various groups. They have been doing this through group activities on legal rights and health awareness, confidence building, income generating and skill development, among others. In addition to group seminars, the centres engage professionals to provide legal and psychological counselling to community members.

All this has been possible through commitment, hard work and empathy of the centres' staff. They are devoted women who have taken up a tremendous challenge. In addition, they are role models and pioneers in implementing this project, because we want to promote its replication or at least its components by other Malaysian organisations. I therefore congratulate the centres' staff for taking up this challenge and for their preparedness to execute these difficult tasks. I say difficult, because that has definitely been so. They are dealing with sensitive issues, and to an extent are seen to be challenging perceived cultural norms. Fortunately, they have the support and assistance of a network of volunteers and respected community leaders.

Since the inception of the project, we have received tremendous support and cooperation from the ministries, government agencies, non-governmental organisations, media, the corporate sector and, of course, the volunteers in each

community. It is exactly the kind of joint effort needed to achieve our shared goal of empowering and building confidence of women, and creating a more equal and just society.

This project would not have been possible without the support and funding from the European Union. I would like to take this opportunity to express our gratitude to the European Commission and specifically to Ambassador Theirry Rommel and Ms Cristiana, who have always given their strong support for the project.

Special thanks also goes to the staff of ERA Consumer, our local partner in implementing this project.

In closing, I would like to remind us all of the vital role women play in every sphere of life, from economic contribution, upholding family and cultural values to creating and promoting peace. Women are said to be the pillars of the family and society. I totally agree, and I also believe this: when we talk about men being heads of family, remember, women are the necks supporting these heads.

Violence against women is a crime, not a family dispute. Help us stop it. Be the voice for those who do not have one.



Keynote Address: Time to Change Mindsets

*Datuk G. Palanivel
Deputy Minister
Women, Family and Community
Development Ministry*



It gives me great pleasure to be a part of this consultation on this very important topic of Violence Against Women. There has been a marked increase in incidents of violence against women in recent times in Malaysia. Cases of rape, domestic violence, sexual assault, molestation and harassment have become a mainstay in the media of late. Practically everyday there is a shocking rape, assault or incest case reported and it is sometimes so difficult to believe that human beings are capable of committing such heinous crimes on one another.

It is important for Malaysians to start being more aware of the severity of the problem at hand. The rape statistics is shocking. More cases have been reported in the first half of this year, compared to the whole of 2003. It is time for us to take a step back and think as to why this problem is escalating? What are the factors that seem to contribute strongly to this growing problem?

One of the issues that I think needs to be looked at further would be strengthening the role of non-governmental organisations in efforts to eliminate violence against women. The Women, Family and Community Development Ministry strongly supports the efforts of NGOs in addressing this issue. There are definitely avenues where NGOs can contribute whilst working together with the government. This is one of those areas. It is high time to change the Malaysian mindset with regards to cultural attitudes and beliefs and also the perception that women are the weaker sex.

Women are not to be treated as mere objects but rather they should be respected and given their due regard in society. The old ways of thinking and treating women as chattel need to be eradicated. In fact, one of the eight aims set by the United

Nations in the Millennium Development Goals (MDG) specifically addresses the need to promote gender equality and to empower women.

The empowerment of women through education and awareness is an important step to address the violations of women's rights. Consultations such as these provide a platform for women to discuss and share their thoughts on issues of violence against women. I understand that the goal of today's consultation would be to put forth policy recommendations to the government on the areas that need improvement with regards to legislation to protect the rights of women.

The government is aware of the need to further improve on the law. We are definitely aware that all legislation need to be amended according to the changes and needs of the society at large. However, it is important for us to develop a comprehensive and holistic approach to address the problems or loopholes in the law rather than doing things in a haphazard way. The ministry does indeed take stock of the work NGOs carry out on such issues. Of late, the interaction between the NGOs and the ministry has increased and this is a very positive development for the future. We are taking note of all recommendations made by the relevant parties as we feel that the realisation of ground realities is very important for the betterment of women's rights.

The difficulty in eliminating violence against women is there are many myths in this area and the fact that there is a stigma attached to victims of violence, especially in rape cases. Women who have been raped are reluctant to report the crime for many reasons. However, the main reason would be the shame and ridicule that the victims go through in the eyes of society. Sometimes the reluctance in reporting rape cases also stems from the fact that the perpetrators of the crime are close relatives with whom the victims have an attachment.

Mindsets such as these are difficult to change, as it is deeply ingrained in the attitude of society. However, I believe that a systematic plan of implementing guidelines to assist in the dissemination of information to members of the public will definitely help in overcoming this problem. Members of the public need to be educated on how to treat a victim of rape, on what needs to be done for a victim of violence psychologically as well as medical assistance. This is of course just the tip of the iceberg in terms of assisting victims of violence but it is definitely a good place to start.



I would like to take this opportunity to commend ERA Consumer Malaysia for its continuous efforts in addressing issues that are of concern to civil society. This public consultation is both timely and necessary in light of the current state of affairs with regards to violence against women. Therefore it gives me great pleasure to officiate this function and I am certain that you will have a fruitful discussion here today.



Violence Against Women: An Overview

Judith Loh

President

All Women's Action Society (AWAM)



Violence against women has existed since the beginning of history. It occurs in every country and among all groups of people. It has no socio-economic boundaries and all girls and women – rich or poor, black or white, educated or illiterate, religious or otherwise – face some degree of risk and are potential targets of violence.

Rape has been used as a “weapon” during wars and unwanted sexual behaviours towards women existed even before the crime was called sexual harassment. Today, through the efforts of women’s movements, these crimes are classified as human rights violations.

Article I of the UN Declaration on the Elimination of All Forms of Violence Against Women 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 private life.” It states that “violence against women can be seen as both a measure of women’s vulnerability and a critical social mechanism for maintaining women’s inequality.”

We must distinguish gender violence from other types of violence. This violence is rooted in prescribed behaviours, norms and attitudes based on gender and sexuality. For example, men are taught from young to be strong, aggressive and independent and be a provider and protector. They are told not to cry or show their emotions. On the other hand, women are taught to be weak, demure, obedient, submissive, caring, dependent and self-sacrificing.

Gender socialisation is subtle and sometimes overt but it legitimises the use of violence to gain assumed privilege and hierarchical power for certain groups, in particular men. In turn, these special privileges and power perpetuate values and



beliefs that accept inequalities and domination of one group over another as “normal”.

Although women’s groups in Malaysia have carried out successful campaigns against gender violence, no systematic efforts have been made to document the prevalence of this crime. Inadequate monitoring and documentation can lead to underreporting gender violence. Many Malaysians still regard gender violence as a private matter and not as a pervasive human rights problem requiring state intervention.

According to police statistics, on an average 3.8 cases of rape have been reported everyday in 2002. It has been estimated that for every 10 reported rape cases, nine others go unreported. Only four out of five reported cases actually go to court. From AWAM’s study, only 10 per cent of the reported rape cases end in successful convictions. The failure to convict the rapists can be due to lack of witnesses or inadequate forensic evidence.

Marital rape is still not considered a crime in Malaysia. A wife is expected to submit and thus it is difficult for a woman to prove that sexual assault has occurred unless she can demonstrate serious injury.

Many women do not report rape simply because they fear further humiliation and degradation. A victim is often afraid of being stigmatised and branded as “spoilt”, dirty or impure. If she is married, she fears her marriage will be jeopardised. Hence, victims remain silent.

The most common form of violence against women is wife abuse or physical harm inflicted by male partners. About 8.5 cases of domestic violence occur everyday but the Domestic Violence Act 1994 provides little protection to abused women, as there are legal loopholes. Many are still reluctant to report domestic violence because of a woman’s social conditioning to accept physical and emotional chastisement as a husband’s prerogative.

Malaysia is a receiving country for trafficked women from Indonesia, the Philippines, Thailand, China, India, Taiwan, Singapore, Myanmar, Vietnam and Laos. Sex workers are mainly adult women but there are also male, transvestite and child prostitutes, both girls and boys. Studies show that more than half of those “rescued” from sex establishments were under the age of 18.

The main channels of sexual exploitation were found to be recreational, businesses, entertainment, fitness clubs and others. Almost every town has a red-light district.

Prostitution is illegal in Malaysia, which makes it difficult for sex workers to come forward to ask for protection if they become victims of rape or they want to escape from brothels. There is also no way of monitoring the situation, as it is difficult to obtain accurate information on prostitution and no effort is being made to document the sex workers.

How is one to overcome the seemingly insurmountable barriers of gender and sexual inequity? How can we change the cultural norms that create these damaging, even fatal, gender disparities and roles? An important first step is to recognise, understand and discuss power imbalance in gender and sexuality, which fuels the epidemic.

The dominant discourse acknowledges the role of gender in fueling the epidemic. Combating violence against women involves challenging the way gender roles and power relations are articulated in society. There is a need to review the meaning of gender and sexuality and the balance of power between women and men at all levels of society.

There is also an urgent need to break the silence because we know that talking openly about the violence is the first step to prevent a denial of the problem. Breaking the cycle of abuse requires concerted action and collaboration between government and non-government actors, including educators, healthcare authorities, legislators, the judiciary and mass media.

What are the responses of women's organisations to these challenges? Women's organisations like the Joint Action Group (JAG) have stood alone for nearly two decades in trying to end violence against women. They have been struggling for equal rights and political power in a world controlled by men. They have become a vocal and legitimate force in society, especially now that United Nations' bodies, development agencies and governments support women's concerns. JAG continues to challenge, address and lobby for policies and laws to end violence against women. The group also devises strategies and action plans to confront the violence.

Let us look at some of its achievements. JAG does a lot of lobbying and advocacy work for policy changes. It launched the "Women in Development" campaign in 1985, which brought recognition to women's contribution to nation building and the need to address gender violence.



JAG lobbied Members of Parliament to endorse the demands in the Women's Agenda for Change and secured their commitment to include 11 Agenda issues in the election manifestos of political parties. An outcome of the women's lobbying is the enactment of the Domestic Violence Act in 1994.

As for legal reforms, amendments to rape laws were made in 1988. Efforts to seek a review of the Syariah (Islamic) Family Law are still continuing. We are also lobbying for the Sexual Harassment Bill. In this regard, JAG has invited professionals from other countries, which already have the Sexual Harassment Act, to share their experience with various groups as well as with the Women, Family and Community Development Ministry. We have submitted proposals for the bill to the relevant ministries for consideration.

We also engage the media and network with journalists to get extensive coverage and support for our concerns on violence against women. We also lobby the media to raise national awareness to end the culture of violence.

Besides JAG, we also have the National Women's Coalition, which networks with the relevant government ministries and agencies. In addition, we work with the police, welfare officers and hospital personnel to ensure gender sensitisation.

New strategies have been devised to empower women. We mobilise women and men to act jointly on gender issues. Other organisations such as ERA Consumer Malaysia and Amnesty International are also beginning to take up issues such as violence against women. In 2000, the government set up the Women's Ministry. In 2002, AWAM formed MAN.V (Men's Action Network Against Violence) in partnership with men. It is important to network and collaborate with groups working towards a violence free society.

MAN.V has teamed up with us to break men's silence over violence against women. Many men are against violence but, unfortunately, they remain silent. Besides working with us to help end men's violence against women, MAN.V also challenges other men and boys not to commit nor condone such acts. Instead, these men and boys are encouraged to work with women to promote gender equality and to end gender discrimination and violence.

Men are now also included in campaigns to eliminate gender violence. Last year, MAN.V and AWAM launched the White Ribbon Campaign, a worldwide initiative by men. The campaign sees violence as something that some men learn. It is a result of the way many men learn to express their masculinity in relationship with

women, children and other men. Many men grow up thinking that the use of violence is acceptable. This attitude will change if every one of us accept personal responsibility and challenge sexist language and jokes that degrade women; learn to identify and oppose sexual harassment and violence in the workplace, in school and the family; support local women's programmes and work towards long-term solutions.

Men themselves have realised that many women's issues are in reality issues for men as well because they are also victims of socialisation. After all, this is men's violence. It's men who control governments, religious institutions and corporations. Thus, when women's rights are denied or are exploited, it's the men who bear responsibility. This is part of the larger truth.

Hopefully, this will take us a step closer to achieving our vision of a violence-free society. Hopefully the deaths of Ang May Hong, Audrey Melissa, Canny Ong, Noritta, Nurul and many others will awaken in us the strength to make a stand against violence, and that these young people would not have died in vain. This must change, and this message must be communicated.



The Realisation of CEDAW Commitments

Tashia Peterson
CEDAW Conference Coordinator
Women's Aid Organisation



International standards and processes can help us understand certain issues and concepts. They can also be useful for our national-level advocacy. This session will focus on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW Convention). It is an international human rights treaty, establishing a bill of rights for women.

There are seven human rights treaties covering civil and political rights, social, economic and cultural rights, rights of the child and rights against racial discrimination, torture and women's rights. The latest treaty involves protecting migrant workers and their families.

Except for the CEDAW Convention, all treaties cover both men and women. So, what is the reason to have a specific treaty for women? The CEDAW Convention recognises the specific gender-based violations women encounter. Many of these violations take place in the private sphere, and were earlier not recognised as violations of women's rights by the international community or the state. In addition, the perpetrators of violations against women are most often private actors, again an area previously not fully recognised by the international community as under the preview of state responsibility. Therefore a crucial concern is how the state can put in place laws to prevent private actors from violating the rights of women.

The CEDAW Convention was adopted in 1979 and came into force in 1981. It predates the Beijing Platform For Action (BPFA)¹ and set the legal framework for the programmes of action that came out of the world conference deliberations in the United Nations (e.g. BPFA and International Conference of Population and Development (ICPD)²)

¹ The Beijing Platform For Action (BPFA) was adopted at the Fourth World Conference for Women in Beijing in 1995. It highlights 12 critical areas for state action towards women's empowerment.

² The International Conference of Population and Development (ICPD) took place in 1996 and was crucial in the recognition of women's reproductive and sexual rights.

So far, 177 countries have ratified the CEDAW Convention³. Malaysia ratified the convention in July 1995. Malaysia has ratified only two of the seven human right treaties. They are the CEDAW Convention and the Convention on the Rights of the Child (CRC).

The CEDAW Convention Contains 30 Articles:

Article 1	Definition of discrimination
Article 2	Policy measures to be undertaken to eliminate discrimination
Article 3	Guarantees basic human rights and fundamental freedoms on an equal basis with men
Article 4	Temporary special measures to achieve equality
Article 5	Sex roles and stereotyping
Article 6	Trafficking and exploitation of prostitution
Article 7	Political and public life
Article 8	Participation at the international level
Article 9	Nationality
Article 10	Equal rights in education
Article 11	Employment
Article 12	Healthcare and family planning
Article 13	Economic and social benefits
Article 14	Rural women
Article 15	Equality before the law
Article 16	Marriage and family law
Article 17-22	Details the establishment and function of the Committee on the Elimination of Discrimination against Women (CEDAW Committee)
Article 23-30	Details the administration of the CEDAW Convention

The CEDAW Convention has 30 articles that can be divided into three areas. Articles 1 to 4 cover the framework and guiding principles. Articles 5 to 16 deal with very specific issues. Articles 17 to 30 are on the CEDAW Committee and the reporting process.

³ As at October 2004



Three principles form the framework of the CEDAW Convention, serving as a guide in understanding and implementing the concept of equality. They are the principles of substantive equality, non-discrimination and state obligation.

Substantive Equality

Substantive equality recognises the differences between women and men, both biological and socially constructed differences. It recognises that applying the formula of formal equality and treating women the same as men without taking into account these differences will not necessarily result in equality. For instance, if we ignore biological differences, we overlook the fact that women get pregnant and give birth to children. If the labour laws do not recognise this difference and instead insist on treating men and women the same, it is a violation of women's rights as the state would have failed to acknowledge this very critical social contribution of women to society. Formal equality (i.e. equality in the laws and policies) alone does not necessarily ensure equal rights.

Substantive equality recognises that one cannot use differences to justify discrimination, for example differences based on the social construction of gender. A law that prohibits women from working at night might be well intentioned as it may be dangerous for women to work in particular areas. The law, it is argued, is meant to protect the more vulnerable women from sexual assault. However, is it a fair law or is it discriminatory in nature? Questions to be asked include a woman's right to employment and to earn wages, and whether these rights have been violated. In fact, this protectionist approach, although well intentioned, ends up curtailing women's rights and reinforces stereotypes of women being the weaker sex and requiring protection.

Substantive equality adopts the corrective approach which recognises the differences: the biological differences that cannot be changed and the gender constructions that have negative impacts on women and can in fact be changed. It seeks to level the playing field, demanding that the state put in place measures to ensure equality of opportunity, access and results. For example, instead of restricting women's right to work due to the unsafe environment at night, the state has the responsibility to make it safe for women to work. This could be done by increasing police patrol, improving lighting in the area or even requiring companies to provide transport for employees working the night shift.

Equality of opportunity refers to formal equality. This includes laws, policies and programmes that need to be put in place first. While there might be laws and policies providing for formal equality between men and women, the concern is whether there is equality of access to these provisions and whether there are results. Are women functioning within an enabling environment conducive to them enjoying formal provisions of equality? Are there results showing real, de facto equality?

Women face many obstacles in accessing equality, including socio-cultural norms and the lack of resources and information. In many instances these are hidden barriers. For example, without gender disaggregated data, statistics that show a large number of people living within 5km of a clinic, might not be an accurate indication of whether women actually have access to the health facility. Do women know of and use these clinics? Do women have the resources to go to these clinics? Even with clinics around the corner, women might not be able to go due to obstacles such as cultural norms and stereotyping. They may skip hospital appointments, as women have to care for the children and manage the house and prepare meals. Non-governmental organisations using the CEDAW Convention need to draw out these concerns and seek accountability of the state to show actual results from available opportunities.

The CEDAW Convention recognises that sometimes it is difficult or it will take a long time to attain equality despite providing the necessary opportunities. Thus, the CEDAW Convention aims to accelerate real equality between men and women by introducing temporary special measures (Article 4.1). These special measures are not seen as discriminatory because they are temporary and would be discontinued after the objectives have been achieved.

A common temporary special measure adopted by states is the quota system, especially to increase women's participation in politics. It is a very popular temporary special measure widely used in many countries. However, there is a need to be more creative even with quotas. For example, there was a case of a gender-neutral policy on promotions, which stipulated that an officer with 10 years of working experience in the government service qualifies to apply for promotion. However, women were not getting promoted and the reason given was that they were not applying for promotions. A deeper study of the problem revealed that 10 years prior to the introduction of the gender-neutral policy, women were not hired in the civil service. Therefore there were no women with 10 years of experience to be promoted. In this instance, a temporary special measure needed to be put in place to correct the wrong. The solution was to take into account the women's previous



working experiences in the private sector when consulting them for promotions. Women could therefore be promoted when their combined working experience in the government and private sectors totaled 10 years. Once women started having 10 years' experience in the government sector, the special measure could be dropped. Temporary special measures are a very useful tool used by many governments around the world.

Non-discrimination

The second principle is that of non-discrimination. It highlights the different types of discrimination and the approaches to correct the situation. There is discrimination in all fields, be it civil, political, economic, social or cultural rights. A country can have the best facilities but do women have the political and civil rights to use them? For example, while the state might have set up crisis centres for victims of violence, are women able to make decisions to leave their homes, to go to the police or to see a doctor on their own?

Discrimination can also be in indirect forms. The civil service promotion example cited earlier is an example of indirect discrimination due to the previous practice of direct discrimination. These are important factors to identify when researching or developing programmes to resolve problems of discrimination against women.

State Obligation

Under the CEDAW Convention, the government has made a commitment at the international arena to eliminate discrimination against women in this country. Article 2 of the CEDAW Convention identifies the measures that the government should take to eliminate discrimination. The other articles of the CEDAW Convention relate to specific concerns such as the socio-cultural practices that prejudice and stereotype women, trafficking, political participation, nationality, education, employment, health and economic rights. Article 14 refers to a very specific category of women – that is rural women. By extension, the CEDAW Convention covers all categories of women, including the disabled and migrants.

Reservations

Many countries have entered reservations when ratifying the CEDAW Convention, citing several reasons. Among them are cultural factors, lack of economic resources to implement the provisions immediately or needing time to amend existing laws.

The Malaysian Government has entered reservations in four areas. They are:

- Article 5(a) dealing with discriminatory cultural practices that need to be addressed. Malaysia has reserved its application with regards to inherited property for Muslim women.
- Article 7(b) on political participation. The reservation is made on the appointment to certain public offices like Mufti, Syariah Court judges and Imam.
- Article 9(2) on transmission of citizenship. There are discriminatory provisions in our Federal Constitution with regards to transmission of citizenship to a child. Malaysia has acknowledged this but has entered a reservation to Article 9(2) on citizenship, saying that it needs time to amend the law. However, the government has yet to make the amendments.
- Article 16(a), (c), (f) and (g) on marriage and family. Malaysia initially entered a blanket reservation on Article 16. However, the government has now narrowed the reservations to four areas where it still has difficulties in implementing. These include age limit of marriage, equal rights during and at the dissolution of a marriage, guardianship and adoption of children and choice of family name and profession.

Women's groups are advocating the removal of the remaining reservations or narrowing further the reserved provisions as some of these laws are already in place and there is no reason for these reservations.

The CEDAW Committee is a treaty body monitoring committee working to ensure that governments that have signed the CEDAW Convention fully implement it. States have an obligation to submit periodic reports to the CEDAW Committee on the implementation at the national level one year after signing the convention and every four years thereafter. The CEDAW Committee will review these progress reports through a face-to-face dialogue with the government delegation at the United Nations headquarters in New York. The CEDAW Committee also accepts NGO or shadow reports to get a complete picture of the status of women in a country. After the review, the CEDAW Committee will prepare its Concluding Comments for each of the states reviewed. These comments contain the committee's identification of areas of concerns and their recommendations after a comprehensive review of the government's report. The Concluding Comments are another useful tool in NGO advocacy to lobby the state to fulfill its obligations.

Malaysia was supposed to submit its first report to the CEDAW Committee in 1996, the second in August 2000 and the third report in 2004. However, Malaysia has just



submitted the first and second reports. The CEDAW Committee has yet to fix a date for review.

In a project initiated by NCWO, women's organisations have started drafting a shadow report, drawing on the experiences of various groups. The project attempts to be inclusive to address the concerns of all groups, including indigenous women, disabled women and migrant women. The Women's Aid Organisation organised a national consultation in August 2004 to discuss the draft shadow report and obtain feedback from the various groups.

CEDAW and VAW

There is no specific provision in the CEDAW Convention on violence against women and this has drawn a lot of criticism. However, the scope of the CEDAW Convention is not limited to the specific articles. The definition of discrimination in Article 1 refers to any "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women" of their rights and this can be used to identify discrimination against women in various areas.

How does this apply to violence against women? Violence against women is violence directed against a woman because she is a woman (i.e. a distinction made on the basis of sex). Further, gender based violence impairs and nullifies women's right to life, to be free from torture, human dignity, physical and mental health and to have equality in the family. A whole range of rights are violated in the case of violence against women.

Besides monitoring government reports, the CEDAW Committee also drafts General Recommendations to understand and interpret the CEDAW Convention's principles and areas of concern. These recommendations can also expand the scope of the CEDAW Convention. The General Recommendations elaborate on articles in the CEDAW Convention (e.g. Article 7, 12, 16, etc) and discuss new and emerging issues (e.g. disability, violence against women, etc). The General Recommendations also pick up on areas where government actions are lacking. The most recent General Recommendation was on temporary special measures (GR 25).

There are now 25 General Recommendations. General Recommendation No 19 specifically deals with the issue of violence against women. In the recommendation, the CEDAW Committee reviewed various factors pertaining to violence against

women, such as the traditional attitude towards women and women's subordinate roles that perpetuate this violence. It recommends that such violence cannot be categorised under any particular article because it permeates all aspects of a woman's lives. It highlights that laws alone cannot eliminate violence against women and that the cooperation of all sectors of society is needed.

The recommendation also lists the state's obligations in terms of compiling statistics and research to understand the cause and effects of violence; enacting laws and policies to provide protection and instill respect for women's rights; organising gender sensitive trainings for judicial, law enforcement and the support services sectors. It also highlights the need for the media to respect and promote women's rights. Overall, it emphasises the importance of monitoring the effectiveness of programmes that had been put in place.

Advocacy

The CEDAW Convention can be used in NGO advocacy work in several ways. Firstly, there is the CEDAW reporting process. Details of the forms and levels of violence among various categories of women can be compiled in the NGO shadow report and brought to the attention of the CEDAW Committee. The committee's detailed recommendations to the government in the form of Concluding Comments can also be used in advocacy at the national level. After the review of the situation in Sri Lanka in 2002, the CEDAW Committee recommended to the Colombo government to have a systematic collection of data on VAW, the recognition of marital rape and the need of comprehensive training for the judiciary, police, medical personnel, etc. For Vietnam (2001), the CEDAW Committee recommended gender training for all public officials, law enforcement personnel, judiciary, etc. and public awareness campaigns on VAW and the impact of such violence.

The second area of advocacy is in litigation where some successes can be noted. In Nepal, the NGOs successfully challenged in court the constitutional validity of a provision in the law on rape that exempted sex with one's wife without her consent. The Supreme Court declared the provision unconstitutional and ruled that there is "no justification in differentiating between women who are wives and other women. Such discriminatory practice is against the provisions of CEDAW". The court decision is the first level of recognition of the violation. The next step is to get the judgment implemented. This requires further public awareness and a change of mindsets.



Another example is in India where a class action suit against sexual harassment in the work place was filed in court. There was no law covering sexual harassment but the Supreme Court, making reference to the CEDAW commitments made by the government, decided that as there were no laws in this area, the court would “lay down the guidelines and norms... for due observance at all work places or other institutions, until a legislation is enacted for the purpose.” This particular court judgment has set a precedent and has been applied in subsequent cases.

There are several resources or tools at the international level that we can draw upon in our advocacy against VAW. For example, the Declaration on the Elimination of Violence against Women was adopted by the United Nations General Assembly in 1993, listing specific steps that governments should take to eliminate VAW. Asean governments have also made a declaration in 2004 on the elimination of violence against women in the region. Another avenue is the Special Rappporteur on VAW appointed by the United Nations to collect and analyse data on specific problems of violence against women. The rappporteur holds annual meetings with NGOs before preparing her report and making recommendations to the United Nations. This is another tool for advocacy.

Recently the UN Special Rappporteur on the right to adequate housing has started to make linkages to violence against women and women’s right to housing – how one affects the other. When women do not have access to housing, they are trapped further in situations of violence. The point is we have to start making the linkages to get to the root of the problem. It is important to monitor what is happening at the international level and to input into the UN processes, as they can be very useful in developing advocacy at the national level.

Protection in Law: Domestic Violence Act, Penal Code and the Criminal Procedure Code

Rasamani Kandiah

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Violence by men against women, specifically against their wives or partners, is not a new problem. It is assumed by some to have begun with the first monogamous pairing. What is new, however, is public admission that wife beating occurs in civilised countries and the insistence by women and men in this country that such violence is no longer acceptable. That is why the Domestic Violence Act came into existence.

Most batterers are not psychotics, psychopaths or the demented few. They are ordinary men who have low levels of self-esteem, have learned male role behaviours from their parents, and continue to play out the violent part of the role when life stresses become intolerable. While some continue to believe that wife batterers are sick, most people today would agree that we are dealing with an average man who is under some unusual stress and/or has learned his masculine role, especially as it relates to socially acceptable aggression, only too well.

Wife batterers come from all age groups, educational levels, religions, socio-economic classes and regions of the country.

The profile of the battered woman is almost identical to that of her batterer. They also represent all age, ethnic and socio-economic groups and have low self-esteem. For the most part, they have very traditional notions of male and female behaviours. A woman may feel that her husband is supposed to be in charge of the family, even if that means beating her. She must be supportive of him, even if that means allowing her to be abused repeatedly. Her role as a woman includes marriage, even a bad marriage, and to leave the home would be to admit that she is a failure as a woman.

One of the most compelling reasons for a woman to remain in the home where she is battered is dependency – physical, financial and emotional. Battered women who are not working outside the home or are extremely traditional in their sex-role



behaviours are particularly vulnerable to such dependency. If the husband is her only form of financial support, it is ludicrous to suggest that she leave him. How else can she survive? Unless the state can offer her the support she needs to either obtain skills training or a job to reestablish her life. Without financial assistance, housing or job training, the feeling of dependency to one's husband is a reality many women cannot overcome.

Social stigma is often a factor in a woman's decision whether to leave. They include embarrassment to admit that her marriage has been bad; embarrassment or guilt that either she or others will feel that the beatings were deserved and that she was responsible for her own victimisation; and embarrassment that she has stayed in such a bad situation for so long. Each of these factors may lead to a woman's decision to remain in the home rather than admit to having been the victim of abuse.

A battered wife also chooses to stay with her husband because of hope and love. It is important to remember that there are very strong bonds between these two people, just as there are with any cohabiting or marital partners. She may stay because she loves this man when he is not beating her and holds out the hope that each beating will be the last. A woman faces a real conflict with regard to this hope.

Very few women leave a man after he hits her the first time. Perhaps the foremost social solution to battering is to educate people regarding the issue and attempt to change public attitudes and behaviours towards battering. We, the society, must see that the legal agencies enforce the laws and the government provides funding for needed social services.

We need immediate assistance for women who are being physically abused by their spouses. We need housing so women can have shelter for themselves and their children while they begin rebuilding their lives.

We need counseling services for both women and men. These must not be services that will help women adjust to their unhealthy homes but services that help both the men and the women to stop the battering. We need to teach men that beating their partners is not a sign of masculinity. Teach both men and women alternative way of relating to each other.

Thirdly, we must teach both partners to re-define acceptable sex-role behaviours. We must help them to understand that it is not a man's prerogative to beat his wife and it is not a woman's duty to stand by her man no matter how he treats her.

It is important that we understand who can use the Domestic Violence Act. Even after the passing of this Act, a lot of people do not treat domestic violence as a crime and they keep claiming that it is a private matter. They will tell the battered spouse to go home and make up.

This Act applies to both men and women. However, it is normally women who use this law. Men are reluctant to make a police report possibly because of the embarrassment, though we know they have also been victims of abuse.

This Act gives the abused person protection. However, it is only a temporary measure and you cannot go on living under the protection forever. It actually gives you time to think about what you intend to do with your life. The interim protection order expires once the police complete their investigations. If the accused is acquitted, the abused wife is back to where she started.

The Act is not perfect and does not spell out the offences the violators can be charged with. That is why the penal code is needed to help frame charges. A police report must be made to get the benefit of the penal code. There was a lot of debate why these actions should not be criminalised, mainly because they involved members of the family. However, we had no choice but to make it a criminal offence because we wanted it to apply to Muslims as well.

The Act does not spell out the offences a husband can be charged with and, thus, the reliance on the penal code. The Act has to be read together with the penal and criminal procedure code. Once a woman has lodged a report, it is the duty of the police to investigate besides giving her the protection she needs. The complainant has to give whatever details she can in the report in order to obtain an interim protection order.

Sometimes a victim may feel that she does not need the protection order. If she says she needs the order, then the police will give her the police report, which she will hand over to the welfare office. A welfare officer will then accompany the victim to the magistrate to get the protection order. It is the duty of the court to give the victim the order as soon as possible. However, the victim does not serve the order on the offender. The police are supposed to serve the order with a copy given to the welfare officer. If the interim protection order is breached, the victim needs to make a police report again.

The law provides that the sealed interim protection order has to be served on the perpetrator within 24 hours. However, often this is not done. I know of a case that



has been dragging and the order has yet to be served. The husband can claim that he was not aware of this order. So, how many people actually benefit from the provisions in the Act?

When a serious offence is committed, the accused can only be charged under the penal code. If it is not serious enough, the police may not investigate further because there have been instances where the victims withdraw their reports. The police may view it as a waste of time.

Under the criminal procedure code, there is a requirement for an order to investigate, in particular for minor offences. The offender can be prosecuted only with the sanction of the Deputy Public Prosecutor (DPP). However, since most often these are minor offences, the women's organisations insisted that all cases of domestic violence be investigated. Following a lot of pressure from these organisations, there is now no need for an order to investigate or the written requirement of the DPP. All the police need to do is to give the alleged offender a call and he has to make himself available and comply with the interim protection order. The police will then go through the evidence and charge the offender under the penal code according to the types of weapons used and the seriousness of the injuries caused.

There are also provisions in the Domestic Violence Act, such as preventing the offender from disturbing the children in school or members of the family in the place of work, which can be incorporated.

I would like to highlight a difficulty the victims face despite having the Act. Invariably, a victim of abuse would normally have walked out of the house without her personal belongings, especially her clothing and even important documents. I will relate the case of a woman who had just delivered twins. Her husband had chased her out of the house with their three children just after midnight, about 1.30am. She just went into her car with her two little babies and another three-year-old child, and drove off to her brother's place. As she had bruises on her body, she made a police report before seeking treatment for her injuries. Obviously, it would not have been possible for her to pack her clothes, diapers and other babies' things before moving out in such a situation.

After a week she obtained the interim protection order with the help of the welfare officer. It is the duty of the police or the investigating officer to take a statement from the husband. When the police called the husband, he told the officer that he was too busy to go to the police station. What an attitude? Shouldn't the police officer have gone to his place of work to get the husband's statement and get

moving instead of waiting for him to come to the station when he was free? So he became comfortable and did what he thought was fit. In this case, the victim was educated and had the support of her family members. She went to the police almost every day. We have the Act but are unable to get it implemented.

The victim was in urgent need of her children's essentials and so she made attempts to collect them from their rented house. We wrote to her husband a letter that she needed to take the things for her children and herself. He informed the investigating officer that she could take her children's things but not her personal belongings.

After we had given him sufficient notice and made transport arrangements, we called to inform him that we would be coming to collect the things. He was acting in a very selfish manner and said he would be back only after a week. So the victim decided to use the law. She went to the house with a locksmith, accompanied by two policemen to take the things. The house owner rushed and told the woman that her husband had informed him not to allow her to open the door because she was no longer a tenant. What a caring society we have? The house owner was taking the side of the husband and, of course, he was only interested in collecting the rent. The policemen then informed the woman that they were not there to help her break the lock. The poor woman had to leave without collecting her children's things.

When the police finally contacted the husband, he told them that he would let them know when his wife could collect her things. Isn't it bad enough that the woman is already suffering and her children do not have their cot to sleep on? The point is how effective is this law? Of course, one can go to court but this will take time. This is an urgent matter. I do not see what is wrong if she had broken the lock and paid for the damage. I learnt that she would be allowed to take her things only this Sunday. In the meantime, the children are made to sleep on the carpet.

The effectiveness of this Act depends on how forcefully the police officers enforce the law. The husband eventually went to give a statement. After that the investigation officer told the victim (his wife): "Oh, he seems to be a nice person." Now, where do you go from there? It is not for the investigation officer to judge. How does the officer know that the husband is a nice person? Just because he puts up a front and said that he wanted to see the children? Did he make any attempt to see the children? No! So, that is the situation.

There is the law that says the enforcement officers are suppose to accompany her. They did but they were not forceful in implementing the law. There is no perfect



law. When such things happened they should have been able to go back to the magistrate who issued the interim protection order. Did the magistrate ask the victim whether she needed someone to accompany her to collect her things? The magistrate did not do it. So, in this instance, because we advised the victim, she knew about it. But again, it falls back on the protection order. The presiding magistrate only gave the protection order, as requested. Maybe the order should have spelled out that the woman should be given her things. The magistrate should have gone deeper and asked what else the victim needed before giving the order.

In another case, the husband was charge under the penal code but the trial dragged on for a long time. The victim, whose breast was burnt with cigarette butts, was a foreigner and she had to get back to her country before her passport expired. Eventually the perpetrator was given the maximum sentence. But he is not serving the sentence because he has filed an appeal. After two years, the woman got her divorce. She then married another local man so that she can continue to stay in this country. However, her former husband has not served the sentence till today because the appeal is still pending.

So where do we go from here? Legislation is not the answer but that does not mean we do not need laws. We need laws but there must be public intervention so that these cases are heard urgently. The victim has remarried and she might think twice about pursuing the matter. What difference does it make to her if her former husband serves a jail sentence now? We want the offender to be punished so that it serves as a deterrent. Where is the deterrent?

We can only educate the public and encourage them to make police reports. Counselling is provided for under the Act. We have counsellors to advise the victim as well as the perpetrator. It is all provided for in the law but where is the enforcement? However, it does not mean that the Act is useless. It has given some recourse to the victims. What are needed are follow-ups.

Everyone should actually get copies of the Act. It is easy to understand, as it is not in sophisticated language. As I said earlier, this law is actually a temporary measure. It gives the woman time to think whether she wants to leave or feels her husband has repented and would like to give him another chance. It is only the victim who can make the decision, as she knows the perpetrator best. It is not for others to advise her to end the relationship and move out. Sometime in the future, she might blame the person who gave her the advice. The main point is she has to think for herself what she actually wants. For example, in the case of the mother of the twins,

the police sergeant formed an opinion that her husband is not that bad a person just based on his looks. It maybe so, but who are we to decide?

To sum up, we do have the law. But it all depends on how we use the Act and how strong the victim can be. What she would need is support. In some cases, the women's family members can support them and provide temporary shelter. NGOs also provide temporary shelters. But for how long can the victims remain there? That is the issue. It is the people, neighbours and society who would have to play an important role.



Question and Answer Session

Chitra*: I have been married for 18 years and have been a victim of abuse for 18 years as well. My husband has been planning a case against me because a third party was involved. Since 2002, he has been attempting to put me in a mental ward even though I am perfectly normal. The doctor's testimonial confirmed that I am a normal person. Whenever I stood up and spoke for myself, I ended up getting bashed up with blue-black marks all over the body. At that time, I thought that was the end of my life because I did not want to wash linen in public. I have three children and I did not want people to laugh at me. I consulted my friends and they gave me legal advice. I started making police reports almost every month. I used to run to the police, crying to them. Even though the investigating officer was a woman, she had no empathy. She just asked me "oh what is it this time?" I had no knowledge about how to deal with the problem and I was so scared. I was at their mercy. At the end of the day, the police just gave me a cold shoulder. My husband took the upper hand and kept bashing me up almost every month.

Last year, he instituted a separation petition and wanted me to vacate the house within 48 hours. Where would I go? I have no financial means and I had been dependent on him. He even confiscated the keys of the car he bought for me as a birthday gift in 1998. Finally, I found a job. People took advantage of me when they found out that I was a victim of abuse. Even the law firm that employed me took advantage by reducing my salary.



I pawned my jewellery and hired a lawyer. At the hearing, the High Court judge told my husband that he did not respect men who beat up their wives. I had this little hope that the judge would be on my side. But in August last year, the judge ruled that I must go back to the house and the three children will be under my husband's care. When I went back to the house, my husband almost suffocated me. I could not breathe and I had to bite his elbow to free myself. At that time I was all stressed out, so confused and did not know what to do. My husband lodged the police report first. A few weeks later, the police came to the office to arrest me because I made the police report later. Why did this happen? The investigating officer who came to arrest me was a woman. She was so harsh to me and she said, "look, I got no time and you better come with me now." I panicked because I did not know why I was being arrested. I went to see the OCPD and I was released the same evening. But I was to appear in court the following day.

I was unable to enter the house because my husband had changed the locks. I needed to get my clothes from the house because the hearing is on the next day. Then I went to the Shah Alam police station. They asked me to come back at 2pm. When I went back there with a letter, I was told me to go to the welfare office. Since it was a long break on Friday, the welfare officer was not in. I waited until about 5pm to see her. The officer said she has got 10 pages to prepare and she could only get it done on Monday. But I told her that I'll prepare the papers and all that was needed was her signature. Then she asked to call her the following morning. But how am I going to get into the house? The next morning, she told me that she would come to the court only if she was free. I told her that I would be in court even if she did not turn up. The officer came to the court and got the order for me from the magistrate. That's how with the help of the police I went to the house to get my clothes. But that was only temporary. After that things were getting from bad to worse and my husband had the police on his side. The moment I walked into the police station, they said to me, "Are you mad? What is your problem now?" What do you expect me to do? Where do I go?

I filed for divorce in December last year. All the while, I thought the judge was on my side. My children were brainwashed by my husband. On the decision day, the judge said, "My dear girl, I am going to teach you a lesson." in the open court. Where is justice for a woman like me? I did not know what to do. I was crying and pleading with the judge who said, "If you want to see your children, you have to call them up and get their permission first, whether they want to see you or not." The judge also told me that I would not get any property but only 25 per cent of his income. I am suppose to file an appeal within a month. With this kind of decision, where is a person like me going to go. Appeal is not cheap. After that, my former



husband filed a fresh application in court to take back the car he had bought for me as a birthday present.

Madam, how shall I go about solving my problem? I have no means and my former husband is not going to give me any matrimonial alimony. He wrote to the court that as long as I am having the car, I will not get a single cent from him. Then there was contempt of court because he had locked me out of the house. The judge just told this man to go home and open the door. But why was no action taken against him for contempt of court? It actually took me a long time to get this courage to come forward. What about other people like me who always think of our reputation and so on? Where do we go from here?



Rasamani: The Deputy Public Prosecutor (DPP) will be here in the afternoon session. I think you can direct the question to him, particularly as to why you were charged and not your former husband. If I remember your case correctly, you said you had a couple of stitches on your forehead. You were the victim of circumstances and yet you were charged.

Regarding this divorce problem, I think we may have to have another forum to discuss this. Why do you think we are asking for a family court? We want the relevant officials to be sensitised to the needs at the grassroots and not appoint people just because they have been judges for so long to hear such cases. Enough is enough. There needs to be a public cry for this. We need a family court. We do not need all these procedures. I am a lawyer and I cannot say that lawyers are charging too much. If there is a complaint, it should come from members of the

public. It is for all of you to ask the government to step in and put some limit to it. But as to how matters should be dealt with, please voice it out in the press that there is a need for a family court and do it fast. This cry has been coming for years. And please appoint the right person to steer the cases.

Also remember, you can make a report at any police station. Some police personnel may give the run around. They have been directed to accept the report irrespective of where the offence was committed. You just make the report wherever you are comfortable and it is the duty of the police to accept the report and pass it on to the right police district. Please do not withdraw after making a police report. Let the law take its course.

Vimala Nair: (Chairman of the Women's Development Committee of MIC): What Chitra said is just a drop in the ocean. I have been helping women who have been abused and it is the same situation. They are just left in the lurch. Sometimes I get calls from the police saying "there is this woman in the police station. She is crying and has no place to go to. Can you please arrange something for her?" The police have all the power to do something and they are asking other people to help. We do not want to send her back to her house because her husband may abuse her further. When a woman is physically abused the police must take action against the husband. But the police are reluctant to do this. So the implementation of this law is very weak. These women cry that their husbands have taken away their children. It is very torturing for these mothers. I often advise them to leave their children with the husbands temporarily till they sort out their accommodation and legal matters. Some of these women have no place to go to and no support from their families because they ran away from their homes to get married to these guys. Some of these marriages are also not legally registered. So, these women cannot get the support from their parents. When they come to us, we can only make arrangements for them to stay in a shelter. These are only temporary measures. The law is very weak in this area. As Ms Rasamani mentioned earlier, there needs to be a public outcry to get the law changed.

* The name has been changed to protect the privacy of the individual



Case Studies from the Community Centres

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This morning, Chitra, a victim of domestic violence, shared her experiences with us. That is the situation of a woman who speaks good English, has some financial security and can afford a lawyer.

Now let's look at the situation of the women who live near ERA Consumer's Community Centres for the Empowerment of Indian Women. These women have no educational qualifications, no awareness, no money and nowhere to go for support.

The Friedrich Naumann Foundation and ERA Consumer have jointly set up 10 community centres with a three-year grant from the European Union to empower women in semi-urban communities in Malaysia. The centres are in areas with large concentrations of Indians earning low incomes. The project aims to raise the socio-economic status of the women through self-help community groups; to build confidence among women in these communities and to raise awareness on gender issues; and to address issues of discrimination and violence against women.

We chose to locate the centres in sub-urban areas – in Slim River, Ampang, Dengkil, Kapar, Rasak Jaya, Semenyih, Au-long in Taiping, Rawang, Sitiawan and Sungai Petani – where women have minimum support. Generally, women in the cities have some form of support, as they know where to go and how to get help. In rural areas, for example in the plantations, they have their own community network and support system to resolve various domestic and social problems.

On the other hand, people migrating from rural to sub-urban areas encounter greater problems. An example is the situation of residents in five blocks of low-cost flats in Dengkil where we have set up a centre. The residents were earlier evicted from four plantations to make way for the building of Putrajaya. In the plantations, they lived in bigger houses and had a lot of open space where they grew their vegetables and reared cows and poultry. But these families were forced out of the plantations and made to live in cramped one-room flats.

These cramped living conditions give rise to a lot of frustrations and social ills. Many of these families are unable to fit into the new environment. Young people feel locked up in these flats and they are unable to concentrate on their studies. They have little skills, which in turn results in low incomes and suppressed living conditions in these sub-urban areas. These are some of the causes for social problems such as youth gangsterism.

Why target Indian women when we are aware that all women face gender-related problems? I'm sure all of you will agree that Indian women face the most discrimination compared to Chinese and Malay women in Malaysia. Why the additional problem? It is because they are more shy and submissive; they have the lowest level of education and financial means; they are the most affected due to poverty, discrimination and violence; they lack information in their own language; and they are culturally more repressed.

When we set up the centres, even the Indian men asked us why we were targeting their women. They wanted to know why Indian men were not involved even though 10 per cent of the participants in our programmes are men. Even the women feel that we should invite their husbands for our programmes. These women think that their husbands must have more information than them. We cautioned them, in jest, that their husbands would soon replace them if they had all the information. Even with the limited information these men currently possess, some of them threaten their wives. They misinform their wives by warning them that women would not get anything if they initiated divorce proceedings against their husbands.

We advised the women that they also need to be informed and not their husbands alone. We want women to come to the centres to acquire knowledge and to know their rights. These women lack information in their own language because the Tamil newspapers are more interested in giving information of events in India or gossips about film stars. The information leaflets meant for the general public are also not in Tamil. You can find such leaflets in English, Malay or Chinese but never in Tamil. We translate the information into Tamil for these women.

There is a lot of pressure on Indian women. Whenever there is problem in marriage, it's always the fault of the woman. For example, if the husband elopes with another woman, the wife is blamed. Maybe she did not meet the sexual needs of her husband, she is told.

They are not suppose to initiate divorce, as there is a lot of stigma on women who leave their husbands. Many people do not want to associate with these single



mothers and they are discriminated in their own community, let alone by outsiders.

Each community centre has two full time staff members – an administrator and a coordinator. The administrator takes care of the office work and the coordinator reaches out to the women in the community. She visits these women to inform them about our services and invites them to participate in community activities. These women are encouraged to use our centre to get information and assistance.

We provide psychological counselling, legal advice and welfare services. We encourage self-help programmes and interaction among the people through community activities. We conduct three to four community activities every month and are planning to increase the frequency to six. We also have programmes to raise awareness on important issues. For example, these women are aware that AIDS can kill but they do not know anything else about it. They do not know how HIV is transmitted.

We work with the local media to disseminate information on our activities and liaise with the police, hospitals, welfare department and the local councils. On legal protection, the women do not know anything about the Domestic Violence Act, though the law has been implemented from 1996. There are no lawyers or counsellors near our centres and often we have difficulty bringing experts from outside. For example, we persuaded a counsellor in Port Klang to travel to our centre in Kapar to provide her services. After three months, she gave up because she had difficulty commuting to Kapar regularly.

Our centres face several challenges in serving these communities. A high percentage of residents near our centres are earning low incomes. They are often in debt and have difficulties even buying essentials such as food and clothing. Their children are underachieving in education and have little skills. The number of suicides is disproportionately high in the Indian community.

Living conditions, sanitation and the drainage system in these areas are poor. Young people are unemployed and frustrated. They have low self-esteem and feel discriminated because of the colour of their skin. They complain, “In school my teachers do not recognise me. My teachers do not care about me. My family has got no time for me. The only people who give me the recognition are gang members”. These youths tell us that they become gangsters because that is the only place they are made to feel wanted.

The social ills in these communities include alcoholism, drug addiction and gangsterism. Another concern is teenagers who run away from homes. They tend to do that because of crowded living conditions and family tensions due to frequent quarrels among parents. Other problems include domestic violence and abuse of children. The women do not have information on family planning. In fact, they are ignorant of even basic human rights.

This is the general situation of the communities near ERA Consumer's centres. It is a great challenge for us to meet the expectations of these poor communities. We do not prescribe solutions. Rather we encourage the residents to care for their respective communities. As part of this strategy, the centre personnel are recruited from the respective communities. We also have a core group made up of community leaders and local businesspeople to resolve community issues. We are happy to note that the core group and volunteers are eager to make changes in their communities.

Awareness programmes make up 60 per cent of our activities and another 30 per cent is skills training for women to enable them to earn better incomes. The following are examples of cases brought to our centres.

Case 1: Mariammah*, a victim of domestic violence

Hardly a month after the community centre was opened, Mariammah, a 40-year-old mother of four children and victim of domestic violence, sought our support. Her husband, a lorry driver, has been abusing her for the past 10 years. He is an alcoholic and does not provide financial support for his family. Mariammah has no education and works as a dishwasher in a restaurant near her home to support her children. A month ago, Mariammah went to lodge a police report after she was badly beaten by her husband and she could no longer take the abuse. Earlier, her husband had warned her against making a police report, telling her that they would not be able to help her.

Mariammah went ahead and lodged a report, hoping to get some support from the police. However, the police told her that "it's a normal and temporary family problem and she should go home and make up with husband". She was advised that a woman's place was in the home. The police also told her she could still make the report if she insisted. Mariammah eventually lodged her report.



Her experience at the government hospital was no better when she sought treatment for her badly injured arm. The doctor had commented that no one would beat a woman so badly if she did not make a terrible mistake. Mariammah was not aware of the Domestic Violence Act and the temporary protection (interim protection order) she could get.

After her bad experience at the hospital, she lost trust in the system. She has nowhere else to go. The non-supportive system forced Mariammah back to where she came from – the violent home. She is just one of the many poor and illiterate women who face similar fate.

This case illustrates the lack of gender awareness and sensitivity in our society. We have the Domestic Violence Act but it is not being implemented forcefully. We expect the police to say to a battered woman, “Look you have been abused, we have this Act to protect you from your violent husband. You can apply for the interim protection order which will prevent your husband from abusing you further”. This is not being communicated clearly to a victim of domestic violence. It is not just how the police and the hospital staff treated this woman. Generally, people tend to treat poor illiterate women differently. They think that these women know nothing and there is no point asking them to make a police report when they cannot even write.

Another detrimental attitude is that the woman’s place is in the home, and she should go back instead of reporting her husband. The police believed that they were actually helping the woman to save her marriage. They thought the woman was acting in haste. For them it was just a family matter. The woman should just cool down and do what her husband wanted and everything will be all right.

Case 2: Jayanti*, a victim of rape

Jayanti, 26, works in a factory in Kajang. Last week, she had just finished work and was leaving the factory when a man, who is known to her, approached her. The man told Jayanti that her father was in an emergency situation and she should rush to see him immediately. The man told her that her father had sent him to fetch her. Jayanti panicked and took the ride back in his van. When Jayanti enquired about her father’s situation, the man did not elaborate except to say that bad news was in store for her. Half way through the journey, the man stopped his van near a jungle and raped her at knifepoint.

He then threatened to kill her if she told anyone about the rape and left her by the roadside. Jayanti managed to get a ride from a passing woman motorist who took her home. With the support of a friend, Jayanti went to the police station to make a report. She expected the police to act fast but to her disappointment was told that the case would take three months. She said the police were not friendly and showed no support.

She was not sent nor advised to go to the hospital for a medical check up. Jayanti was brought to the community centre by a relative for advise on how to bring the man to justice. She was advised to go for a medical check up but Jayanti was afraid of the treatment that she may face at the hospital after the experience at the police station. She also blamed herself for the rape.

In this case, the police took her report but the moment she said she knew the man, their attitude changed. She was blamed for the rape. Why did she accept the ride from this man? Why didn't she telephone her father? Why didn't she call her mother? Why didn't she call the whole world before she went into his van? But we need to understand that when someone comes and tells the woman that her father needs her help urgently to deal with an emergency, her mind is focused on the immediate situation. It was a trick used to get her into his van. It is not only the authorities that think that way, the victim now blames herself for the rape.

Conclusion

The examples illustrate the predicament of women in these communities. Generally, they think they do not have any rights, especially after they get married. After marriage, everything is centred on the family and the husband has the last word. Few of these women are strong or brave enough to leave when they are abused. Mothers who have left their husbands are treated as outcasts in the society.

Our centres aim to educate and empower these women. Our support groups bring together victims of domestic violence to build their confidence and self-esteem before they reach out to their communities. We want the support group to lobby their communities to act against abusive men. For example, if a man hits his wife, about 10 men and women should stand outside the house and demand an end to such abuses. The message would be that the community would not tolerate such abuses. We aim to achieve such results in the long term.



To sum up, ERA Consumer's centres intervene in several areas to develop community initiatives and coordinate with the relevant government agencies. We provide psychological counselling and legal services for victims of abuse and domestic violence and organise awareness activities to address various community problems. We also provide information on laws such as the Domestic Violence Act that offer some protection to abused women. We also follow up on cases where police are reluctant to accept reports or take action against the perpetrators.

ERA Consumer organises workshops, seminars and campaigns and highlights women's issues in the media to raise public awareness. We are targeting the Tamil media to bring greater awareness of women's rights and laws to protect them against domestic violence.

ERA Consumer also sends memorandum to the relevance government agencies to lobby for policy changes and amendments to laws related to women that would enhance their development.

* *The names have been changed to protect their identities and privacy.*

Panel Discussion: Developments of the Law and Impacts of Court Decisions on Rape Cases and Victims

Dr Rohana Arifin from Men in Action chaired the panel discussion. The panelists were Deputy Public Prosecutor Stanley Augustin, representing the Attorney-General's Office, Ms Pushpa Ratnam, legal advisor of the All Women's Action Society (AWAM), and Assistant Superintendent of Police Nor Azilah Junid, from the Special Investigation Unit – Sexual Crimes of the Royal Malaysian Police Force.



Dr Rohana Arifin: Earlier speakers related several cases of violence against women and provided important data this morning. In this session, very knowledgeable and experienced legal practitioners and a senior police officer will respond to the various issues raised. After hearing all views, participants are encouraged to make suggestions and recommendations in the later part of this session. The suggestions and recommendations will be compiled into a memorandum and forwarded to the government.

It needs to be reiterated that violence against women has been on the rise in the last decade. This is partly because of urbanisation and values that dehumanise human relations, especially with the objectification of women everywhere, including in the media. Malaysian women are not the only ones subjected to violence. Women migrant workers from neighbouring countries, including sex workers, also fall victims. As Deputy Women, Family and Community Development Minister Datuk G.



Palanivel mentioned this morning, cultural values have forced women to a secondary position and, therefore, we have to educate the men as well.

It has been said that when a woman falls victim to violence, the whole family will be affected. I would like to point out that it is not one but two families that have to bear the burden. For example in a rape-cum-murder case, the first victim is the “victim”, whom many tend to overlook. Her family is then very much affected by the crime and the loss of a loved one. Another person who is often forgotten and marginalised is the perpetrator’s wife or partner. This person is also traumatised because the man she trusted has raped and murdered another woman. Thus, for every act of violence against women, two families are affected.

Judith Loh mentioned this morning about the White Ribbon campaign where men are encourage to come forward to help end violence against women. I don’t think we can completely eliminate violence against women but we can reduce tremendously such incidences. We have the White Ribbon Day in Penang too, observed almost about the same time as that held by the Kuala Lumpur group.

Rasamani talked on the need to improve the implementation of laws. I would also say that the attitude of the people – lawmakers, judges and the police – involved in formulating, interpreting and enforcing the law is very important. Law enforcement must go hand in hand with changing the attitude of people.

In a recent press report, Professor Haji Zakariah said the number of incest cases has increased and the perpetrators were usually the fathers. When the perpetrators are sent to prison, they are given religious education beside skills training. The religious education is about the relationship of man and God. There is very little counselling to change these men’s attitude towards women. I certainly agree with Prof Zakariah’s comments on the need to change their attitude. I have interviewed rapists in several prisons and found that they have a very skewed view of women. It is important to change their attitude towards women. If we can recollect, an American serial killer said in an interview with a priest two hours before he was hanged that pornography had definitely influenced him and his friends to commit crime against women. So with that, I would like to invite the three panelists to give their views.

DPP Stanley Augustine: Basically, I will talk on the debate generated by the Court of Appeal’s recent decision on a rape case. What we have read in the newspapers so far is just hearsay because we do not have the written judgment yet. We can analyse the decision only after getting the written judgment. For the time being, we

must take into account that two parties are involved in rape cases. We must consider the interest of the accuser and that of the individual. Allegations are easy to make but difficult to refute. We must always bear in mind that an accused is also someone's brother, sister or relative. However, if we have sufficient evidence, we will definitely prosecute. It does not matter whether the victim can or cannot remember the date. We will prosecute if the victim remembers the incident well.

For example, I am now in the process of prosecuting a businessman who raped his three-year-old daughter. Unfortunately, the court had granted him bail. Subsequently, the father had also attempted to rape his seven-year-old daughter. This time I strongly opposed bail. He made a third attempt this morning to get bail. My problem is the expert witness, a psychiatrist, is currently in Australia and I have to make travel arrangements for her to come back to testify. The expert witness has also requested us to pay for her young daughter's travel expenses because the girl will be accompanying her. I am pleased to say that we have convinced the police to bear the travel expenses of the witness and her daughter.

Now, if a victim cannot remember the time or day, it does not mean we will not prosecute. We have to look into the evidence itself. From my experience as a Sessions Court judge for more than 14 years and as the current head of prosecution in Kuala Lumpur, our attitude to reports made by individuals is still the same. We must have sufficient evidence and we must take into account whether the witness can testify in court and face cross-examination.

For example, a women's organisation has expressed concern that I did not prosecute a man accused of rape. In this case, the victim happened to be a "special person" and there was no other evidence to show that she was raped. When we sent the



man for medical examination, he was found to be impotent. On one hand the accused was found to be impotent, and on the other the victim was a special person who lodged the police report quite sometime after the rape. I decided not to prosecute the man for a simple reason that I did not have corroborative evidence. When a person reports a rape within 72 hours of the incident, we immediately send the victim to hospital. On examination, the doctor can confirm if the hymen injuries happened within 72 hours. We take into account that the report was lodged within 72 hours and I am prepared to prosecute. But if it was an old tear, and in this case the victim is a special person, we have to take into account that it would be traumatic for the victim when she is put on the stand, knowing how the defence counsel would question her when cross-examining. We also take into account the reaction of our society. If we lose the case, they will say, “oh they (the prosecution) were not prepared at all”.

We have to acknowledge the fact that some rape victims will lodge reports late. We have to sieve the evidence. I have successfully prosecuted men who had raped their daughters or other women even when the reports were lodged quite sometime after the crime had been committed. At the end of the day, it depends on whether I believe the victim or not. I have been labelled as pro-prosecution and pro-police. No, I am not. I am actually pro-society. I am like a scale. On one hand I have the individual, and on the other I have the accused person. I must take into account the evidence that I have.

I take special interest in cases involving women and children. If you say that the number of cases involving violence against women in Kuala Lumpur has increased, I would disagree because we must look at the reports that have been made. One cannot just make sweeping statements. One must be responsible and back statements with facts. For example, a lot of domestic violence reports are made in Kuala Lumpur. Later, the wives want to withdraw their reports against their husbands. In Kuala Lumpur, I decide whether a woman can withdraw her report against her husband. When making a decision, I take into account the injury suffered by the wife and the family situation. In some cases, if we prosecute, the women may turn turtle. In such instances, a woman will not testify against her husband because she still loves him. On the other hand, I will not withdraw the charge if there are injuries or there have been repeated violence against the women.

A few years ago, I filed charges against an employer who had ill-treated an Indonesian maid in Bangsar. Subsequently, a non-governmental organisation wrote to my office asking if the charge could be withdrawn because this family wanted to donate RM10,000 to the NGO. I refused to entertain the request. Amid this, I was

transferred to Taiping. I heard later that they have compensated the victim and she conveniently went back to Indonesia. Sometimes we have such problems but rest assured that we take domestic violence cases and offences committed against children very seriously. The most important factor is whether we have sufficient evidence to prosecute. It does not have to be 100 per cent. What is sufficient? That will depend on individual cases.

Dr Rohana: Thank you Mr Stanley for explaining the cases you have prosecuted and the issues of lack of evidence and hearsay. Regarding gathering of evidence, where does the fault lie? Is it with the police or because of a lack of technology?

DPP Stanley: It is not the fault of the police. They will go all out to gather sufficient evidence. For example, take a case of a child who is raped by her father. Normally, this comes to light after an aunt or close relative reports the crime. Very seldom the mothers lodge reports. Sometimes it might be because of the culture. In this instance, we take into account the age of the child and whether she can testify. We must also consider when the incident happened, whether recently or many years ago. It is still possible to gather sufficient evidence even if the crime was committed many years ago. So, it is not the fault of the police or technology. It is up to the victim or family members to give sufficient evidence. It all depends on whether they can provide us with sufficient evidence.

Pushpa Ratnam: Taking off from Manohary, who spoke at the earlier session, it has to be noted that people are still rather judgmental about women. This certainly includes the police.

I quote as an example the comments made by two retired police officers, who are currently legal practitioners. I met them at a family law training session. We spoke about the Domestic Violence Act and the role of the police in attending to complaints made by women and these officers' job in assisting these women to get protection from their violent spouses. During the discussion session, one of the retired police officers explained that he saw his role as that of a counsellor. When a woman came to lodge a complaint, he said he tried to counsel the complainant and her husband to help them get back together again. He was reluctant to accept the woman's complaint. It is surprising that he did not act as a police officer and saw his role as that of a counsellor.

The retired police officer also related his experience in dealing with several other cases. He said nothing about whether the police successfully prosecuted men who had abused or assaulted their wives. It is clear from all the cases cited that there is



a tendency to generalise and to be biased against women who went to make police reports. For example, if a woman withdraws her complaint or does not follow up after lodging reports two or three times, there is a tendency to assume that the next woman who comes to make a report would act in the same manner. This is very concerning. I think the police should not be judgmental and treat each case objectively.



This problem is not confined only to the police. It happens everywhere because people just cannot stop being judgmental. When a woman reports rape, the first impression is often negative. There are speculations that the rape victim might not have dressed properly or she could have been a “loose woman”. During a rape trial, many people will follow the court proceedings intensely through the mass media. However, at the back of their mind, there is always this judgmental attitude. It is quite difficult to change the mindset of these people.

In this session, I will talk on the Court of Appeal’s recent decision. As Mr Stanley explained earlier, whatever that has been reported in the mass media so far was based on hearsay because the written judgment is not out yet.

However, let’s look at people’s response to what has been reported in the media. In one case, a contractor was sentenced to jail in 2001 for raping a 14-year-old girl. He subsequently appealed against the decision and was acquitted by the Court of Appeal early this year. The court allowed the appeal on three grounds: the girl had failed to identify the blunt object inserted into her private part; the specimen taken

during the examination was not followed up with a concluding report; and witness testimonial was neutralised by cross-examination and the prosecution did not follow up with a thorough re-examination. The ambiguity was that the girl could not describe in her evidence the object that was inserted. Now, who do we blame for this acquittal? Perhaps a more thorough investigation was needed.

In another case, a janitor was convicted for raping his 10-year-old daughter in the mid-1990s. Several rape charges were filed against this man. One was that the rape took place on a Sunday in 1994 and another occurred on a Friday in 1996. The other charges were that the girl was raped in his house in 1991, and in an oil-palm plantation along the Mentakab-Temerloh highway about 2.30pm in early December 1996.

The janitor was convicted in 1998. However, his appeal was allowed on the ground that the charges were not specific. As per the law, the prosecution is supposed to ensure that “the charge contains such particulars as the time and place of the alleged offence and the person, if any, against who or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.” Thus, reasonably sufficient information is required such as when, where and how the crime took place, who was the perpetrator and so on.

However, there is some leeway in other offences such as criminal breach of trust. I believe the charge date can be framed within a period of one year. Why is a CBT charge different from a rape charge? In CBT offences, there are records that we can trace back. But with rape, the defence requires the specific date in order to provide alibi evidence, if any.



Now, how do we view the problem from women's perspective? Of course, there is a lot of frustration because victims of sexual abuse or rape have already gone through serious trauma. Most incest cases are not violent and the perpetrators leave little physical evidence. It is a habitual crime, which is repetitive in nature. A father or brother could have raped the child over a period of time. This is a situation where witnesses cannot be precise as to when the offence took place. Studies also show that the perpetrators cannot be rehabilitated and there is a need to separate them from the victims. Emotional healing takes time and giving evidence in front of the perpetrators can be very traumatic for the victims.

Despite these difficulties, a rape or incest victim is encouraged to give evidence. They do come forward and give evidence. We must also keep in mind that almost 80 per cent of reported rape cases do not go to court and very few end up with convictions. This is because of difficulty in providing evidence. Physical evidence such as cuts and marks can heal fast. So, we hope that the judiciary will look at the whole thing in a wider perspective and not just emphasise on physical evidence. We hope that the court will rely on the testimonial of the witness itself.

Sometimes rape or incest cases are reported late because of the shock, trauma, sense of shame, fear or even out of sheer confusion. Some families would want to hush up incest cases, especially where the perpetrator could be the father or brother. However, these families may later decide to report the crime. So they may go to the police three or four months later. Of course, it would be best if they can give the date and time of the incident. Often they do not remember the dates. How can we address these problems? We need to encourage the community and the women to be brave enough to come forward and report immediately after a crime is committed. We must impress on the women to do the right thing. At the same time, there must be teamwork between the prosecution and the victim. We rely on the expertise of the prosecution to get their job done as efficiently as possible. It is easier said than done because of the problems we would have to encounter. But the main issue is we have to address this problem by encouraging rape victims and mothers of sexually abused children to report such crimes immediately.

Perhaps, we should also seek changes in the laws. These laws should never function rigidly. Rape or incest victims seek justice and they want to be treated fairly. They are coming forward to make reports in spite of the social obstacles and the tedious judicial procedures they have to go through. It is very humiliating for them when reporting the crime to the police and describing the incidents in detail to the prosecuting officers. During the trial, they have to relate their ordeal again. Thus, it will be extremely painful for the victims when they are suddenly informed

that the charges against the perpetrators are not specific and that the cases have to be withdrawn. So, we would like to urge the police and the prosecution to be extra vigilant at the very early stage itself before the perpetrators are charged.

DPP Stanley: I would like to discuss this while the topic is still fresh in your mind. Let us take the Domestic Violence Act. The NGOs lobbied for the Act. It is a good move but, on the other hand, we did not look at the practical aspects of the law. For example, a woman takes an order against a violator, who is normally her husband, to stay away from the house. What happens if the woman is a housewife and lives in a rented premise? How do you support the victim? The husband will say, “Okay, since there is an order against me, I will stay away from the house, I will not pay the rent”. What will you do? You have to take that into account unless you are prepared to go all out.

When does investigation stop? It stops at the end of the defence’s case. The investigation does not stop once we prosecute someone. We can still investigate at that stage, for example when the accused is asked to testify.

We take every report lodged seriously. We will hand over reports involving women or children to a special police team in the respective districts. We have special people to investigate these reports.

DPPs must have at least three years’ experience in order to prosecute. We do not interview victims or witnesses. We leave it entirely to the investigation officer. We must look at it professionally and we cannot be emotional.

Regarding the case where the victim failed to identify the object that was inserted into her private part, it is common sense that it must have been his penis. The victim did not know what the object was because she might have been a virgin. We are very upset with the High Court decision.

Our stand is even a prostitute face the risk of rape. Just because a woman is a prostitute, it does not mean she cannot say no. For rape charges, the victim has to provide the date. For example, the victim can say it was some time in 1996 or when I was 15 years old. We will try to trace the time the victim means. It could have occurred during a festive season and so on. We will try to narrow down the date.

Just because there are delays in reporting rape cases, it does not mean that we will not prosecute. But as I said earlier, we must have sufficient evidence based on individual cases. We do not stereotype rape cases or say that we will ignore rape



cases that were reported three months or four years later. As long as people can relate the incident and there is some sufficient evidence, we look at the case seriously.

We also have video link nowadays for children and vulnerable witnesses to testify from separate rooms. We can see the witnesses in court but they will testify from another room. They do not come into contact with the accused.

ASP Nor Azilah Junid: I think I am going to be shot at today because every speaker before me has commented on police services. I hope I can provide you with more useful information.

I will share with you what happens when a report is lodged at a police station. First of all, a (abused) woman comes to a police station after she has decided that it is enough and she should do something for herself. Well, I cannot deny that some police personnel have a certain attitude. Why is there an attitude problem? One of the reasons is probably because they are bogged down with too much work. From January to August this year, 4,684 cases of violence against women were reported throughout Malaysia. Unfortunately, in some states such as Perlis and Pahang we do not have women officers to help in these cases. We have to go through a lot of procedures when a report is lodged. When a woman comes to the police station, we have to assess whether she needs immediate medical help or we should wait. If the victim informs us that the incident happened within 72 hours, we have to act fast. If the incident is reported after 72 hours, the hospital will treat it as a cold or old case.

So, the first thing we do is to record the statement, take the woman to the scene of the crime, then send her to a doctor and so on. Members of the public have even questioned our ability to assess whether the woman needs medical or psychiatric help and whatever. We do what we can to help this woman but, of course, we have to go through a lot of procedures – send her to hospital, take photographs, etc. We used to have only male photographers. Recently, we have trained women photographers. For example, if a husband injured his wife's breast or other parts of her body, then the victim would have to expose those parts to be photographed. We encountered this situation and addressed the problem by training our women officers to take pictures.

When we talk about training, it involves money and budget. Nevertheless, we have conducted two training sessions for our women officers so far this year. In the seminars, we emphasised gender sensitisation and also invited an AWAM

representative to give a talk. That is how we work with NGOs. Experts from the DPP's office, welfare department and others also train our officers to be more competent in their investigations. However, whatever investigation we do, in the end it's the DPP who decides whether to charge a perpetrator or the IO has got to do further investigation.

I am the head of the children's unit where I record statements from children who have been sexually abused or witnessed a crime. The perpetrators are mostly the fathers, accounting for about 30 per cent of the incest cases, next are the uncles and then the stepfathers. Recent trend shows the brothers-in-law are also committing the crime in the family.

What I can do is I will try my best to help the children. Earlier, Tuan Stanley mentioned about the video link in court. Unfortunately, only one court in Kuala Lumpur is equipped with this facility. I had submitted proposals for the police to put up video recording equipments in Johor and Penang. The government has recently approved the proposals and has allocated RM700,000 to set up the units in the two states.

DPP Stanley: I just want to comment on the 72-hour requirement. This is a medical term. The doctor can only say whether the injuries happened within 72 hours or earlier than 72 hours. The medical profession came out with this. We always maintain that decisions cannot be based on public pressure. Our decisions must be made objectively. As I said earlier, whoever is the victim or the accused, he or she is someone's father, mother, sister, brother etc. But if we have sufficient evidence, we will prosecute.

The panel discussion was followed by questions, comments and suggestions from members of the floor.

Chitra*: I would like to highlight to Mr Stanley Augustine what happened at my divorce hearing. All the while (during the divorce proceedings), I was under the impression that the judge was pro-wife, but towards the end he became pro-husband. I was shocked with what he said. The judge told the other lawyer in the open court this: "I'm going to teach this woman a lesson." Earlier he said: "She is not going to get anything. She doesn't deserve anything." Then the judge turned to me and said: "My dear girl, I'm going to teach you a lesson. Just take it that I'm like your father telling you. For the way you treated your children, you don't deserve anything." But I did not treat my children badly. Basically, my children were brainwashed by my husband. The children were always told that I am a



liability to the family. At the end of the day, after 18 years of marriage and all the abuses that I experienced from him, I got nothing. On top of it, I was embarrassed in an open court. I have lost everything. Till today, I have not got a single sen for maintenance. It is very costly for me to file an appeal against the decision. Besides, filing an appeal takes time.

DPP Stanley: It is difficult for me to comment on your case. I cannot say anything unless it is on paper. What the judge said in the oral judgment could be different from the written judgment. I am very sorry... best of luck! That's all I can say.

Vimala Nair: We are now clear about the need to provide sufficient evidence. In future, I will advise abused women who seek assistance to make sure every detail of the incidents are stated. I have been advising battered women to note the time, the day and anything else that is important. If possible, I ask someone to take photographs for the women. I also advise them to go to the hospital first and request the doctor to detail the evidence before going to the police station. I think they can make the police report within 24 hours but all the other procedures may take a longer time. For example, if the incident happened about 7am, the victims go to the police station and wait for the police officers to arrive. Sometimes they come very late and the victims get frustrated. So when victims of domestic violence seek my help, I advise them to go to the doctor first, to take photographs and then go to the police. I am not sure whether I am right. Is it the appropriate course of action?

Why are the police not serious about reports on domestic violence? I have been doing social work for almost 10 years and I know these problems go on and on. The implementation of the Domestic Violence Act is still weak. The men always get off and the women suffer. The men always get back at the women and this affects the children. In some instances, the women contemplate suicide because they do not get any help. Even though we have shelter homes, the women do not want to go there because they fear their husbands may find the place and beat them up.

Violence against women is common in society, whether they are poor or rich. I think the main cause is pornographic material, which is easily available. Perhaps, the police should take tough measures to crackdown on distributors of pornographic material.

I also learnt from my students that criminal gangs always try to recruit boys between 17 and 18 years of age for their illegal activities. Since they are juveniles, they believe the boys would be let off easily even if the police charged them.

DPP Stanley: Age is not a criterion. We will prosecute anyone who commits a crime, even if the person is 17 or 18 years old. It is better to prosecute the boy when he committed the crime. It is better that he is brought to court early and the family regrets now rather than later.

We do not have evidence and the statistics to show that pornography contributes to an increase in domestic violence. We cannot make sweeping statements. But if you are concerned that nothing is being done, you can always write to our headquarters. We will take up the matter with the police. What is most important is justice is done. We work only for Mr Justice and not anyone else.

ASP Nor Azilah: Actually, only police photographers are qualified to testify in court about photographs. We do not accept photos taken by individuals. It is up to the victim to choose to go to the hospital or police station first. If a victim feels she needs medical attention immediately, she can go straight to the hospital. There is a police beat base in every hospital. The victim can relate the incident to the doctor who will then inform the policeman to take her report as the first information report. This policeman in the beat base will then request the officer in charge at the police station to visit the victim, or she can go straight to the police station and lodge a report.

If possible, a victim should not take her bath immediately because it will wash away the evidence. I would like to share my experience in investigating the rape of a nightclub worker in Kuala Lumpur. Just after midnight, she accepted a lift from a man. The man drove her to another place and raped her in a bush. The victim managed to note the rapist's features and the number plate of the car. After she was raped, she ran to the main road. Fortunately, a police patrol car saw her and took her to the police station. I was the police officer on duty that day. I gave her a T-shirt and sent her to the hospital. I kept her blouse, which was torn and had some soil patches, for evidence. Since the victim had given a description of the man's features and the car, I alerted all the police stations in the vicinity to look out for the vehicle. About two hours later the policemen spotted the car and arrested the man. So, I was very happy. I took soil samples from the tyres. The following morning I went to the scene of the crime and took soil samples there. I then sent all the samples to the Chemistry Department. The tests showed that the samples from the tyres, the place of the crime and the victim's clothes matched. I was happy to investigate this kind of case because it was fresh and I was able to nab the perpetrator fast. It helps a lot.



Of course, it's a traumatic situation for these victims when they come to the police station. A rape victim will experience four types of trauma. The first is the trauma of the rape itself. The second trauma is when the victim undergoes the medical examination. The head of the trauma unit in Kuala Lumpur Hospital told me that a medical examination on a rape victim is like another rape for her. Then she has to relate the incident to the police officer in detail, from the beginning to the end, because we need to prove penetration and all that. The third trauma is waiting for the trial to begin. The fourth trauma is when the victim has to tell the court what happened and face cross-examination by the defence counsel. So we can understand what the victim has to go through after being raped.

I understand the difficulty in serving the interim protection order to the husbands within 24 hours in domestic violence cases. Yes, we get the IPO but the investigation officer has not been able to serve it personally. Probably, she has to assign another officer to serve the IPO. Serving an IPO is not like serving a subpoena when you have to go to court. IPO is a differing thing. From what I gathered from the ground, the policemen have difficulties serving the IPO. The husbands just refuse to receive the IPO. We are dealing with civil law here but Muslims come under the syariah law. If a perpetrator is a Muslim, the victim is still his wife under the syariah law. These are some of the difficulties we face. Somehow or rather we still try to serve the IPO within 24 hours.

The kind of protection a woman needs is not clearly spelled out in the IPO. A number of IPOs just state that the woman needs protection and say nothing else. But what kind of protection does she need? They just mention a need for shelter, that's all. But what type of shelter does she need? Is it that she does not want her husband to go near her or beat her? When the details are not clearly stated in the IPO, of course we have difficulties enforcing the order.

Regarding police investigations, our Inspector General of Police has directed us not to turn away anyone who comes to the police station to lodge a report. If a policeman refuses to accept reports from the public, he may even lose his job. This is a very stern warning from our top management. The police also have to inform the victim or the person who made the report the outcome of investigations. This has to be done two weeks after a report has been made, then after a month and followed by three months. They have to fill certain forms to be given to the complainants and they have to state whether the perpetrator would be charged in court.

Recently, we have also drawn up guidelines for our investigations to meet ISO 9000 standards. I am working very hard to draw up this procedure. So hopefully, things will improve for the better. We try our best to help the victims.

Gunapathy Arumugam (Head of Family Division, YSS): I need some guidance on two cases I am handling. In one case, a private doctor informed me that a 13-year-old Indian girl has given birth to a child and asked me how to get a birth certificate. The girl's family did not make any police report. Actually, the man who had sexual relations with the girl is her uncle. After the girl became pregnant, the family members said the uncle would marry her and so they did not want to make a police report.

In another case, a 15-year-old Indian girl, who worked as a domestic servant in a senior police officer's residence, was physically abused by his wife and sexually harassed by the officer. The girl's mother reported the matter at the local police station. Subsequently, the girl's mother demanded about RM50,000 from the officer but he agreed to pay RM3,000 or RM5,000. The police officer who took the report became the mediator to settle this matter. The case was withdrawn after the mother received the money from the senior officer. This case was covered up. Is it possible to reopen the case?

As NGO members, what is our role? Can we make a police report or take the two cases directly to the authorities? What should I do to ensure that the abusers face the law?

DPP Stanley: Regarding the first question, sexual intercourse with a minor who is below 16 years, with or without her consent, is rape. Your responsibility is you must report the crime, more so because the girl has just given birth to a child. If we say the uncle has promised to marry her, we are going to condone the crime. Let the law take its course. We must be objective and look at the case from the point of view of the law. Your responsibility is to lodge a police report, full stop! Stop being a do-gooder. Do not attempt to play god. As for the second question, I leave it to my colleague to answer.

ASP Nor Azilah: For the second case, if you can get a copy of the police report, please forward it to my director, who is a very open and helpful person. You can always meet him personally in his office. I think he is the only director in the police force who gives his personal hand phone number to the public and gets calls even at midnight. As a director, I think he should not do that but he is being open and helpful. You may write an official letter to him, enclosing a copy of the report. I think it is the best thing to do. I cannot comment on this case.



Vasandra (HELP University College): What surprised me was a case in Penang, which I read in the newspapers two years ago. This man named Ayakanoo, his wife and their three children had booked into a motel. He is a former drug addict who had just completed serving sentence. In the middle of the night, he had beaten up his two-year-old daughter and stuck cloth into her mouth so that she cannot scream. In the morning when the wife realised that the child was bleeding through the nose and ears, she took her to the clinic. But the child did not survive. The man was charged with culpable homicide not amounting to murder. He was found guilty and sentenced to 10 years' jail. However, the child had injuries on her vagina, her anus and back. There was sufficient evidence to show that this child had been repeatedly sexually and physically abused. It surprised me that this man was not charged with murder. Do we have plea-bargaining?

DPP Stanley: No comment. Since I do not know the facts of the case, it is very difficult for me to comment. There is no plea-bargaining in this country.

Dr Rohana: If there are no more questions, may I request the panel members to make suggestions, if any, that can be forwarded to the government.

DPP Stanley: I think we have sufficient laws to deal with the various issues. Basically, we go back to common sense. Law is common sense. In court we can always use what is heard or said as evidence. At the end of the day, we go back to the testimonies of the victim and the doctor. If there are other people who can testify, that is bonus. But this does not mean that if we do not have the evidence from the victim and the doctor, we will not prosecute. We will still prosecute.

Dr Rohana: Any recommendations from the floor?

Shanti: I would like to repeat what ASP Nor Azilah mentioned earlier about the need to have more female officers to handle certain cases. We need to request the government to increase the number of female officers in the police force and the judiciary as well. In cases involving violence against women, I think we are not focusing enough on how we can support the victims. After listening to the cases, it is apparent that the victims are severely handicapped in terms of psychological support and financial resources. We should propose to the government to have some regulations or mechanism to provide counselling to the victims as well as the family members of the perpetrators. We should also look into providing legal aid or other forms of support to the victims.

Pauline Phua: I agree that the number of female officers should be increased. More importantly, more women officers should be trained to handle certain cases. This would be more practical than waiting to see an increase in the number of senior officers.

Claudine Gonsalves (Regional Coordinator SU/ SSC, UNDP): I would like to share by views, especially with regards to law enforcement. There is a great need for sensitisation. After listening to all of you here today, I think you already have a lot of experience. You have all the information to bring changes in your institutions.

It is important to look at the curriculum in the school and other training institutions. For example, you can look at your school curriculum and see if they still have sex stereotyping. How effective are the police training courses? Is elimination of stereotyping part and parcel of police officers' education?

Another point is violence in the media. After looking at the media and entertainment programmes, I cannot comprehend the tremendous tolerance for violence in Malaysia. Violence is portrayed as entertainment. Many people appear to condone it and I see little children going in there. I find it scary. We need to look at the whole issue of censorship and media and whether we want to condone the portrayal of violence as entertainment.

As a mother, I don't hit my child. I come from a society where that is normal and my family used to say, "beat him up to discipline him". Yes, I do discipline my child but I do it differently. If I portrayed to my child that I have the right to hit him because I have to discipline him, basically I am teaching him that violence is a legitimate tool.

These are some issues we need to look at. Yes, we need laws and enforcement, but we also have to start building a different culture where these issues are addressed. In other countries, such as in Latin America, women have been consulted on housing issues. These are very simple issues such as what would facilitate women's safety. Basically these meetings will be held before building houses in new areas.

Another issue mentioned earlier was Indian women could not read information booklets or speak in English. We have such experiences in other regions of the world, where government sponsors literacy programmes for women and the law is translated into whatever form and shape to make the information accessible to all, even to illiterate women.



Finally, when I lived in Jamaica, I learnt of a group called Women's Watch. It was a group of women, mostly journalists and lawyers, who would keep track of issues and network with parliamentarians and legislators to bring changes. These are some of the areas we should be looking into.

ASP Nor Azilah: I would like to comment on the issue of whether gender sensitisation is part of police training curriculum. At the moment, no, but recently I have included it in courses for our special investigation officers. After listening to all the suggestions, I will probably submit a report to my superiors recommending the inclusion of gender sensitisation in police training at all levels. Thank you for the suggestions.

Pushpa Ratnam: Unfortunately, stereotyping still exists in the school syllabus. The textbooks still portray the same things. For example, the girl is shown washing dishes with her mother while the boys wash the car with their father. Such stereotyping is still there but we hope that things will change for the better.

Dr Rohana: Before we end this session, I would just like to summarise briefly the recommendations. Earlier this morning, there was a suggestion for family courts. I think we need to push very hard for the setting up of family courts. As always, the police came under scrutiny and the recommendations are for a better-trained police force, to increase the number of women police officers and so on. We also went on to suggest that more women should be recruited in various institutions, including the judiciary. We touched on the need to review the curriculum of our education system and police training programmes. I think we need appropriate curriculum and training programmes for men at all levels of society, which HAWA has been conducting since last year. Such programmes must continue. We also have to educate society to view violence against women differently and have in place a support system for the victims. There were also suggestions that we should increase the number of counsellors and provide counselling both for the victim as well as the perpetrator. As I said earlier, the kind of education given to prisoners does not necessarily change their view on gender relations and interactions. There was also a suggestion to set up a women's watch. I think it already exists in Malaysia in the form of the National Council of Women's Organisations but it can be made more effective. Lastly, but not least, is the need to build a culture of non-violence in our society. With that I would like to thank all our speakers and bring the session to a close.



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