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**RESOURCE MATERIAL  
SERIES No. 69**

**UNAFEI**

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## INTRODUCTORY NOTE

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It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community Resource Material Series No. 69.

This volume contains the Annual Report for 2005, the work produced in the 130th International Training Course that was conducted from 16 May to 23 June 2005 and the Seventh Course on Corruption Control in Criminal Justice that was conducted from 18 October to 12 November 2004. The main theme of the 130th Course was “Integrated Strategies to Confront Domestic Violence and Child Abuse”.

Domestic violence and child abuse are problems that plague every nation. They are particularly harmful because they often affect the most vulnerable members of society, i.e. women and children, and most often occur in the home – the place where we are supposed to feel most safe. Up until quite recently such violence and abuse was considered a family matter in all but the most extreme cases. Coupled with the fact that these crimes occur invariably in the home, and thus are rarely witnessed by others, law enforcement agencies rarely intervened and the victims were thus left to suffer in silence.

However, there is a growing realization in most societies that domestic violence and child abuse need to be taken more seriously and treated as the crimes they are. Many countries have now established specific laws, legal procedures and agencies to deal appropriately with the problem. The United Nations has taken the lead in this matter in order to make the international community aware of its responsibilities with the 1978 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1989 Convention on the Rights of the Child, the CEDAW General Recommendations and many General Assembly resolutions calling for action against domestic violence and child abuse.

Nevertheless, there are still many countries that are behind in taking the necessary measures to protect their most vulnerable citizens. This topic was chosen for this Course in order to highlight the need for governments to take the necessary measures to combat domestic violence and child abuse.

Corruption undermines democratic institutions, retards economic development and contributes to government instability. It is a problem for both rich and poor nations in both the public and private sector. It is a perennial evil that constantly needs to be challenged. For these reasons UNAFEI holds a multiple country course specifically on Corruption Control every year.

The adoption in 2003 by the United Nations General Assembly of the Convention against Corruption was a milestone, creating for the first time a treaty specifically intended to address corruption across the whole of the globe. Its entry into force in December of 2005 will require States Parties to implement a number of measures to tackle corruption in a comprehensive way, including measures directed at prevention, criminalization, international cooperation, and asset recovery. It is hoped that all countries, including our participants’ countries, will promptly ratify this Convention and in so doing take a step closer to a world free of corruption.

In this issue, in regard to the 130th Course, papers contributed by visiting experts, selected individual presentation papers from among the participants, and the Reports of the Course are published. I regret that not all the papers submitted by the Course participants could be

published. In regard to the Seventh Corruption Course the papers contributed by the visiting experts and the Report of the General Discussion are published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular, the editor of Resource Material Series No. 69, Mr. Simon Cornell, who so tirelessly dedicated himself to this Series.

July 2006

田内正広

Masahiro Tauchi  
Director of UNAFEI

**PART ONE**  
**ANNUAL REPORT**  
**FOR 2005**

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- *Main Activities of UNAFEI*
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**UNAFEI**



# **MAIN ACTIVITIES OF UNAFEI (1 January 2005 - 31 December 2005)**

## **I. ROLE AND MANDATE**

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1961 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the re-integration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

## **II. TRAINING**

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of criminal justice discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice by the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks duration) and one international seminar (five weeks duration). One hundred and twenty government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA; an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from Africa, Latin America and Europe. These participants are experienced practitioners and administrators holding relatively senior positions in criminal justice fields.

During its 44 years of existence, UNAFEI has conducted a total of 131 international training courses and seminars, in which approximately 3192 criminal justice personnel have participated, representing 108 different countries. UNAFEI has also conducted a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved in. In their respective countries, UNAFEI alumni have been playing leading roles and holding important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

### **A. The 129th International Seminar**

#### **1. Introduction**

From 11 January to 9 February 2005, 25 participants from 15 countries attended the 129<sup>th</sup> International Seminar to examine the main theme of "Crime Prevention in the 21<sup>st</sup> Century – Effective Prevention of Crime associated with Urbanization based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency".

#### **2. Methodology**

The objectives of the Course were primarily realized through the Individual Presentations and Group

Workshop sessions. Firstly, the Seminar participants each presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. The participants were then divided into three group workshops as follows:

- Group 1: Effective Measures for the Prevention of Crime Associated With Urbanization
- Group 2: Effective Measures for Youth at Risk
- Group 3: Role of the Community in the Reintegration of Victims and Offenders into the Community

Each group elected a chairperson, co-chairperson, rapporteur and co-rapporteur in order to facilitate the discussions. During group discussion the group members studied the designated topics and exchanged views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Later, Plenary Meetings were held to discuss the interim outline of the Group Workshop Reports and to offer suggestions and comments. During the final Plenary Meetings, drafts of the Group Workshop Reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their Reports and presented them in the Report-Back Sessions, where they were endorsed as the Reports of the Seminar. The full texts of these Reports are published in UNAFEI Resource Material Series No 68.

### 3. Outcome Summary

#### *(i) Effective measures for the prevention of crime associated with urbanization*

- a) Emphasising repressive measures in combating crime, such as strengthening law-enforcement and punishment are necessary and some positive results can be expected. However, relying solely on such measures is insufficient since they do not take into account the prevention of crime and reintegration of offenders into the community.
- b) An understanding of where and why crimes occur can improve attempts to fight crime. Maps offer crime analysts graphic representations of such crime related issues.
- c) Proper and meaningful urban planning is essential. If we want to change criminal behaviour, we must first change the environment such as to reduce the opportunities which might lead a person to offend. Target hardening such as installing CCTV, grills on windows and doors, better locks for doors and windows and lighting around houses and other security devices act as a deterrent to prevent the commission of crime.
- d) The creation of social amenities should be provided for people in urban areas. The youth and children for instance, need assistance from the community around them in terms of proper housing, recreation, education, vocational training, employment, etc. that can make their lives better so that they are less likely to commit crimes.
- e) The family as a whole, local government leaders, religious leaders, etc. should get involved in crime prevention. Youths and juvenile delinquents should be educated and sensitized to improve their morals and values.
- f) There are bad effects and a loss of confidence from society's perception of corruption within the police administration. Effective measures must be taken by the government to ensure that there is transparency and accountability.
- g) Inter-agency cooperation is very important. A comprehensive anti-crime programme should be planned in order to have many governmental organizations as well as non-governmental organisations share information and work together.
- h) There should be a partnership between the police and the community letting the latter bear some responsibility in preventing crime. That is to say, that the establishment of community policing is inevitable. As a step forward, introducing a close relationship between the prosecution and the community is of vital importance (Community Prosecution).

#### *(ii) Effective measures for youth at risk*

Many new initiatives should be taken by the government, foundations, businesses and non-government organizations to combat juvenile delinquency, youth crimes and unemployment as follows.

- a) There should be an emphasis on staff training and development and cross-disciplinary training should be increased.
- b) There should be professional development opportunities for staff and officials at all levels of the system.

## MAIN ACTIVITIES

- c) Measures should be taken to overcome the negative perceptions of juvenile offenders. Negative public reaction to violent offences committed by youths creates great obstacles for them to seek access to community services including education, employment and practical training.
- d) Providing public forums that enable young people to tell their stories is an effective way to engage the media, public officials and the public.
- e) More extensive diversionary measures with more respect for victims should be discussed in the criminal justice system.
- f) Institutional vocational education programmes should offer training only in occupations for which there is demand. Efforts to reach out to employers should extend to public sector employers and small and medium businesses.
- g) The necessary community based services and support for juveniles should be made accessible in the community.
- h) Youth correctional facilities, local workforce development, education and youth development providers should work closely together to connect youth to appropriate services prior to their scheduled release date.
- i) Identifying adequate resources. Policymakers should be informed about the outcome of effective programmes and the cost savings they can achieve.
- j) Common understandings, goals and desired outcomes should be developed through a multi-disciplinary approach involving law enforcers, educators, the judiciary, etc.

The government should put an emphasis on implementing effective early prevention measures, executing criminal justice procedures with more extensive diversionary measures including more respect for victims; and promoting re-integration of juveniles into society with appropriate court dispositions.

### *(iii) Role of the community in the reintegration of victims and offenders into the community*

#### *Rehabilitation of offenders*

- a) Develop appropriate offender treatment, support and aftercare measures by utilizing community resources.
- b) Improve the training systems of appropriate organizations and institutions with a view to providing effective delivery of programme activities and services.
- c) Develop appropriate policy guidelines to improve coordination and collaboration among relevant sector agencies, organizations and institutions and the government to consider embedding appropriate policies into legislation.
- d) Introduction of evidence-based practice for offender treatment, support and aftercare.

#### *Victims of crime*

- a) Develop standards for police, lawyers, medical professionals and others as well as establish appropriate training and educational courses. There is also a need to raise public awareness on avoiding victimization, promoting understanding of the victims' situation and so on.
- b) Invest in projects to implement victim assistance and support, including services provided to women and children by non-governmental organizations, health and police professionals.
- c) Develop appropriate policy guidelines to improve coordination and collaboration among relevant sector agencies, organizations and institutions.
- d) Adopt legislation to incorporate the principles of the UN Victim Declaration into appropriate language of Members States countries in a form that provides a framework for the implementation of the Declaration.
- e) Invest in research to assess the extent to which victims receive services and justice as well as surveys to measure the extent of victimization and its impact.

#### *Restorative justice approaches*

- a) Consider the recruitment and appropriate professional training of selected facilitators.
- b) Establish an expert group of selected and competent officers and facilitators; including volunteers to develop and facilitate the implementation of appropriate restorative justice programmes.
- c) Establish an agency mandated and authorized to provide supervision and monitoring to ensure compliance and fulfilment of the agreement between the offender and victim in the restorative justice programme.

- d) Develop appropriate legislation to provide a basic legal framework for the restorative justice system to protect fundamental human rights.

*Other relevant issues*

- a) Implement national crime prevention programmes consistent with the UN Guidelines and the Recommendations of the World Health Organization to significantly reduce violence, prioritizing violence within the family.
- b) Foster policing that is focused on strategic approaches to the reduction of crime and partnerships with agencies such as schools, social services and local government that are likely to lead to real reductions in victimization specifically focused upon youth at risk.
- c) Establish local level government crime prevention strategies to diagnose crime problems, develop plans, and implement strategies and monitor success in reducing crime.

There is no single or easy solution to combating crime, especially as we confront the transition into a new knowledge based economy and all that comes with it. The challenge is to continue to explore best practices, and draw from lessons learnt from other countries.

The re-integration of offenders and victims based upon community involvement is the best vehicle to support evidence-based practice in reducing crime levels.

## **B. The 130th International Training Course**

### 1. Introduction

UNAFEI conducted the 130th International Training Course from 16 May to 23 June 2005 with the main theme, "Integrated Strategies to Confront Domestic Violence and Child Abuse". This Course consisted of 23 participants and 2 observers from 19 countries.

### 2. Methodology

The objectives of the Course were primarily realized through the Individual Presentations and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into three groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Effective Criminal Justice Responses to Child Abuse and Domestic Violence

Group 2: Protective Measures for Victims of Child Abuse and Domestic Violence

Group 3: Treatment Programmes for Perpetrators

The three groups elected a chairperson, co-chairperson, rapporteur and co-rapporteur to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. During the course, Plenary Meetings were held to discuss the interim outline of the Group Workshop Reports and to offer suggestions and comments. During the final Plenary Meetings the drafts of the Group Workshop Reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the Reports of the Course. The full texts of the Reports are published in this 69th Resource Material Series.

### 3. Outcome Summary

#### *(i) Effective criminal justice responses to child abuse and domestic violence (CA/DV)*

- a) Acts pertaining to CA/DV should be criminalized to ensure the purposes underlined by relevant UN instruments.
- b) There is a need for a multidisciplinary approach to victim protection and support.
- c) Victim protection should not compromise the accused's right to due process and a speedy criminal procedure.
- d) There is a need to rehabilitate offenders to prevent re-offending.
- e) All stakeholders of the criminal justice system who deal with CA/DV should receive training.

## MAIN ACTIVITIES

- f) Criminal justice agencies should cooperate and collaborate with other outside agencies.
- g) The possibility of developing programmes to treat offenders should be explored.
- h) Experts and technological improvements should be utilized.

### *(ii) Protective measures for victims of child abuse and domestic violence*

- a) In order to promote general prevention the role of education and public awareness is critical. Media and private sector participation at the grass-roots level in this campaign is a key to success.
- b) The target of these awareness raising campaigns should be people from all strata of society including public officers, community and religious leaders, young couples, children, victims and perpetrators.
- c) In order to encourage reporting, protection of the source of the information should be ensured and professionals with information on victims should be exempted from confidentiality.
- d) A system of mandatory reporting may be implemented to encourage the public to report domestic violence and child abuse.
- e) Maximum channels should be available to the public in order to get relief and a well organized interdisciplinary coordination mechanism can result in providing relief to victims at their doorstep.
- f) A timely and appropriate level of intervention is vital to ensure the safety of victims by secluding victims from perpetrators to prevent repeated victimization and victims should be encouraged to approach shelters and other help centres.
- g) Counselling is not only important for victims to empower them to deal with the situations but perpetrators should also be targeted to improve their behaviour and break the cycle of violence.
- h) Public education is a major way of minimizing secondary victimization by the community. Moreover, criminal justice practitioners should also be aware of the plight of the victims and equipped with skills to deal with victims appropriately.
- i) A legal framework for effective and prompt protective orders should be in place and violations of these orders should be criminalized.
- j) A holistic approach, e.g. Unified Family Courts, is an alternative solution to the problem but its practical difficulties should be taken into account. The prime importance is providing relief and protection to victims and it should be envisaged in existing and future judicial set-ups.

### *(iii) Treatment programmes for perpetrators*

The participants agreed that the perpetrators of CA/DV need to undertake a special perpetrators programme, utilizing the “Common Hybrid Model” as a model programme/model guideline. In order to implement this programme/guideline in each field, we have to consider the different settings in respective countries. For implementation, the following issues should be considered.

- a) States are obliged to promote treatment programmes for CA/DV perpetrators.
- b) Treatment programmes must address the risks, needs and characteristics of target perpetrators.
- c) States must consider the status of perpetrators such as inmates, probationers/parolees.
- d) States can utilize programmes which are proven to be effective based on research evidence. States may change such programmes depending on the particular conditions of respective countries.
- e) State government needs to co-operate with other stakeholders, such as, civil organizations, etc.
- f) Staff competency is important for successful treatment programmes; therefore, appropriate training is essential.
- g) Proper evaluation of the treatment programmes is important.
- h) Safety of victims and their family members should be considered in developing treatment programmes.

## **C. The 131st International Training Course**

### **1. Introduction**

From 29 August to 6 October 2005, UNAFEI conducted the 131st International Training Course with the main theme, “The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power - Twenty Years after Its Adoption”. This Course consisted of 24 participants from 17 countries.

## 2. Methodology

The objectives of this Course were primarily realized through the Individual Presentations and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. To facilitate discussions, the participants were divided into three groups.

Each group elected a chairperson, co-chairperson, rapporteur and co-rapporteur to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth.

Group 1: Protection of Victims of Crime in the Criminal Justice System

Group 2: Response to Needs of Victims of Crime

Group 3: Active Participation of Victims of Crime in the Criminal Justice Process

Plenary Meetings were later held to discuss the interim outline of the Group Workshop Reports and to offer suggestions and comments. During the Plenary Meetings, drafts of the Group Workshop Reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their Reports and presented them in the Report-Back Sessions, where they were endorsed as the Reports of the Course. The Reports will be published in full in UNAFEI Resource Material Series No. 70.

## 3. Outcome Summary

### *(i) Protection of victims of crime in the criminal justice system*

It is highly likely that victims suffer secondary victimization more often while in the hands of the police than in court. Although considerable efforts are now being made in different countries aimed at protecting victims and ensuring their active participation in the criminal justice process, much still needs to be done to improve the knowledge levels of criminal justice practitioners about the impact of crime on victims. Justice officials need therefore to exhibit positive attitudes towards crime victims and victims of abuse of power.

The following are recommended as possible measures to take in order to protect victims of crime in the criminal justice process.

- a) Provide adequate professional training to police investigators, prosecutors and judges in order to change their attitudes and perceptions towards victims of crime, as well as to improve skills for protecting them.
- b) Improve the public affairs office in information dissemination through both print and electronic media to raise awareness levels on the problems and needs of victims.
- c) Consider establishing a substantive and easily accessible victim contact office based, for example, at the national police agency headquarters.
- d) Improve investigators' attitudes, questioning skills, etc. when interviewing victims of crime, so that the victims will not suffer from secondary victimization. Also, ensure that victims are interviewed at police stations or public prosecutors' offices in a separate room and/or time from offenders.

### *(ii) Response to needs of victims of crime*

- a) States should conduct a survey on the impact of physical, financial and psychological injuries, and secondary victimization of crime victims.
- b) Criminal justice personnel should be given training on the impact of secondary victimization and susceptibility of crime victims.
- c) States should endeavour to make various forms of support available to victims of crime at one place.
- d) States should promulgate a code of conduct for criminal justice personnel to deal with victims of crime and victims of abuse of power.
- e) Private victim support organizations and criminal justice personnel should act in cooperation in order to extend maximum support to victims of crime. A coordinating body should be set up to coordinate activities of private victim support organizations and criminal justice agencies.

## MAIN ACTIVITIES

- f) A charter containing rights of victims should be adopted by states, and those rights should be widely disseminated so that people are more aware of their rights. This charter should be included in academic curriculum of states.
- g) Victims should be given all information regarding their case as long as it does not jeopardize the investigation and trial of cases.
- h) States should create a fund to compensate victims of crime.

### *(iii) Active participation of victims of crime in the criminal justice process*

It was agreed that the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was significant and Member States should consider endeavouring to implement the Declaration as much as possible, based on each country's situation, culture and the justice system.

With this perspective in mind, the following conclusions and recommendations were made:

- a) Victims should be given an opportunity to express their views and concerns, and those should be considered carefully by relevant agencies throughout the criminal justice process.
- b) In the investigation stage, victims should be given an opportunity to express their views and concerns by making a complaint.
- c) Victims should be entitled to access to basic information on the progress of the case at every stage of the judicial process.
- d) Victims should be treated with compassion and respect for their dignity, and should be supported in their efforts to participate in the criminal justice process.
- e) In a jurisdiction where the basic form of prosecution is public prosecution, it is important to have an independent and impartial body to review decisions of non-prosecution in order to ensure fair prosecution.
- f) Private prosecution might be one of the options when the State decides not to prosecute; however, measures should be in place to guard against abuse.
- g) It is important that the judicial system of a country has appropriate judicial and administrative mechanisms to facilitate the victim's participation in the court proceedings.
- h) Victims of crime suffer the most as a result of crime. It is of the utmost importance to give them an opportunity to express their pain and feelings in the form of a Victim Impact Statement and Victim Impact Evidence.
- i) With respect to the compensation and restitution of victims, it is important that victims receive swift restoration for damage inflicted by the offender through the criminal justice process.
- j) Victims' views, amongst other factors, should be considered by the prosecutor in determining whether to appeal.

## **D. Special Seminars and Courses**

### 1. Tenth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China

The Tenth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China, entitled "Protection of Human Rights for Suspects and Defendants in Criminal Proceedings and Utilization of Non-custodial Measures in the Criminal Justice System", was held from 21 February to 10 March 2005. Sixteen senior criminal justice officials and the UNAFEI faculty comparatively discussed contemporary problems faced by China and Japan in relation to the above theme.

### 2. The First Seminar on Criminal Justice for Central Asia

The First Seminar on Criminal Justice for Central Asia entitled "Comparative Study on the Criminal Justice Systems of the Participating Countries and Japan - For the Establishment of a Fair and Efficient Criminal Justice System" was held from 28 February to 16 March 2005. The participants comprised of sixteen criminal justice officers from the five Central Asian countries, namely Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan.

### 3. The Second Special Training Course on Strengthening the Anti-Corruption Capacity in Thailand

The Second Special Training Course on "Strengthening the Anti-Corruption Capacity in Thailand" was held from 27 June to 21 July 2005 for twenty officials from the Office of the National Counter Corruption Commission (ONCC), Thailand. Through the Training programme, participants discussed various problems relating to corruption control, expanding their technical and juridical knowledge on the suppression of corruption and asset investigation.

4. The Sixth Special Training Course on the Juvenile Delinquent Treatment System for Kenya

UNAFEI held the Sixth Training Course on the Juvenile Delinquent Treatment System for Kenya from 17 October to 10 November 2005. The participants comprised officials working for the prevention of delinquency and the treatment of juvenile delinquents in Kenya including the children's department, the children's court, the police, probation officers, corrections officers and volunteer children's officers. The Course exposed sixteen Kenyan officials to the workings of the Japanese juvenile justice and treatment systems through lectures, a practicum and observation visits to relevant agencies.

5. The Eighth Special Training Course on Corruption Control in Criminal Justice

The Eighth Special Training Course on Corruption Control in Criminal Justice was held from 24 October - 17 November 2005. In this course fifteen foreign and three Japanese officials engaged in corruption control comparatively analyzed the current situation of corruption, methods of corruption prevention and suppression, and measures to enhance international cooperation.

6. Fourth JICA-NET Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines

A video teleconference was held from 5 to 6 December 2005 to facilitate the development of the Philippine VPA system. Twenty four participants and twenty four observers from the Parole and Probation Administration of the Philippines attended and interacted with Japanese VPOs and PPOs.

### III. TECHNICAL COOPERATION

#### A. Regional Training Programmes

1. Short-Term Experts in Kenya

From 28 June to 31 August 2005, three UNAFEI professors were dispatched to Kenya to assist the Children's Department of the Vice-President of the Ministry of Home Affairs of Kenya in a project to develop nationwide standards for the treatment of juvenile offenders.

2. International Training Course on Criminal Justice System Reform in Latin American Countries

UNAFEI dispatched two professors to the Republic of Costa Rica, from 24 July to 12 August 2005, to jointly host, with ILANUD, a course on Criminal Justice Reform in Latin America in which ten countries were represented. On 4 August, they travelled to Guatemala to hold a follow-up seminar, focusing on the specific situation in Guatemala.

#### B. The 11th Congress

UNAFEI and the Swedish Economic Crimes Bureau organized a workshop on "Measures to Combat Economic Crime, Including Money Laundering" for the 11<sup>th</sup> Congress held in Bangkok, Thailand from 20 to 21 April 2005. A comprehensive report on the results of the workshop will be published at the beginning of 2006.

#### C. Second In-Country Training Course on Strengthening the Anti-Corruption Capacity in Thailand

UNAFEI, in cooperation with the National Counter Corruption Commission (NCCC) of Thailand, held a second In-Country Training Course in Bangkok, Thailand from 28 November to 2 December 2005. Sixty participants from Thailand attended the Course. The purpose of the Course was to develop and enhance the capacity and efficiency of the ONCC (which supports the activities of the NCCC) in the field of suppression, inspection and prevention of corruption.

### IV. COMPARATIVE RESEARCH PROJECT

Reflecting its emphasis on the systematic relevance of training activities and priority themes identified by the UN Commission, the research activities of the Institute are designed to meet practical needs, including those for training materials for criminal justice personnel. In March 2005, UNAFEI Published its Research on the Trends in Drug Abuse and Effective Measures for the Treatment of Drug Abusers in Asian Countries – An Analysis of Innovative Measures for the Treatment of Drug Abusers.

In April 2005, UNAFEI embarked on a two year research project with the research department of the Research and Training Institute of the Ministry of Justice concerning measures to combat high-tech crime, including identity theft. Research was carried out by a UNAFEI professor in the United States, Canada and Japan.

## MAIN ACTIVITIES

### V. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

### VI. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2005, the 65<sup>th</sup>, 66<sup>th</sup> and 67<sup>th</sup> editions of the Resource Material Series were published. Additionally, issues 116 to 118 (from the 129<sup>th</sup> to the 131<sup>st</sup> respectively) of the UNAFEI Newsletter were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's web site <http://www.unafei.or.jp/english>.

### VII. OTHER ACTIVITIES

#### A. Public Lecture Programme

On 28 January 2005, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the 129th International Seminar participants. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. This year, Dr. Vincent E. Henry (Associate Professor, Department of Homeland Security, Long Island University, United States) and Prof. Hans-Jurgen Kerner, (Professor of Tubingen University, President, Institute of Criminology, Tubingen University) were invited as speakers to the programme. They presented papers on "COMPSTAT Management in the NYPD: Reducing Crime and Improving Quality of Life in NewYork City" and "Young Delinquents and Youth at Risk: Data and Reflections about a Complex Problem with Regard to Community Level Crime Prevention Efforts", respectively.

#### B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries carry out research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

#### C. Overseas Missions

Ms. Tamaki Yokochi (Professor), Mr. Rosei Tada (Staff), Ms. Minako Fujimura (Staff) and Ms. Yukari Ishikawa (Staff) visited the Philippines from 16 to 20 January 2005 with nine Volunteer Probation Officers to conduct interaction meetings with Filipino Volunteer Probation Aids at San Pedro, Bacolod and Iloilo.

Mr. Kunihiko Sakai (Director) and Mr. Keisuke Senta (Professor) visited Washington, D.C. to prepare for Workshop 5 of the 11<sup>th</sup> U.N. Congress on Crime Prevention and Criminal Justice from 1 to 6 March 2005.

Ms. Tomoko Akane (Former Deputy Director) visited Manila, the Philippines to observe the progress of the revitalization of the Volunteer Probation Officers and had meetings with JICA Philippines from 8 to 11 March 2005.

Mr. Kunihiko Sakai (Director), Mr. Keisuke Senta (Deputy Director), Mr. Hiroyuki Shinkai (Professor) and Mr. Seiji Yamagami (Secretariat Officer) visited Bangkok, Thailand to co-host Workshop 5 of the 11<sup>th</sup> U.N. Congress on Crime Prevention and Criminal Justice from 14 to 26 April 2005.

Mr. Motoo Noguchi (Professor) visited Bangkok, Thailand for the 11<sup>th</sup> U.N. Congress on Crime Prevention and Criminal Justice from 14 to 26 April 2005 to attend a Working Group on the Role of Criminal

## ANNUAL REPORT FOR 2005

Justice in Minimizing Socio-economic Damage Subsequent to National Disaster, jointly held by the ACPF, the Attorney General's Office of Thailand and UNAFEI. He also attended an Ancillary meeting entitled Crime Prevention and Criminal Justice in the Context of National Disasters: Lessons Learned, organized by the ACPF and ISPAC.

Mr. Takafumi Sato (Professor, Chief of Training Division) visited Bangkok, Thailand and presented a paper at Workshop 1 of the 11<sup>th</sup> Congress on Crime Prevention and Criminal Justice 1 from 17 to 26 April 2005.

Mr. Kunihiko Sakai (Director) and Mr. Takafumi Sato (Professor) visited Vienna, Austria to attend the U.N. Commission on Crime Prevention and Criminal Justice to present a report on Workshop 5 of the 11<sup>th</sup> U.N. Congress from 22 to 29 May 2005.

Mr. Motoo Noguchi (Professor) visited The International Criminal Court in The Hague, Netherlands, as a Visiting Professional from 4 June to 7 July 2005.

Mr. Masahiro Tauchi (Director), Mr. Hiroyuki Shinkai (Professor), Ms. Tamaki Yokochi (Professor), Mr. Junichi Ebara (Chief of Secretariat) and Mr. Masayuki Tanuma (Chief of the International Research Affairs Section, Secretariat) visited China to prepare for the 11<sup>th</sup> Special Seminar for Senior Criminal Justice Officials of the People's Republic of China from 24 to 31 July 2005.

Mr. Iichiro Sakata (Professor) and Mr. Tomoyuki Noge (Professor) visited Costa Rica and Guatemala from 24 July to 12 August 2005. In Costa Rica they jointly hosted with ILANUD a course on Criminal Justice Reform in Latin America in which 10 countries were represented. On 4 August, they travelled to Guatemala to hold a follow-up seminar, focusing on the specific situation in Guatemala.

Mr. Masato Uchida, (Professor, Chief of Research Division) visited Kenya to assist them in enhancing the services of the Children's Department of the Ministry of Home Affairs and National Heritage from 28 June to 31 August 2005. Mr. Keisuke Senta (Deputy Director) and Ms. Tae Sugiyama (Professor, Chief of Information and Library Science) joined him from 1 August – 21 August 2005.

Mr. Motoo Noguchi (Professor) visited Copenhagen, Denmark to participate and speak at the 10<sup>th</sup> Conference of the International Association of Prosecutors from 28 August to 1 September 2005.

Mr. Keisuke Senta (Deputy Director) visited the United Arab Emirates from 17 to 21 September 2005. He presented a paper on "Job Allegiance and Professional Ethics Emphasizing Concepts, Codes of Ethics, Means of Enhancing Job Allegiance and Maintaining Professional Ethics (Japanese Police and Criminal Justice Experience)" at a Symposium on Job Allegiance and Professional Ethics at the United Arab Emirates Ministry of Interior Police College.

Ms. Tamaki Yokochi (Professor) visited Balanga City, Bataan Province, and Manila the Philippines from 19 September to 12 October, 2005 to give technical assistance to training courses conducted by the Parole and Probation Administration of the Department of Justice for local probation officers and volunteer probation aids.

Mr. Masato Uchida (Professor), Mr. Hiroyuki Shinkai (Professor), Ms. Ayako Tanaka (Staff) and Mr. Hideyuki Inoue (Staff) visited the Republic of Korea to participate in the 25<sup>th</sup> Asian and Pacific Conference of Correctional Administrators from 25 September. Mr. Uchida addressed the Conference on the activities of UNAFEI and other delegates participated in various workshops. Mr. Shinkai returned to Japan on 28 September while the other delegates stayed until 1 October.

Director Masahiro Tauchi and Mr. Hiroyuki Shinkai (Professor) visited China to attend the Second International Congress of the ASEAN and China Cooperative Operations in Response to Dangerous Drugs from 17 to 21 October, 2005.

Director Masahiro Tauchi, Mr. Keisuke Senta (Deputy Director), Mr. Tomoyuki Noge (Professor), Ms. Satoko Ikeda (Professor), Mr. Ryousei Tada (Staff) and Mr. Takayuki Aizawa (Staff) visited Bangkok, Thailand

## MAIN ACTIVITIES

from 24 to 30 November and 24 November to 3 December 2005 respectively, to attend the In-Country Training Course under the three-year project on “Strengthening the Anti-Corruption Capacity in Thailand”.

Director Masahiro Tauchi visited Courmayeur, Italy to attend the 2005 PNI coordination meeting from 30 November to 4 December 2005.

Ms. Kayo Ishihara (Professor) visited Shenzhen City, the Peoples Republic of China to attend the First Asia-Europe Prosecutors General Conference from 9 to 12 December, 2005.

### **D. Assisting ACPF Activities**

UNAFEI cooperates and corroborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of ACPF’s membership consists of UNAFEI alumni, the relationship between the two is very strong. As an example of this cooperation the Director of UNAFEI Mr. Kunihiko Sakai visited Macau from 24 to 26 November to attend the ACPF World Conference and gave a presentation on the “Specific Objectives to be achieved at the Eleventh United Nations Congress in Bangkok”.

## VIII. HUMAN RESOURCES

### **A. Staff**

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and eleven Professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. UNAFEI also has approximately 20 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

### **B. Faculty Changes**

Ms. Tomoko Akane formerly Deputy Director of UNAFEI was transferred and appointed Professor at Nagoya University Law School and Professor at the School of Law, Chukyo University on 1 April 2005.

Mr. Kei Someda formerly Professor of UNAFEI, was transferred and appointed Director, Case Management Division of Tokyo Probation Office on 1 April 2005.

Ms. Tae Sugiyama, formerly Deputy Director of the General Affairs Section of Kanto Regional Parole Board’s Secretariat, joined UNAFEI as a Professor on 1 April 2005.

Mr. Tomoyuki Noge, formerly a prosecutor with Tokyo District Public Prosecutors Office, joined UNAFEI as a Professor on 1 April 2005.

Ms. Satoko Ikeda, formerly a prosecutor with Chiba District Public Prosecutors Office, joined UNAFEI as a Professor on 1 April 2005.

Mr. Haruhiko Higuchi, a Professor and Director for Special Police Studies at the Police Policy Research Centre, National Police Academy joined UNAFEI as a Professor on 11 April 2005.

## IX. FINANCES

The Ministry of Justice primarily provides the Institute’s budget. The total amount of the UNAFEI budget is approximately ¥287 million per year. Additionally, JICA and the ACPF provide assistance for the Institute’s international training courses and seminars.

# UNAFEI WORK PROGRAMME FOR 2006

## I. TRAINING

### A. 132nd International Seminar

The 132nd International Senior Seminar, “Strengthening the Legal Regime for Combating Terrorism”, will be held from 10 January to 9 February 2006. The Seminar will examine the current situation of terrorism and the legal regime against it and the current problems and challenges in order to come up with effective strategies and countermeasures, having regard to each country’s resources and individual factors and the efforts being made by the international community.

### B. 133rd International Training Course

The 133rd International Training Course, “Effective Prevention and Enhancement of Treatment for Sexual Offenders” will be held from 15 May to 22 June 2006. The Course will examine and analyze the current situation of sexual offences, the legal framework for prevention, punishment and treatment of offenders and practices and programmes for prevention and treatment. It will identify the current problems and challenges faced and explore effective measures and strategies to improve prevention and treatment programmes.

### C. 134th International Training Course

The 134th International Training Course, “Challenges in the Investigation, Prosecution and Trial of Transnational Organized Crime”, will be held from 28 August to 5 October 2006. The Course will examine the current situation of transnational organized crime in the respective participant’s countries and their legal regime to investigate, prosecute and try it. It will also examine the current situation of and problems and challenges in the investigation, prosecution and trial of these offences in relation to collecting key evidence and in relation to international cooperation.

### D. Eleventh Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China

The Eleventh Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China, “Towards a Criminal Justice System that can meet the Challenges of Globalization and Reflects the Citizen’s Point of View” is scheduled to be held at UNAFEI from 20 February to 9 March 2006. Twelve senior criminal justice officials and members of the UNAFEI faculty will discuss contemporary problems faced by China and Japan in relation to the above theme.

### E. The Second Seminar on Criminal Justice for Central Asia

The Second Seminar on the Criminal Justice System for Central Asia will be held from 27 February to 16 March 2006 at UNAFEI. The Seminar is entitled a “Criminal Justice System that Meets the Needs of the New Epoch”. Fourteen criminal justice officials and members of the UNAFEI faculty will discuss contemporary problems faced by central Asia and Japan in relation to the above theme.

### F. Third Special Training Course on Strengthening the Anti-Corruption Capacity in Thailand

UNAFEI will hold the Third Special Training Course on Strengthening the Anti-Corruption Capacity in Thailand for sixteen officials from the Office of the National Counter Corruption Commission (ONCC), Thailand. In this final course of a series of three, participants will discuss various problems relating to corruption control, expanding their technical and juridical knowledge of the suppression of corruption and asset investigation. The Course will be held from 6 to 27 April 2006.

### G. First Seminar on the Revitalization of the Volunteer Probation Aide System for the Philippines

UNAFEI will conduct a new seminar entitled the “First Seminar on the Revitalization of Volunteer Probation Aide System for the Philippines”, which will be held from 28 June to 11 July 2006. Ten Parole and Probation officers of the Parole and Probation Administration of the Philippines and two Volunteer Probation Aides will attend.

### H. Seventh Training Course on the Juvenile Delinquent Treatment System for Kenyan Criminal Justice Officials

UNAFEI will hold the Seventh Training Course for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Course will be

## WORK PROGRAMME

held around October 2006. The Course will expose Kenyan officials to the workings of the Japanese juvenile justice and treatment systems through lectures and observation visits to relevant agencies.

### **I. Ninth International Training Course on Corruption Control in Criminal Justice**

UNAFEI will conduct the Ninth International Training Course entitled “Corruption Control in Criminal Justice” from 23 October to 17 November 2006. In this course, foreign and Japanese officials engaged in corruption control will comparatively analyze the current situation of corruption, methods of corruption prevention and measures to enhance international cooperation in this regard.

### **J. Fifth JICA-NET Seminar on the Revitalization of the Volunteer Probation Aide System for the Philippines.**

A video teleconference will be held on the Revitalization of the Volunteer Probation Aide System for the Philippines. The date has not been decided yet.

## **II. TECHNICAL COOPERATION**

### **A. International Training Course on the Criminal Justice System Reforms in Latin America**

UNAFEI will be represented by two professors at a training programme held in cooperation with JICA and ILANUD entitled “International Training Course on the Criminal Justice System Reforms in Latin America”, in El Salvador from 19 to 21 July 2006 and in San Jose, Costa Rica from 24 July to 3 August 2006. The participants of the training programme will be judges, prosecutors and attorneys (public and private, engaged in defence) and in Costa Rica the Course will be attended by participants from ten countries.

### **B. Short-Term Experts in Kenya**

In August 2006, two UNAFEI professors will be dispatched to Kenya to assist the Children’s Department of the Vice-President of the Ministry of Home Affairs of Kenya in a project to develop nationwide standards for the treatment of juvenile offenders.

### **C. Second In-Country Training Course on Strengthening the Anti-Corruption Capacity in Thailand**

UNAFEI in cooperation with the National Counter Corruption Commission (NCCC) of Thailand will hold an In-Country Training Course in Bangkok, Thailand around November 2006. Sixty Thai participants are expected to attend.

### **D. Joint Seminar**

UNAFEI will hold a Joint Seminar with Thailand in November 2006. The theme of the Joint Seminar has yet to be decided.

### **E. Research**

In 2006, UNAFEI will complete a research project with the research department of the Research and Training Institute of the Ministry of Justice concerning measures to combat high-tech crime, including identity theft.

## APPENDIX

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### MAIN STAFF OF UNAFEI

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Mr. Masahiro Tauchi  
Mr. Keisuke Senta

Director  
Deputy Director

#### Faculty

Mr. Motoo Noguchi  
Mr. Haruhiko Higuchi  
Ms. Tae Sugiyama

Professor  
Professor  
Chief of Information & Library Service Division,  
Professor  
Professor  
Professor  
Chief of Research Division, Professor  
Professor  
Professor  
Professor  
Chief of Training Division, Professor  
Professor  
Linguistic Adviser

Mr. Hiroyuki Shinkai  
Ms. Tamaki Yokochi  
Mr. Masato Uchida  
Mr. Tomoyuki Noge  
Ms. Megumi Uryu  
Ms. Kayo Ishihara  
Mr. Ichiro Sakata  
Ms. Satoko Ikeda  
Mr. Simon Cornell

#### Secretariat

Mr. Junichi Ebara  
Mr. Hitoshi Nishimura  
Mr. Kazunari Arakawa  
Mr. Ryousei Tada

Chief of Secretariat  
Deputy Chief of Secretariat  
Chief of General and Financial Affairs Section  
Chief of Training and Hostel Management  
Affairs Section  
Chief of International Research Affairs Section

Mr. Masayuki Tanuma

AS OF DECEMBER 2005

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**2005 VISITING EXPERTS**

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**THE 129TH INTERNATIONAL SEMINAR**

Prof. Sir Anthony E. Bottoms	Wolfson Professor/Director Institute of Criminology University of Cambridge, United Kingdom
Prof. Hans-Juergen Kerner	Professor of Tubingen University President, Institute of Criminology, Tubingen University, Germany
Prof. Irvin Waller	Professor of Criminology University of Ottawa, Canada
Dr. Vincent E. Henry	Associate Professor Department of Homeland Security, Long Island University, United States
Ms. Celia Sanidad-Leones	Commissioner National Police Commission, Republic of the Philippines

**THE 130TH INTERNATIONAL TRAINING COURSE**

Dr. Harry Stefanakis	Registered Psychologist Private Practice, Vancouver, B.C., Canada
Dr. Alexander Butchart	Coordinator, Prevention of Violence Department of Injuries and Violence Prevention, Non-communicable Diseases and Mental Health, World Health Organization, Geneva, Switzerland
Ms. Kanwaljit Deol	Joint Commissioner of Police Headquarters, PHQ, New Delhi Police, India
Ms. Celia C. Yangco	Undersecretary for Operations Department of Social Welfare and Development, Project Director, Early Childhood Development Project, Philippines

**THE 131ST INTERNATIONAL TRAINING COURSE**

Prof. Prathan Watanavanich	Adjunct Professor of Law Thammasat University, Kingdom of Thailand
Dr. Markus Löffelmann	Staatsanwalt Federal Ministry of Justice, Germany
Dr. Marlene A. Young	President World Society of Victimology, USA
Dr. Pedro R. David	Judge Argentine Federal Criminal Court of Cassation, Argentina
Mr. Eduardo Vetere	Former Director Division for Treaty Affairs, UNODC
Dr. John P. J. Dussich	Director Tokiwa International Victimology Institute, Tokiwa University, Japan

APPENDIX

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**2005 AD HOC LECTURERS**

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**THE 129TH INTERNATIONAL SEMINAR**

Prof. Tsutomu Muramatsu	Professor Sensyu University
Mr. Yutaka Harada	Director National Research Institute of Police Science (NRIPS), Department of Criminology and Behavioural Sciences
Mr. Keiji Oda	Chairperson The Alliance of Guardian Angels Japan, Inc.

**THE 130TH INTERNATIONAL TRAINING COURSE**

Prof. Hidehiko Kawazu	Tamagawa University
Dr. Eiichi Senoo	Tokyo Institute of Psychiatry
Ms. Sayoko Nobuta, Director	Harajuku Counselling Centre
Mr. Takao Kaneko	Chief Family Court Probation Officer Tokyo Family Court
Prof. Hiroko Goto	Chiba University
Ms. Chiho Hatakeyama	Superintendent National Police Agency

**THE 131ST INTERNATIONAL TRAINING COURSE**

Prof. Akira Yamagami, M.D.	Professor of the Department of Criminal Psychiatry Division of Social Medicine, Tokyo Medical and Dental University
Ms. Emiko Okubo	Director of the Victim Support Centre of Tokyo; Member of the Committee on the Elaboration of the Measures on Crime Victims
Mr. Tatsuya Ota	Faculty of Law Keio University
Mr. Ryotaro Oba	Counsellor of Minister's Secretariat Ministry of Justice
Mr. Koichi Hirota	Director of the Office for Victims of Crime National Police Agency

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**2005 UNAFEI PARTICIPANTS**

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**THE 129TH INTERNATIONAL SEMINAR**

***Overseas Participants***

Mr. Anare Bulainacagilaba	Assistant Superintendent of Police Nasinu Police District, Fiji Police Force, Fiji
Mr. Conrado Arnulfo Reyes Sagastume	National Coordinator The Program of Civil Security in Guatemala, Guatemala
Mr. Harlan Mardite	Head of Special Crime Section District Attorney in Metro Lampung, Indonesia
Mr. Bounsavad Boupcha	Deputy Director - General Department of Court Judgement Execution, Ministry of Justice, Laos
Mr. Abd Wahab Bin Kassim	Head of Human Resource Headquarters Malaysia Prison Department, Malaysia
Ms. Robiah Binti Abdul Ghani	Assistant Director Public Affairs Division, Royal Malaysia Police, Malaysia
Mr. Vincent Peter	Police Lieutenant Department of Public Safety, Republic of the Marshall Islands, Marshall Islands
Mr. Mustapha Hajjam	Headquarters Adviser's Member Nationale, Morocco
Mr. Nasser Abdulla Al-Riyami	Assistant Attorney-General Public Prosecution, Oman
Mr. Fasihuddin	Frontier Constabulary NWFP (Northwest Frontier Province), Peshawar, Pakistan
Ms. Judith Del Socorro Gomez Serrano	District Attorney with Speciality in Juvenile Delinquency Public Ministry, Panama

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Mr. Victor Isouve	Acting Director of Crimes Criminal Investigation Division, Police Headquarters, Konedobu, Papua New Guinea
Ms. Negil Kauvu	Director Community Based Corrections, Department of Justice, Papua New Guinea
Mr. Advocate Leonard Nyombi	Officer in charge of Lindi Region Tanzania Police Force, Tanzania
Mr. Manat Cheokul	Director Chiangmai Juvenile Observation and Protection Centre, Thailand
Ms. Chirawan Khotcharit	Judge Burirum Provincial Court, Thailand
Mr. Silence Pondo	Assistant Commissioner Operation of Crime in charge of Matebeleland, Zimbabwe Republic Police, Zimbabwe
<b><i>Japanese Participants</i></b>	
Mr. Kimio Chiba	Director of General Affairs Section Osaka Probation Office
Mr. Nobuhiko Furuya	Public Prosecutor/Professor The First Training Department, Research and Training Institute, Ministry of Justice
Mr. Masayoshi Kozawa	Public Prosecutor Tokyo District Public Prosecutors Office
Mr. Noboru Nakatani	Assistant Director/Superintendent Cyber Crime Division, National Police Agency
Mr. Souichiro Nishioka	Director of the Rehabilitation Research and Liaison Office General Secretariat, Kinki Regional Parole Board
Mr. Mitsuaki Takayama	Judge Tokyo District Court
Mr. Hideki Tanaka	Principal Programme Supervisor International Affairs Division, Fuchu Prison

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Mr. Motohiro Yano  
Public Prosecutor/Professor  
The Third Training Department,  
Research and Training Institute,  
Ministry of Justice

**THE 130TH INTERNATIONAL TRAINING COURSE**

Mr. Lim Thong  
Central Department of Justice Police  
Commissariat General of Cambodian  
National Police, Ministry of Interior,  
Cambodia

Mr. Hossam-Eldin Mohamed Aly Abo  
Helw  
Judge  
Chief of a Family Court- Alexandria  
Court,  
Ministry of Justice,  
Egypt

Ms. Ligia Yvette Turcios Torres  
Public Defender  
Prowraduria General Office,  
Public Ministry,  
El Salvador

Mr. Jioape Tukitoga Caginidaveta  
Prison Officer (Officer in Charge)  
Fiji Prisons Service,  
Prisons Headquarters,  
Fiji

Ms. Irene Putrie  
Public Prosecutor/Attorney  
General Attorney of the Republic of  
Indonesia,  
Republic of Indonesia

Ms. Rosemary Nanjala Nabwana  
Senior Probation Officer/Manager  
Probation Girls' Hostel,  
Nakuru Probation Department,  
Ministry of Home Affairs,  
Kenya

Ms. Nor Azilah Hj. Jonit  
Head  
Sexual Investigation Unit,  
Criminal Investigation Department,  
Royal Malaysia Police,  
Malaysia

Mr. Thuya Thein Tun Aung  
Director  
Prison Department,  
Ministry of Home Affairs,  
The Union of Myanmar

Mr. Akbar Nasir Khan  
District Police Officer, Chitral  
Police Service of Pakistan,  
Pakistan

APPENDIX

Mr. Hilbert Macagaling Flor	Jail Chief Inspector (Jail National Training Institute), Bureau of Jail Management and Penology, Department of the Interior and Local Government, Philippines
Mr. Peleniseaila Ifo	Senior Constable Criminal Investigation Branch, Ministry of Police Prisons and Fire Services, Samoa
Mr. Delana Mudiyanseelage Sarath Abayagunawardana	Commissioner Department of Probation and Child Care Services, Ministry of Women's Empowerment and Social Welfare, Sri Lanka
Mr. Lameck M.H. Bankobeza	Prison Officer, Legal and Welfare Officer Tanzania Prisons Service, Prisons Headquarters, Tanzania
Ms. Foelane Chipu Muronda	Public Prosecutor Attorney General's Office, Zimbabwe
Mr. Chi Keung Kan	Chief Officer (Penal Operations) Headquarters, Correctional Services Department, Hong Kong
Mr. Jae Ho Lee	Education Specialist Education and Reform Division, Daejeon Correctional Institute, Korea
<b><i>Japanese Participants</i></b>	
Mr. Hiroshi Aoki	Public Prosecutor Osaka District Public Prosecutors Office
Mr. Tomoyuki Hatakeyama	Chief Specialist Ichihara Juvenile Training School
Mr. Katsuhiko Kasai	Assistant Judge Tokyo District Court
Mr. Koji Miura	Investigation Specialist Tokyo Detention House
Mr. Masaki Nagai	Family Court Probation Officer Chiba Family Court

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Mr. Hiroki Sugimoto	Probation Officer Nagoya Probation Office
Mr. Eiichi Suzuki	Probation Officer Kanto Regional Parole Board
Ms. Asako Takashima	Public Prosecutor Yokohama District Public Prosecutors Office
Mr. Hironori Yokoyama	Assistant Judge Tokyo District Court

**THE 131ST INTERNATIONAL TRAINING COURSE**

***Overseas Participants***

Mr. Mohammad Ashraf	Chief Judge Primary Court, Mohammad Ager Province, Afghanistan
Mr. Skerdilajd Bushi	Officer of Judicial Police Tirana District Prosecution Office, Albania
Ms. Dimpho Margaret Mathumo	Training Commandant Botswana Local Police Service, Botswana
Mr. Sothy Veng	Deputy Director Department of Anti-Human Trafficking and Juvenile Protection, Commissariat General of Cambodian National Police, Ministry of Interior, Cambodia
Mr. Gao-Feng Jin	Teacher and Researcher Chinese People's Public Security University, China
Mr. Errol Selwin Watts	Assistant Superintendent of Police Guyana Police Force, Guyana
Mr. Jose Miguel Martinez Madrid	Police Chief of Public Affairs/Operations Secretaria de Segridad, Honduras
Mr. Yudi Kristiana	Head of Sub-District Attorney Pagimana Central Sulawesi, Indonesia
Mr. Abdulla Mohamed Mahmood	Judge Criminal Court, Maldives

APPENDIX

Mr. Edsel Ioanis Elias	Police Officer Pohnpei State Department of Public Safety, Micronesia
Ms. Nant Aye Aye Kyi	Deputy Director Supreme Court, Yangon Myanmar
Mr. Azhar Rashid Khan	Assistant Inspector General /Ops CPO Quetta Balochistan, Pakistan
Mr. Jovian Serui Adelbai	Police Officer Division of Criminal Investigation and Drug Enforcement, Palau
Mr. Kathwa Vananka Umpake	Lawyer Public Prosecutors Office, Department of the Attorney General, Papua New Guinea
Mr. Alexis Nobuo Takahashi Cabrera	Public Prosecutor Public Ministry, Paraguay
Mr. Davide Jusa	Superintendent Deputy National Coordinator Zimbabwe Republic Police, Zimbabwe
<b><i>Japanese Participants</i></b>	
Mr. Junichi Ibuki	Senior Programme Supervisor Fuchu Prison
Mr. Toru Maruyama	Judge Osaka District Court
Mr. Hideki Murota	Deputy Chief of Security Division Guard and Rescue Department, 9th Regional Coast Guard Headquarters, Japan Coast Guard
Ms. Yuka Nakagawa	Public Prosecutor Nagoya District Public Prosecutors Office
Mr. Atsushi Nishikawa	Assistant Judge Tokyo District Court
Mr. Katsuhiko Okumura	Public Prosecutor Matsuyama District Public Prosecutors Office, Uwajima Branch
Mr. Norikazu Ozeki	Public Prosecutor Osaka District Public Prosecutors Office
Mr. Genyuu Takeda	Probation Officer Utsunomiya Probation Office

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**TENTH SPECIAL SEMINAR FOR SENIOR CRIMINAL JUSTICE  
OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA**

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Mr. Jun-xing Yan	Deputy Director Research Office, Ministry of Justice
Ms. Qian Wang	Director Criminal Legislation Department, Legislative Affairs Commission of Standing Committee of NPC
Mr. Xiao-hua Wu	Director Criminal Legislation Department, Legislative Affairs Commission of Standing Committee of NPC
Mr. Jian-ji Zhao	Chief staff Research Office, Ministry of Justice
Ms. Yang Zhao	Programme Officer International Division, Department of Judicial Assistance and Foreign Affairs, Ministry of Justice
Ms. Chun-ying Zhuang	Deputy Division Director Research Office, Ministry of Justice
Mr. You-shui Miao	Judge Supreme Court of China
Ms. Chu-xiao Song	Judge Supreme Court of China
Mr. Feng Cao	Supervisor/Senior Prosecutor Prosecution Department for Imprisonment and Reformatory, Supreme People's Procuratorate of China
Mr. Chang-zhi Zhou	Supervisor/Senior Prosecutor Rail Transportation Prosecution Department, Supreme People's Procuratorate of China
Mr. Da-min Wang	Deputy Section Chief Public Security Ministry
Mr. Li-hua Zhou	Division Chief Police Supervision Bureau, Ministry of Public Security

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**FIRST SEMINAR ON CRIMINAL JUSTICE FOR CENTRAL ASIA**

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Mr. Askar Narimanovich Okapov	Deputy Head of the Department of Investigation Ministry of Internal Affairs, Kazakhstan
Ms. Raushan Kasenovna Zhabakova	Deputy Head of the Department of International Relations General Prosecutor's Office, Kazakhstan
Mr. Melis Asanbekovich Asanbekov	Senior Prosecutor of Department General Prosecutor's Office, Kyrgyzstan
Ms. Damira Uzgenovna Kaimova	Senior Prosecutor General Prosecutor's Office, Kyrgyzstan
Mr. Askat Sharshekovich Sydykov	Chairman Court of Sverdlovskiy District, Bishkek City, Kyrgyzstan
Mr. Kanybek Joldoshbekovich Turdumambetov	Deputy Head Department for Investigation of Serious Crime Cases, General Prosecutor's Office, Kyrgyzstan
Ms. Dilbar Sohibovna Goibova	Chief Specialist Juridical Section, President's Office, Tajikistan
Mr. Muhamadjon Khairulloevich Khairulloev	Head Department of Control of Legality of Court Decisions, Office of Public Prosecutors, Tajikistan
Mr. Naim Mullaevich Mansurov	Chairman Court of Justice by the Name of Sino, Dushanbe City, Tajikistan
Mr. Koyunly Akoyliyev	Deputy Chairman Court of Balkan Region, Turkmenistan
Mr. Ataberdi Batyrovich Annagulyev	Chairman Kopetdag District Court of Ashgabat, Turkmenistan

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Mr. Tuvaknazar Sopiyeu	Member of Criminal College Supreme Court, Turkmenistan
Mr. Fayzulla Abdullaevich Abduazimov	Judge Supreme Court, Uzbekistan
Mr. Muradjan Kabilovich Karimov	Chief of Department Ministry of Internal Affairs, Uzbekistan
Mr. Murad Malikovich Khakimov	Head of the International Legal Department Ministry of Justice, Uzbekistan
Mr. Bakhtier Tairovich Samukov	Senior Prosecutor of Department General Prosecutor's Office, Uzbekistan

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**THE SECOND SPECIAL TRAINING COURSE ON STRENGTHENING  
THE ANTI-CORRUPTION CAPACITY IN THAILAND**

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Mr. Chairat Khanittabutr	Senior Legal Officer Policy and Planning Bureau
Mr. Thammanoon Ruengdit	Senior Legal Officer Policy and Planning Bureau
Ms. Suphawan Pinyotanmakorn	Senior Prevention Officer Policy and Planning Bureau
Ms. Piyanooch Aranyakananda	Junior IT Officer Policy and Planning Bureau
Mr. Chaipat Raungtiravongsa	Senior Legal Officer Corruption Prevention Bureau 1
Mr. Udomsak Dulyapraphan	Senior Legal Officer Corruption Suppression Bureau 1
Mr. Monchai Vasuvat	Senior Legal Officer Corruption Suppression Bureau 1
Mr. Surapong Vichayakitti	Senior Legal Officer Corruption Suppression Bureau 2
Mr. Pee Chatganpi	Senior Legal Officer Corruption Suppression Bureau 2
Ms. Songsiri Dechakaisaya	Senior Legal Officer Legal Affairs Bureau
Mr. Chai Chinnasod	Senior Legal Officer Legal Affairs Bureau
Mr. Wichean Augchaprasert	Senior Inspector (Auditor) Assets Inspection Bureau 1
Mr. Pongaek Vijitgool	Senior Inspector (Auditor) Assets Inspection Bureau 2
Ms. Mookda Kuptaapakul	Senior Inspector (Auditor) Assets Inspection Bureau 3
Ms. Vallee Tepasit	Senior Inspector (Auditor) Assets Inspection Bureau 5
Ms. Pol. Lt. Col. Wilasinee Treematurakul	Senior Inspector (Auditor) Assets Inspection Bureau 5
Ms. Sirirak Jumnakros Sawangdee	Senior Financial Officer Finance Division

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Mr. Jumnian Moolsarn	Junior Personnel Officer Personnel Division
Ms. Chongkonnee Kamonwisatkul	Junior Administrative Officer Administrative Section
Ms. Sirinuch Siristonphan	Junior Inspector (Auditor) Administrative Section

APPENDIX

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**SIXTH TRAINING COURSE FOR KENYAN OFFICIALS ON  
JUVENILE DELINQUENT TREATMENT SYSTEMS**

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Mr. Noah Mokaya Omambia Sanganyi	Assistant Director of Children's Services Department of Children's Services, Ministry of Home Affairs
Mr. Eliud Festus Mutwiri	Provincial Children's Officer Central Province
Mr. Peterson Ndwiga	Manager Kabete Rehabilitation School
Mr. Joseph Sila Mulinge	Manager/Children's Officer Kisumu Children's Remand Home
Ms. Caroline Chepkemoi Towett	Manager Nairobi Children's Remand Home
Ms. Loise Mugure Gikuhi	District Children's Officer Embu District
Mr. Kenneth Mbito Mvurya	District Children's Officer Lamu District
Mrs. Bibiana Robayi Khamete Andabwa	Volunteer Children's Officer Kakamega District
Mr. Johnstone Cheruiyot Koech	Senior Probation Officer Probation Department, Ministry of Home Affairs
Ms. Teresia Achieng Oloo	Probation Officer Probation Department, Ministry of Home Affairs
Mr. Angus Masoro Kimega	Superintendent in Charge Shimo La Tewa Borstal Institution
Ms. Rhoda Akinyi Anyim	Officer in Charge Kisumu Women Prison
Ms. Beatrice Nthiori Thurania	Children's Court Magistrate Mombasa Law Courts
Mr. Walter Ndolo Nyarima	Acting Principal Magistrate Busia Law Courts
Mr. Joseph Kipsang Kiget	Senior Superintendent of Police/Officer Commanding Police Teso Police Division
Ms. Lilian Gloria Akoth Okembo	Chief Inspector/Officer in Charge Traffic Department Instructor, Kenya Police College

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Mr. Jue Wang	Director General Department of the Guidance of the Grass-roots Work, Ministry of Justice
Mr. Ming-de Wu	Deputy Director General Department of the Guidance Lawyers' and Notaries' Work, Ministry of Justice
Mr. Jia-yi Han	Secretary General Criminal Trial Commission of All China Lawyers' Association
Mr. Yong Zhou	Division Director Institute for Crime Prevention, Ministry of Justice

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**EIGHTH SPECIAL TRAINING COURSE ON CORRUPTION CONTROL**


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Ms. Irina Kharatyan	Specialist Department of Legal Expertise Court of Cassation, Armenia
Mr. Golam Shahriar Chowdhury	District Anti Corruption Officer (Investigator) Anti Corruption Commission, Bangladesh
Ms. Lerato Dube	Senior Anti Corruption Officer Directorate on Corruption and Economic Crime, Botswana
Ms. Pen Somethea	Searching and Publishing Law Manager Criminal and Commutation Affaires Department, Ministry of Justice, Cambodia
Ms. Aliti Kiji Choi	Senior Legal Officer Director of Public Prosecution Office, Fiji
Mr. Arie Sudihar	Head of Section for Special Crime District Prosecution Service of Manokwari, Indonesia
Mr. Kadhem Salman Nuhar Altimimi	Investigator Commission on Public Integrity, Iraq
Mr. Acksonesinh Vixayalai	Assistant Judge People's Supreme Court, Laos
Mr. Herinaivalona Thierry Ravalomanda	Magistrate Deputy Public Prosecutor, Chaine Penale Anti Corruption, Madagascar
Ms. Oyunchimeg Jamsran	Associate Prosecutor General State General Prosecutor's Office, Mongolia
Pol. Col. Ohn Myint	Deputy Commander Criminal Investigation Department, Myanmar Police Force, Myanmar

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Mr. Suresh Adhikari	Under Secretary Commission for the Investigation of Abuse of Authority, Nepal
Mr. Hassan Muslim Sule	Prosecutor Economic and Financial Crimes Commission, Nigeria
Mr. Samuel Precia Rodriguez	Police Superintendent Internal Audit Office, Philippine National Police, Philippines
Mr. Vincent Wagona	Acting Senior Principal State Attorney Directorate of Public Prosecutions, Uganda
Mr. Daisuke Iwamura	Prosecutor Morioka District Public Prosecutors Office, Japan
Mr. Akira Maruta	Judge Osaka District Court, Japan
Mr. Takeshi Mochizuki	Prosecutor Nagasaki District Public Prosecutors Office, Sasebo Branch, Japan

APPENDIX

**DISTRIBUTION OF PARTICIPANTS BY PROFESSIONAL BACKGROUNDS AND COUNTRIES**

*(1st International Training Course/Seminar - 131st International Training Course/Seminar)*

Professional Background Countries and Regions	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Afghanistan	7	9	5	4									25
Bangladesh	21	13		12	5		4			5		2	62
Bhutan				6									6
Brunei	4				2								6
Myanmar	5	1		2	1								9
China	13	3	5	10							8		39
Hong Kong	14			11	24	3	9		1	3	1		66
India	15	10		51	7	1	1			2	6	4	97
Indonesia	21	22	27	25	14		3			6		1	119
Iran	5	11	8	8	6						2	1	41
Iraq	5	3	3	5	5	5					2		28
Jordan				4									4
Cambodia	1	2	1	7	1								12
Oman			1	3									4
Korea	12	3	53	6	21	4					3		102
Kyrgyz	1			1									2
Laos	9	6	7	10									32
Malaysia	20	2	7	44	34	8	3		1	5	3	1	128
Maldives	1	2	1	1									5
Mongolia	1			2									3
Nepal	28	13	11	31								3	86
Pakistan	19	10	2	36	8	1	2				2	1	81
Palestine	1			1			1			1			4
Philippines	17	9	23	34	9	3	11	3	1	7	5	6	128
Saudi Arabia	4			6	3						1	1	15
Singapore	10	18	5	12	10	3	10			3	1	1	73
Sri Lanka	21	20	13	20	19	1	11		1	3		1	110
Taiwan	12	4	2	2	1								21
Tajikistan				1									1
Thailand	23	36	37	16	17	9	11	1		8	5	1	164
Turkey	2	1	1	2							1	1	8
United Arab Emirates	1												1
Uzbekistan												1	1
Viet nam	10	5	2	7	1					4	1		30
<b>A S I A</b>	<b>303</b>	<b>203</b>	<b>214</b>	<b>380</b>	<b>188</b>	<b>38</b>	<b>66</b>	<b>4</b>	<b>4</b>	<b>47</b>	<b>41</b>	<b>25</b>	<b>1,513</b>
Algeria		3	2										5
Botswana	1			3									4
Cameroon	3		1										4
Cote d'Ivoire		2		1									3
Egypt	1	3		3							3	1	11
Ethiopia	3			1									4
Gambia				2									2
Ghana	1		1	5	1								8
Guinea			1	2									3
Kenya	6	4	1	12	7		7				2		39
Lesotho				1			2						3
Liberia											1		1
Madagascar				1									1
Mauritius		1											1
Morocco			1	4								1	6
Mozambique	1			1	1								3
Nigeria	1			5	5							1	12
South Africa				2	3					1	1		7
Seychelles				3			1						4
Sudan	2		1	13	1						2		19
Swaziland				2									2
Tanzania	4	3	4	7	2								20
Tunisia				1									1
Zambia		1		6									7
Uganda			1	5								1	7
Zimbabwe	1		1	7									9
<b>AFRICA</b>	<b>24</b>	<b>17</b>	<b>14</b>	<b>87</b>	<b>20</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>9</b>	<b>4</b>	<b>186</b>

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Professional Background Countries and Regions	Judicial and Other Administration	Judge	Public Prosecutors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Australia			1				1			1			3
Vanuatu				3									3
Fiji	6	1	9	21	16					1			54
Kiribati	1												1
Marshall Island	1			4									5
Micronesia				1			1						2
Nauru				1									1
New Zealand	1			1									2
Palau				1	1								2
Papua New Guinea	10	1	4	15	10		4			1		2	47
Solomon Islands	3		1	2									6
Tonga	2	1		6	3		1				1		14
Western Samoa	1			2			1					1	5
<b>THE PACIFIC</b>	<b>25</b>	<b>3</b>	<b>15</b>	<b>57</b>	<b>30</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>145</b>
Argentina	2	2		2									6
Barbados				1			1						2
Belize	1			1									2
Bolivia		1										1	2
Brazil	2		3	15					1	1			22
Chile	1			4	2								7
Colombia	3	1	2	3					1			1	11
Costa Rica	3	4	4								1	2	14
Ecuador			1	4		1							6
El Salvador	1	1		2								1	5
Grenada				1									1
Guatemala					1							1	2
Guyana				1									1
Haiti				1									1
Honduras			1	4									5
Jamaica	3				1								4
Mexico	1												1
Nicaragua		1											1
Panama			2	2								1	5
Paraguay			1	9		1							11
Peru	4	10	4	2	1						1	2	24
Saint Christopher and Nevis			1	1									2
Saint Lucia	1				1								2
Saint Vincent				2									2
Trinidad and Tobago	1				1								2
Venezuela	1		1	10							1		13
U.S.A.(Hawaii)								1					1
<b>NORTH &amp; SOUTH AMERICA</b>	<b>24</b>	<b>20</b>	<b>20</b>	<b>65</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>9</b>	<b>155</b>
Albania	1			1									2
Bulgaria				1									1
Estonia			1										1
Hungary	1												1
Macedonia	1												1
Poland				1									1
Lithuania				1									1
<b>EUROPE</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>
<b>JAPAN</b>	<b>110</b>	<b>158</b>	<b>252</b>	<b>95</b>	<b>89</b>	<b>78</b>	<b>186</b>	<b>61</b>	<b>38</b>	<b>2</b>	<b>48</b>	<b>68</b>	<b>1,185</b>
<b>TOTAL</b>	<b>489</b>	<b>401</b>	<b>516</b>	<b>688</b>	<b>334</b>	<b>118</b>	<b>271</b>	<b>66</b>	<b>44</b>	<b>54</b>	<b>102</b>	<b>109</b>	<b>3,192</b>

**PART TWO**  
**RESOURCE MATERIAL SERIES**  
**NO. 69**

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Work Product of the 130<sup>th</sup> International Training Course  
“INTEGRATED STRATEGIES TO CONFRONT DOMESTIC VIOLENCE  
AND CHILD ABUSE”

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**UNAFEI**



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## VISITING EXPERTS' PAPERS

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### THE IMPLEMENTATION OF PROGRAMMES FOR OFFENDERS OF INTIMATE PARTNER VIOLENCE IN BRITISH COLUMBIA\*

By Jane Katz<sup>1</sup> and Harry Stefanakis<sup>2</sup>



#### I. INTRODUCTION

*Recent reports (World Health Organization, 1997; Garcia-Moreno, 2000) estimate that one of every three women around the globe has experienced violence in an intimate relationship at some point in her life. (Nayak, Byrne, Martin & Abraham, 2003).*

It has been almost thirty years since domestic violence entered public and political awareness as a pervasive social problem in Canada. Prior to 1970, violence against women in relationships was hidden and usually managed through medical interventions with the women. This frequently involved the prescription of tranquilizers and a return to the relationship (DeKeseredy & MacLeod, 1997). Domestic violence started becoming a public issue through the efforts of a grassroots women's movement that viewed violence against women as abuse of power in a patriarchal society. These women's groups set about building shelters and supportive counselling for women who wanted to escape abusive relationships. Mental health issues for women in abusive relationships began to be seen as normal reactions to abnormal events.

In addition to shelters for women, by the late 1970's "batterer's" programmes were beginning to emerge in Canada. Originally programmes for men were created to meet the demands of women who wanted help for their partners. A parallel process was occurring in the United States. Over the subsequent 25 years in Canada, a combination of public awareness, an increasingly aggressive response by the criminal justice system, coordinated community responses, and attention to intervention needs for both women victims and male perpetrators has helped create a more sophisticated response to domestic violence. Our strategy for responding to male offenders has involved changes to criminal justice policy and legislation, research into

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\* Editors note: This paper was presented at the 130<sup>th</sup> International Training Course by Harry Stefanakis in his role as a visiting expert; however, the paper was written with Jane Katz.

<sup>1</sup> Jane Katz, M.A. is a Registered Clinical Counsellor in British Columbia. She has been involved in domestic violence work for 25 years. She has worked with child and adult victims as well as with both male and female adult offenders. Ms. Katz and her husband, Dr. Zender Katz, developed and co-facilitated the Ministry of Attorney General funded Fraser Valley Family Violence Programme from 1990-2003. This programme provided group treatment for men on probation for spousal violence as well as support groups for the women partners. Ms. Katz also developed and delivered the Family Relationships programme for the Correctional Services of Canada and was involved in development of CSC's national family violence programmes. Ms. Katz has developed and delivered programmes for adolescents and for incarcerated women who have used violence in relationships. She has provided training and supervision for programmes in B.C. and Nova Scotia, and more recently in Japan for a programme funded through the Bureau of Gender Equity. Ms. Katz has been very involved in community coordination initiatives and is a founding member of the Ending Relationship Abuse Society of B.C. (current vice-president). Currently Ms. Katz is a consultant for the Ministry of Public Safety and Attorney General in programme development for male and female offenders, a trainer for B.C. Corrections and the Justice Institute of B.C., a therapist in private practice and an associate faculty member in the department of Organizational Leadership and Learning at Royal Roads University.

<sup>2</sup> Dr. Harry Stefanakis is a registered psychologist. He has over 12 years experience working with men who have assaulted their partner and has completed a research project on how men stop using violence and abuse. Dr. Stefanakis has intervened with men in prison, court-ordered men on probation and with voluntary men using individual and group modalities. He has designed several community and institutional programmes and has provided training and supervision on domestic abuse. Dr. Stefanakis has presented his research and theories at national and international conferences. In addition, Dr. Stefanakis has worked as an advocate for larger social and policy changes through his work with the Ending Relationship Abuse Society of BC (current president) and the BC Community Coordination for Women's Safety Committee. Dr. Stefanakis was a consultant to the Ministry of the Attorney General in their Family Violence core programmes initiative. He currently runs a clinical and consulting practice in Vancouver, B.C.

understanding men's violence against their intimate partners and identifying whether or not there is a "profile" of the man who assaults his partner, all is an effort to provide effective treatment programmes for offenders. We still have much work to do, but our path to date, with all the pitfalls and successes, may provide helpful information for other Nations who are looking for ways to stop violence against women in relationships.

## II. THE PREVALENCE AND SEVERITY OF DOMESTIC ABUSE

Domestic violence is a pervasive social problem causing significant physical, psychological and economic impact in Canadian society. Many sources of statistics are available that demonstrate the prevalence, and a few are cited here.

### A. Incidence in Canada

The Canadian Centre for Justice Statistics (2004) cited the following information taken from a representative sample of 94 police departments in Canada:

- In 2002 27% of all victims of violent crimes were victims of family violence, and 62% of these cases involved spousal violence (population 31,361,311). Over 34,000 cases were reported in this sample (this represents 56% of the national volume).
- Females accounted for 85% of all victims of spousal violence reported to the police.
- Young females aged 25-34 were most likely to be victims.
- 80% of incidents resulted in a charge being laid by police; 82% of incidents involving female victims and 17% of incidents involving male victims.
- In 2002 there were 67 females and 16 males killed by an intimate partner (based on reports from the entire country, not a representative sample.) Over half of the homicide victims had a reported history of domestic violence, and the majority (58%) had a previous conviction for a violent offence.

### B. Incidence in British Columbia

According to the report *Violent Crime in British Columbia* (Ministry of Public Safety and Attorney General, 2004), the following are statistics for 2003 (population 4,130,759):

- The lifetime prevalence rates for spousal abuse are 25% in Canada and 32% in BC.
- Fourteen victims of homicide were killed by a spouse or ex-spouse.
- There were 9,186 incidents of spousal assault reported in British Columbia. 81% of offenders were male, 11% were female. The remainder involved cases where both were charged.
- More than two thirds of those charged have a prior criminal record, and half of those are for a previous violent offence.
- Over 40% were alcohol related.

## III. FACTORS AFFECTING INCIDENCE OF ABUSE

The following are taken from The Canadian Centre for Justice Statistics (2004):

- Rates of violence were higher when the spouse was looking for work.
- Rates were higher among those who are heavy drinkers.
- Spouses in step-families are more likely to experience violence.
- Spouses with children under the age of 15 living in the home are more likely to experience violence.
- 80% of victims of criminal harassment had some form of relationship with their stalkers. Females were most likely to be harassed by a partner.
- Rates of spousal homicide have continued to decline over the past three decades; however data continue to indicate women are more at risk than men. (Eight women per million couples as opposed to two men per million couples.) The risk is higher for younger and common law couples.
- In 2002 there were 67 females and 16 males killed by an intimate partner (based on reports from the entire country, not a representative sample.)
- Over half of the homicide victims had a reported history of domestic violence, and the majority (58%) had a previous conviction for a violent offence.
- The motivations for spousal homicide vary, but reportedly since 1993 44% resulted from the escalation of an argument, jealousy accounted for 22%, frustration, anger or despair was cited as 16%, revenge 3% and financial gain 3%.
- Between 1993 and 2002, murder-suicides were involved in one third of spousal homicides against women and 3% of spousal homicides against men.
- From 1997 to 2001 35% of convicted violent offenders were spouses. 19% of these convictions resulted in prison sentences. 72% resulted in probation. Those under the age of 25 and those estranged from their spouses were more likely to receive jail sentences.

- Sexual assault against a spouse is more likely to result in a conditional sentence than sexual assault against someone other than a spouse.

In general the rate of reporting has increased since 1993 as a result of policies, however, in 1993 12% of women in relationships reported violence and in 2000 this had declined to 8% of women.

The number of reported assaults is staggering and reflects only a portion of what is actually occurring. It is even more alarming to consider what this represents with respect to other forms of abusive behaviour in relationships. We know that prior to and concurrent with incidents of domestic violence there are many other forms of controlling and abusive behaviour (verbal and psychological) occurring that cause tremendous emotional damage to individuals in families. Studies have indicated that while not all men who are abusive as adults have experienced or witnessed physical violence as children, almost all report experiencing emotional abuse and/or neglect (Widom, 1989). The consequences of abuse are far reaching and must be addressed at the non-physical level in order to avoid escalation to physical violence.

#### **IV. THE IMPACT OF VIOLENCE IN RELATIONSHIPS**

Many studies have reported on the social impact of domestic violence. The Centre for Research on Violence Against Women and Children estimated annual costs of domestic violence in Canada to be at least \$4.2 billion in 1995. These costs take into account findings that 45% of all women who had experienced violence had suffered an injury, 43% of those injured required medical attention and 53% had taken time off work. (Statistics Canada, 1993). In 2000 there were 96,359 admissions to 448 women's shelters in Canada (57,182 women and 39,177 children). More than 71% of these shelters turned women away on one or more occasion.

One of the most significant impacts of domestic violence involves children. Many studies have identified the high co-occurrence of domestic violence against women and abuse of children in the home. In 28% of child homicides there was also a known history of domestic violence (Statistics Canada, 1999). In addition, the impact on children who witness violence is profound. It is estimated that children see or hear over 80% of the violence between their parents. Many studies have suggested children have the same reactions to witnessing violence as children who are the victims of direct violence (Suderman and Jaffe, 1997; Groves, 2002; Jaffe, P. Baker, L. & Cunningham, 2004). These studies report the following: reduced academic success, aggressiveness, non-compliance, irritability, being easily angered, anxiety, depression, withdrawal, low self esteem and an increase in somatic complaints. Suderman and Jaffe (1997) also found that 56% of children of women in shelters met the criteria for PTSD. In addition, they reported "subtle" symptoms in children, such as inappropriate attitudes regarding conflict and violence against women, condoning relationship violence, and hypersensitivity about problems at home, and self-blame. These symptoms are more likely to lead to victimization and/or aggression in relationships as an adult, as well as other socialization problems. Robinson and Taylor (1994) found that 50% of federal Canadian offenders had witnessed or been victims of abuse in their families of origin.

#### **V. REDUCTION IN VIOLENCE**

Five year prevalence rates suggest a decrease in intimate partner violence in Canada (Statistics Canada, 2002).<sup>3</sup> The following reductions were reported:

- Severe types of assault (beating, choking, sexual assault) dropped from 50% to 43% of all victims.
- Proportion of victims reporting injury dropped from 47% to 40%.
- Proportion of victims reporting injury requiring medical attention dropped from 21% to 15%.
- Fewer women experiencing chronic (10 or more) assaults.
- The rate of spousal homicide decreased by 26% between 1993-1999.

#### **VI. WOMEN'S USE OF VIOLENCE IN RELATIONSHIPS**

Police reports suggest that male on female spousal assault is much more prevalent than female on male. Some research studies have suggested that women's use of violence in relationships can be as prevalent as men's (Kwong, Bartholemew & Dutton, 1999; Statistics Canada General Social Survey, 2000). These

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<sup>3</sup> It is important to note that the same study showed the number of women who are afraid has gone up 3%.

findings have been criticized because the survey questions did not explore the emotional context in which the violence occurred. In addition, the surveys did not explore sexual abuse in the relationship, other controlling behaviours or power imbalances. Furthermore, there is much evidence to suggest the severity of violence and the resulting emotional and physical injury is much greater for women (Jiwani, 2000; Dasgupta, 2001; DeKeseredy & Martin, 2003). Critics of the view that abuse is equal between men and women refer to evidence that women are more likely to experience injury, to require medical attention, to be victims of multiple assaults in the same relationship, to be assaulted after separation and to be victims of domestic homicide (Report to the Federal-Provincial-Territorial Ministers Responsible for the Status of Women, 2002).

In programmes in B.C. for men who have assaulted their wives or girlfriends it is common to ask the participants if they have also been physically assaulted by their partners (Katz, 2002). At least 70% will say they have been. This is then followed by these questions:

- Were you injured?
- Did you require medical attention?
- Were you afraid for your life?

While occasionally there are men who say they were injured or afraid for their lives, the majority said they were not injured or afraid. Most state the emotion they experienced was frustration or anger.

It is often suggested that embarrassment prevents men from calling the police. This may be a contributing factor, however it is also likely most men don't call police because they are not afraid of injury. The emotional context of a violent argument is different for men and women. If a woman starts the physical conflict by hitting her partner she may be angry at the time (or afraid.) If the man responds with physical violence it doesn't take long before the woman's anger will turn to fear (or existing fear will escalate) while his anger likely escalates, and of course people are more likely to call the police when they are afraid. One finding suggested that 38% of women feared for their lives compared to 6% of men (Report to the Federal-Provincial-Territorial Ministers Responsible for the Status of Women, 2002).

Of course women can be violent and cause injury. In B.C. police are becoming increasingly responsive to women's use of violence in relationships and increasingly women are being charged. Men are still more likely to be charged for less severe incidents of violence which may reflect a tendency for men not to call the police unless the violence perpetrated by the women is severe. Programmes for women who use violence are currently only funded in institutional settings and are not available in the community.<sup>4</sup>

## **VII. THE DEVELOPMENT OF POLICY AND PROCEDURES FOR RESPONDING TO DOMESTIC VIOLENCE**

In Canada, prior to 1983 domestic violence was considered to be primarily a social issue as opposed to a criminal justice issue; charges and convictions were rare, other than in the most extreme cases of violence or in the case of homicide. In fact, it was not until a report on the prevalence, nature and social/economic impact of violence against women in relationships was presented to the House of Commons in 1982 that it was even considered to be a severe social issue. As a result of this report, in 1983 Solicitor General Robert Kaplan directed police chiefs across Canada to engage in more aggressive arrest and charge policies for those who engaged in violence in intimate relationships. This resulted in intimate partner assault becoming recognized in Canada as a serious criminal act, and increased awareness of the pervasiveness of domestic violence.

In British Columbia, the Ministry of Attorney General responded to the federal directive by creating the 1984 Wife Assault Policy. This policy emphasized arrest whenever sufficient evidence was found. A significant factor in this policy removed the responsibility from the victim to lay the charges against her partner. Unfortunately, legislation does not change attitudes, and it took some time for attitudes and behaviours of arresting officers to change and for police to respond with the laying of criminal charges as

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<sup>4</sup> One of the authors of this paper (Jane Katz) has developed programmes for incarcerated women who use violence in relationships. In addition, both authors have delivered community programmes for partners of men who use violence, and many of those women acknowledge having used some form of physical violence and many forms of emotional/verbal abuse in the relationship, either offensively or defensively. A focus on safety and responsibility is important for both men and women. When either a man or a woman uses violence in a relationship s/he is not only impacting others' safety, but also her/his own.

required. Over time the police and prosecution response became more aligned with the “zero tolerance” approach outlined by the Ministry of Attorney General. Multiple revisions were required to create an effective coordinated response, culminating in the 1996 Violence Against Women in Relationships (VAWIR) Policy which is currently in effect.

The 1996 VAWIR Policy was founded on the principle that society must be given a clear message that violence in relationships is unacceptable. In addition, to be effective coordination of services is essential. To this end the following are cited in the policy as being absolutely necessary for an effective coordinated response:

- victim protection, safety and support through swift police response, shelters, education and advocacy, no contact orders;
- involvement with the court system through strong pro-arrest policies, clear guidelines and procedures for investigation and prosecution to increase convictions, enforcement of protection orders, probation guidelines, interagency flow of information;
- legal sanctions with increasingly harsh penalties for repeat offenders;
- mandatory treatment programmes for offenders, in keeping with Canada’s criminal justice system philosophy regarding the rehabilitation of offenders.

Since domestic violence is a criminal justice issue in Canada, it is helpful to look briefly at Canada’s history of responding to criminal behaviour, particularly with respect to treatment. A watershed moment in Canadian Corrections occurred in 1938 when the Archambault Commission first postulated that treatment and rehabilitation of offenders (as opposed to just punishment) were objectives of the criminal justice system. This was influenced by humanitarian prison reform movements in the United Kingdom; there were also parallel processes occurring in the United States in the 1930’s (Giardini, 1942). A corollary of this increased focus on treatment was the recognition of the differing needs of offenders, leading to the hiring of classification officers post WWII. In the mid 1950’s the Correctional Services of Canada began to employ psychologists and those with psychological training for testing, counselling and psychotherapy.

In the early 1970’s a “nothing works” backlash from US prison reformers resulted in a decline in funding for treatment programmes in many jurisdictions in the United States (Watkins, 1992). Although this had an impact in Canada as well, Canada chose to persevere with the philosophy that treatment is required for rehabilitation. Two processes unfolded to help deal with the backlash: 1) a growing focus on ‘evidence-based’ treatment driven by research, evaluation and accountability and 2) an increased use of clinical and applied social psychologists (either under contract or on staff) as practitioners, consultants and researchers in risk assessment, programme development and programme delivery. The Correctional Services of Canada has developed a full slate of accredited programmes for offenders aimed at addressing all levels of risk and all criminal needs, including domestic violence.

Canada has two correctional systems - provincial and federal. Any offender who is sentenced to over two years of incarceration becomes the responsibility of the Correctional Services of Canada (CSC), which means the vast majority of offenders in the country fall under the jurisdiction of provincial correctional systems. As with all provincial systems, the Corrections Branch of British Columbia is expected to align itself with federal policy, and as such was impacted by the initiatives of the federal system toward rehabilitation. In 1946 the British Columbia Gaol Commission created the foundation for the development of procedures for offender management aimed at rehabilitation, including correctional programmes (Doherty & Ekstedt, 1992). As with CSC, the involvement of clinical, forensic and applied social psychologists in the development of evidence based programmes and risk assessment tools has been a significant focus of offender management and rehabilitation in B.C. Programmes in the past twenty years.

The majority of spousal assault convictions, then and now, do not result in federal sentences unless the assault results in significant injury or death. However, Robinson and Taylor (1994) conducted a file review of federal offenders and found that independent of the crime for which they were convicted, 25% had engaged in acts of violence towards a female partner (physical, sexual or psychological assault). This paralleled an earlier study by Dutton and Hart (1992). It is important to point out these reviews only identified those offenders with reported incidents of violence. In keeping with evidence that all domestic violence is underreported, it is estimated the actual incidence of domestic violence as defined by physical, sexual or

psychological abuse is much higher in federal offenders than this file review suggests. In addition, both studies found that file information suggested almost half of federal offenders had been victimized or had witnessed some form of family violence as children. This is certainly a higher proportion than what is seen in the community, and again reflects only what is on the file. Finally, consistent with the general family violence literature, both studies found that offenders who witnessed or experienced abuse as children were far more likely to be abusive in their adult relationships. These studies clearly indicate that a focus on domestic violence programming is important for male federal offenders. (It is also important for female offenders as the rate of childhood abuse in women offenders has been shown to be equally high, if not higher.)

### **VIII. DEVELOPMENT OF MANDATED PROGRAMMES IN THE CORRECTIONAL SERVICES OF CANADA**

In the early 1990's CSC developed a ten session educational programme called "Living Without Violence" which was delivered by trained correctional officers. In various parts of the country psycho-educational cognitive-behavioural, pro-feminist (i.e. viewing violence against women as grounded in a power imbalance between men and women) treatment programmes were offered by contracted therapists.<sup>5</sup> In the late 1990's CSC pulled together some of these therapists, along with researchers and other experts in the field, to consult on the development of accredited National Moderate and High Intensity Family Violence programmes for male offenders (MIFVP and HIFVP).

The MIFVP and the HIFVP are cognitive-behavioural and 26 and 72 sessions respectively were implemented in 2000 in federal institutions across Canada. Admission to the programmes is based on the Spousal Assault Risk Assessment (SARA), identified incidents of physical violence and an offender risk/needs assessment. Until April of 2005 the CSC Pacific Region in British Columbia also offered a programme called Family Relationships as an alternative to the Moderate Intensity programme. It had a greater focus on meeting the relationship skills needs of all offenders, not just those who with reported incidents of violence, and was more preventive in nature. Unfortunately, a focus on accreditation and working only with reported criminal behaviour has put this programme on hold at this time. This programme, however, had the highest completion rate of any programme in the Correctional Service of Canada and speaks strongly to the need for male offenders to learn more about developing healthy, non-violent relationship skills. Findings that suggest there is a high incidence of domestic violence and abuse in offender intimate relationships, and that stable relationships are a significant factor in preventing recidivism, suggests there is a need to address relationship violence pro-actively, not just when incidents have been reported.

### **IX. DEVELOPMENT OF MANDATED PROGRAMMES IN BRITISH COLUMBIA CORRECTIONS**

The sentences for spousal assault are usually under two years, which means most spousal assault offenders end up supervised in the community by probation officers. After the implementation of the Wife Assault Policy in 1984 the police became more efficient in arrest and charge policies, women were no longer able to drop charges and as a result the incidence of conviction increased. This led to an increased number of men on probation for spousal violence. In the province of B.C. these men have been designated as K-file offenders, and currently K-files account for approximately 22% of sentenced offenders supervised through probation.<sup>6</sup> Over 80% of these clients are considered to be medium or high risk.

By 1989 the B.C. Ministry of Attorney General had provided funding for three programmes for male K-file offenders on probation. These were delivered by The Victoria Family Violence Project, The Vancouver Assaultive Men's Programme and the Fraser Valley Family Violence Programme.<sup>7</sup> In 1992, based on the

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<sup>5</sup> Ms. Katz developed and delivered this programme in the Pacific Region for CSC from 1992-2005. It was called the Family Relationships Programme.

<sup>6</sup> This does not include probation clients who are on conditional sentences, peace bonds or bail.

<sup>7</sup> Ms. Katz was the Director of the Fraser Valley Family Violence Programme from 1990-2003. Research on this programme's effectiveness is included in the study by Kropp & Bodnarchuk, 2001.

ever increasing numbers of K-files, funding for spousal assault programmes was made available through the Ministry of Attorney General to over 50 communities in the province.<sup>8</sup> Most of these programmes were required to include therapist contact with the victims to ensure safety and to become involved in community coordinating committees to help implement and monitor the VAWIR policies. Some programmes had additional funding to provide support groups and/or counselling for the women victims.

In order to make it more likely offenders would comply with mandated orders, significant work was done to ensure the wording of court orders was such that expectations to attend programmes were clear; e.g. *Will attend counselling as directed by the probation officer, and complete to the satisfaction of the probation officer and the counsellor*. Offenders who did not comply were considered to be in breach of their court order, taken back to court and additional sanctions were levied. While there were significant challenges in the early years resulting in relatively low completion rates in some of these programmes, it ultimately began to work well. By 1995 there was a significant turn around in completion rates and many of the programmes were running successfully.

Consistency in the delivery of these programmes was primarily guided by a set of principles developed by the BC Association of Counsellors of Abusive Men (ACAM). This association was founded in 1989 by a group of therapists interested in promoting the development and implementation of high quality interventions for men. A collaborative process between ACAM, representatives of provincial government ministries (Attorney General, Health, Social Services, Women's Equality), and community agencies providing services to women victims of domestic violence resulted in a set of guiding principles for engaging in responsible and effective work with the men. These principles were based on what was considered best practices at the time. They became embedded in programme contracts and provided some consistency for the delivery of the programmes in the province, although programmes were not otherwise standardized.

The guiding principles developed by ACAM have been adopted by many programmes in Canada. The direct goals of treatment as defined by ACAM are: to stop the physical violence, reduce the whole array of abusive and controlling behaviours and provide men with alternatives to abuse which encourage sharing power and decision making in a respectful relationship. The full document containing 31 principles can be found on the ACAM website ([www.bcacam.bc.ca](http://www.bcacam.bc.ca)).<sup>9</sup> They include:

- The safety of women and children is paramount.
- Access to women's safety services and supportive counselling for partners is a prerequisite to the effective implementation of men's treatment.
- Great care should be taken to be conservative in communicating expectations for change in men's behaviour so as not to bias women's self-protective decision-making.
- Ongoing contact with women partners is important for assessment purposes and assurance of her safety. Contact should be based on her willingness to participate.
- A coordinated system of services for women and men ensures a consistency in consequences and response.
- Cooperation among men's treatment programmes, probation, Crown counsel and the judiciary is necessary to allow breach charges to succeed, thereby increasing accountability.
- An approach to each individual man that demonstrates respect and compassion, while holding him accountable, is fundamental to the process of change.
- A treatment philosophy focusing on attitude change and skill development is considered most effective. A cognitive-behavioural approach is recommended.
- Programmes should include strategies to reduce minimization, denial and blame, while raising awareness of the nature of all forms of abuse, the impact of abuse and teaching skills aimed at managing difficult emotions without abusive behaviour. Use of anger management alone is not considered effective treatment.
- Group counselling is the preferred treatment modality.
- Men's groups should be led by a two-person team, preferably male/female.
- Couples counselling is not recommended in early stages of treatment.

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<sup>8</sup> Dr. Stefanakis facilitated programmes for the Vancouver Assaultive Men's Programme and developed and ran the Alternatives to Violence Programme at New Haven Correctional Centre between 1996 and 2001.

<sup>9</sup> ACAM has recently changed its name to the Ending Relationship Abuse Society of B.C. Currently ERA is revising the guiding principles.

- Careful assessment and evaluation techniques are necessary to maintain the effectiveness of the programme.
- Programmes should not advocate for men in legal proceedings.
- Programmes must have a clear policy around responding immediately to situations that suggest someone is at risk
- Alcohol, while often involved, does not cause violence, however might be a barrier to treatment if not addressed.

ACAM invited all counsellors in B.C. working in the field who agreed with the guiding principles to join the organization. While not mandatory, most of the people delivering programmes in the province became involved in the 1990's. An important purpose of ACAM was to provide opportunities for networking and education in a new field; this was done primarily through an annual conference.

In the late 1990's the Ministry of Attorney General felt pressure to develop greater standardization of programme delivery across the province. In 1997 the Corrections Branch embarked on a new model for treatment delivery. Between 1999 and 2002, B.C. Corrections consulted with experts in the field including the authors of this paper, other members of ACAM, researchers from Correctional Services of Canada and victim services in the development of a two phase treatment programme for men. The first phase is a ten session pre-treatment educational group programme called *Respectful Relationships (RR)* that is delivered by trained Correctional and Probation officers. This programme is delivered both in the provincial jails and in the community. The second phase is a standardized 17 session psycho-educational, cognitive-behavioural group programme called the *Relationship Violence Treatment Programme (RVTP)* which is delivered by contracted therapists. This programme is primarily offered in the community since provincial jail sentences tend not to be long enough to complete both RR and RVT. This restructuring of programme delivery was done in the service of achieving greater accountability and more accurate evaluation.

It is early days yet for these two programmes. Both have undergone revisions as the Corrections Branch appears to be committed to finding a process that is effective.<sup>10</sup> A benefit of the RR programme is that all community and many custody corrections staff are being trained to deliver it and therefore are learning to model skills and respond to clients both one-on-one and in groups in ways that promote non-violent relationships. The RVTP programme is currently being managed by one contractor who is required to find, train and supervise over 60 counsellors delivering programmes throughout the province. As a result, availability of programmes and coordination of services have suffered somewhat in the early stages of this new initiative. In addition, there is now limited funding for voluntary clients as programmes are being strictly held to a "corrections clients only" policy. There is also a concern that standardization of programmes in such a new field will limit innovative efforts to meet the varied treatment needs of all offenders and improve treatment outcomes. The very positive note in this, however, is that B.C. continues to see domestic violence as a criminal justice issue and is committed to finding solutions.

Currently in B.C. the criminal justice response to violence against women in relationships continues to follow the 1996 VAWIR policy. This includes the following procedures:

- Police are required to respond quickly and arrest and charge if there is any sign of violence.
- Charges are not laid or dropped at the request of the victim.
- No-contact orders are put in place and not dropped solely at the request of the victim, but rather through recommendation by the probation officer.
- Violations of no-contact orders can lead to a breach of probation charge.
- Victim services and probation officers contact the women and make appropriate referrals to shelters and counselling services.
- Men are court-mandated to attend programmes and are breached for non-compliance.

Four of the possible outcomes of sentencing include:

- Jail sentence and condition to attend counselling as directed.
- Jail sentence, probation and condition to attend counselling as directed.
- Peace-bond and requirement to attend counselling as directed.
- Conditional sentence and requirement to attend counselling as directed.

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<sup>10</sup> Ms. Katz provides training for facilitators of both RR and RVT, is the author of the current version of RR and significant portions of the revised RVT.

The last two sentencing outcomes do not result in a criminal record if the offender meets the conditions of his sentence. If alcohol was involved in the charge there is also often a requirement to abstain from drinking.

The challenge for domestic violence, as with many criminal behaviours, is that without prompting through the criminal justice system it is unlikely offenders will seek out intervention on their own volition. The Criminal Code of Canada has made provision for court mandated treatment through the following sections:

- Section 732.1 (1) Optional Conditions of probation order: (3) (g) if the offender agrees, and subject to the programme director's acceptance of the offender, participate actively in a treatment programme approved by the province.
- Section 742.1 (a) Where the court imposes a sentence of imprisonment of less than two years, and (b) is satisfied that serving the sentence in the community would not endanger the safety of the community . . . . the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community subject to the offender's complying with the conditions.
- 742.3 (1) The court shall prescribe, as conditions of a conditional sentence order, that the offender do all of the following: (e) attend a treatment programme approved by the province, and (f) comply with such other reasonable conditions as the court considers desirable, subject to any regulations . . .

While the first section clearly states that the offender must agree, the following sections encourage compliance with conditions that include counselling. In the federal correctional system an inmate is awarded early release or parole based on the risk he poses to society. Offenders are considered to be more likely to be able to manage their risk if they have completed a treatment programme. In the provincial system programmes are often a condition of probation.

Mandating of programmes has frequently led to questions about programme effectiveness. This of course has led to the importance of developing programmes that engage offenders in learning and change, and this will be discussed later in this paper. There are limited studies examining the differences between voluntary and court-mandated referrals; however, there is some evidence to suggest voluntary convicted offenders are less likely to complete treatment, or be successful with treatment. Certainly in the many years of programme delivery conducted by the authors of this paper this has been confirmed. With respect to domestic violence, it is frequently the case that even those who are "voluntary" are externally motivated to seek out treatment because their partner has left and refuses to come home, their children have been apprehended or they are seeking custody. If these external factors are resolved early in the programme it is not unusual for voluntary clients to drop out. A court mandate is more likely to result in completion of treatment.

## **X. PRO-ARREST AND PRO-CHARGE**

The pro-arrest, pro-charge guidelines that are part of the VAWIR policy in B.C. reflect a desire to emphasize the criminality of violence against women in intimate relationships. The literature about the impact of arrest alone on recidivism has provided mixed findings. Studies seem to suggest it has an impact that is short-lived and most significant with men who are married or employed and have "something to lose" (Sherman & Berk, 1984; Berk, Campbell, Klap & Western, 1992; Gelles, 1993). Studies do suggest, however, that pro-arrest, pro-charge policies have a significant impact on the safety of women because they promote the following: immediate protection, time to consider options, access to support services, information about abuse and time to make alternative living arrangements (Buel, 1988; Jaffe, Hastings, Reitzel and Austin, 1993; Stark, 1996; Tolman, 1996; Varco, Jaffer & Kelln, 2002). Russell (2002) researched criminal justice responses in B.C. and found that arrest is the most effective strategy for ensuring safety of victims and decreasing the rate of abuse. These policies give a strong message to society about the seriousness and inappropriateness of the behaviour.

In Canada, police make the arrest and the Crown Counsel (prosecution) lays the charges. Pro-arrest, pro-charge policies have been shown to improve police and crown practice by minimizing the impact of individual bias. A review of the literature conducted by the B.C. Institute Against Family Violence (MacRae, 2003) cited many research findings that supported the use of a standardized response for the following reasons:

- The personal domestic situation of police officers made them more or less likely to arrest.

- Opinions of fellow officers influenced arrest.
- If police believed victims were uncooperative they were less likely to arrest. (Research suggests that most victims will cooperate with appropriate support.)
- Inadequate or inaccurate information in police reports led to failure of prosecution.
- Severity of injury, weapon use, property damage, violation of court orders and/or involvement of alcohol made it more likely arrest would occur and charges would proceed. In the absence of these obvious factors, police are less likely to arrest, putting the victim at risk by suggesting “call us when it gets worse”.
- Presence of witnesses impacted arrest and charge.
- Prosecutors were less likely to charge, and police are less likely to arrest, when the victim’s attributes lead to questions about her victimization.

Hanna (1996) found these policies have been responsible for a reduction in homicides, and suggests they have created huge societal gains with respect to changing attitudes and behaviours.

These policies have not existed without criticism. These are typically based on the following factors:

- Women feel disempowered by the process and feel their wishes are not being considered. Many women don’t want a lengthy no contact order or for their partner to have a criminal record (which could impact employment and travel outside the country). They simply want the abuse to stop.
- The policy has led to more cases coming in to the system than were ever expected (which reflects the pervasiveness of the behaviour), and there is often not enough time or resources to do it properly.
- Women (as well as offenders) sometimes complain the information gathered by police is limited and inaccurate in order to facilitate convictions. Victim (and offender) statements, although they may be similar to one another and different from the police statement, are not seen to have more credibility than the police statement.
- Overzealous compliance with the policy has resulted in some men being charged and convicted when they were actually victims of assault themselves and were seeking help.
- Family problems are often multi-levelled. There is no room in the system to treat people as individuals with varying needs; no room for discretion.
- Rigid policies result in some women not using the system.

These challenges speak to the need to have a coordinated response that takes into account the needs of both victim and offender.

## **XI. A COORDINATED RESPONSE**

In a drive to ensure domestic violence is viewed as a criminal justice issue it is important to not lose sight of the fact that it is also a social issue that involves individuals and families who care about each other and who may have multiple needs. There have been many studies that demonstrate a coordinated response which includes arrest, support for the victim and mandated treatment for the offender is more effective than arrest alone (Pence, 1989; Steinman, 1990; Dutton & McGregor, 1991; Syers & Edleson, 1992). A study by Steinman (1990) found that police interventions that were not coordinated with other criminal justice sanctions actually led to increased violence. Dobash, Dobash, Cavanagh & Lewis (2000) have reported evaluation research that suggests arrest and treatment is more effective in reducing men’s physical and emotional abuse than criminal justice sanctions alone. This result is consistent with the general criminology literature that has pointed out the important role of well developed and implemented programmes on reducing criminal recidivism when compared to punitive measures alone (McGuire, 1995).

Effective responses depend on a philosophy that domestic violence is both a crime and a social issue. Comprehensive programmes that engage in a coordinated treatment-criminal justice-victim advocacy response have a greater impact at reducing recidivism (Gondolf, 1999; Dobash et al., 2000). MacRae (2003) writes,

The literature indicates that while arrest alone may have some positive consequences on the incidence of relationship violence, the best results occur when arrest is part of a multi-level, multi-faceted, coordinated criminal justice response in which prosecution is a key component (Russell, 2002; Wooldredge & Thistlewaite, 2002; Gelles, 1993).

## **XII. PROTECTION ORDERS**

Emergency intervention is available 24 hours a day through a Justice of the Peace and allows police to restrain communication or contact, remove the abuser from the home and give the victim exclusive occupation of the home. As soon as the respondent is served this order it must be ratified by the Court of the Queens Bench.

In B.C. protection or no-contact orders are routinely implemented in cases of domestic violence. While some studies show there is a positive benefit, there is also research that suggests they have little impact on extremely high risk offenders (Finn, 1991). The effectiveness of protection orders seems to be entirely related to how they are enforced by the police.

It is not uncommon for victims to willingly violate no-contact orders for a variety of reasons: a desire to allow contact with children, strained finances, the problem of avoiding contact when living in a small community, wanting to include the spouse in family events. In addition, sometimes as stated above the no-contact order goes beyond the time frame that is helpful for the woman and her wishes to have it removed are not considered. If a victim willingly violates a no-contact order the police are less likely to act on it if she requests help. Education for police is critical in this case. A system that understands the difficult dynamics of relationships and responds appropriately to any or all incidents of threat or fear is required. An effective response would include a standing no-contact order that indicates to the police the man can be dangerous, and that could be invoked during times of threat.

## **XIII. DIVERSION**

In some communities in the United States and Canada diversion has been used to respond to domestic violence. Diversion means the offender stays out of the court process (i.e., is not officially charged) and is given the opportunity to either attend counselling and/or keep the peace. There have been criticisms that diversion is more likely to be used with those who are better educated and middle to upper-middle class, that it sends the wrong message about the criminal nature of the offence and puts pressure on the victim to agree to diversion. These issues might reinforce existing power imbalances in the relationship and diversion is difficult to monitor. Suggested benefits to diversion include: greater flexibility for individual response, quicker response time, possibly greater compliance with programmes and possibly more women will use the system. In B.C. at this time neither diversion nor any other alternate measures are being used to respond to domestic violence. An effective diversion programme requires many levels of coordinated, fully funded resources which are currently not in place.

## **XIV. FAMILY VIOLENCE COURTS**

The large numbers of domestic violence cases in Canada has led some provinces to set up specialized court systems; this helps prevent lengthy delays in court proceedings and referral to programmes. Those working in these systems have specialized training to raise sensitivity to all of the issues relating to domestic violence. Manitoba, Ontario, Alberta and the Northwest Territories have implemented these systems which include involvement of court, probation, victim services and programmes for offenders and victims. These courts place a strong emphasis on victim safety, thorough investigation of the facts, successful prosecution, appropriate sentencing, monitoring of orders and treatment. They are successful because everyone working in the system has a knowledge of the issues. These courts are founded on a belief in the need to address this as both a crime and a social problem. Accountability and opportunity for change are promoted. At this time B.C. does not have a Family Violence Court, however, evaluation results from these other jurisdictions are promising.

## **XV. CHARGE AND SENTENCE**

In B.C., as in all jurisdictions in Canada, the Crown counsel will decide if there is sufficient evidence to proceed with a charge based on police findings. While victim testimony might be necessary for conviction, if there is sufficient evidence the Crown will proceed regardless of the victim's willingness to testify. The maximum sentence for assault is a \$2,000 fine or imprisonment for six months or both. Assault with a Weapon or Assault Causing Bodily Harm can lead to imprisonment not exceeding ten years. Aggravated Assault can lead to imprisonment not exceeding fourteen years. Manslaughter and Attempted Murder can result in imprisonment for life. Murder results in an automatic life sentence. These are the maximum

sentences and offenders are infrequently sentenced to these maximums. For assault the usual sentence is probation including an order to attend treatment. Occasionally offenders receive a suspended sentence with a requirement to attend treatment - this means if they complete all requirements they will not have a criminal record. This is more likely to happen for first time offenders who offer a guilty plea and who agree to attend treatment.

## **XVI. MEN'S VIOLENCE AGAINST WOMEN IN RELATIONSHIPS: FACTORS FOR TREATMENT**

Since violence against women in relationships became a focus in public consciousness there has been a great deal of effort made trying to understand the men who engage in this behaviour in order to develop effective programmes. Most studies suggest there are similarities in some behaviours and attitudes, but there is not a "profile" as such. Domestic violence occurs in all socio-economic groups; however those with lower educations and less income are more likely to find their way into the criminal justice system. Holtzworth-Munroe and Stuart (1994) conducted a meta-analysis of studies and concluded there are three distinct groups of men who use violence in relationships: family only (which has the lowest levels of physical, psychological and sexual violence, dysphoric-borderline (which may or may not include some extra-familial violence and is more likely to involve substance abuse and moderate to severe violence), and generally violent-antisocial (moderate to severe violence, likelihood of substance abuse and criminal problems). Saunders (1996) found that 50% are men who assault their partners have problems dealing with intimacy but are not violent outside intimate relationships, 25% are emotionally volatile and dependent and 25% are generally lacking in empathy. In one study higher levels of narcissistic personality disorder and obsessive-compulsive personality disorder related to increased severity of violence (Bodnarchuck, 2000). The review of the typology literature by Cavanaugh and Gelles (2005) suggests that these types of batterers are consistent with low<sup>11</sup>, moderate and high risk offenders and that it is unlikely for most offenders (low and moderate categories) to escalate over time or move from one category type to another. Thus, these authors caution against matching offenders to wrong treatment (e.g., impulse control for anti-social men).

A number of factors are considered to be related in some way to men's violence against their intimate partners. These include: childhood and adolescent experiences including childhood trauma, attachment disorders, patriarchal attitudes and beliefs, unrealistic expectations in relationships, substance abuse, inability to manage anger and other difficult emotions, head injuries, depression, marital distress, jealousy and insecurity, dependency, personality disorders and biological and genetic variables.<sup>12</sup>

The perceived causes or theories for violence have an impact on the treatment that is provided. Theories of biology, psychopathology, social learning, family systems and feminism have all informed programme development. Biological theories include brain injury leading to violent impulses and genetic programming around safeguarding the sexual mate (jealousy and control). These theories lead to treatment primarily based on pharmacology. Theories of Psychopathology focus on psychodynamic rather than organic variables; the focus is often on childhood and other experiential events. Violence is seen to co-exist in a constellation of other interpersonal problems and functional deficits. Psychiatric diagnoses, specifically borderline and anti-social personality disorders, are inherent in a focus on psychopathology. Violent reactions and patterns are long standing and firmly entrenched, and treatment takes many forms (cognitive-behavioural, psychotherapy, pharmacology) with a strong focus on risk management.

Social Learning Theory suggests domestic violence is a product of learning and early modelling of behaviours that achieve a desired result. Proponents of this theory state it is supported by research on trans-generational violence. Interventions prescribed from this theory are usually cognitive-behavioural in nature. Critics say that it does not explain why intergenerational transmission is not universal.

Feminist Theory explains violence against women as being influenced by a patriarchal societal structure that reinforces men's superior role and therefore their sense of entitlement to exert power and control over

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<sup>11</sup> This categorization of low risk is used as a relative reference in comparison to the other two categories in the typology and should not replace a risk assessment by professionals to ascertain treatment needs.

<sup>12</sup> These factors, along with many others, are regularly seen in group participants in varying degrees, and this speaks to the challenges of providing effective treatment.

women. Imbalances at a societal level are then reproduced within the family. Interventions are based on advocacy, the provision of services for women and sensitization aimed at changing attitudes, beliefs and social structures that support violence against women.

Family Systems Theory suggests the family is a dynamic organization made up of interdependent components; action and reaction leads to probability of reoccurrence. Treatment involves exploration of the attitudes, beliefs and behaviours in relation to the many systems in which the offender lives – family, culture, religion, community standards. Intervention includes individual work as well as couple or family counselling to improve communication and problem solving skills within the family.

Dutton (1995) used the term “nested model” to also explore the belief that violence as multi-determined. This model takes into account both the psychological features of the offender as well as the interpersonal context, i.e. influences of family, couple and social systems. Dutton suggests there are four levels that influence each other:

- Macrosystem: Broad societal attitudes and beliefs regarding spousal violence.
- Exosystem: Social structures that influence the immediate context where the assault occurs.
- Microsystem: Immediate environment within which the abuse takes place; the home, the couple's relationship pattern.
- Ontogenic Level: Perpetrators individual histories and characteristics.

No one theory emerged as having unequivocal support. Human behaviour is complex and there are no easy ways to explain it. Integrated approaches that incorporate all aspects of these theories seem to be most beneficial.

## **XVII. DOMESTIC VIOLENCE AND ALCOHOL ABUSE**

The involvement of substance abuse, particularly alcohol, in domestic violence has been well documented. Estimates of concurrent use of violence and alcohol range from 25% to 60%, and “use” does not imply a drunken state. Abuse of alcohol and drugs contributes to risk and can be a significant barrier to treatment effectiveness, however, it is currently a generally supported view that alcohol does not cause violence. Some studies found that substance abuse only increased the risk for woman abuse for men who already approved of situational violence against women, were under socioeconomic hardship, had high levels of hostility and low levels of marital satisfaction (Kantor & Straus, 1987; Leonard & Blane, 1992).<sup>13</sup> Perneran (1991) found the average amount of alcohol consumed prior to the violent episode was only a few drinks, which suggests the alcohol is an excuse.

Gondolf (1995) suggests there may be common psychosocial factors which overlap, e.g. substance abuse and violence may share common origins in a need to achieve personal power and control. He cautions that treatment approaches may have a very different focus in that alcohol and drug treatment is very self-focused.<sup>14</sup> He suggests that treating one may have an impact on the effectiveness of treatment for the other. Katz (1998) suggests that if men become motivated to act in ways that keep themselves and others safe this should have an impact on stopping violence in relationships as well as other self-destructive behaviours like substance misuse.

Some important factors about the link between violence and substance abuse include:

- Being drunk may provide a justification - or alibi - for behaviours normally proscribed by society.

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<sup>13</sup> Both authors have had many participants who claim alcohol as a reason for the violence. When challenged they will frequently admit to having thoughts about assaulting their partner when they are sober and angry with her, but state they are more able to control their behaviour more effectively at those times. Even under the influence of alcohol men control where, when and how much violence they use. It has been both authors experience that when asked about particular behaviours many men say “no matter how drunk I got, I would never....” which suggests limits have been set that will not be crossed drunk or sober. It is very unlikely that a person who never thinks about sex offending or robbing a bank will suddenly do it because they are drinking.

<sup>14</sup> It has been both authors experience that men in alcohol treatment who have not addressed the issues underlying their abuse of their partners will use their need to maintain sobriety as an excuse for controlling behaviours. “It will be your fault if I continue to drink.” Some men who have stopped drinking and continue to be abusive also blame the behaviour on being a “dry drunk”.

- Alcohol may contribute to the misreading of signals by both the offender and the victim.
- By reducing inhibitions, alcohol may impair attention to internal behavioural cues and the consideration of consequences.
- Alcohol may decrease frontal lobe functioning, affecting ability to handle new or threatening situations and to develop alternative strategies to solve problems. Alcohol may affect neuro-chemical systems that mediate aggressive behaviour (Boles & Motto, 2003).
- Risk of serious violence increases with alcohol.
- Cocaine and methamphetamines can increase violent behaviour.
- Women with substance abuse problems have an increased risk of being victims of violence.
- Completion rate is lower for those with addiction problems.
- Addiction leads to increased conflict in the relationships.
- Sobriety does not necessarily lead to non-violence or change the nature of the abuse in the relationship.

### **XVIII. THE NATURE OF DOMESTIC VIOLENCE**

Violence against women in relationships includes verbal, emotional, psychological, physical and sexual abuse. Most programmes have lengthy lists of behaviours that describe these forms of abuse. Various types of abuse inventories and scales have been developed to help those working with both victims and offenders to identify the nature and severity of the abusive behaviour (Tolman, 1989; Marshal, 1992; Shephard & Campbell, 1992; Saunders, 1995; Strauss, 1995). The most commonly used document in programmes to date is the Power and Control Wheel produced by a programme in Duluth, Minnesota (Pence & Paymar, 1993). This wheel describes many types of behaviours that are designed to intimidate and control. These include: threats of physical harm to others or to self; verbal abuse that degrades or humiliates; economic abuse through attempts to control finances; use of the children to control or threats to hurt the children; minimization, denial and blame for the abuse; property damage, in particular selective property that has meaning for the victim; acts of sexual coercion; acts based on beliefs about male privilege and men's and women's roles in society; acts intended to isolate the victim from others; harassment and stalking behaviours. Although the violent acts that are sanctioned by the criminal justice system are physical violence, sexual violence and threats of physical violence, these other non-physical forms of violence are equally damaging to individuals and relationships and are always precursors to physical violence. Programmes must address these behaviours in order to stop physical violence.

The nature of sexual abuse in relationships has not been well researched or addressed in many programmes. It is not uncommon for women who feel controlled in relationships to lose sexual desire for their partner (this is also true for men). The loss of desire by a woman who is being abused may lead to an increase in feelings of powerlessness or rejection in the man, and result in more abusive behaviour. Cycles of interacting in abusive relationships are often as follows (Katz, 1999):

1. Abuse occurs.
2. Emotional distance between partners increases.
3. Feelings of rejection by the offender increase.
4. Abuse escalates.

### **IXX. TREATMENT OPTIONS**

There are three principles for treatment: risk, needs and responsivity. The risk principle suggests that higher-risk cases benefit from more intervention; lower-risk cases benefit most from low (or no) levels of service. The needs principle suggests the greatest reductions in recidivism can be achieved by targeting criminogenic needs for treatment and supervision. The responsivity principle suggests treatment programmes and supervision approaches will be most effective when geared to the offender's own abilities and learning style. Currently much has been done on risk and needs; however, responsivity is an area requiring more attention and speaks to the process of delivery of programmes as opposed to the content.

The current state of knowledge about domestic violence is not sufficient to promote any specific treatment modality or programme (Cooper, 1995; Hanson & Wallace-Capretta, 2000). Indeed, the question of how and why cessation of violence occurs remains unclear and has not been directly examined in most evaluation studies where the focus has been on the more general questions of whether treatment with spousal abusers is at all effective. Much of the focus has been on programme content, while for those

working in the field the process of therapeutic alliance and engagement with the offenders is considered critical for improving responsiveness and programme completion. Recent research suggests the highest risk of recidivism occurs in those who drop out of programmes (higher than those who never take programmes.) This suggests keeping men in the room is critically important.

Healey, Smith, and O'Sullivan (1998), in their National Institute of Justice sponsored paper *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, conducted a very comprehensive review of spousal assault treatment. This study and other literature cited earlier in this paper and below point to some common principles:

- A cognitive-behavioural focus is most frequently used in correctional programmes based on meta-analytic and theoretical reviews that have identified a cognitive – behavioural approach as the most effective treatment orientation to date in reducing criminal recidivism (Losel, 1996; Andrews & Bonta, 1998).
- No treatment approach (cognitive-behavioural, psychodynamic or family systems) has been shown to be significantly better than any other in stopping domestic violence; however the most common approach is a psycho-educational cognitive-behavioural model that encourages pro-feminist attitude change while building interpersonal skills (Hanson & Wallace-Capretta, 2000).
- Research by Hanson & Wallace-Capretta (2000) highlight the importance of well trained and supervised staff with a commitment to programme integrity. Modelling of skills and use of motivational skills are paramount to inviting change. This point is consistent with the general criminology literature (Andrews, 1995) and highlights the importance of the facilitators' skill in engaging men into the change process (Stefanakis, 1998a).
- Rondeau, Brodeur, Brochu & Lemire (2001) have noted that, among treatment variables, therapeutic alliance was the most significant factor in promoting programme completion.
- Group processes that do not restrict men's identities to offender status alone can facilitate therapeutic engagement (Augusta-Scott, 1999; Stefanakis, 1998b, 2000; Trimble 2000).
- Treatment effectiveness depends on matching treatment (intensity and type) and therapists to risk/need of offenders. (Gendreau & Andrews, 1990; Serin & Kennedy, 1997).
- Therapists' attitudes and competence that do not match the aims and content of a programme may lower treatment integrity and reduce its effectiveness. (Serin & Kennedy, 1997).
- Pre-group preparation programmes or treatment readiness programmes (such as the RR programme in B.C.) may be effective in reducing attrition in treatment (Cooper, 1995; Rondeau, Brodeur, Brochu & Lemire, 2001).
- Well managed programmes delivering structured intervention focusing on the offender and offending behaviours are more likely to be effective (Dobash et al., 2000; Gondolf, 1999).
- A coordinated treatment/criminal justice system response has a much greater impact on reducing recidivism than treatment alone or a criminal justice response alone. Programmes embedded within the criminal justice system, with immediate and strong sanctions for non-compliance had relatively low attrition rates in Great Britain (Dobash et al., 2000).

Treatment should acknowledge the complexity of the origins of the problem by addressing multiple targets that are empirically shown to contribute to abusive behaviour. In 1990, B.C. ACAM introduced the term "The Common Hybrid Model" to describe multi-model programmes that attend to all these theories and emphasize safety, personal responsibility, self-awareness, compassion, skill development and the promotion of attitudes of equality and respect that support the maintenance of non-violent relationships. All programmes tend to have the following: a cognitive-behavioural foundation; pro-feminist based (view violence as tactics of power and control and promote equality); hold offenders accountable for the behaviour; confront rationalizations and excuses; challenge beliefs, attitudes and expectations that support violence and inequality; help offenders identify high risk situations; teach skills which include emotions management, conflict resolution, problem solving, assertiveness and respectful communication (Pence & Paymar, 1992; Cooper, 1995; Gondolf, 1997; Healey, Smith & Sullivan, 1998; Katz, 2005). Some programmes also incorporate family systems strategies, trauma work, couple work, a focus on attachment theories and psychodynamic approaches to meet some of the individual needs of the men in the programmes, but all within the framework of promoting personal responsibility and motivation to behave non-abusively toward others. Modelling of respectful relationships in interactions with the participants and between co-therapists is a foundation of the ACAM model. The emotional and physical safety of women, children and men is the primary goal of programme delivery and is reflected not only in the treatment programme itself but also in pro-active participation in a coordinated community response.

The Correctional Services of Canada programmes for moderate and high intensity family violence offenders are accredited based on the following eight criteria that have shown to be effective:

- An explicit empirically based model of change.
- Targeting of criminogenic needs.
- Use of proven effective methods of facilitating.
- A skills development orientation.
- Attention to responsivity issues (e.g. culture).
- Continuity of care or relapse prevention.
- Sufficient intensity or dosage.
- Ongoing monitoring of the integrity of programme delivery and programme evaluation.

## **XX. EVALUATION OF PROGRAMMES**

Although programme evaluation of intervention for men who assault their partners is still at a relatively early stage of development, there is a body of methodologically sound research that supports the overall effectiveness of treatment (Edelson and Syers, 1990; Edelson, 1995; Dutton, 1995; Gondolf, 1997; Gondolf & Jones, 2001; Healey et al., 1998; Dobash and Dobash, 1999; Kropp & Bodnarchuk, 2001; Gondolf, 2004). While results from different studies vary in the size of the effect, there is significant evidence to suggest there is an effect. There remains much to do in identifying the most effective approaches.

Research on programmes report varying levels of effectiveness. In large part this is likely due to the variability in programmes being measured. Some studies report that as many as 53% – 85% of abusers stop violence after treatment in follow-up periods ranging up to 54 months (Dobash and Dobash, 1999; Edelson and Syers, 1990). Jones, D’Agostino, Gondolf and Hekert (2004) found that treatment reduces probability of assault by 26 – 34%. Dutton (1995) reported strong treatment effects for court-mandate programmes in B.C.; after six months 16% of untreated and 4% of treated re-offended and after 30 months 40% of untreated and 4% of treated re-offended. Self-reports from men and women supported this reduction and demonstrated that levels of verbal aggression dropped as well as violence. A more recent review by Gondolf (2004) suggests variability in results in previous studies, including previous meta-analyses, has to do with problems with methodological shortcomings. He found that programmes lead to a de-escalation of re-assault and other forms of abuse, the majority of men do not re-assault but approximately 20% of offenders continuously re-assault.<sup>15</sup> Gondolf points out that the cognitive-behavioural approach appears to be appropriate, but needs to include more intensive programmes for high risk offenders, on-going monitoring of risk and a “swift and certain response” to violations.

It is important to note that given the large number of incidents of domestic violence “even a small or modest statistically significant result can have large clinical and social significance in reducing violence in the community” Gondolf (1999). It is also important to highlight that intervention should be considered and evaluated as part of a larger community response to end violence against women (Edleson, 1995; Healey et al, 1998; Dobash & Dobash, 1999; Dobash, et al. 2000).

The authors of this paper strongly support research that suggests effectiveness of programmes has a great deal to do with the ability of the therapist to build therapeutic alliance (Stefanakis, 2000, 2001; Katz, 2005). This involves acceptance of the individual with a focus on maintaining dignity, while at the same time inviting and encouraging change in behaviours that are not helpful in keeping themselves or others safe and in maintaining healthy relationships. Of primary importance is the modelling of skills that help build compassion (Stefanakis, 1999; Katz, 2001). Corvo and Johnson (2003) have written about the “vilification of the batterer” shaping some policies around domestic violence interventions that simply serve to reinforce the problem. This is consistent with research on barriers to desistence from violence (Stefanakis, 1998a). In B.C. a training focus for those delivering the RR and RVT programmes is understanding the principles of motivation and change, learning skills to facilitate motivation and change and understanding the importance of modelling the skills taught in the programme in order to facilitate offenders’ learning and motivation to

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<sup>15</sup> This is consistent with the authors’ findings in their own programmes - 20% stop all forms of violence, 20% continue to be physically violent, and the remaining 60% stop physical violence but continue to engage in some non-physical abusive behaviour that might escalate over time to a re-offence. In these cases the re-offence tends to be less severe and re-focuses the offender on managing behaviour.

change. Katz (2002) suggests viewing clients as “reluctant” to engage in change as opposed to “resistant” leads to more effective motivational strategies and greater therapeutic alliance.

As stated earlier, offenders are individuals with varying treatment needs. Programme effectiveness is often based on “one-time” attendance in a “one size fits all” programme, and focuses on a quantitative measure of violent recidivism. Models of change suggest that offenders enter and leave programmes at different stages of awareness, personal responsibility and motivation to change. It follows that evaluation of programmes would be more meaningful if there was a greater focus on shifts in these factors as opposed to just recidivism. Programmes must be able to take offenders through the stages from pre-contemplation (denial) of the need for change to maintenance of the change. One example of a process oriented model of change was developed from research on men’s desistance from violence (Stefanakis, 1998). A summary of this framework is presented below.

## XXI. FRAMEWORK FOR CHANGE

Based on research and clinical experience with men who have desisted from violence and the current literature on desistance, a framework for change was developed (Stefanakis, 1998ab, 2000). This framework is useful because it makes visible specific obstacles to change and highlights certain interventions that may facilitate change by attending to the particular needs of offenders at particular stages in their change process.

Stefanakis (1998a) identified the following transitional processes in men who desist from violence in relationships: Acknowledging the Abuse, Creating Commitment, Stopping the Violence, and Sustaining Change. These transitions are consistent with the stages of change identified by Prochaska, DiClemente and Norcross (1992) in their Transtheoretical Model of Change (TMC). The five stages of change in the TMC are referred to as the *Precontemplation* (lack of awareness or acknowledgement of the problem, feel coerced into changing, no intention to change), *Contemplation* (some awareness/acknowledgement of the problem but no commitment to change, not accepting responsibility), *Preparation* (accepting responsibility, intention to change), *Action* (accepting full responsibility, taking consistent steps to change) and *Maintenance* (relapse prevention) stages.

Men entering services for assaulting their partners usually enter in the precontemplation or contemplation stages. This is evident in the vast repertoire of denial, excuses and justification strategies they offer when accounting for their violence against their partners. An examination of the cultural context highlights that these responses reflect the common social myths and excuses present in society in general (Davidson, 1998; Stefanakis, 1998b). Men in the preparation stage may still offer some excuses and justifications but they are also beginning to claim agency and responsibility for their actions. In addition, they are beginning to talk about the need to change their lives in some way. In the action stage men are taking full responsibility for their actions and actively using non-violent strategies (e.g., time-outs, appropriate listening and assertiveness skills, respecting boundaries). Their dialogue about violence begins to centralize around the idea of having choices across most contexts and situations. Finally, the maintenance stage is characterized by men’s active involvement in relapse prevention efforts. These efforts may include ongoing involvement in men’s treatment groups or finding other ways of becoming part of the solution instead of the problem.

Understanding where each man is at in the stages of change helps identify issues that need to be addressed in order to facilitate and invite change. Movement past the precontemplation stage involves *Acknowledging the Abuse*. Here the men need to accept the notion that they are responsible for their acts of violence, while maintaining a belief that they remain redeemable as people. Helpers can engage men in the process of change by recognizing this dilemma. This involves naming the abuse explicitly and educating the men around the various forms of abuse without judging the character of the men. It is important to speak about actions rather than identities (Stefanakis, 1997). For example, it is possible to explicitly label a man’s actions as abusive without labelling him as an abuser. The difference in emphasis may seem minor but the authors believe it is an essential component to engaging men in the early stages of treatment and overcoming reluctance to change. It increases the men’s willingness to be accountable. Another useful strategy involves helping the men to identify how they have resisted the use of abusive and controlling behaviours in some difficult situations in the past. This exercise helps the men identify that they are not

simply seen as abusive men and it challenges the common excuse of “losing it” since, by their own accounts, they have demonstrated control in difficult situations and reinforced the notion that violence is a choice.

Movement to the preparation stage involves *Creating Commitment* to change by the men. One way to help this process is to document the effects of the violence and abuse across all aspects of the man’s life. The men are often surprised by the extent of the harm and the amount of people affected by their acts of violence and abuse. In addition, they often do not recognize the harm they are causing themselves. Katz (1998) suggests that commitment comes primarily from recognition of how their abusive behaviour is affecting their own lives and preventing their own safety, security and sense of self-worth. In addition, the authors have both witnessed strong motivation in men who suddenly recognize the impact of their behaviour on their children. A need to have a “good father” as part of their identity helps to build commitment. All of these factors create a reasonable justification to change; it is easy for participants to recognize that any reasonable person would move towards change. The decision to change, in the context of this new knowledge, has the positive effect of supporting a positive identity for the man while allowing him to accept responsibility for his past violence.

Another barrier to commitment involves the search for the causes of violence, a barrier that is often supported by well-meaning professionals. Thus, the men identify many theories that explain their violent behaviours. These may include anger management problems (e.g., impulse control disorder), substance abuse or family upbringing. Although an identification of these issues is important, treating them as causes tends to excuse the men from taking full responsibility for their actions (Jenkins, 1990). It is useful to deconstruct many of these misconceptions in a way that helps men recognize that these explanations are unacceptable and argue for their own change (Jenkins, 1990). Consequently, violence, as an inevitable response to certain circumstances or experiences, cannot be as easily justified or excused and, therefore, becomes less likely.

Another way to help the men take a stand against violence and abuse involves helping them identify their own personal values and then contrasting these values with the abusive behaviour in which they have engaged (Stefanakis, 2000). Similarly the men can be invited to identify with valued identities that are incompatible with abuse (e.g., a caring father). These strategies serve several goals. First, they move the men away from feeling coerced into changing by the system because they are invited to live up to their own values. Thus, the men begin to argue for their own change rather than having others argue for them to change. Second, the explicit recognition that their actions are incompatible with their values creates a personal crisis in meaning that acts as a catalyst for change. Third, the process of identifying positive values helps the men claim a positive identity even as they accept responsibility for their abusive behaviours. Thus, they can distance themselves from pathological labels. Finally, a discussion of personal values brings forth, in a secular way, aspects of spirituality into the discussion of change. This spiritual dimension can be a powerful resource for the men, for ourselves and for the change process (Trimble, 2000; Kiyoshk, 2003).

Movement to the action stage and *Stopping the Violence* involves helping men make non-violent choices and helping them claim non-violent identities. Skill development is most appropriate at this stage (e.g., communication skills, stress management techniques, etc.) with an emphasis on the meaning of the skills taught. For example, the men can be guided to recognize that having/learning these skills means that they have choices and, therefore, excuses for using violent or abusive behaviours become untenable. In addition, it is useful to have the men bring forth situations when they have not acted abusively. This is useful in terms of identifying and reinforcing skills and also in terms of reinforcing the claims of a new non-violent self identity.

As the men begin to demonstrate changes peer pressure to maintain the status quo may begin to act as an obstacle to ongoing change. The men may also be dealing with personal barriers such as the belief that their changes will have an immediate positive effect on their relationships. Thus, helping the men form new supportive relationships that sustain non-violent norms and supporting them in dealing with daily challenges and unrealistic expectations can be very beneficial.

Finally, *Sustaining Change* involves helping the men stay active in the process of change. Setbacks need to be talked about, not as failures of character, but as opportunities to learn. This needs to be done without

minimizing the impact of an act of abuse on another person. The men will also face ongoing challenges in dealing with contradictory cultural expectations (requirements to be aggressive at work or in sports) and personal difficulties that may have been hidden through the use of violence and controlling behaviours (e.g., personal experiences of victimization). Current and future issues need to be identified and discussed. If necessary, other resources need to be made available to the men. Strategies that help the men become part of the solution instead of the problem are also useful. These can include helping other men stop violence or volunteering in other domains of life. Helping others becomes a wonderful reinvestment in self and society. Teaching others is a way of reinforcing learning in ourselves. In essence, sustaining change requires the ability to argue for non-violent solutions to problems.

The strategies discussed here are not meant to be an exhaustive list of effective intervention strategies for change. This framework of change is most useful as a tool that helps the therapist explore and identify potential barriers to change and potential interventions to facilitate change. In addition, the framework highlights that the responsibility for ending violence in our culture lies with everyone. Individual responsibility by perpetrators of violence does not excuse social or community responsibility from creating and reinforcing beliefs and institutions that support, legitimize and sustain non-violence in relationships. Therefore, although the men in these programmes must be held accountable for their actions, it is incumbent on society to create change by challenging notions that sustain violence (e.g., anger causes violence, male-to-male violence is normal) and ensuring all violence is seen as a criminal justice issue.

Finally, any programme is only as good as the manner in which it is facilitated. While content is important, the process of interaction between the facilitator and the participant is of critical importance. A process built on compassion for the individual along with invitations to change behaviour needs to be the framework in which this work is done.

## **XXII. PROGRAMME CONTENT**

Regardless of treatment model, court-mandated programmes have common procedures that include intake, assessment, participation agreements, victim contact, orientation, group treatment and follow-up (Healey, Smith, and O'Sullivan, 1998). Typically programmes for male domestic violence offenders include the following content areas:

- identifying abusive behaviours
- identifying the elements of respectful relationships
- identifying individual factors that get in the way of having stable relationships and high risk situations
- confronting minimization, denial and blame
- changing beliefs that lead to violence
- teaching skills for managing difficult emotions
- conflict resolution skills and assertiveness skills
- understanding the impact of abuse on self, partner and children
- empathy and compassion building
- communication skills; problem solving skills
- self-care
- managing jealousy
- family of origin work
- parenting skills
- financial management
- healthy intimacy and sexual interactions

There is a strong focus on stopping all forms of abusive behaviour in programmes since violence in relationships usually starts with and exists in concert with other forms of controlling and abusive behaviours. Katz (1998) has suggested that a focus on building the Emotional Intelligence Competencies of self-awareness, self-regulation, motivation, empathy and compassion and social skills is a useful framework for programmes for both men and women who use violence in relationships. The ability to take responsibility for the emotional and physical safety of self and others is required.

### **XXIII. VICTIM SAFETY**

This work with men has as its primary goal the safety of women and children in relationships. This doesn't suggest that the man's needs are second. In fact, it is easily argued that the programmes are also about keeping the men safe. It takes time for change to occur, however, and programmes need to provide external structures for safety while the men are building internal structures. These need to include:

- Contact with women partners before and during the programme.
- Referral to resources such as counselling, shelters and legal aid.
- Notification if the man stops attending the programme or if there is any indication she may be at risk.
- A clear message that simply because a man is attending treatment does not ensure her safety. (Programmes must not be used as part of her safety plan.)
- Safety takes priority over confidentiality.
- Programme facilitators do not advocate for custody, removal of no-contact orders or reconciliation.
- While the men are often very likeable in the group programmes it is important to remember the potential for violence that exists in the primary relationship.
- The development of clear standards of practice regarding safety.

### **XXIV. COMMUNITY COORDINATION**

As this paper has stressed in various ways, one of the key features in effective programmes is integration of services. One of the strengths of the response to domestic violence in B.C. in the early years was the strong focus on community coordination. Many communities had committees comprised of representatives from victim services, women's shelters, police, crown counsel, probation, hospitals, mental health services, child welfare services, clergy and other family services. A key component of these committees was to recognize their shared vision of stopping violence and to work in their own agencies and together to develop policies which would be more likely to lead to reduction of violence against women in relationships. The following are recommendations that will help make coordination effective:

- Get the right people on board. Include people with power to make change in their organizations.
- Make a commitment to collaboration and hold regular meetings.
- Work together on mission, vision and values.
- Have the courage to speak up about personal experiences and problems in the system. Address territoriality, confidentiality and inequality in status and power of those at the table.
- Honour each other's work.
- Coordinate activities within and between organizations and initiate multi-disciplinary and inter-agency education and training.
- Establish protocols for interdisciplinary collaboration and service delivery.
- Collaborate on projects.
- Build trust by undertaking concrete, achievable tasks.
- Work together to educate and engage the public.

The benefits of coordination are many for those involved. They include: reduction in duplication of services and gaps in service, reduction in competition for resources, reduction of time it takes to get through the system, increase in innovative methods of preventing abuse, increased awareness of resources, and reduction in feelings of isolation.

### **XXV. FUTURE DIRECTIONS**

Clearly there remains a great deal of work to do in stopping violence in relationships. In Canada, the economy and shifting political agendas has an impact on the funding and availability of programmes. Some significant issues we continue to find include the fact that funding for prevention remains limited in scope and standardization of programmes has the potential to stop innovation and lead to a belief that the job is done. Despite this, the work in British Columbia and Canada as a whole has done much to inform knowledge and practice with respect to intervention and treatment.

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# VIOLENCE AND PUBLIC HEALTH: AN INTEGRATED, EVIDENCE-BASED APPROACH TO PREVENTING DOMESTIC VIOLENCE AND CHILD ABUSE

By Alexander Butchart\*



## I. INTRODUCTION

Domestic violence and child abuse are both serious problems in their own right and highly significant contributors to the burden of ill health in countries the world over. Along with other types of violence to which they are causally related - such as youth violence, elder abuse and suicide - child abuse and domestic violence are therefore challenges for public health. In addition to the massive direct costs of treating injuries due to violence, most types of violence, but especially child abuse and intimate partner violence, have enormous non-injury health consequences including alcohol and drug abuse, depression and anxiety disorders, suicide and suicide attempts, obesity and eating disorders, unsafe sexual behaviour and sexually transmitted diseases (including HIV-AIDS) and smoking.

Violence - including child abuse and domestic violence - is, however, preventable. As shown by a growing body of scientific research, interventions that address the underlying causes of violent behaviour and victimization are effective in preventing new instances of violence. When applied at the population level to entire communities and societies, such interventions have been shown to be both effective and cost-effective.

Although there are relatively few published economic evaluations of interventions targeting interpersonal violence, available studies show that preventive interventions to stop interpersonal violence occurring cost less than the money that they save, in some cases by several orders of magnitude.

For instance, the costs of a USA programme to prevent child abuse equalled 5.0% of the costs of child abuse itself. Also in the USA, interventions that targeted juvenile perpetrators of violence - including aggression replacement training and foster care treatment - resulted in economic benefits that were more than 30 times greater than the corresponding costs<sup>1</sup>.

### A. World Report on Violence and Health<sup>2</sup>

The impacts of violence on public health, the drain on health services of treating the consequences of violence, and the fact that violence is preventable are among the main reasons why the World Health Organization (WHO) has in recent years scaled up its commitment to promoting the prevention of violence. In the year 2002, WHO published the *World report on violence and health*, and this report forms the foundation of the Organization's violence and health activities at the global, regional and country levels. The report represents the first ever comprehensive review of violence on a global scale, and through an exhaustive review of the best available scientific studies looks at the magnitude and impact of violence, risk factors, interventions and policy responses, and a set of recommendations for national and international action, all of which are discussed below.

Violence has many faces, some of which are highly visible and others of which we are only barely aware. The report addresses all of these, including youth violence occurring among persons aged 10-29 years;

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<sup>1</sup> For a review of the literature on the costs of violence and cost effectiveness of prevention, see Waters H, Hyder A, Rajkotia Y, Basu S, Rehwinkel JA, Butchart A. *The economic dimensions of interpersonal violence*. Department of Injuries and Violence Prevention, World Health Organization, Geneva, 2004.

<sup>2</sup> Unless otherwise indicated, all statistics and findings cited in this paper are from the *World report on violence and health*. Krug EG et al., eds. *World report on violence and health*. Geneva, World Health Organization, 2002.

collective violence, particularly armed conflicts; sexual violence, largely against women and girls, but also men and boys; suicidal behaviour; elder abuse; violence by intimate partners, and child abuse and neglect by parents and caregivers. Also included is a statistical annex with country and regional data from the WHO Database and Global Burden of Disease project for 2000, and a list of resources for violence prevention.

## **B. Objectives**

This paper has six objectives.

- The first objective is to review the definition and typology of violence developed by WHO and from this to highlight the importance of dealing with child abuse and domestic violence in an integrated way, as part of the larger problem of preventing suicide and interpersonal violence in general.
- The second objective is to describe what is known about the magnitude and impact of different types of violence, and, as importantly, to highlight how much is not known about this aspect.
- The third objective is to describe what's known about risk factors and causes, especially those that underlie multiple types of violence.
- The fourth objective is to review the current status of prevention efforts and describe what is known about the effectiveness of different approaches – touching upon all types of violence to the extent possible.
- The fifth objective is to provide a snapshot of WHO's Global Campaign for Violence Prevention, focusing upon its recommendations for multi-sectoral prevention programming.
- The sixth and final objective is to highlight some of the implications of the public health approach to violence prevention for the criminal justice sector's work on child abuse and domestic violence.

## **II. DEFINITION AND TYPOLOGY OF VIOLENCE**

### **A. Definition of Violence**

The *World report on violence and health* defines violence as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation”. This definition reflects extensive review of other definitions of violence and thorough consultation with international experts. While every word of the definition is important, it is worth highlighting the fact that the definition identifies violence as including both threatened and actual physical force or power and that it does not limit violence to only those acts resulting in physical injuries but also includes psychological harm, deprivation and maldevelopment.

The report also stresses the importance of using operational definitions for particular forms of violence (such as violence involving firearms, knives and blunt instruments, child sexual abuse and intimate partner violence) that permit their unambiguous identification for measurement purposes, that are shared between different sectors, and that permit international comparability. The operational definitions contained in the various editions of the *International Classification of Diseases*<sup>3</sup> come closest to meeting these criteria.

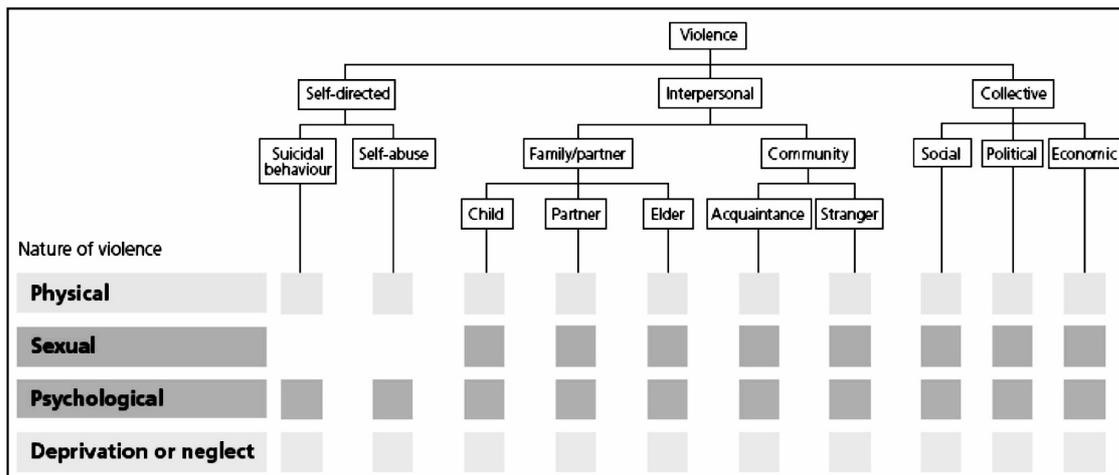
### **B. Typology of Violence**

To properly understand the problem of violence in a way that assists in showing where and how we can intervene to prevent it, a typology of violence, such as the WHO typology shown in Figure 1, is useful. At the first level this typology differentiates between violence people inflict upon themselves, interpersonal violence inflicted by another individual or small group of individuals, and violence inflicted by larger groups such as states.

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<sup>3</sup> International Statistical Classification of Diseases and Related Health Problems 10th Revision. Version for 2003 <http://www3.who.int/icd/vol1htm2003/fr-icd.htm>.

Figure 1: Typology of violence from *World report on violence and health*



Self directed violence is divided into suicidal behaviour and instances of self-abuse. Interpersonal violence is divided into family and partner violence, and community violence. Collective violence is divided into social, political and economic violence. For each subtype of violence, the typology also includes the nature of violent acts, which can be physical, sexual, psychological, or involving deprivation or neglect.

While there is conceptual and practical value in distinguishing between these different types of violence, it also important to emphasize that there are many important links between them, and therefore that preventing one type of violence may help prevent other kinds of violence. For instance, war is a major risk factor for suicide and interpersonal violence, while interpersonal violence involving child maltreatment is a risk factor for suicidal behaviour and for becoming a victim or perpetrator of intimate partner violence in later life.

### III. MAGNITUDE AND IMPACT OF VIOLENCE

#### A. Fatal Violence

Globally, violence is a substantial problem even when measured in terms of the deaths that it causes, which, as described below, represent only a small fraction of the full burden of its negative social and economic consequences. According to WHO burden of disease estimates, in the year 2000 there was a global total of over 1.6 million deaths due to violence. This was around half the number of deaths due to HIV/AIDS, roughly equal to deaths due to tuberculosis, somewhat greater than the number of road traffic deaths and 1.5 times the number of deaths due to malaria.

In the year 2000, and contrary to the impression created by the massive media coverage of collective violence, the largest number of violent deaths was due not to war but to suicide: 815,000 cases, or one suicide every 40 seconds. Interpersonal violence accounted for 520,000 deaths: or one murder per minute. There were 310,000 deaths directly due to collective violence or one war death every two minutes.

#### 1. Global Homicide Rates

Rates of violent death vary by country and region income levels. For the year 2000, homicide rates were highest in Africa, Latin America and central and Eastern Europe, and lowest in Western Europe and some countries in the western Pacific. Studies show a strong relationship between homicide rates, economic development and economic inequality with poorer countries (especially those with large gaps between the rich and poor) tending to have higher rates of homicide than wealthier countries, and poorer communities in high inequality societies have higher homicide rates than their wealthier counterparts.

By age and sex there were marked differences in homicide rates. Gender differences were least marked for the age groups 0-4 and 5-14 years. For the age groups 15-29 and 30-44 male rates were four times as high as female rates and for the remaining age groups around 2.5 times as high as female rates. From age 15 onwards female rates showed little difference between age groups while male rates varied substantially.

## 2. Global Suicide Rates

Suicide rates show a very different geographical distribution to homicide rates. Except for central and eastern Europe which have high homicide and high suicide rates, the highest suicide rates occur in regions where homicide is lowest, and, at the country level, wealthier countries tend to have higher levels of suicide than poorer countries (though, this may also reflect gaps in information; for example, there is little information on suicide in Africa).

Suicide rates showed a clear trend towards increasing gender differences with age. At 5-14 years rates for males and females were roughly equal, whereas from age 45 onwards male rates were nearly twice as high as female suicide rates.

Owing to the inadequacies of data on collective violence, WHO burden of disease statistics do not include similar information for war deaths, although the *World report on violence and health* notes that, like homicide, war death rates were lowest in high-income countries and highest in low- and middle-income countries.

Deaths are only the tip of the violence iceberg, and even in terms of knowing the real size of this tip there is a very long way to go. In over half the world's countries there is no adequate information about how many people die by violence.

### **B. Non-fatal Violence**

The violence recorded in routinely available data, such as vital statistics and crime reports, is mainly that which leads to fatalities. By contrast, the much larger burden of violence is non-fatal. To count non-fatal health outcomes one could begin by looking at cases reported to health agencies or to the police. Only small proportions present at both the health agencies and the police, and studies from several countries show that for every victim reporting to the police at least two more report only to health agencies. The health burden this represents is illustrated by the fact that for every young person murdered at least 20 to 40 other young people receive hospital treatment for a violent injury. Given that there are approximately 200,000 youth homicides each year, this means that globally there are between four and eight million hospital presentations each year for youth violence alone.

Moving away from health facilities, epidemiological studies show that an even larger proportion of violence is reported in household surveys and special studies, and it is here that female victims often outnumber male victims. These studies have shown, for instance, that up to 70% of women report being a victim of intimate partner violence at some point in their lives. One in five women versus one in 10 men report being sexually abused as a child. For 90% of cases involving female victims of child sexual abuse the perpetrators are male, as they are for 70% of male child sexual abuse victims. Up to 40% of first sexual encounters are forced. About 4% to 6% of the elderly report having been abused in their homes by caregivers, with elderly males and females equally at risk for being abused by spouses, adult children and other relatives. Many older citizens have also been subjected to abuse in institutions.

Unfortunately, a lot of violence never gets reported – whether due to fear, shame, the acceptance of violence as normal and therefore unremarkable, or the inadequacy of reporting and recording systems.

### **C. Health Consequences and Economic Costs of Violence**

Beyond counting the deaths and injuries due to violence, the Report shows that it is of critical importance to look at the non-injury health consequences of violence, which are especially important for child maltreatment and intimate partner violence. These non-injury health consequences are many and include: physical consequences, such as gastrointestinal disorders and chronic pain syndromes; mental health consequences, such as depression, anxiety disorders and post-traumatic stress disorder; behavioural problems such as alcohol and drug abuse, eating and sleep disorders, unsafe sexual behaviour, smoking and other risk-taking behaviours; reproductive health consequences, such as infertility, gynaecological disorders, sexual dysfunction, unwanted pregnancies or pregnancy complications, and sexually transmitted infections, including HIV/AIDS.

In the case of collective violence, conflicts also destroy infrastructure and disrupt vital services such as immunization, medical care, and food production and distribution – contributing to infectious diseases and famine.

The human toll is only one dimension. Violence also puts a massive burden on national economies costing billions in US dollars each year when the direct costs associated with health care, emergency response services and law enforcement are combined with the many indirect costs such as lost productivity, quality of life and strains on economic development.

#### IV. RISK FACTORS FOR VIOLENCE

To prevent violence and reduce its consequences it is necessary to understand the causes of violence. A major finding of the *World report on violence and health* is that no single factor explains why one individual, family, community or society is more or less likely to experience violence. Instead, it shows that violence is rooted in the interaction of factors ranging from the biological to the political. The Report captures this in an ecological model that organizes the risk factors for violence into four interacting levels: the individual, close relationships, community contexts and societal factors.

Individual-level risks include demographic factors such as age, income and education; psychological and personality disorders, alcohol and substance abuse, and a history of engaging in violent behaviour or experiencing abuse.

The relationship level explores how relationships with families, friends, intimate partners and peers increase the risk of becoming a victim or perpetrator of violence, and risk factors at this level include poor parenting practices and family dysfunction, marital conflict around gender roles and resources, and associating with friends who engage in violent or delinquent behaviour.

The community level refers to the contexts in which social relationships occur such as neighbourhoods, schools, workplaces and other institutions, and the Report identifies a number of community characteristics that increase the risk for violence – for example, poverty, high residential mobility and unemployment, social isolation, the existence of a local drug trade, and weak policies and programmes within institutions.

At the societal level the Report identifies broad factors contributing to a climate that encourages violence, including economic, social, health, and education policies that maintain or increase economic and social inequalities, social and cultural norms supporting the use of violence, the availability of means (such as firearms) and weak criminal justice systems that leave perpetrators immune to prosecution.

#### V. THE PUBLIC HEALTH APPROACH TO PREVENTION

Violence is often seen as an inevitable part of the human condition – a fact of life to respond to, rather than to prevent. By contrast, the notion that violence is preventable is a basic tenet of the public health approach. In moving from problem to response, the public health approach has four steps. The first step is to statistically describe and monitor the extent of the problem; to identify the groups and communities at risk. The next step is to identify and understand the factors that place people at risk for violence – to assess which factors may also be amenable to intervention. The third step is to develop and evaluate interventions to reduce these risks, and the fourth is to implement and apply widely the measures that are found to work. By linking ongoing statistical description and monitoring of the problem to the fourth step of widespread implementation, the four steps form a feedback loop through which the effectiveness of violence prevention programmes can be constantly monitored and improved.

The public health approach is population-based. It emphasizes primary prevention – doing something about the problem before it occurs. It draws upon a wide range of expertise across many sectors, and it is based in science. It asserts that everything – from identifying the problem and its causes, to planning, testing and evaluating responses – should be based on sound research and informed by the best evidence.

To look forward and build a future violence prevention agenda, it is useful to have a sense of where the field of violence prevention is now. The following sections, mainly based upon analysis of the evidence collected in the *World report on violence and health*, therefore show the current status of prevention efforts in order to highlight what works and what's promising, and to identify areas where more attention is needed.

##### A. Public Health Interventions

Public health interventions are traditionally characterized in terms of three levels of prevention: primary

prevention – approaches that aim to prevent violence before it occurs; secondary prevention – approaches that focus on the more immediate responses to violence, such as pre-hospital care, emergency medical services or treatment immediately following a rape or an injury sustained as a result of violence; tertiary prevention – approaches that focus on long-term care in the wake of violence that has already occurred, such as rehabilitation and reintegration, attempts to lessen trauma or reduce the long-term disability associated with violence. The three levels of prevention are defined by their temporal aspect – whether prevention takes place before violence even occurs, immediately afterwards or over the longer term. While these levels of prevention have traditionally been applied to victims of violence and within health care settings, they are also relevant to perpetrators and have been used to characterize judicial responses.

When we look at where the emphasis of prevention programmes has been placed in terms of timing (before, soon after, or long-term care), there are some differences by type of violence. In youth violence, the majority of efforts have focused on primary prevention. There have been programmes for youth already involved in violent and delinquent behaviour and initiatives aimed at “getting tough on crime” – detaining juveniles, boot camps, shock incarceration programmes, and trying and sentencing youth in adult courts for serious offences – but on balance, there have been many more prevention efforts aimed at curbing violent behaviour before it occurs. And there has been a growing emphasis on early intervention in childhood – as a way of disrupting or changing the developmental trajectories of violence.

With intimate partner violence, sexual violence, child maltreatment and elderly abuse, the majority of efforts have been focused on secondary/tertiary prevention – that is, identifying victims and providing the necessary care and services to prevent re-victimization. There have been primary prevention efforts in schools and communities, and efforts aimed at parents and caregivers, but on balance, there have been more efforts aimed at secondary/tertiary prevention.

It is important to keep in mind that this is not an either/or proposition. As stated in the Report, we must do what we can to strengthen responses for victims of violence and make sure that offenders are punished, but we also need to develop and test programmes and strategies aimed at preventing violence from happening in the first place.

## **B. Ecological Model – Systems of Influence**

Another way of looking at violence prevention programmes is by their level of influence. The ecological model was used in the *World report* to illustrate the complex and multifaceted nature of violence. As outlined in Section IV above, violence has its roots in the interaction of many factors – biological, social, cultural, economic and political. It is the outcome of a complex interaction between context and person – not person alone; and not context alone.

Each level in the ecological model can be thought of as a level of influence and also as a key point for intervention. That is, we can attempt to modify individual behaviour directly; we can modify individual behaviour by influencing the close, interpersonal relationships of people such as family environments; we can influence behaviour by modifying the settings people move through – for example, schools, workplaces or neighbourhoods. And we can make more societal, system-wide changes to improve (for example), educational or economic opportunities or change cultural norms. In short, we can aim to modify individual behaviour directly, and we can also attempt to change the environments and systems that create the climates for violence to occur.

If we look at the emphasis of prevention programmes by their level of influence, we can see that across the different types of violence, there is an imbalance in the focus of prevention programmes – there have been far more efforts aimed at changing individual and relationship factors than there have been at changing community or societal factors. In other words, more emphasis has been placed on changing individual attitudes, beliefs, and behaviours than on the factors or systems that create the conditions for violence to occur. In some ways this is not surprising because it is much easier to design these types of programmes and it is also much easier to evaluate them.

## **C. Types of Outcomes**

Outcomes are also very important in violence prevention efforts. We can think of outcomes in terms of a continuum – with knowledge change at one end and reductions in injuries and deaths at the other end. We

can also think of these as a causal chain with change in one potentially leading to change in the next one – although this is not always the case. In terms of the outcomes generally studied, there have been more efforts across the different types of violence geared towards changing knowledge and attitudes than behaviour. Behaviour change is an important outcome and should be an important goal of prevention efforts. As one might expect, smaller-scale research efforts have generally not included injuries and deaths. These are more rare outcomes and it is difficult to see a significant change in these outcomes with a smaller-scale prevention trial.

## VI. EVIDENCE-BASE FOR VIOLENCE PREVENTION PROGRAMMES<sup>4</sup>

From the perspective of public health, a fundamental question is “Do violence prevention programmes work?” That is, “Are there certain interventions, programmes or strategies that are effective in preventing or reducing violence?” To answer this question, this section reviews the evidence base for effective violence prevention programmes. Before doing so, it is important to note that the evidence-base for prevention programmes has largely come from developed countries. This is not to say that prevention programmes are not in place in developing countries, but rather that many have not been systematically and rigorously evaluated. It is important to keep this in mind when reviewing what is known about the effectiveness of different approaches.

To begin, it is necessary to define “effective”. Testimonials about a programme are useful because it is important to know that a programme is running smoothly and that the participants seem to be getting a lot out of the programme. But testimonials are insufficient when it comes to knowing whether or not the programme is producing change in behaviour or in the factors that mediate or moderate violence.

Various criteria for effectiveness have been proposed. The most stringent include an evaluation of a programme using a strong research design, either experimental or quasi-experimental; evidence of a significant preventive effect; evidence of sustained effects (that is, they are maintained beyond treatment or participation in the programme); and replication of the programme with demonstrated preventive effects. As you might expect, few programmes meet all of these criteria.

In the following sections, the term “effective” refers to programmes that have been evaluated with a strong research design and have evidence of a preventive effect; “promising” to programmes that have been evaluated with a strong design and have some evidence of a preventive effect, but require more testing; and “unclear” to programmes that have either been poorly evaluated or remain largely untested.

A useful way to review what is currently known about the effectiveness of different interventions is to consider it according to the different levels of influence mentioned earlier, namely the individual; close relationships; community and society levels of influence.

### A. Individual-Level Interventions

Individual-level interventions are those designed to change an individual’s attitudes, beliefs and behaviours directly. It does not matter where the intervention takes place, if it is designed to change the attitudes, beliefs, and behaviour of an individual directly it is considered an individual-level intervention.

Programmes designed to prevent unintended pregnancies and to get women to seek adequate prenatal and postnatal care are believed to be key in ensuring better birth outcomes and reducing the risk for child maltreatment and the early developmental risk factors for youth violence. Both strategies, however, require more testing, particularly in terms of these outcomes. Interestingly, a year 2000 study by US economists John Donohue and Steven Levitt<sup>5</sup> attributes the more than 50% decline in the US teenage murder rate during the 1990s to the impact of legalising abortion 20 years earlier, in 1973. Legalized abortion meant fewer unwanted children, and fewer unwanted children meant that 20 years later there were fewer individuals with socialization and substance abuse problems, and less violence.

<sup>4</sup> This section is adapted from: Dahlberg LL, Butchart A. State of the Science: Violence Prevention Efforts in Developing and Developed Countries. In press, *Safety Promotion and Injury Control*.

<sup>5</sup> Donohue J, Levitt S. The Impact of Legalized Abortion on Crime. *The Berkeley Law & Economics Working Papers*. Volume 2000, Issue 2, 2001 Article 7.

Preschool enrichment programmes are designed to strengthen bonds to school and to introduce children early on to the social and behavioural skills necessary for success in school. Long-term follow-up studies of prototypes of such programmes have found positive benefits including less involvement in violent and other delinquent behaviours (e.g. the Perry preschool programme). This is in the promising category because there have only been a few long-term studies.

Social development/life-skills training programmes are designed to build social, emotional, cognitive and behavioural competencies. They are often multi-component programmes that help participants manage anger, resolve conflicts and develop social and other life-skills. These appear to be an effective strategy for reducing youth violence and have also yielded positive, although short-term, results for dating violence.

Educational incentives for high risk youth to complete schooling are also among the most effective and cost effective approaches to preventing youth violence. A study by the Rand Corporation<sup>6</sup> showed that, in California USA, graduation incentives for high risk youth were 5-7 times more cost-effective in achieving a 10% reduction in violence and crime than increased incarceration.

The evidence for counselling and therapeutic approaches is mixed. Counselling or psychotherapy is not an effective strategy for reducing youth violence. There is, however, some evidence that cognitive-behavioural therapy administered shortly after a sexual assault can hasten the rate of improvement and lessen trauma, and there is evidence that it may be an effective approach in reducing suicide attempts; in both cases, while promising, the evidence is not conclusive.

Some programmes provide training to police, health care providers, and employers to make them better able to identify and respond to the different types of violence. Training police has proved largely ineffective in changing police behaviour primarily because it has not always been accompanied by or reinforced with efforts to change attitudes and organizational culture. In terms of health care providers, training has led to changes in knowledge and awareness in the short term, but these changes have not always translated into behavioural change or changes in practice. And there has been little evaluation of programmes for employers.

Programmes for men who physically and sexually abuse their partners have helped some men modify their behaviour, but there is generally a very high drop-out rate and many who are referred to these programmes never complete them. These programmes work best when they continue for longer rather than shorter periods; change men's attitudes enough for them to discuss their behaviour; sustain participation, and work in tandem with a criminal justice system that acts strictly when there are breaches of the conditions of the programme.

## **B. Relationship-Level Interventions**

Relationship-level interventions focus on changing behaviour by influencing close, interpersonal relationships and proximal environments, such as the family environment.

The evidence for programmes that focus on family relationships and functioning, particularly on family management, problem-solving, and parenting practices – is quite strong, consistent, and among the best evidence we have for reducing child maltreatment and other negative outcomes, including youth violence. The most successful programmes address both the internal dynamics of the family and the family's capacity for dealing with external demands. The earlier these programmes are delivered in the child's life and the longer their duration, the greater the benefits. Programmes that simply provide parents with information, however, are not effective.

For child abuse, evaluations of intensive family preservation services (which are geared towards keeping the family together and providing intensive services over a short period of time) have been limited and their findings inconclusive mainly because these programmes offer a large variety of services (making it difficult to know which are effective) and relatively few studies have included a control group.

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<sup>6</sup> Greenwood PW et al. (1996). *Diverting children from a life of crime: measuring costs and benefits*. Santa Monica, CA, The Rand Corporation.

A warm and supportive relationship with a positive adult role model is thought to be a protective factor for youth violence, and some well-designed studies do suggest that this is the case. However, there is also substantial variability with respect to mentoring programmes and participation by both the mentors and the youth can be uneven. Negative effects have been reported particularly where there has been little training and breakdowns in the relationships with mentors.

Peer interventions emphasize modifying behaviour by changing the nature of peer interactions, changing peer group norms, or redirecting peer group activities. The latter, for example, have been tried with gangs. There is little evidence to date that these types of approaches are effective in reducing violent behaviour, particularly as single component programmes. Some have also led to unintended increases in violent behaviour. One of the failed ingredients in these types of approaches is the mixing of high-risk youth together – which has had the unintended consequence of increasing cohesiveness and facilitating delinquency.

### **C. Community-Level Interventions**

Community-level interventions focus on modifying the characteristics of settings that promote violent behaviour or create the conditions for violence to occur. Interventions at this level also focus on changes to institutional environments by means of appropriate policies, guidelines and protocols.

There have been a number of efforts aimed at improving school settings with policies and programmes that are designed to promote a consistent, pro-social, non-sexually and physically-violent environment in classrooms and throughout the school. Attention has been paid to classroom management practices, promotion of cooperative learning techniques, teacher/staffing practices, student monitoring and supervision, changes to the physical environment, and efforts to increase student engagement, reduce bullying, and involve parents/caregivers. And the evidence to date suggests that these types of environmental change programmes are promising. Several have been evaluated with rigorous designs and have evidence of a preventive effect. Further evidence of sustained effects and replication will place these in the effective category.

The evidence-base for other settings, however, is less developed. Active screening for abuse – whether for intimate partner violence, sexual violence, child maltreatment or elderly abuse – is generally considered good practice. Unfortunately, little systematic evaluation has been carried out on whether screening for abuse can improve safety and health-seeking behaviour – and if it does, under what conditions.

Efforts to improve workplace, residential and primary care environments by means of appropriate policies, guidelines, and protocols for identifying and managing abuse and for promoting healthy and non-violent behaviour have also not been rigorously and systematically evaluated.

More has been done along the lines of changing community attitudes, beliefs, and norms surrounding violence with the use of public information campaigns. Multi-component prevention campaigns have been launched to address gang violence, bullying, child maltreatment, and domestic and sexual violence. In general, these types of campaign have increased knowledge and awareness, as well as shifts in social norms concerning domestic violence and gender relations, and some have led to increases in disclosure of child abuse and sexual offending, but have not consistently led to changes in behaviour.

Other types of community-level interventions focus on community organizing, coordination of services, proactive policing, increased cohesion among community residents, the density of housing, and the availability of alcohol. Most have either been poorly evaluated or remain largely untested. Community coalitions, coordinating councils or interagency forums, for example, have been used to monitor and improve responses to intimate partner violence. Their aim is to identify and address problems in the provision of services, promote good practice through training, and to promote community awareness and prevention work. This type of intervention has been popular in the United States, Canada, and the United Kingdom and in parts of Latin America. Coalitions have also been put in place to raise awareness about the problem of youth violence, and similar coordinated community interventions have been put in place in parts of Africa to address child sexual abuse. These types of intervention have seldom been rigorously evaluated and the limited findings that do exist suggest that the efficacy of the services provided, particularly in the cases of partner violence and child abuse, may be more important than the community organizing per se. Efforts to

reduce the availability of alcohol, by, for instance, reducing the number of points of sale, the hours of sale, and the price of alcohol show promise in preventing youth violence.

#### **D. Societal-Level Interventions**

Societal interventions focus on the cultural, social and economic factors related to violence – addressing such issues as access to means, gender, economic or educational inequality – and emphasize changes in legislation, policies, and the larger social and cultural environment to reduce rates of violence.

Measures for reducing access to means include restricting access to guns (e.g., bans on certain types of firearms, waiting periods, rules on licensing and registration, stricter policing of illegal possession and trafficking of guns, and rules for storing them safely). With suicide, it also includes fencing in high bridges, limiting access to roofs and high exteriors of tall buildings, automatic shut-off devices for motor vehicles, restricting access to pesticides and fertilizers, and measures to make prescription drugs safer (e.g., packaging and monitoring size and use).

There is some evidence that restricting access to means is effective in reducing suicide. With interpersonal violence, there have also been a few studies showing a preventive effect. However, a recent systematic review of all the measures pertaining to firearms found insufficient evidence to conclude whether or not such measures are effective – citing inconsistencies in the findings and serious methodological flaws in the studies themselves.

The evidence for legislative and judicial remedies is also mixed. Measures to criminalize abuse by intimate partners, to broaden the definition of rape, to criminalize the harsh, physical punishment of children in various settings, and mandatory reporting laws for child and elderly abuse have been instrumental in bringing these issues out in the open and dispelling the notion that violence is a private family matter. In this regard, they have been very important in shifting social norms. However, the evidence surrounding the deterrent value of arrest in cases of domestic violence shows that it may be no more effective in reducing violence than other police responses such as issuing warnings or citations, providing counselling or separating couples. Some studies have also shown increased abuse following arrest, particularly for unemployed men and those living in impoverished areas. Protective orders can be useful, but enforcement is uneven and there is evidence that they have little effect on men with serious criminal records. In cases of rape, reforms related to the admissibility of evidence and removing the requirement for victims' accounts to be corroborated have also been useful, but are also ignored in many courts throughout the world.

As for the other societal approaches, much could be done in the way of educational reforms, policy changes to reduce poverty and inequality, and improve support for families. More could also be done in terms of changing social and cultural norms around issues of gender and to address racial and ethnic discrimination and harmful traditional practices. Unfortunately, although critically important, many remain largely untested ideas.

#### **E. Multi-sectoral Solutions**

From this review of the evidence for what works in preventing violence, it is evident that prevention, as noted earlier, is a multi-sectoral challenge requiring multi-sectoral solutions, and the involvement, among others of welfare, education, employment, the police, justice, diplomacy and public health. Within this mix of sectors, the Report shows that the role of public health should be to add value by assisting with:

- data collection through mortuary, coroner and medical examiner reports, health agency records, surveys and other surveillance mechanisms;
- research into the underlying causes and risk for violence, such as those discussed in this paper;
- prevention, by promoting a primary prevention approach and contributing advice on how to design, implement and disseminate prevention programmes;
- evaluation, by applying public health methods to determine the most effective responses;
- policy development;
- the provision of more effective trauma and health care services for victims of violence; and
- advocating for prevention using the information at the health sector's disposal about the magnitude of the violence problem and about its preventability.

## VII. GLOBAL CAMPAIGN FOR VIOLENCE PREVENTION

Using data about the magnitude of the violence problem, the public health model for problem identification, intervention and ongoing monitoring, and the evidence base for prevention described in the preceding sections, the Global Campaign for Violence Prevention seeks to raise awareness about violence as a major public health problem, including the impact of violence on public health and the role that public health can play in the prevention of violence, and to advocate for increased human and financial resources for science-based violence prevention efforts at local, national and international levels.

### A. World Report on Violence and Health Recommendations

At the heart of the campaign are nine recommendations for the prevention of violence made in the *World report on violence and health* and taken up in a number of global and regional resolutions and policy papers (see below).

Recommendations one to six focus on country-level actions for prevention and advocate:

1. creating, implementing and monitoring a multi-sectoral national action plan for violence prevention;
2. enhancing capacity for collecting data on violence;
3. defining priorities for and supporting research on the causes, consequences, costs and prevention of violence; and
4. promoting primary prevention responses;
5. strengthening responses for victims; and
6. integrating violence prevention into social and educational policies and thereby promoting gender and social equality.

Recommendations seven to nine promote international prevention actions, advocating:

7. increasing collaboration and exchange of violence prevention information;
8. promoting and monitoring adherence to international treaties, laws and other mechanisms to protect human rights; and
9. seeking practical, internationally-agreed responses to the global drugs trade and the global arms trade.

### B. Country-level Implementation

A major thrust of the campaign is to promote implementation of the recommendations at the country-level. To this end, around 60 countries have involved their ministers of health, justice and others sectors in national launches of the report, often in conjunction with policy discussions about how to strengthen violence prevention activities. Over 70 countries around the world have officially designated senior ministry of health focal points for violence and health; and around 25 countries have or are currently preparing national reports and plans of action on violence and health.

### C. Resolutions and Declarations

These ongoing efforts to secure political commitment by national governments are complemented by work with global and regional political and professional bodies to encourage the preparation and adoption of resolutions and declarations that commit signatories to implementing the *World report on violence and health* recommendations. These include resolutions by the World Health Assembly, United Nations Commission on Human Rights, the African Union, the Council of Europe and the World Medical Association.

### D. Visual Awareness

To assist partners in violence prevention, WHO has published three poster series<sup>7</sup> - the “red” series, the “explanations” series, and, launched at the May 2005 World Health Assembly, the “family album” series - copies of which are freely available from WHO. For countries interested in customizing the posters by translating the text into local languages, WHO will gladly provide the electronic printer files and permission to adapt and reprint the posters. Currently being edited, WHO has also collaborated with an independent television producer on production of a 50 minute television documentary on the problem and prevention of interpersonal violence.

### E. Implementation Tools

The WHO has also prepared a number of documents<sup>7</sup> that provide technical guidance on how to

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<sup>7</sup> All WHO violence prevention documents and posters can be downloaded or ordered, free of charge, from the WHO Prevention of Violence website, at: [http://www.who.int/violence\\_injury\\_prevention/violence/en/](http://www.who.int/violence_injury_prevention/violence/en/).

implement the *World report on violence and health* recommendations, including *Preventing violence* which gives step-by-step advice on how to implement the report's country-level recommendations; a handbook for the documentation of violence prevention programmes, guidelines for the medico-legal care of sexual violence victims, and essential trauma care guidelines.

#### **F. Violence Prevention Alliance**

The Violence Prevention Alliance is a network of institutions linked by their voluntary adoption of shared violence prevention principles and policies derived from the *World report on violence and health*. Participation is open to WHO Member State governments, nongovernmental and community-based organizations, and private, international and intergovernmental agencies working to prevent violence. The Violence Prevention Alliance activities will expand the number of agencies that apply a public health approach to implementing violence prevention programmes and services. It will enhance the impact of individual programmes on national and local policy and practice. The Alliance is part of an ongoing effort to integrate more countries into the Global Campaign for Violence Prevention, while connecting similar groups at regional and local levels to facilitate better sharing of knowledge.

### **VIII. CRIMINAL JUSTICE IMPLICATIONS**

This final section briefly comments on some of the main implications of the public health approach to violence prevention for the criminal justice sector's efforts to deal with violence in general and with child abuse and domestic violence in particular.

First, encyclopaedic reviews of the empirical research on what reduces crime and interpersonal violence have been completed by a number of governments, intergovernmental agencies and university groups in recent years. The findings of these reviews are highly convergent and agree with the *World report on violence and health* that rates of interpersonal violence can be significantly reduced through well-planned and multi-sectoral strategies that tackle multiple causes, using frameworks such as the public health approach. They are cautious about the extent to which increasing expenditures on policing and corrections will reduce rates of crime and victimization, particularly because of the costs involved to achieve minimal returns. The principal conclusions that these reviews draw are that while policing and corrections are an essential component of prevention, the policing models and types of intervention involved will strongly determine whether or not they are effective.

Second, the public health approach implies that child abuse and domestic violence are not free standing problems, but are causally linked to each other and to causes that are shared with other types of violence. Their prevention is therefore most likely to be achieved through an integrated approach that establishes information systems, prevention programmes and victim services relevant to all types of violence, and within this develops the specialist programmes (e.g. for home visitation and parent training) required to prevent child abuse and domestic violence. The third implication is that primary prevention is only possible through a multi-sectoral approach. For instance, the health sector has neither the mandate nor the knowledge to implement situational violence prevention measures, such as CCTV monitoring, which must be the task of the police, and the police are not equipped to design and deliver parent training and home visitation services, which must be the job of the social welfare sector. The obvious need for different sectors to deliver the interventions in a coordinated way highlights the need for clear leadership, which, since prevention is still new or unknown in many countries, remains critically underdeveloped.

The third and final implication concerns the importance of sharing data and collaborating across sectors in using data to identify the size and characteristics of the problem, to target interventions, and to provide ongoing monitoring of the impact of prevention efforts on violence and risk factors for violence. Because only a partial view of the problem is provided when using data from a single sector (such as the police or health services), it is critical to establish an information working group where data from many sectors can be brought together, analysed and interpreted with a view to informing prevention programming. An information working group can facilitate the initiation, continuation, and intensification of cross-disciplinary collaboration on the prevention of interpersonal violence. Once existing sources of data have been identified and relationships with the responsible agencies fostered through development and limited dissemination of the initial profile, interested groups can join the multi-sectoral response to the interpersonal violence problem by participating in the information working group. The information working group must ensure

widespread dissemination of the information gathered and all reports that are produced. Dissemination can inform the public about the extent of the problem and the factors affecting it; can raise the political profile of the problem within the community; and is essential to ensure that future plans to address it are based on appropriate evidence. Finally, an ongoing responsibility of the working group will be to critically assess the effectiveness of the system that has been created, as well as the quality of the data being produced.

## IX. CONCLUSION

This paper has reviewed the *World report on violence and health's* key finding that violence is preventable, and has argued that child abuse and domestic violence should be addressed as part of the larger problem of violence in general. Practical steps to reduce the amount and severity of violence include preventing unintended pregnancies; strengthening preschool enrichment programmes; providing home visitation services to high risk parents; training parents in parenting skills; changing community norms surrounding violence; reducing alcohol availability; enhancing the fairness and efficacy of the criminal justice system; improving access to effective emergency medical care and medico-legal services, and reducing gender, economic and social inequalities.

There are many concrete things that can be done right now to further strengthen national violence prevention capacity, including appointing a ministerial violence and health focal point; commissioning a national report on violence and health; developing a national plan of action for violence prevention; raising awareness of the need for violence prevention through a poster campaign, and joining the Violence Prevention Alliance, whose founding participants include Belgium, Canada, Germany, Jamaica, South Africa, the US Centres for Disease Control and Prevention and the California Wellness Foundation.

To end, it is useful to recall the words of Nelson Mandela, who in his foreword to the *World report on violence and health*, writes: "We must address the root causes of violence. Only then will we transform the past century's legacy from a crushing burden into a cautionary lesson".

# CRIMES AGAINST WOMEN CELLS - THE DELHI POLICE EXPERIENCE

*By Ms. Kanwaljit Deol\**



## I. INTRODUCTION

A steep decline is evident in the male female ratio in India over the last century. It has declined from 972 females for every 1000 males in 1901 to 927 per thousand in 1991. The northern states show even poorer ratios than the national average. Along with some other countries in South Asia, India must hold itself accountable for its missing women.

From cradle to grave there is a systematic discrimination against women. Nutrition, health care, education are all withheld or provided grudgingly to daughters. Son preference is expressed in deep rooted cultural mores: blessings and rituals at a marriage, foods prescribed for pregnant women, condolences at the birth of a girl child.

Violent crimes against women are both a continuation of the systematic discrimination against women and its results. The violator feels his acts are socially sanctioned; the evidence is manifest in all that he has witnessed since childhood. Women must be kept in their place, else some great calamity may befall society.

The falling sex ratio should be of grave concern to law enforcement and criminal justice agencies.

In simple terms who will the extra men find to marry, start a family with, or harass in a domestic relationship? Will it not lead to greater street crimes, more harassment of women in public places, more rape, and more violence in marriage as husbands strive to keep control of the increasingly rare commodity that they have managed to secure?

Looked at in this context an emergency response from law enforcement is almost mandatory. The experience of the Delhi Police that this paper elaborates is one response that has met with some success. There have been many course corrections along the way and it is clear that the way ahead may call for many more.

## II. ESTABLISHMENT

The Crimes Against Women Cell was set up in 1983 at a central level in the Delhi Police. It was the first police response meant specifically for women in India; and most likely anywhere in the world.

For hitherto, crimes, or other forms of harassment faced by women were handled by the normal police stations along with other crime and law and order issues.

The need for a gender-specific police response had been felt for some time earlier due to the following reasons:

- (i) The status of women was low and there was little inclination among them to take their problems to police stations staffed largely by male police officers.
- (ii) There were specific problems that women faced due to their low social status which could not receive adequate attention from a largely overworked and understaffed police force.
- (iii) It was being recognized that a more sympathetic response was needed in this area than it was receiving.
- (iv) The sensitiveness of the average police officer when dealing with a harassed and frightened woman left much to be desired.

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### III. THE INSTITUTION OF DOWRY

Women's organizations in Delhi had been lobbying for a more humane approach to crimes against women for some time and had even taken their protests to the streets on several occasions. In particular the pernicious influence of Dowry had been receiving vociferous condemnation from these non-governmental groups and considerable media support had also been built up.

Dowry demands start at the time a marriage is being fixed up. Parents with sons regard them as a sort of investment from the time of their birth and are hopeful that their boy will bring a rich dowry that will raise the standard of living of the entire family. Equally, parents with daughters tend to regard them as a disability and start to collect and save for their marriages from their infancy itself. In North India, in particular, dowry can be considered as a major reason for son preference and evil practices such as female infanticide, and in more modern times female foeticide, can be blamed largely on this retrograde social institution.

Once a marriage is performed the problem of dowry is not over, for demands on the bride's family may continue in various socially sanctioned forms. Thus, the bride's family may be required to bring gifts for the groom and his family at all major festivals such as *Diwali*, and at landmark family events such as the birth of a child to the couple, a marriage of a sister-in-law of the bride, or even the death of the father-in-law. The continuing comfort and status of a woman in her bridal home could often depend on the diligence and generosity with which her parents meet these periodic social obligations and many a woman would complain of frequent taunts and threats of divorce when her family had not been able to satisfy the needs of a particular occasion. There were also complaints that, when these threats did not succeed, the groom and his family were capable of taking the extreme step of doing away with the bride altogether so that another bride and another dowry could be arranged. The death would be made to look like an accident and the most commonly reviled form of such murder was by burning, given that the woman's responsibilities in the kitchen could offer many opportunities for such accidents.

### IV. THE POLITICAL WILL

How true such allegations were is debatable, but these bride-burning cases, as they came to be called in the seventies and eighties, rallied many organizations and women's groups to the cause. All such incidents received sensational media attention. It is this concerted action and the public outcry that was generated that was largely responsible for creating the necessary political will to set up a specialized unit to look into cases of dowry harassment and death. The first such unit set up in Delhi in 1982 was initially named the Anti-Dowry Cell. However it was some time before the necessary resources could be placed at the disposal of the police.

There was already a Dowry Prohibition Act in existence since 1963, that banned the demanding, giving and taking of dowry, but it was largely without teeth, and has remained more on paper than in practice. The act exempts gifts given at a wedding from the definition of dowry and requires that all gifts must be registered. However in a country where it is not mandatory to register marriages, there is little sense in requiring that marriage gifts be registered. Both the giver and taker of dowry being proscribed effectively ensures that there will hardly ever be a complainant. Dowry prohibition officers, empowered with initiating *suo moto* action, are mandated to be notified in each district but most states have either not notified the same or have loaded the task on to some already overworked official of the administration. That the act is hardly ever used is an example of how laws enacted for largely cosmetic reasons, without social involvement and consultation, can remain dead letters.

The first Anti-Dowry Cell was a lean unit, set up by the Delhi Police from within its own resources, headed by a part-time Deputy Commissioner of Police who held substantive charge of another unit. The experience of the unit was however to prove invaluable in assessing the need for changes both in the legal and investigative framework.

The officers of the Cell visited the scene of every case in which a married woman had been burnt and found that very few, if any, were outright murders for dowry. Rather, there were an inordinate number of suicides by women who had been married only a few years and the method of choice was usually burning with the help of kerosene oil, which was in common use in kitchens around the country.

Investigations revealed the reasons for these suicides to be harassment within the bridal home usually for material demands which could not be met by the bride's family, aka, dowry.

The social system frowned on a bride leaving her husband and becoming, afresh, a burden on her parents, but in the economics of that era women would rarely have much option, as there were few educated working women of independent means among the lower and middle classes. Traditionally a girl child would be considered as 'paraya dhan', another's assets, in her parents' home. Once they had arranged a suitable match for her with an adequate dowry she was only supposed to ever leave her husband's home when carried to her funeral pyre. Thus suicide was sometimes the only honourable way out.

The Indian Penal Code of 1862 contains a provision for abetment to suicide, section 306 IPC, but it was not easy to prosecute the members of the grooms' family for abetment if no overt act to aid the suicide had been committed. There were judgements at that time to the effect that, unless the accused had handed the kerosene and matchbox to the victim saying "You should burn yourself", he or she could not be held as abettor. The police were hard pressed, therefore, to find the method by which responsibility for these deaths could be determined in a way that could lead to prosecution.

Moreover, as it became increasingly clear, there were many forms of domestic abuse which might not end in the death of the wife and might not strictly arise out of demands for dowry. It was also the experience of the Cell that women complainants and victims needed specialized attention for offences other than dowry harassment and domestic violence, for example rape and sexual abuse. It also became increasingly evident that the traditional police response of registration of an offence, investigation, arrest and prosecution left something to be desired in many instances where women did not want to send their abusive husbands to jail, but only wanted them to stop the abuse.

## V. LEGAL CHANGES

The experiences of the Cell outlined above were to have a direct contribution in engendering several legal changes between 1983 and 86 and even thereafter. Most important of these was a new provision, section 498 -A, that was added to the Indian Penal Code. Aiming at domestic violence and harassment for dowry, this provision defines cruelty, physical or mental, within a marriage. Investigation by police with powers of arrest is incorporated and responsibility can extend to the husband, his parents or other relatives. The offence is punishable with up to two years imprisonment.

In addition the laws relating to rape were made more stringent with custodial and minor rapes giving rise to presumptions against the accused and resulting in harsher penalties.

Some time later a section on Dowry Death was added. Section 304B IPC made the unnatural death of any woman within seven years of her marriage a subject of investigation by the police and prosecutable if it was found that the death was attributable to harassment for dowry by her husband or his family. Such a death was also made enquirable by an executive magistrate by introducing changes in the Indian Criminal Procedure Code. It was thereby ensured that no such death would be filed as an accident or suicide without a detailed enquiry.

## VI. CRIMES AGAINST WOMEN CELL

The Cell itself was re-christened as the "Crimes against Women Cell" to reflect the enhanced field of its activities. In 1986 separate cells on similar lines were set up in each of the nine districts of Delhi. Most importantly, the central Crimes against Women Cell was provided with enhanced manpower, infrastructure and responsibilities. Counselling of families became an essential part of the functioning of these cells. Although this was informal at first, and resented by many as not a police role, it is now a sanctioned activity with staff being trained for the purpose and receiving support from social workers and recognized non-governmental agencies.

Other cities and states in India have set up similar units within their police forces with some southern states experimenting with all-woman police stations to provide a more enabling environment for women complainants.

## A. Overview of Activities

### Counselling as a Police Role

Counselling is the first response of the Crimes against Women Cells in domestic matters. Many families in India still continue to live as joint families and counselling often involves other members of the family besides the immediate protagonists. The aim of counselling continues to be to remove irritants in the marriage, to prevent abuse or to ensure that there is no further abuse, and to secure the position of the woman in the marriage.

There has been criticism of this approach from several quarters. Some women's groups in particular were opposed to the police taking on the role of counsellors on the following grounds:

- (i) That the police are not trained for the job and have no experience of counselling.
- (ii) That there is a traditional patriarchal mind set displayed in trying to keep the marriage intact even when the woman is patently unhappy in it.
- (iii) That there is no guarantee that the woman will not be harassed even after the Crime against Women Cell has closed the case. In fact intervention by police may be ham-handed and result in increased abuse.

Over the years the police have responded to this criticism by ensuring better training, posting more women officers into the cells, and involving social workers and NGO's to assist in counselling and follow-up. In any case, the police resort to counselling in several routine and on-street situations, and, therefore, cannot be said to be new to the experience. The same argument applies to criticism from within police circles that the cells may be overstepping the role of the police. The early fear that it would be difficult to stabilize a marriage once a complainant has brought her husband and his family before the police has also been seen to be largely unfounded. Credit for this must go to the officers of the cell for handling matters before them with sensitiveness and restraint. Out of the 8310 complaints brought before the central Crimes Against Women Cell in 2004 almost 2000 have ended in settlements or compromise.

A secondary object of counselling is to ensure that, if a marriage has to be terminated, it does not end to the detriment of the woman's rights. Usually being in a weaker economic position than her husband the woman is likely to end up deprived or inadequately compensated in a civil divorce action.

The Supreme Court of India, in a celebrated judgement, has defined the gifts a woman receives at her marriage from her own and her in-laws family and from other relatives and friends as her 'Istridhan'. In other words these are her personal assets over which only she has absolute rights. If the marriage is to be terminated, the officers of the Cells try to ensure that she is either given her complete istridhan, or is adequately compensated for the same. As failure to do so would invite criminal action under section 406 IPC for criminal misappropriation, most husbands would prefer to return all such gifts. In Indian society, these gifts would generally comprise amounts of gold and precious jewellery of considerable value and in previous times the husband's family routinely kept the entire lot. Other concomitants of divorce such as maintenance and custody can also be worked out between the couple keeping the needs of the woman in mind so that a petition can then be filed in the court for granting divorce by mutual consent, which is quick and largely painless.

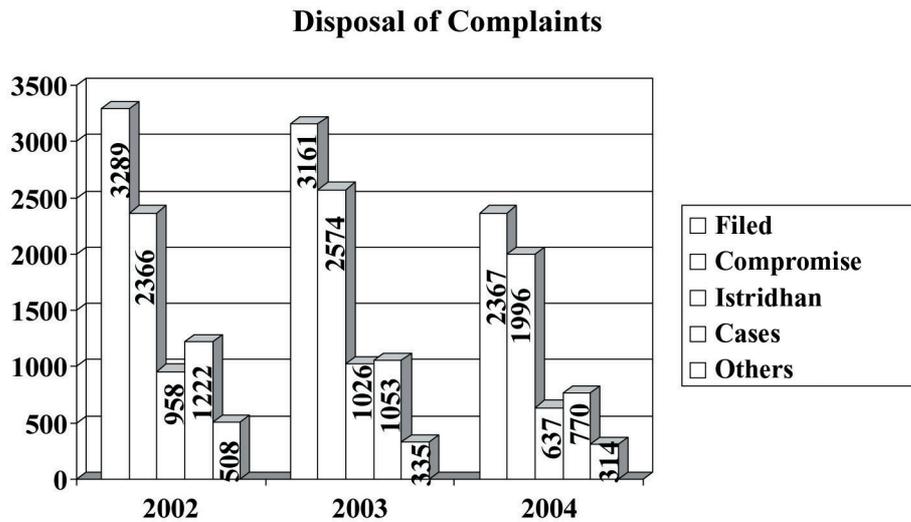
If the couple is unable to conclude the matter in the ways mentioned above over a period of three months or so, the position is assessed as per the law and a criminal case registered under the relevant sections for harassment, violence, misappropriation, etc. with a charge sheet being filed after investigation. The Crimes Against Women Cells are not notified as police stations and the cases are registered by the police stations of jurisdiction. Usually these police stations carry out further investigations, although some important cases may be investigated by small investigative units attached to the cells themselves.

Needless to state, in matters where prima facie criminal cases are made out or overt violence is evident, the above process is short-circuited and a criminal case registered at the outset. The wishes of the victim may not be respected in such cases, although it is usual to first make intensive efforts to secure her consent for prosecution.

Although no systematic evaluation is available, the process of dealing with domestic discord outlined above has stood the test of time and overcome most of the criticism directed against it. It has been upheld by

several courts and has been widely duplicated all over the country. In the conditions prevailing in India, it can be said to be the most suitable way of dealing with domestic discord. It ensures, for instance, that husbands and family members will appear when they are summoned by the police cells, which they may not do if called by counselling services or other social service groups. It facilitates a conclusion in the woman's favour without resort to lengthy court procedures that, due to the time involved if nothing else, are always against the interests of the woman. Most importantly, it strikes a balance between unnecessarily criminalizing the domestic arena on the one hand, and totally screening it from intervention on the other.

An overview of the handling of complaints by the Cell over the last three years is offered as an illustration below:



### B. Other Activities of the Cell

Although a large part of their time is taken up with domestic cases, the cells also act on complaints of sexual harassment, sexual abuse, molestation, rape, and other gender related crimes. Investigation of selected cases is taken up by the officers of the Cell, while the progress of other cases registered by them is monitored in the police stations where they are under investigation. The central Cell monitors the functioning of the district cells through periodic evaluations and meetings although these cells are operationally under the control of the supervisors of the districts where they are located. Women complainants have a choice of approaching either the central Cell or one nearer to their homes at the district centres.

The Crimes Against Women Cell has also developed as a hub for providing non-police services to women complainants. Through liaison with psychological and legal counselling services they are in a position to provide counselling and free legal advice to needy complainants with the help of reputed NGOs. Organisations such as Swanchetan, a psychological victim counselling service, and Lawyer's Collective, an NGO that advises on both civil and criminal legal matters, hold weekly sittings in the premises of the Cell. The Cell also forwards appropriate cases to Rescue shelters and Short Stay Homes run by the Government and by non-governmental agencies.

### C. Crisis Intervention Centres

The need for a multi professional approach to victims of crime has been recognized from the very inception of the Cell. It has been formalized some years ago by setting up Crisis Intervention Centres in all the nine districts to deal with cases of rape and sexual abuse. As soon as a case of this nature is reported, a representative of non-governmental social organizations is associated to assist in the medical examination of the victim and to provide assistance in treatment for trauma, counselling and rehabilitation. The investigating officer remains in touch with this representative who also provides the necessary support to

the victim right throughout the trial of the case. The Crisis Intervention Centres have been set up with the cooperation of the Delhi State Commission for Women and associate social workers, doctors, lawyers, psychologists and prosecutors with their functioning.

As far as possible, cases of rape and sexual abuse are assigned to women investigating officers and women prosecutors. Three special courts headed by women judges have also been set up to give speedy attention to these cases, as long delays in prosecution can inflict further trauma on the victims and dissuade them from testifying in court. The experiment has met with some success in several high profile cases. However, there is scope for improving and systematizing the process of consultation and providing incentives to voluntary workers who have to diligently stay the course through sometimes lengthy legal procedures. Moreover, although women victims are definitely more comfortable with women investigators, prosecutors and judges, in the long term the need is to ensure sensitization of the large number of men involved in these professions, rather than limiting the dealing of such cases to women alone.

#### **D. Round the Clock Helpline**

A significant service started by the Crimes against Women Cell is a 24 hour helpline that responds to callers in distress. The helpline number, 1091, is managed by the Police Control Room which receives and manages all calls for police help. A caller may directly access the helpline or be diverted from one of the general 100 services. A Women Police mobile team is available round the clock at the Crimes against Women Cell to attend to distress calls received through the helpline or directly in the Cell. The staff receives continued training in dealing with distress calls, and are equipped both to initiate criminal action and to provide counselling and other assistance. The team also provides links to emergency support services such as shelters and short stay homes, besides offering on the spot counselling and legal advice in needy cases. On an average the helpline receives 11 calls per day, with 4193 calls having been received in 2004.

Reaching out to women is not always easy. Even when women are aware of the services available, they may be reluctant to seek help or approach the police. Some may not even have access to a phone. In such cases the Cell provides an alternative through a post box number where women can send mail asking for assistance. The letters are analysed to identify the kind of assistance that is being sought. Action may then be initiated or the letters forwarded by the Cell to other concerned agencies.

#### **E. Anti-Eve Teasing Drives**

From time to time the Cell undertakes special drives against what is referred to as "Eve Teasing", but is actually a form of sexual harassment of women and girls on the street or in public transport. The officers of the Cell may concentrate on areas around women's colleges and schools or conduct surprise checks in buses, markets, cinemas, etc. Announcements are made in the buses to make the passengers aware of the special drive and to encourage complaints. At other times officers may travel in plainclothes inside buses to detect such cases or women officers may be used as decoys at public places such as bus stops or university campuses. Sometimes women students who wish to volunteer, are also co-opted for such exercises. Periodic Contact Programmes are launched in campuses and women's colleges to work out joint strategies for achieving a more secure environment for the women students. Complaint boxes have been installed in such campuses so that girls can complain anonymously if they so desire. This technique has often assisted the Cell to identify areas of the city that need its focussed attention.

#### **F. Self-Defence Training**

One of the most acclaimed projects of the Cell has been the Self Defence Training Camps launched in a major way in 2002. While the focus of such training has been school and college girls, working women and housewives have also volunteered in significant numbers for these camps. The objective of the training is to instil confidence in women and to make them think positive and act quickly in a vulnerable situation. The curriculum includes simple concepts of unarmed combat coupled with the knowledge of using common items that the woman may have on her person such as articles of clothing, bags, books, keys, etc. as defensive weapons. Each module stretches over a period of ten working days with two hours of training per day. After the training accredited non-governmental organizations are invited to interact with the trainees to inform them about their rights and make them legally aware. The programme has trained about 17,000 women so far and is continuing to perform an invaluable service in building police-community relations, and in making women more comfortable and confident in approaching the police with their problems.

## VII. LESSONS BEING LEARNT

Whenever any special provisions are made in the law for a particular group or segment of society in a developing nation, initial problems take several generalised forms. Firstly, the persons who need the protection of the specific provision the most urgently often lack awareness of it or are otherwise unable or incapable of taking advantage of it. Thus the battered wife of a poor building labourer, whose likely source of such knowledge is her husband alone, will probably never find out that she is legally empowered to protest against the abuse. Despite extensive use of the media, posters and pamphlets to publicise the new provisions, the Cell found it difficult to make a dent until it roped in NGOs to start mass contact and legal literacy programmes in the poorest areas. In order to ensure better attendance such programmes were often clubbed with sessions of religious discourses or devotional songs.

Conversely, the persons who will be the first to take advantage of the special provisions will often be those who do not, in fact, have any need for the provisions. Thus women with the means to secure expensive legal advice, who may have other problems of a non-abusive nature with their marital lives, will be quick to produce excellently drafted complaints that fit into the four corners of the law and wrap into its snare the whole extended families of their husbands. Although the Cell's systems of counselling and enquiry are capable of dealing with such false complaints fairly effectively, the dangers of the law getting a bad name are quite obvious. In an essentially patriarchal society like we have in our country, there will be strong voices questioning the very basis of a law that is so amenable to misuse. Essentially such misuse arises out of the fact that the civil laws are relatively undeveloped and inefficacious in their operation, and the gap is sought to be filled by the convenience of a powerful criminal law. However, instead of calling for better civil laws, there is a tendency to focus on the misuse of the criminal law and to demand its substantive dilution.

Another area of concern that arises is the effective awareness and sensitization of the various elements of the criminal justice system. Police officers, lawyers, prosecutors and judges are all equally wary of a law that is moving at a faster pace than society. If they are convinced about the need for change, they can effectively pull society up by its boot straps by the sincere and judicious implementation of the law. If they are not, on the other hand, they can claim to be only products of society and focus on perceived imperfections of the law that render it unimprovable.

So far it would appear that the battle for retraining the system is being gradually won. The domestic cruelty law has been understood more widely with applicability beyond the area of dowry harassment. There have been a few carefully worded judgements that have helped to clarify its basic objectives. The police response outlined above has been supported in many judgements as being in line with these basic objectives. The difficult area of defining what constitutes criminal psychological cruelty has received considered judicial attention also, with chronic verbal abuse being classified as one such criteria. However, attention to the crucial factor of training all elements of the criminal justice system cannot be allowed to slacken.

Many police officers observe that the proactive police approach in an area which is essentially a social concern, has led to other relevant agencies taking a back seat, and that crimes against women are being viewed as basically a police problem. When, for instance, a sensational rape case leads to widespread police bashing in the media, internal debate in the police focuses on whether at all the crime was preventable by police action. The fact is that in over ninety percent of rapes the accused is known to the victim and may even be someone whom the victim holds in trust. Many of these are cases of sexual abuse of children by adult relatives. Without dwelling overmuch on fields of responsibility, one of the issues that can be flagged here is the need for institutionalizing a multidisciplinary approach so that the expertise of diverse agencies can be optimally utilized in the interest of crime prevention and victim protection.

A comprehensive Domestic Violence Bill is currently receiving attention in the country. While it can be argued that the legal provisions are already in place in the Penal Code and elsewhere, if the aim could be for the comprehensive act to focus on institutionalizing a multidisciplinary approach in the interests of the victim rather than on defining new offences, it would be a step in the right direction. At present the humbler goal appears to be to merely gather all the offences at one place. This would probably succeed in drawing greater attention to the area of domestic violence but could conversely lead to confusion for all concerned.

### VIII. CONCLUSIONS

The experience of the Delhi Police is singular and unique in many ways. Yet there are examples that it can be duplicated in significantly different circumstances in the various states of the country. Law and order is a state subject in India, but national laws are applicable everywhere, although the details of their implementation may vary. The levelling factor of an all-India police service, that provides the supervisory officers for all states, is also relevant in this context.

A common strategic thread that can be noted is the launching of specific units initially from within the resources of the existing police force. Once these have met with success and public appreciation, it has not been difficult to secure sanctioned resources.

Recruitment and staff training are ongoing issues to which solutions are still in the process of being found. There is a greater need for women police officers at all ranks and several states have introduced policies which envisage that a third of their police forces will comprise women. However, most police forces are reluctant to give up posts of male police officers in exchange, and states are understandably reluctant to sanction large increases ab initio. Currently, women do not comprise more than five percent of the police forces nationwide; even if a third of all fresh recruitments were to be devoted to women it would take many years before the composition of the police forces as a whole could reflect that percentage. Added to this is the reality of many Indian women not seeing the police as an attractive career option and the consequent difficulty in finding suitable recruits.

Notwithstanding, a point made earlier in this presentation needs repetition. It is not healthy to determine that only women police officers, women lawyers, women prosecutors or women judges are required to deal with issues of domestic violence and other crimes against women. The more pressing need is rather to make the existing criminal justice system more responsive to what is essentially an exploitative situation with social, economic, political and other dimensions. Training acquires centre-stage position.

Whether training of a limited duration can actually result in attitudinal change is a debatable point. A person can be trained fairly easily to operate a space shuttle in comparison with changing an attitude that he or she has acquired over years of 'socialization'. Training is also time and resource intensive making it difficult to secure these resources without being able to demonstrate the efficacy of better training in a reasonable time frame.

Still, it is possible to end on a hopeful note because the importance of sensitization and training is gradually receiving recognition in all sectors of the criminal justice system. In a somewhat complex relationship it has been the setting up of the Crimes against Women Cells itself that has drawn attention to the inadequacies of training and helped to secure this recognition.

# TRAINING FOR CHANGE

*By Ms. Kanwaljit Deol\**

## I. INTRODUCTION

In a sense women are victims ab initio. Deprived of their share in health, education and economic opportunity due to their depressed position in society they lack both the knowledge and confidence to seek protection from the law. A potential perpetrator of a crime perceives this vulnerability and is encouraged to commit the crime because of it. A rapist can be reasonably sure his victim will be too cowed down and debilitated by shame to approach the law. A man who beats his wife can be equally certain she has nowhere to turn to. Law enforcement officials have essentially to understand this. When a woman approaches the law she is not a victim of the crime alone but has already been doubly or triply victimised in sequence.

With such a perception law enforcement officials would realize that women victims need to be treated differently. Delayed reporting by a rape victim, for instance, would be attributable to her fear and sense of shame and not to the fact that she is not telling the truth. The criminal justice system in its entirety attaches this latter negative interpretation to delays in reporting a crime, while studies and experience show that a rape victim typically goes through many crises of indecision, seeks advice from any source she can trust and does not approach the law unless she receives strong support from a relative, friend or NGO who can accompany her to make a report. There are also the symptoms of the Rape Trauma Syndrome, which are practically ignored by all players in the criminal justice system.

Sensitisation and attitude training are essential for all wings of the criminal justice system, but the need cannot be overstressed as far as police, the first port of call, so to speak, are concerned. It is not acceptable that police personnel continue to profess the attitudes of the society from which they are drawn. But it is natural they do so, and therefore the vital need for training to overhaul attitudes.

The context for this paper is the Indian police and the criminal justice system of India. However, the composition and attitudes of the systems, as also the dominant attitudes in societies, are broadly similar across the world, resulting for instance in domestic violence and child abuse being matters of concern everywhere. An attempt has also been made to generalize issues wherever possible so that the concepts touched upon have relevance across national boundaries, more particularly for developing nations.

## II. TRAINING FOR ATTITUDE CHANGE

Attitudes are not so easily transformed through formal training. Prescriptive training, the norm in most initial training courses for police, is effective only in a certain context: that of making the trainees aware of the laws and giving them the rules of behaviour. The trainees learn what will be expected of them and which behaviour will be rewarded and which punished.

However, this alone is insufficient to equip them with their professional requirements. The training has also to convince them that their existing attitudes cannot be stitched on to the job they are required to perform. Better crafted training modules, with inputs from professionals in training psychology and attitude change, need to be designed and administered at frequent intervals instead of just once or twice in a police officer's career. Additionally, police women should also undergo such training as it cannot be assumed that they are immune to the stain of the prevailing social attitude on gender issues.

At the recruit level, the trainee must recognize what his or her attitudes are and learn where these attitudes are coming from. It is mandatory that every trainee also understand what are unacceptable attitudes.

On the job, the new recruit will face the problems of acting under conditions of stress and overwork, facing sudden and emergent situations for which no training can adequately equip her or him. Looking to

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\* Joint Commissioner of Police, Delhi Police, India.

colleagues and seniors for solutions, the recruit will act as they act, and, not before long, will adopt their unsaid prescriptions that indicate: do what I do, not what I say.

Frequent retraining is therefore essential. Refresher training has the bonus benefit of removing the officer from the stresses of formulating immediate responses to unforeseen situations, providing a breather to reflect and evaluate. The officer can be reacquainted with the values that underpin policing and see how they relate to her or his work from an objective point of view.

Retraining requires more aggressive methods than initial training. By now, the officer is aware that society condones, and even supports in certain situations, many of the attitudes that were explained as unacceptable during recruit training. In the position of mentor to fresher recruits who are looking up to and following the officer's lead, there is the sense of self at stake. The officer is older but not much wiser for the purposes required of him or her. The function of refresher training should be to shake up, to redirect, and ideally to lead to a new understanding, initiating a surging sense of renewed growth after a period of stagnation. The police officer has to be continually lifted above the level of society and out of the static state that makes the individual feel that the limits of what she or he is capable of have been reached.

The above is true for training of the entire criminal justice system, and indeed for the training of all public officials, but it cannot be stressed enough for police officers who are in a constant state of engagement with society and who are looked to for assistance in the most crucial hours of crisis. In internal circles police officers regularly report feelings of dissatisfaction and frustration at not being able to be the protectors that they are intended and expected to be. Society, their peers and superiors, politicians and government are usually held to be the culprits responsible for this inability. It is not the intention of this paper to hold that training is a panacea to all these ills but to argue that police training that does not take these feelings into account is failing both society and the police forces.

### **III. TRAINING CURRICULUM**

In the context of domestic violence, child abuse and other crimes against these vulnerable sections of society a suggested curriculum for training for attitude change can be outlined. That this curriculum is not exclusive to police training needs emphasis, for attitude change is a requirement in the present context in all wings of the criminal justice system. Further there are other agencies of government, specifically those that address issues relating to welfare, development, health and education, which could benefit from both the training content and methodology that is suggested. However this aspect will be addressed in some detail later.

In outline the training curriculum should include the following at both initial and refresher stages:

- (i) Gender awareness and sensitization;
- (ii) Human rights and crimes against women;
- (iii) Where violence is coming from – the roots of gender violence, specific to a particular society and generalized to the world situation; and
- (iv) The crucial role of law enforcement and other elements of the criminal justice system.

The rest of this paper will elaborate on each of these issues suggesting the general content that can be suitably tailored according to the society and the organization being addressed. In addition a final section will address strategies that can be adopted to initiate change.

### **IV. GENDER AND TRAINING**

#### **A. What is Gender**

Gender is not another word for sexual difference, but a socially constructed difference between women and men, a difference that reflects each society's interpretation of biological difference. People are born female or male, but learn to be girls and boys who grow into women and men. They are taught what the appropriate behaviour and attitudes, roles and activities are for them, and how they should relate to other people. This learned behaviour is what makes up gender identity, and determines gender roles.

This conceptual difference between sex and gender was first developed by Anne Oakley<sup>1</sup>. It is a useful analytical tool to clarify ideas that has now been adopted almost universally. Sex is concerned with biology whereas gender is socially and psychologically, and that means also historically and culturally, determined.

Gender relations refer to the socially ordered relationship between women and men, men and men, women and women, at different ages and stages of the life-cycle. Together, these help to turn biologically different males and females into socially differentiated men and women, through the acquisition of culturally defined attributes of masculinity and femininity, as well as through the allocation of resources and responsibilities which are associated with these categories. It is important to note that gender relations vary with society and culture, indeed these two are together the essential determinants of what is referred to as gender.

### **B. Gender Perspectives**

A perspective that often appears gender neutral, in that it does not specify any particular gender, but which takes the life experiences, needs, interests and constraints of the male social actor as the standard one and therefore representative of both genders can be classified as gender-blind.<sup>2</sup> It is not blind in the sense that justice is said to be blind, for one of the scales is invisibly loaded.

As opposed to this we may consider a gender-aware perspective as one that accepts that men and women of the same class, and even within the same house, may have some overlapping needs and interests but that their differing life experiences and the unequal distribution of resources and responsibilities between them will also give them gender-specific needs and interests which may conflict.

### **C. Gender Implications**

The social construct of gender differentiated roles has profound implications for women. In relation to work both men and women may contribute to production of goods and services or to community and public life, but tasks associated with the reproduction of society, such as ensuring basic needs at the family level, are almost always managed exclusively by women. Women have longer working days than men the world over.

Women's work is also devalued so that even a woman who labours all day in the household is likely to say of herself "Oh, I don't work."

The oft quoted UN statistics<sup>3</sup> still hold true:

- women perform 2/3<sup>rd</sup> of the world's work
- women earn 1/10<sup>th</sup> of the world's income
- women are 2/3<sup>rd</sup> of the world's illiterate
- women own less than 1/100<sup>th</sup> of the world's property

Despite national and international human rights laws that guarantee equal rights irrespective of sex, women do not possess equal rights to men with regard to land, property, mobility, educational and employment opportunities, shelter, food, health, over decisions concerning their children or even over their own bodies. In many cultures across the world women's bodies are ritually maimed and mutilated and women are customarily beaten and even murdered in the name of culture and tradition.

Gender oppression takes a multitude of forms and adds another dimension to oppression based on race, ethnicity, religion, class and caste. On the road to social equity, gender is the last barrier, because it involves transformation of attitudes and practices in all societies, for all people: it touches all of us, deep down to our most intimate relationships. For this reason perhaps, it arouses very strong feelings among both men and women and these feelings are often brought out by gender awareness training.

The reality is that legislators as makers of law, and agencies of the criminal justice system as its enforcers, are predominantly male and likely to be imbued with conventional ideas about the rights and

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<sup>1</sup> See 'Why gender is a development issue' by April Brett in Changing Perceptions, Oxfam.

<sup>2</sup> 'Towards a Sensitive Work Culture' National Centre for Gender Training, LBS National Academy of Administration, Mussoorie, India.

<sup>3</sup> Source: The Oxfam Gender Training Manual.

status of women, so it is not surprising that their attitudes and actions are often found to be insensitive to problems affecting women. Quite often, therefore, the laws are deficient from the point of view of women's needs. Many laws intended for the benefit of women, may turn out to have only cosmetic value because they have been framed from a gender-blind perspective. Legal procedures are too complex and protracted and implementation of protective legal provisions tardy and inadequate. Besides, the many infringements of women's dignity and autonomy that are implicit in the realm of personal laws are beyond the pale of public action.

"Women too have their weaknesses," is a comment rather regularly heard from male officers undergoing Gender Awareness training. They will then point to lack of education, legal awareness, confidence and staying power, etc.

"So who's responsible for that?" the trainer will ask.

## V. HUMAN RIGHTS AND CRIMES AGAINST WOMEN

Crimes that specifically target women, such as trafficking, rape, kidnapping, dowry death and domestic violence, sexual harassment and molestation, are all more than crimes because they also assault the human rights of women. They violate the fundamental rights enshrined in our constitution, as each offence deprives a section of the population of security of life and limb and the basic dignity due to them as members of society. This fact that violence against women violates a woman's fundamental human rights has not been so widely recognized and needs to be underlined. It is surprising that even CEDAW, the UN Convention which recognizes the need to eliminate all forms of discrimination – political, social, economic and cultural – against women, makes no mention of eradicating all forms of violence against women.

Among all crimes, the most heinous are perhaps rape and domestic violence. The first, because the threat of rape seriously retards individual potential by clipping the wings of a girl ready to take flight into freedom and achievement. It cripples her mentally and hurts her physically in ways beyond the imagination of anyone. The fear of rape alone makes it difficult for a young girl to share the freedoms her brothers, for instance, may enjoy. It intrudes in numerous ways into the dreams she may dream for herself. The second, because domestic violence provides an entry for fear to creep insidiously through the keyhole of the very last bastion of her security - her home. It denies the woman respect and dignity even in her own most pristine and intimate space. In addition it presents her as a helpless victim in front of her children, diminishes her parental authority and damages the children themselves in many ways that we cannot even begin to assess.

A study<sup>4</sup> based on data on crimes against women maintained by the National Crime Record Bureau of India, which collects crime figures down to the basic administrative unit of the district, reports some important findings. It would appear that early and continuous deprivation of basic rights suffered by girl children is likely to lead to more heinous forms of violence when they become adults. There are indications that states having high rates for domestic violence and dowry deaths also usually have a low female-male ratio, especially in the crucial 0-6 year age group. The state of Punjab in north India, for instance, which has comparatively low rates for all other crimes against women, had one of the highest rates of dowry deaths. This probably explains the high rate of female foeticide in Punjab, which, although successfully evaded in all crime recording, shows itself through the lowest female-male ratio in all age groups and typically in the 0-6 age group where it is most significant, as the author of the study notes.

Most of the districts with high rates of rape seem to have low dowry death rates and vice versa. As the author of the study comments rather chillingly, 'Those women who seek to come out of the boundary walls of domestic life, face violence outside, while those who seek to remain inside, face dowry deaths'.

When a woman approaches the criminal justice system, she does so wearing an invisible badge that we would recognize as a badge of both shame and courage, if we could only see it. Consider that:

- Violence against women can begin even before life begins.
- Violence scars the childhood of girls in the shape of child abuse and incest, child prostitution, and

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<sup>4</sup> See Leela Mehendale, 'Crime, Women and Justice Delivery: Numbers Speak', Mainstream, 12.1.2001.

exploitative child labour.

- It bars her from the street and public places as a teenager and young woman.
- It follows her into marriage and family life. In most cultures only the tip of this iceberg has begun gradually to emerge.
- Finally, it can culminate in murder or suicide as evidenced in dowry deaths, or honour killings noted in other Asian cultures.

The latest advances in medical technology are used to wreak violence on the unborn female foetus (femicide). And, even after half a century of independence, it has not been possible to entirely wipe out female infanticide and abandonment of female new-borns. Indeed, certain districts of the otherwise progressive Tamil Nadu state in southern India, such as the district of Salem, are notorious for the killing of girl babies.

Female foeticide over the last 15 years has distorted male/female sex ratios at birth (SRB) in several Asian countries. Along with East Asia, North Africa and West Asia, the societies in the Indian subcontinent exhibit a strong preference for sons over daughters. China adopted a 'one child family' norm in 1979 and the phenomenon of millions of 'missing girls' was recognised by the early 1990s. A study in 1994<sup>5</sup> reported female foeticide to be a major cause of this imbalance. As fertility rates declined rapidly in east Asian countries (South Korea, Taiwan, Hong Kong), selective abortion of female fetuses increased, leading to rising sex ratios at birth over the last 10 years<sup>6</sup>.

Transfer of reproductive technology to India has resulted in reinforcement of patriarchal values, with parents tending to choose the sex of the next child basing their calculations on the birth order, sex sequence of previous children and the number of surviving sons. Foetal sex determination clinics have mushroomed over the last 20 years from the late eighties, especially in many northern and western cities, as professional medical organizations have seemed to be indifferent to the ethical dimensions. (Indian medical researchers who pioneered amniocentesis in 1975, felt that it would assist those women who keep on reproducing just to have a son, and also aid measures for population control).

The population sex ratio which was 1.03 in the 1901 census rose relatively consistently to 1.08 in 1991. Although there is no reliable data for the incidence of female foeticide, the Central Committee on Sex Determination described it as an epidemic across the length and breadth of the country<sup>7</sup>. A rough estimate of female foeticide and direct infanticide together, obtained by indirect demographic techniques on census data, is 1.2 million 'missing girls' in India during 1981-91. But, as most of the selective abortions occurred during the second half of the nineties, it was predicted that we should expect to see more. In 2000 a national daily<sup>8</sup> reported: "Femicide is gaining in popularity. Banned in government hospitals it is clandestinely available in mushrooming private clinics and is justified even by some family planning officials as an effective method of birth control in a country with a strong son preference. Nearly two million fetuses are assessed by NGOs to be aborted each year. In some states like Bihar the sex ratio has declined to 600 females per thousand males. Demographic surveys undertaken by several research bodies indicate that the issue of female infanticide has been further vitiated by prenatal sex determination shops".

In rural areas access for rural populations to sex determination shops enhanced substantially after sophisticated ultrasound machines, portable by car along untarred roads, became widely available in India from the early nineties. But a comparative study of the 1981 and 1991 Indian censuses was already showing a marked shift towards excess masculinity of SRB in 1991 in the rural areas of north and north-west India. An empirical study<sup>9</sup> reveals that part of the increase may reflect discrimination against girls following foetal sex determination of the place of birth. Male babies may be given the privilege of safer hospital deliveries, while for females, delivery at home in the village is considered adequate.

Some professionals hoped that the national law against Sex Determination Tests (SDT) passed in 1994,

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<sup>5</sup> Coake and Banister, 1994.

<sup>6</sup> Park and Cho, 1995.

<sup>7</sup> National Commission for Women 1994.

<sup>8</sup> The Times of India (P), 6.2.2000.

<sup>9</sup> George, Sabu M; Dahiya, Ranbir, S.: Female Foeticide in Rural Haryana, Economic and Political Weekly, Aug 1998.

will prevent female foeticide. But the experience of the state of Maharashtra, where a similar law has been in place since 1988, does not give much hope. Before the legislation, in Bombay city alone, the number of STD clinics went up from 10 to 248 during the period between 1982 and 87. After the legislation the practice just went underground, and over the last 10 years, not even one doctor has been penalised for breaking the law<sup>10</sup>.

On another plane, the Human Rights Watch, an independent international organization set up in Helsinki in 1978, has gathered evidence of 'epidemic levels of violence against women and rampant sex discrimination' around the world<sup>11</sup>. The evidence shows a striking commonality in women's vulnerability to violence across cultures and countries, with sexual assault being its 'most visible and least condemned expression'. It points out that, while on the one hand sexual abuse is looked upon as a private matter of individual concern, on the other hand the priority given to women's 'purity' and 'honour' make them targets for violence directed, through them, against their families or against the communities to which they belong. How the world can be so 'modern' and so primitive in its ideas about sexual abuse, in the same thought as it were, can never cease to amaze.

## VI. THE ROOTS OF VIOLENCE

When we try to unravel the roots of this gender-based violence, we realize that violence has always been a tool for exercising domination and appropriating control in a particular situation, or at a particular time, or in a particular sphere in life. In the domestic sphere too then, violence must be a means for domination and control – of women's bodies, their labour, their assets and their mobility and on another plane, of their emotions, ideas and attitudes. Male violence generates an over-all climate of fear which then succeeds in imposing the values of male superiority and female subordination. According to one view<sup>12</sup>, 'Far from being abnormal behaviour, the violence of men towards the women they live with, should rather be seen as an extreme form of normality, an exaggeration of how society expects men to behave... it is concerned with the wider issues to do with power and equity and to do with how we perceive manhood.'

A tendency to justify and condone the violence, and thus mitigate criticism and punishment has been noted, at least in the Indian context. The battered woman may be projected as mentally ill, morally depraved, or even some sort of a witch; the man as a helpless victim of poverty or driven beyond his control by drugs or alcohol.

The need to prove the guilt of the offender beyond reasonable doubt, which is the cornerstone of the Indian criminal justice system, can often translate into what is reasonable for the individual judge. Sometimes researchers detect a conscious or unconscious philosophy to be working even in the judgements of the highest court of appeal: that of protecting the privacy of the home and family honour at any cost. In one case<sup>13</sup> in a charge of murder of a housewife the court ruled that the husband's guilt could not be proved beyond reasonable doubt as the woman may well have committed suicide out of depression.

A large body of national and state-level data related to domestic violence became available through the second National Family Health Survey of 1996-98 (NFHS 2). The survey reports that at least one in five of all ever-married women above the age of 15 years experienced physical violence and at least one in nine reported experiencing it in the 12 months immediately preceding the survey. Secondly, the beatings were typically administered by their husbands. Thirdly, domestic violence appears to be 'democratic'- in that it cuts across religion, community, the rural-urban divide, even women's employment status.

The findings of the survey expose some commonly held beliefs as myths:

- That wife battering affects only small groups of the population

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<sup>10</sup> *ibid.*

<sup>11</sup> The Human Rights Watch, Report on Women's Human Rights, OUP, Delhi, 1998.

<sup>12</sup> Elizabeth Wilson, 'What is to be done about Violence against Women?' as cited in 'Indian Women: From Darkness to Light...', Shoma Chatterjee, Calcutta, 2000.

<sup>13</sup> Flavia Agnes, 'Protecting Women against Violence? Review of a Decade of Legislation', as cited in Dr. Mukul Mukherjee, 'Human Rights and Gender Issues', Institute of Social Sciences, N. Delhi.

- Only poor women get battered
- Battered women are uneducated
- Battered women are free to leave home

The NFSH 2 also collected data on women's perceptions about the legitimacy of husbands beating their wives. A substantial proportion of the women surveyed, between 33 to 40%, felt that a husband would be justified in beating his wife if there is a particular lapse on her part, such as neglecting the home or children, going out without informing the husband, being unfaithful, showing disrespect to in-laws or not cooking properly. Over-all almost three out of every five women surveyed, 56%, justified domestic violence on one or the other grounds mentioned above.

The NFHS 2 report<sup>14</sup> comments: 'The experience of violence, and the silent acceptance of violence by women, undermine attempts to empower and will continue to be barriers to the achievement of demographic, health and socio-economic goals.'

Let us look for a moment at this 'silent acceptance of violence' by women. An aspect of the power structures operative in society is explicated by Lukes<sup>15</sup>. "The most insidious exercise of power" he says, "... (is) by shaping perceptions, cognition and preferences in such a way that they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because it is divinely ordained and beneficial."

Police officers dealing with cases of domestic violence report similar perplexities all the time, such as a battered woman justifying a previous beating as of no consequence with the explanation that she had forgotten to put salt in the food on that occasion.

## VII. THE IMPORTANT ROLE OF THE CRIMINAL JUSTICE SYSTEM

### A. Domestic Violence

Domestic Violence is not a private issue but a violation of the fundamental rights of women. Domestic violence, or its threat, could affect the right to equality, livelihood, life and liberty, speech and expression, mobility, freedom of religion, education and to form associations of the victims. As the state is responsible for the protection of the fundamental rights of the individual, their infringement, and the failure of the state to take steps for its prevention and punishment, would make the state liable for the acts and omissions of its agents. Thus, apart from its role in the maintenance of law and order, the criminal justice system is an agent with liability of rights delivery through social justice and empowerment in cases of domestic violence.

The rising trends in crimes against women, as well as a low conviction rate, at least 10% less for rape, for instance, than for all crimes at the all-India level, both imply constriction of women's human rights.

Some of the reasons for the acquittals in cases of violence against women are attributable to failures in investigation by the police, and a rough check-list can be drawn up to suggest how one should overcome these:

- Initial efforts at counselling should be recorded and documents preserved to be used later if the case takes a serious turn, even in cases where there is a settlement.
- Delays in recording the First Information Report (FIR) should be explained.
- Specific role of each accused should be mentioned
- Statements of witnesses should not be recorded in a stereotypical fashion. The evidence of neighbours is important. Special precautions should be taken while recording dying declarations.
- The quality of photographs and forensic evidence should be improved and the chain of evidence should be meticulously preserved.

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<sup>14</sup> National Family Health Survey: 1998-99 – India, (NFHS2, All-India Report) 2000.

<sup>15</sup> S. Lukes, Power: A Radical View, Macmillan, London, 1974.

On the legislative side we need to look at the gender perspective of laws on Domestic Violence. Critics of the draft Domestic Violence Bill before the Indian Parliament point out that:

- It protects only women related by blood, marriage or adoption but not those in common law relationships or otherwise living in intimacy with the man.
- There is a risk and ambiguity inherent in the key phrase 'habitual violence' that is the object of punishment, and that it may furnish an easy escape route to the accused.
- The self-defence clause which provides for the right to self-defence on grounds of self-protection or protection of property is completely misplaced.

The delivery of justice by the courts also needs to address both attitudes and procedures:

- Judicial standards such as the test of a "reasonable prudent man" reflect the subjective standards of mostly male judges, and there is a need for greater gender sensitivity in dealing with cases of domestic violence.
- There is a crying need for a coordinated approach to both civil and criminal remedies. Civil remedies such as injunctions, perpetual and temporary, preventive and mandatory, can be obtained asking for various relief such as restraint orders against abuse/molestation, ousting the woman from the matrimonial home or creating any third party rights on it and directing the husband to allow entry into the matrimonial home and visitation rights of children, etc.
- Matrimonial proceedings such as divorce, maintenance, judicial separation, restitution of conjugal rights and custody are also relevant. Damages can also be claimed on various counts.
- The difficulties in obtaining such civil relief which are long and time consuming and involve payment of court and lawyer's fees. Protection orders are also difficult to obtain, are not granted immediately and, in case of failure of compliance, need separate contempt or execution proceedings to be filed.

It needs to be pointed out that training of lawyers has hardly ever been addressed and that curricula in law schools, as well as professional councils, should be required to cover gender sensitization and professional ethics.

## **B. Rape and Sexual Abuse**

Rape investigation is one of the most challenging and frustrating responsibilities that a police officer can undertake. The major task is to prove that the sexual act occurred by force and without consent. When the victim has been beaten into insensibility, or otherwise injured there may be not much difficulty in proving lack of consent but it is more usual to find that the victim was threatened with a weapon or was paralysed by fear into submission and no actual physical injury was inflicted on her. Relatively recent studies by behavioural scientists have, however, identified certain stress reactions in victims which may be linked to the crime of rape and thus serve as a basis for corroborating their testimony. It is essential therefore that the investigator be trained to recognize such reactions and be familiar with ways to develop and document such stress related evidence. Other players in the criminal justice system should also be familiarized with such evidence that can substantiate the victim's testimony when more traditional evidence is not available.

The source of most psychological evidence of force lies in the victim's reactions after the incident and presents so specific a pattern that it has been named the Rape Trauma Syndrome by the first mental health researchers who studied the problem. It consists of somatic, cognitive, psychological and behavioural symptoms resulting from an active stress reaction to a life threatening situation and it usually has two phases. The first phase begins immediately after the threat to the victim is over, and is characterized by disorganization with the victim experiencing alternating feelings of shock and fear. She then usually develops one of two forms of coping – an expressed style in which she may display her feelings by crying, sobbing, smiling or laughing and be restless and tense. Alternatively, she may display a controlled style of coping, appearing calm and composed. I have seen both reactions and regret that I was not trained to recognize them at that time.

The second phase is the reorganizing phase when the victim will try to cope with the rape and assure herself that she will not suffer it again, and this phase typically begins two to three weeks after the incident.

Collecting rape evidence should thus entail questioning the victims about her feelings and reactions besides the basic facts and should be followed by a second interview two to three weeks after the incident. A third interview should follow after 45 days before closing the investigation. At all times information consistent with the rape trauma syndrome should be clearly documented.

The Rape Trauma Syndrome is a specific sub-set of the general category of Post-Traumatic Stress disorder. It is characterized by recurrent and intrusive recollections or dreams of the event. As the victim adjusts to the trauma, the theme of the dreams may change to one in which she is able to gain mastery of the situation, or even mutilate or kill her assailant. Further symptoms may involve sudden acting or feeling that the event was recurring because of an association with an environmental or ideational stimulus, markedly diminished interest in one or more significant activities, feelings of detachment or estrangement from others, constricted or withdrawal from life effects, hyper-alertness or exaggerated startle responses, sleep disturbance, guilt, memory impairment, avoidance of activities that arouse recollections of the event, etc. Loss of appetite, depression, excitability and nausea are further symptoms. In the reorganization phase the victim may change her residence, or, as documented in one case, disappear altogether.

While it is not suggested that police officers should attempt to make diagnoses they are not qualified to make, an ongoing consultation with a qualified mental health professional who can testify in court is recommended. However, the need to ensure that training encompasses these behavioural aspects both to ensure sensitive handling of the victim and to not miss essential evidence cannot be overstressed. The police officer should also be aware that the victim may not share his or her priorities and may, in fact, abandon the process of evidence gathering altogether.

While we have had some judgements convicting the accused on the uncorroborated testimony of the victim, applying gender analysis to these always brings out the fact that the judge has held that the victim would not suffer the harm to her honour and future life by bringing a false accusation. While this may be a realistic assessment, one cringes at the implication that rape is still considered as an offence injuring the victim's honour rather than her person and her sense of self. Many victims never recover from the physical and psychological effects, and quite a few choose suicide as an escape.

The position of section 376, the offence of rape, in the Indian Penal Code is illustrative of this attitude, coming at the very end of the chapter on crimes against the body that starts with murder at section 300, and goes through the entire gamut of bodily injury with grievous hurt at section 325. Only two places removed from section 379, the offence of theft, which starts the chapter on crimes relating to property. The mind set of the early lawmakers that women are closely akin to property and that rape damages the property owner: the husband, father or brother, rather than the woman herself, is inescapable. There is no reason why this should not be changed, and sufficient reason to infer that placing it directly after the offence of murder will emphasise its gravity in the eyes of all who study and apply the law.

## VIII. STRATEGIES FOR CHANGE

### **Organizational Change**

The organizational culture of any agency is a strong binding factor that assists each individual member to contribute effectively to the common goal. However, it can also act as an obstacle to change and is a particularly pervasive stumbling block to change of attitudes. Police, para-military and armed force organizations that require a high degree of individual commitment have correspondingly more powerful organizational cultures that are highly resistant to change. Commitment to change at the highest levels is therefore a definite plus. One of the advantages of constant interaction with the community, which most police forces will have regardless of whether definite policies are in place to this end, is that this commitment can be secured more easily if influential and respected members of the community outside the police are also convinced of the need for change.

Almost everyone recognizes the need for more women police officers. Their importance, however, extends beyond the role of reporting and investigating officers with whom women and child victims are more comfortable. It is their ability to foster organisational change in the police forces, a most difficult and crucial task, which is invaluable and which requires to be focused on.

A certain critical mass of agents of change is necessary in an organisation before the culture begins to respond to their influence. Small numbers on the other hand are prone to succumb to the dominant culture, sometimes even supporting it with greater vigour than the majority elements in a bid to gain acceptability and approval. It is for this reason that some women complainants may articulate that they have found more sympathy from male rather than female police officers.

The critical mass recommended is at least a third of the organizational strength. The difficulties in achieving such numbers are not insurmountable, but as they also involve reserving posts that could go to men for women, there is considerable reluctance among police managers to accept modifications in recruitment policies.

One of the results of low numbers of women police officers is that women may be marginalized into 'soft' jobs; the inference that women are unsuitable for tough police duties thus becomes self-perpetuating. Even specialist duties such as handling women and child complainants, or deployment at reporting desks in police stations can become identified as 'soft' in this context. Mainstreaming of women officers and posting suitably trained male police officers to posts like the ones mentioned is an important step towards change in organizational culture as well as in ensuring that the needs of women and children are not themselves marginalized.

It is also essential to improve the environment for women in the police organization so that the situation of carrying women vacancies or not finding suitable women recruits is mitigated.

## **IX. BUILDING PARTNERSHIPS**

Empowerment, the process by which the powerless gain greater control over the circumstances of their lives, has to be seen as a primary stepping stone for the realization of women's human rights. It includes greater control not only over tangible and intangible resources (physical, human, intellectual, financial) but also over ideology (beliefs, values and attitudes). Women's ability to make choices and decisions must extend to all walks of life - family, household, community, and society as a whole.

A National Policy for the Empowerment of Women was announced by the Government of India in 2001. On violence against women the policy states, "All forms of violence against women, physical or mental, whether at domestic or societal levels, including those arising from customs, traditions or accepted practices, shall be dealt with effectively with a view to eliminating its incidence. Institutions and mechanisms/schemes for assistance will be created and strengthened for the prevention of such violence. A special emphasis will also be laid on programmes and measures to deal with trafficking in women and girls". (para. 7.1).

On the rights of the girl child, the policy says 'All forms of discrimination against the girl child and violation of her rights shall be eliminated by undertaking strict measures, both preventive and punitive, within and outside the family. These would relate specifically to strict enforcement of laws against prenatal sex selection and the practices of female foeticide, female infanticide, child marriage, child abuse and child prostitution, etc. In implementing programmes for eliminating child labour, there will be special focus on girl children'.

The relevance of the policy can be judged not just by the comprehensiveness of its objectives but more by the efficacy with which it translates into practice and achieves results in a reasonable time span.

The unfinished task of building a well-extended, responsive and humane infrastructure geared to the needs of women in distress needs to be acknowledged and pursued in a coordinated manner. This includes setting up special courts/judicial bodies and legal aid services for speedy disposal of cases of human rights violations, arrangements for interim relief for affected women such as financial assistance and rescue homes, and arrangements for educational and vocational training so that they can be economically self-reliant and in a better position to access their rights.

A critical point can be made with regard to infrastructural and other support for the lot of victims of crime in general. The criminal justice system is prosecution oriented and has little scope for victim support. Other

agencies, where such support could be based are usually not adequately engaged by the criminal justice system. For women victims, burdened as they are by restricted choices, this issue requires more pertinence, and alternatives have to be created for them. It should not be the lot of victims of domestic abuse, for example, to stay on and suffer because there is nowhere else to go. Law enforcement agencies themselves are often at a loss in the absence of such support.

A victim-centred multidisciplinary approach which enables inputs from police, medical, legal, social and voluntary services would be ideal to fill in this major void. It is surprising how quickly sound partnerships can be forged once common goals and their importance are acknowledged. A common goal of victim support can well lead to other areas of concern, such as the long delays endemic in the judicial systems in the country being highlighted for action. Judicial delays work against the interests of all victims and women victims in particular, and efforts to reduce these would yield the best results when addressed in a coordinated manner. Various initiatives to reduce these delays are underway in India and the need for support from all agencies concerned can hardly be over emphasized.

Another unexpected windfall from forging partnerships can be to find how strong individual organizational cultures can become receptive to change and how the talents and competencies of one organization can flow in to fill gaps in another.

## **X. INNOVATIVE TRAINING STRATEGIES**

Training methodology is almost as important as training content. Creating empathy, i.e. putting oneself in the victim's place is seminal to creating a gender aware perspective. Role play as an innovative form of training that can be very effective in creating this internalization of the victim's needs and teaching the officer the correct way to respond to them. I can do no better than to quote briefly from a report on one such role play exercise.

'He is the woman complainant approaching a co-trainee who is the duty officer in the reporting room. He complains of beating by his (her) husband. The reporting officer, aware that he is under observation, starts off very polite and considerate but things soon begin to go wrong. The complainant is taking her job too seriously and the reporting officer is beginning to lose his temper with her inability to state clearly what it is she desires or expects him to do.

"What did you do to make him beat you?" he finally says in exasperation.'

A video or other audio visual training aid can serve the place of weeks of lectures.

The most effective of these was a training video that contained the simple testimony of an American male police patrol officer who had had the bad luck to be in the wrong place at the wrong time. As he cruised slowly down a main road he observed a garbage can that was lying squarely in the middle of a side road and turned his patrol car up the alley. As he leaned over to remove the can he felt a gun thrust into his spine and two big men abusively order him to remain as he was and lower his pants. He was then raped by both men and forced to perform other sexual acts that he related plainly in the language of his assailants. His feelings at the time and the physical revulsion that he felt are also related in a similar manner.

Eventually he was freed and returned to the precinct where he was allocated to make a report. He then describes his treatment at the hospital where he is called up out of a line up, is sure that everyone present there knows exactly what has happened to him and that they are all staring at him and whispering amongst themselves. The pain of the medical comes next and then the finishing coup.

Returning to the precinct he feels all his colleagues are uncomfortable, will not meet his eye. Finally two of his best buddies come up to him. One of them puts an arm on his shoulder and says, "Hey George, did you know these guys from before or what?"

## **XI. CONCLUSION**

Domestic violence is an issue pertaining to both men and women and has to be addressed with both of them. By this we cannot mean just the victim and the perpetrator, but law enforcement and other authorities

who have a role to play, as well as the community and elements of society who are in a sense the context in which the tragedy of violence plays itself out.

A predilection for tokenism has to be avoided when framing laws and policies towards addressing such issues, no matter what the pressures for quick action are. As a former President of India said, “Before we can address ourselves to legal enactments for the prevention of oppression and the protection of the rights of women, we have to fight the attitude and atmosphere of prejudice against and neglect towards women”.

Of course when legal or other change is mooted in this sphere one has to contend with the difficulty of balancing the need to strengthen social institutions such as marriage and the family with the individual’s rights for justice, equality and recognition. This would bring us full circle to the beginning, the introduction to this paper that observes how women are more heavily victimized because of social attitudes and neglect of their rights. The criminal justice system possesses the inherent power to make a significant difference in initiating gender related changes in social institutions by first changing itself. As a law enforcer I feel we have to understand that and provide, in mitigation and response, a far more humane and sensitive approach to the women among the victims.

# **A COMPREHENSIVE APPROACH TO PREVENTION OF CHILD MALTREATMENT IN THE PHILIPPINES: BUILDING PARTNERSHIPS AMONG AGENCIES, ORGANIZATIONS AND THE COMMUNITY**

*By Celia Capadocia Yangco\**



## **I. INTRODUCTION**

The Philippines has a young population, with 36 million or 43% of its population of around 76 million as of 2000 consisting of children below 18 years of age. As such, it has a vast reservoir of future and potential human resources that can contribute to its progress as a nation, culture and people.

Children in the Philippines are guaranteed their rights, and their best interests are enshrined in the Constitution, the basic law of the country, as well as in other laws. All institutions of the land – from family, school, church, community and others – are called upon to protect and promote the welfare of the Filipino child. In fact, the Philippines is among the first countries in the world that has adopted a Child and Youth Welfare Code. Passed in 1974, the Child and Youth Welfare Code, also known as Presidential Decree 603 (PD 603), contains provisions that articulate not only the rights and privileges of children but also the responsibilities of the State and its institutions towards children and youth.

Like any other country, however, the Philippines is constantly affected by global changes and adjustments that somehow also affect its families and their children. Some of these changes, while intended to bring progress and developments, have negatively impacted on families specially children. The fast pace of living, rapid technological development, urban migration and congestion, and increased participation of women in the labour force are some developments that put stresses and pressures on the family.

The stresses and pressures on families are eventually communicated, transmitted and manifested in children, who are among the most vulnerable members of a family, because of their young age and malleability. At worst, these changes lead to maltreatment or abuse of children and, therefore, the violation of their rights.

Thus, the Philippine government, through the Department of Social Welfare and Development (DSWD) and the Council for the Welfare of Children (CWC), among other agencies, have embarked on a comprehensive and integrated approach to children's development along the areas of survival, protection, development and participation. Part of this holistic approach is the prevention and early detection of child maltreatment as well as the recovery, rehabilitation and after-care for maltreated or abused children.

This approach is part of the Philippine National Strategic Framework for Plan Development for Children for years 2001 to 2025 otherwise known as Child 21. Child 21 is a comprehensive guide for various stakeholders in designing their plans and programmes for Filipino children. Using the United Nations (UN) Convention on the Rights of the Child (CRC) as its framework, Child 21 follows a rights-based approach to achieving its vision of a child-sensitive and child friendly society.

## **II. CHILD MALTREATMENT IN THE PHILIPPINE CONTEXT**

Child abuse or maltreatment, whether habitual or not, as defined in the Philippines, includes any of the following:

- Psychological or physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment
- Any act by deeds or words which debases, degrades, or demeans the intrinsic worth and dignity of a child as a human being.
- Unreasonable deprivation of his/her basic needs for survival such as food and shelter.

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- Failure to give medical treatment to an injured child resulting in serious impairment of his/her growth and development or in his/her permanent incapacity or death.

Child abuse may be categorized in specific cases as follows:

1. Physical Abuse

Physical abuse refers to inflicting physical harm by beating, hitting, punching, kicking, biting, burning or any other act, which causes physical pain. This type of abuse can be caused by over-discipline or punishment that is inappropriate for the child's age and size.

2. Sexual Abuse

Sexual abuse includes activities by a parent or caretaker such as fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure and exploitation through prostitution or the production of pornographic materials.

3. Emotional/Mental Abuse

Emotional/mental abuse refers to a pattern of behaviour that impairs a child's emotional development or sense of self-worth. This may include constant criticism, threats, or rejection, as well as withholding love, support, or guidance. Emotional abuse is often difficult to prove and is almost always present when other forms are identified.

4. Child Neglect

Child neglect is the failure to provide for a child's basic needs, whether physical, educational or emotional. This can include refusal of or delay in seeking health care, poor nutrition, abandonment, expulsion from home or not providing shelter and inadequate supervision.

5. Child Labour

Child labour is the participation of children in a wide variety of work situations, on a more or less regular basis, to earn a livelihood for themselves or others. Poverty of the child worker's family is a reason for the emergence of child labour and the fact that it is relatively cheap and accessible. Child labour is tapped as a coping strategy of families who view children as potential income providers and as part of the family support system.

The worst forms of child labour include:

- (i) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;
- (ii) The use, procuring or offering of a child for illicit activities, in particular for the production of pornography or of pornographic performances;
- (iii) The use, procuring or offering for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties;
- (iv) Work, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or the morals of the children.

6. Commercial Sexual Exploitation of Children (CSEC)

Commercial sexual exploitation of children consists of practices that are demeaning, degrading and many times life threatening to children. It is a fundamental violation of the human rights of a child. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual and commercial object.

There are four primary and interrelated forms of CSEC. These are:

- (i) *Child Prostitution* which is the use of a child in sexual activities for remuneration or any other form of consideration. Children whether male or female, who for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group, engage in sexual intercourse or lascivious conduct, are deemed children exploited in prostitution and other sexual abuse.

Those who engage in or promote, facilitate or induce child prostitution, those who commit the act of sexual intercourse or lascivious conduct with the child and those who derive profit or advantage as owner or manager of the business establishment can be prosecuted for child prostitution.

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- (ii) *Child Pornography* which is any representation, by whatever means, of a child engaged in real or simulated, explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. These include photographs, negatives, slides, magazines, books, drawings, movies, videotapes and computer disks or files.
- (iii) *Child Trafficking for Sexual Purposes* which is the recruitment, transportation, transfer, harbouring or receipt of a person below 18 years of age for the purpose of prostitution, pornography or other forms of sexual exploitation, the geographical transfer of the child's body from one place to another, both within the country (internal) and outside of the Philippines (external).
- (iv) *Child Sex Tourism* which is the commercial sexual exploitation of children by persons who travel from their own country to another, usually less developed country, to engage in sexual acts with the children. Child sexual tourism also includes local Filipino tourists who travel to other parts of the country to engage in sex with children.

Different studies and research on child abuse/domestic violence show the following common findings on the victims and the abusers or perpetrators.

Factors	Profile of Victims	Profile of Abusers/Perpetrators
<b>1. Age</b>	<ul style="list-style-type: none"> <li>• The average age is 12 years, with age ranging between 7-16 years old at the time of reporting</li> <li>• Initial occurrence is between 7-12 years old</li> <li>• Abuse had been happening from 2-4 years if perpetrators are family members.</li> </ul>	<ul style="list-style-type: none"> <li>• Majority of perpetrators are in their middle and late adulthood (30-59 years old)</li> <li>• Average age is 35 years old</li> </ul>
<b>2. Sex</b>	<ul style="list-style-type: none"> <li>• Females are usually the victims rather than males (90%)</li> </ul>	<ul style="list-style-type: none"> <li>• Perpetrators are usually males rather than females</li> </ul>
<b>3. Educational Attainment</b>	<ul style="list-style-type: none"> <li>• Majority of the victims reached elementary level while others stopped schooling due to poverty or due to the case filed in court</li> </ul>	<ul style="list-style-type: none"> <li>• More educated than his victim</li> <li>• Majority are skilled workers</li> </ul>
<b>4. Socio-Economic Status</b>	<ul style="list-style-type: none"> <li>• Victims generally come from lower class (90%)</li> </ul>	<ul style="list-style-type: none"> <li>• Perpetrators usually come from lower class</li> </ul>
<b>5. Relationship Between Perpetrator and Victim</b>	<ul style="list-style-type: none"> <li>• Victim of kin offender is much younger than victim of other relation types. The closer the relationship between the victim and offender, the more likely the abuse is committed more than once.</li> </ul>	<ul style="list-style-type: none"> <li>• The offenders know most victims; 33% would include incest (father-daughter relationship is most frequent)</li> </ul>

With the increasing numbers of victims of domestic/family violence and child abuse, the DSWD, in coordination with other government agencies, developed programmes and services that address the needs of the victims. These programmes and services are focused on the three major aspects of prevention, recovery/rehabilitation and after care.

### III. THE PHILIPPINE DSWD

The Department of Social Welfare and Development (DSWD) is the premier national social welfare agency of the country involved in poverty reduction and the social protection of the most vulnerable and disadvantaged sector, namely children, youth, women, persons with disabilities (PWDs), older persons (OP) and disadvantaged or needy families, including victims of disasters.

### **A. DSWD Vision and Missions**

It has for its vision, “a society where the poor, vulnerable and disadvantaged families and communities are empowered for an improved quality of life”.

It’s mission is “to provide social protection and promote the rights and welfare of the poor, vulnerable and the disadvantaged individual, family and community to contribute to poverty alleviation and empowerment through Social Welfare and Development (SWD) policies, programmes, projects and services implemented with or through Local Government Units (LGUs), Non-Government Organizations (NGOs), People Organizations (POs), other Government Organizations (GOs) and other members of civil society”.

### **B. DSWD Goals**

The DSWD’s goals are:

1. Formulation and advocacy of a just and responsive SWD legislative agenda, policies and plans, as well as ensuring their effective implementation;
2. Identification, development and marketing of technologies for building up social capital;
3. Setting up and enforcement of SWD standards to protect the rights of the poor and the disadvantaged to quality services;
4. Provision of technical assistance and resource augmentation to intermediaries in the implementation of SWD programmes and services; and
5. Provision of preventive, protective, rehabilitative and developmental programmes and services.

### **C. DSWD Functions**

Since Philippine governance is devolved to the local government units (LGUs), the main responsibility of delivering basic social welfare services is latched in the provincial, city or municipal governments. There are 79 provinces, 115 cities and 1499 municipalities in the Philippines. Thus, there is a great diversity in the actual implementation of programmes and services, including those for children.

In the meantime, the DSWD continues to be in-charge of the following:

1. Policy Formulation and Programme Development, which involves coordination and networking with various stakeholders in coming up with policies and plans designed for social protection and poverty alleviation and eventually the development of programmes.
2. Social Technology Development - the development of a new programme which involves technologies addressing emerging needs.
3. Standards Setting and Compliance Monitoring which include registration, licensing and accreditation of social welfare agencies, programmes and services of intermediaries such as local government units, non-government organizations and people’s organizations.
4. Provision of Technical Assistance and Resource Augmentation to intermediaries needing such.
5. Capability Building of Intermediaries involving training and other forms of capacity building.
6. Implementation of national centre-based and community-based programmes and projects which include those for families, children, youth, women, older persons and persons with disabilities.
7. Management of Special Projects that are in keeping with national or flagship projects of government.

### **D. DSWD Structure and Network**

The Department has a central office, five bureaus, seven services and sixteen field offices all over the country. It has three major organizational groups, namely the Policy and Programmes Group; General Administration and Support Services Group and the Operations and Capacity Building Group where all the field offices belong. Under the field offices are residential facilities and non-residential programmes.

It has three attached agencies: the Council for Welfare of Children (CWC), Inter-Country Adoption Board (ICAB) and National Council for the Welfare of Disabled Persons (NCWDP). Recently, the National Commission on the Role of Filipino Women (NCRFW) and the National Youth Commission (NYC) were attached to the DSWD for oversight purposes.

The DSWD has a working relationship with 79 provincial social welfare offices, 115 city social welfare offices and 1499 municipal social welfare offices. It has partnerships with 536 NGOs which it has registered, licensed and accredited.

### **E. The Council for the Welfare of Children (CWC)**

One of the major thrusts of P.D. 603 is the creation of the Council for the Welfare of Children (CWC)

composed of several agencies, namely: the Department of Social Welfare and Development (DSWD), Department of Health (DOH), Department of the Interior and Local Government (DILG), Department of Education (DepEd), Department of Labour and Employment (DOLE), Department of Justice (DOJ), Department of Agriculture (DA), National Economic and Development Authority (NEDA), the National Nutrition Council (NNC) three private individuals concerned with the welfare of children and youth and a youth representative. The CWC is the overall body for the formulation, coordination, monitoring and evaluation of plans, programmes, projects and services for children. The CWC is an attached agency of the DSWD, with the Secretary of Social Welfare and Development as Chair of the Council, alternating with the Secretaries of Health, Education and Interior and Local Government.

It has for its powers and responsibilities the following:

1. Coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare;
2. Formulate an integrated national policy and long range programmes, monitor and evaluate the implementation of this policy, and all programmes and services relative to the development of the general welfare and protection of the best interests of children and youth;
3. Advocate and recommend to the President and other appropriate agencies for implementation on a nationwide scale when appropriate, new, innovative, pilot programmes and services for the general welfare of children and youth;
4. Mobilize resource assistance and call upon and utilize any department, bureau, office, agency, or instrumentalities, public, private, or voluntary, for such assistance as it may require in the performance of its functions;
5. Submit annually to the President, through the Secretary of Social Welfare and Development, a comprehensive report on its activities and accomplishments.

#### **IV. ROLES AND RESPONSIBILITIES OF DSWD IN RELATION TO DOMESTIC VIOLENCE AND MALTREATMENT OF CHILDREN**

The roles and responsibilities in coping with child maltreatment and family violence are classified into four major aspects: prevention, early detection and intervention, recovery and after-care.

The DSWD plays a vital and pivotal role in the management of both domestic violence and child abuse or maltreatment cases. Aside from the Child and Youth Welfare Code, several republic acts have mandated DSWD to lead in the policy formulation, planning, development, implementation, monitoring and evaluation of programmes and services geared towards addressing these phenomenon.

Republic Act 7610 "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, mandates the DSWD and the Department of Justice (DOJ) in coordination with other government agencies and the private sector concerned, to come up with a comprehensive programme to protect children against child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows or other acts of abuse and circumstances which endanger survival and normal development. RA 7610 was further amended by RA 9231 to provide for the elimination of the worst forms of child labour and afford stronger protection for working children.

In the meantime, Republic Act 9262, known as the Anti-Violence Against Women and their Children Act of 2004, seeks to prevent all forms of violence against women and children to secure their physical, sexual and psychological well-being, and has specific mandates for the DSWD. Under this law, violence against women and their children is considered a public crime. Temporary protection orders are issued to restrain the offender from causing further violence. The same is true for RA 9208 or the Anti-Trafficking in Persons Act which institutes policies to eliminate trafficking in persons, specially women and children.

##### **A. Prevention**

Prevention entails the setting up of wholesome and developmental programmes and services that will enable children to grow wholly and develop fully. It includes programmes and services that enhance family life, and promotes effective and responsible parenthood. Under this phase, the DSWD leads in the development, implementation and monitoring of the following programmes:

1. Early Childhood Development Project (ECDP)

ECDP refers to child and family focused services designed to build on and improve existing health,

nutrition, and early education services for disadvantaged children 0-6 years old. This project aims to reduce, by half, the infant mortality rate, child mortality rate, protein-energy malnutrition and dropout rates in elementary schools. It also aims to improve psychosocial development, school-preparedness of children and achievement levels of Grade 1 pupils.

## 2. Day Care Service for Children

This is the provision of supplementary parental care to 0 to 5-year old children of parents who find it difficult to fully take care of their children during part of the day because of work or some other reason.

Day care services are provided in day care centres or child minding centres. If these centres are not physically available, a community may avail of a supervised neighbourhood playground under an accredited service provider, child development worker or a day care mom.

A child who undergoes day care can expect to:

- become physically fit through proper care and nutrition;
- develop self-confidence, self-expression and self discipline;
- relate well to peers, parents and other adults;
- develop mental, intellectual, verbal and language skills;
- develop strong spiritual, socio-cultural and nationalistic values as well as positive attitudes towards one's family and community; and
- be provided comfort, safety and protection from neglect, abuse and exploitation.

## 3. Night Care for Children of Working Mothers

Night care involves the provision of temporary substitute custodial care for young children while their mother is working on the night shift.

## 4. Pre-Marriage and Marriage Counselling

Such counselling prepares about to be married couples (for pre-marriage) and spouses to understand their roles and obligations as couples and parents, among others.

## 5. Parent Effectiveness Service (PES)

This is a community-based service providing and expanding the knowledge and skills of parents and caregivers on parenting to be able to respond to parental duties and responsibilities on the areas of early childhood development, behaviour management of younger and older children, husband-wife relationships, prevention of child abuse, healthcare and other challenges of parenting. It assists parents and parent substitutes to develop and strengthen their knowledge and skills so that they can assume a major educational role in their child's growth and development.

## 6. Empowerment and Reaffirmation of Paternal Abilities (ERPAT)

This is a service that gives importance and emphasises the development and enrichment of knowledge, attitude and skills of fathers in performing their paternal roles and responsibilities. It involves conducting community-based sessions for fathers and training of and organization of father leaders and volunteers in the community to facilitate collective action and participation in promoting the important role of fathers to the family. It sees the significant role of fathers in performing multiple roles in all aspects of child rearing and development, including the care and behaviour management of adolescent children.

It gives emphasis to eliminating traditional gender role differentiation as manifested through the proliferation of the "macho" image of men as seen and observed in the norms, role expectations and behaviour patterns of Filipino males. It helps them achieve a broader and fairer definition of gender roles and understanding of oneself as nurturing and caring individuals both for their children and spouses.

## **B. Early Detection and Intervention**

Programmes and services under this category consist of interventions meant to detect abuse/maltreatment and protect the child and his/her parents, usually the mother, from harm and further trauma. It tries to reduce the frequency, intensity and severity of early signs of abuse or maltreatment through early case finding and immediate responses.

Programmes and services included in this category are as follows:

1. Child Protective Behaviour Programme

This is a safety programme addressing issues relating to safety including abuse of children, adolescents and adults. It has the following objectives:

- Provide simple practical skills and strategies to keep children safe;
- Assist children in identifying and coping with situations where they may be unsafe;
- Encourage children to recognize early warning signs, i.e. bodily responses/signals;
- Encourage children to further develop communication, problem solving and relationship skills;
- Assist children to increase their self protective skills against forms of abuse and assault;
- Encourage children to recognize their early warning signs to network with a trusted adult and to report their concern.

2. Counselling

This intervention focuses on assisting the clients overcome their problems and enables them to move on and pursue activities that will restore their socio-economic functioning. Counselling is carried out either individually or in groups.

3. Clearance for Travelling Unaccompanied Minors

A travel clearance is a document issued by the DSWD through its Field Offices or its attached agency, the Inter-Country Adoption Board (ICAB), whichever is applicable, to a Filipino minor who is below 18 years of age travelling outside of the Philippines, unaccompanied by his/her parents or those exercising parental authority and legal custody of the child. It certifies that a minor is authorized to travel abroad for valid reasons based on the assessment of the social worker.

A travel clearance is issued to:

- Protect the child from abuse and exploitation while abroad;
- Prevent child trafficking;
- Ensure that the travelling companion is duly authorized and able to look after the welfare of the minor;
- Ensure that the sponsor has the capability to protect and support the minor's needs while abroad.

4. National Family Violence Prevention Programme (NFVPP)

This is a community-based strategy of preparing family members to protect themselves against violence and manage resolution of conflict within the context of family relations.

The main goal of the project is the reduction of violence against women, children and other vulnerable members of the family. The programme uses the following strategies:

- Training and continuing technical assistance
- Organization and strengthening of support groups/community based structures
- Research and documentation
- Public information and advocacy
- Installation of a data based system on family violence

5. Comprehensive Package of Social Development and Social Welfare Services for Single Parents and their Children

This is a response to address the needs of single parents and their children. The package of services initially includes livelihood, self-employment and skills development, employment-related benefits, psychosocial, educational, health and housing services.

The programme emanated from the enactment of Republic Act 8972, otherwise known as the Solo Parents Welfare Act of 2002. The law mandates various government agencies and other sectors to consolidate their efforts to help address the needs of single parents.

**C. Recovery and Rehabilitation**

Recovery and rehabilitation involves the process of transformation of a child from a dysfunctional to a state of renewed functional condition where he/she shows competence in the performance of his/her roles.

The DSWD utilizes two approaches in the provision of recovery services to victims of domestic/family violence and child abuse. These are the community-based and centre-based approach.

### 1. The Community-based Approach of Recovery/Rehabilitation

The community-based approach refers to the provision of community-based programmes and services. This includes the *System of Referral*, which is a support service that the social worker may use to link and network the needs of women and children for services and interventions available within the community such as health, education, livelihood, etc.

Aside from referral, the 16 Field Offices of the DSWD maintain *Crisis Intervention Units (CIU)*, where the victims of domestic violence and child abuse may be provided with counselling services. Other services provided by the CIU are: stress debriefing, financial assistance to defray medical expenses in case the victim needs immediate treatment and medical attention, transportation assistance, and temporary shelter. Through the CIU, working arrangements with appropriate government, non-government, professional and civic organizations are established for the benefit of the clients.

Other types of community-based services that seek to address the recovery or rehabilitation of a child abuse victim are the following:

- (i) *Child Care and Placement (CCP)* which is the provision of alternative care to children in especially difficult circumstances whose parents are unable to provide for their basic needs, temporarily or permanently, brought about by problems in family relationships, illness, extreme poverty, abuse and neglect. This may be provided through kinship care, local adoption, foster family care or legal guardianship.
- (ii) *Child and Family Counselling* which provides information, options and opportunities and emotional support to strengthen child-family relationships and coping capabilities to enable the child and family to reach a decision about family and child care.
- (iii) *Casework/Group-work Services* which focuses on treatment and rehabilitation of children who have undergone traumatic experiences that may affect their growth and development as human beings.
- (iv) *Psychological and Psychiatric Interventions* through tests and other modes of assessment as well as therapeutic sessions extended to the child to determine aptitudes, capacities, interest and behavioural problems to facilitate treatment in accordance with individual needs and characteristics.
- (v) *Medical Services* in the form of referral for medico-legal examinations, hospitalization and medical treatment, if indicated.
- (vi) *Legal Services* through referral to volunteer lawyers in pursuance of the victim's case, litigation of the perpetrator or termination of parental authority.
- (vii) *Livelihood Services* which provide skills training and capital grants to enable the child, when able, and his/her family to engage in income producing activities to alleviate their financial difficulties and improve their economic conditions.

### 2. The Centre-Based Approach of Recovery/Rehabilitation

The centre-based approach is done through the provision of activities geared towards the victim's recovery in a residential setting, managed either by the DSWD, LGUs or licensed/accredited agencies, and is commonly known in the Philippines as *residential care service*.

Residential care service is 24-hour group care that provides alternative family care arrangements to poor, vulnerable and disadvantaged individuals and families in crisis whose needs cannot be adequately met by their families and relatives or by any other forms of alternative family care arrangements over a period of time.

Under the guidance of trained staff, residents in centres and institutions are cared for under a structured therapeutic environment with the end in view of reintegrating them with their families and communities as socially functioning individuals.

To date, there are sixty-six DSWD-managed centres and institutions. Of this number, twelve are for women victims of domestic/family violence and twenty-five are for children/youth victims of abuse. The rest are for children in conflict with the law, persons with disabilities and older persons.

In addition, three *Therapy Centres* are being pilot tested for the conduct of therapy sessions for victims of sexual abuse. These are located in the cities of Manila, Cebu and Davao.

The following are the major services provided to victims of domestic violence and child abuse while they

are temporarily sheltered at the different centres and institutions:

- *Treatment and Rehabilitation services* - which refers to the process of providing appropriate intervention to a woman/child whose behaviour is inappropriate and unacceptable and has a negative impact on her and others. The social worker's focus is to facilitate the determination of the functional level of the woman/child. It also refers to the series of activities that would facilitate restoration, healing and recovery of the women/children from the trauma of neglect and other forms of abuse/maltreatment and exploitation and make them return to normal functioning for eventual social reintegration.

Among the activities provided to women/children are: casework, counselling, group work, group counselling, therapy and referral.

- *Group Life and Home Care Services* which refers to the daily living experience of the women/children that provides opportunities for self-discovery, social control and discipline that would promote a sense of responsibility and strengthen capability for decision-making and relationships with others. This includes: in-house training and daily living; self-enhancement skills and development; and maternal and child care skills development (for women).
- *Health and Nutrition Services* which includes preventive, curative and rehabilitative services to ensure physical, mental and psychological conditions of the women/children that would promote a healthy and productive environment through information dissemination, waste/ecological management, nutrition education and a health campaign against epidemics and contaminations. The health and nutrition services include: medical and dental care, STD clearance, psychiatric, psychological, and dietary.
- *Productivity Skills Training* to the women/children based on their needs and capability in preparation for future economic independence and gainful employment.
- *Legal Services* that would help women/children needing legal intervention while their cases are in litigation through coordination with other government agencies, private individuals, and groups providing legal services.

#### **D. After-Care Services**

After-care and follow-up services are necessary to ensure the smooth return and reintegration of the survivor to their families and communities. It is the provision of interventions, approaches and strategies with the end goal of ensuring effective reintegration and relapse prevention of the children and women victims of violence discharged from residential facilities.

The centre and community workers formulate a discharge plan as a basis in the provision of appropriate services to both the client and her/his family/guardian. The discharge plan indicates the interventions that will prepare the client, family/guardian and the community for their eventual return to the community.

The City/Municipal Social Welfare Development Office (C/MSWDO) under the city/municipal LGU provides after-care and follow-up services within a period of one year from discharge, in coordination with other government and non-government organizations. A contract/agreement is signed by both the community social workers and the client to carry out the reintegration plan.

The following are the components of the after-care service for women/children:

- *Educational Assistance*: the provision or access for scholarship and/or financial assistance to school age children to support the educational needs of those who decide to pursue their education/studies.
- *Family Counselling*: the provision/conduct of counselling sessions to the client and her/his family to enable them to be aware of the factors which caused the problem; their roles and responsibilities in order to improve their coping capabilities and strengthen their family relationships.
- *Self-Enhancement Service*: continuous provision of opportunities for the improvement of the self to enable her/him to fully participate and be fully mainstreamed into society. These include: personality development through values education, formation and inculcation: values clarification, gender sensitivity and the process of sustaining positive attitudes, habits and values acquired in the centre.
- *Social and Vocational/Practical Skills Development*: to further develop positive work habits, attitudes and skills in crafts and trades for the economic productivity of the client. The training is provided to either individuals or groups. It is conducted in existing community centres, facilities in the neighbourhood where clients reside through self-sheltered workshops and/or referral for appropriate employment to the client.
- *Spiritual Services*: provision of activities to maintain the moral and spiritual development of the client.

- *Referral Services*: provides the client the opportunity to avail of other services from other agencies like medical, laboratory examinations, psychological treatment and medication in the hospitals/clinics of the client who are sick/suffering from any disease or illness.

In all the major aspects of prevention, recovery or rehabilitation and after-care or follow-up service, the necessity of building partnerships among local government units, government agencies, non-government organizations and the community is of utmost importance. Convergence of existing programmes and services to eliminate domestic/family violence and child abuse/maltreatment is indispensable.

## **V. IMPORTANCE OF PREVENTIVE MEASURES AND NECESSITY OF BUILDING PARTNERSHIPS AMONG AGENCIES, ORGANIZATIONS AND THE COMMUNITY**

The quotation an “ounce of prevention is better than a pound of cure” is still very much relevant today, especially in the management of domestic violence and child abuse and maltreatment. Preventive measures ensure that domestic problems and situations in the family that spawn violence and abuse are nipped in the bud, so to speak. It brings about peace and development at the micro (family) as well as the macro levels of society.

At the family level, couples’ or parents’ capabilities are enhanced and their potential as role models are honed. Parents are able to demonstrate to their children the responsibilities that go with parenting, as well as of responsible, productive and contributing citizens of a community and society. They are able to live out their God-given roles as inter-generational purveyors of priceless values such as love, peace, joy, unity, kindness, generosity, etc.

In the meantime, preventive measures at the community and societal level ensure that citizens abide by the laws of the land, contribute to the progress of the nation and ultimately produce better and brighter citizens of the world.

Thus, it is important that the State lead in building partnerships among agencies, organizations and the community to prevent and address domestic violence and child maltreatment. Towards this end, the following have been established and institutionalized in the Philippines to prevent child abuse/maltreatment and promote children’s development.

### **1. Local Councils for the Welfare of Children**

The CWC at the national level have been replicated at the regional and sub-regional levels. At the regional level, a regional sub-committee for the welfare of children (RSCWC) is created under the Social Development Committee (SDC) of the 16 Regional Development Councils (RDC) in the country. The RDCs are the regional coordinating bodies for all concerns and issues confronting a region. There are presently sixteen geographical regions throughout the Philippines consisting of several provinces, cities and municipalities. The RDCs have four major committees: economic development, social development, infrastructure and development management.

At the provincial level, there is a Provincial Development Council, under which is a committee in charge of the welfare of children and women. This is true for city and municipal councils.

### **2. Barangay Council for the Protection of Children**

As provided for under the Child and Youth Welfare Code, every village is encouraged to organize a barangay council for the protection of children (BCPC) which draws up and implement plans for the promotion of child and youth welfare in the barangay. The functions of this Council are as follows:

- Foster the education of every child in the barangay
- Encourage the proper performance of the duties of parents, and provide learning opportunities on the adequate rearing of children and on a positive parent-child relationship
- Protect and assist abandoned or maltreated children and dependents
- Take steps to prevent juvenile delinquency and assist parents of children with behavioural problems so that they can get expert advice
- Adopt measures for the health of children
- Promote the opening and maintenance of playgrounds and day-care centres and other services that

are necessary for child and youth welfare

- Coordinate the activities of organizations devoted to the welfare of children and secure their cooperation
- Promote wholesome entertainment in the community, especially in movie houses
- Assist parents whenever necessary in securing expert guidance counselling from the proper governmental or private welfare agencies.

In addition, the BCPC shall hold classes and seminars on the proper rearing of children. It shall distribute to parents available literature and other information on child guidance. The BCPC shall assist parents, with behavioural problems whenever necessary, in securing expert guidance counselling from the proper governmental or private welfare agencies.

### 3. Parent Teacher Associations (PTAs)

Parent Teacher Associations are required to be organized in all elementary and secondary schools to provide a forum for the discussion of problems and their solutions, relating to the total school programmes, and for insuring the full cooperation of parents in the efficient implementation of such programmes. It is also mandated to aid municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programmes and activities to promote child welfare.

### 4. Associations of Private or Non-Government Agencies involved in Child Development and Welfare

Among the private sector and non-government agencies, there are a number of associations that have been organized to address child development and welfare and specifically to prevent child abuse and maltreatment. Foremost among these are Plan International, World Vision, ERDA Foundation and Christian Children's Fund. The Association of Child Caring Agencies of the Philippines (ACCAP) is a main supporter for community and centre based interventions.

### 5. Business Initiatives for Children

There are also a number of business establishments that have as a group or on their own support and/or established, programmes and services for children and/or their families. Such establishments include banking institutions, manufacturing firms and trading and service companies. Their support comes in terms of programmes, advocacy, resources and funding.

### 6. Professional Organizations

Professional organizations for children's causes such as those of lawyers, medical practitioners, social workers, etc. also have programmes for child development and welfare. They focus on specific areas where their particular expertise is needed. Medical practitioners for instance assist in the medical recovery of clients while lawyer groups assist in the legal aspects of cases.

### 7. Youth Organizations

Youth organizations at the local level are likewise actively involved in helping their peers or younger children, through participation in children's programmes and services such as in day-care centres and residential facilities. The older youth act as facilitators and guides for the younger children and serve as a resource group.

## **VI. PROGRAMMES AND ACTIVITIES FOR THE PREVENTION OF CHILD ABUSE/MALTREATMENT**

### **A. Preventive and Developmental**

Programmes, services and activities that are in place in the Philippines for children in addition to those enumerated in Section IV of this paper, and which highlight partnerships among the sectors of the community are as follows.

#### 1. Mainstreaming Child 21

Mainstreaming Child 21 is an advocacy and planning programme at the national and local level, aimed at integrating children's concerns and services in all development plans at these levels. The three concrete manifestations of the outputs of this programme are having local child welfare codes or ordinances, local

children's plans and investment plans and functional local councils for the welfare or protection of children.

2. Bright Child Programme

This is basically a campaign strategy to accord children up to six years of age a full range of health, nutrition, psycho-social stimulation and early education services to ensure their holistic development. Led by the Departments of Health, Social Welfare and Development and Education, the programme counts as its supporter other government agencies, LGUs, non-government organizations, the private sector, the media the church and inter faith groups and the community.

3. Search for Child Friendly LGUs

Search for Child Friendly LGUs encourages LGUs to provide a child-friendly environment for the children in their localities, through the granting of a Presidential Award from the President of the Philippines. The LGUs are adjudged child-friendly based on certain criteria. This initiative has increased awareness of LGUs and improved their governance by making them responsible to the needs of children.

4. Bantay Bata Programme

Initiated and led by the TV-radio network ABS-CBN, the programme has an emergency response component through a 24 hour trunk line which the people can call for child-related concerns. Much like the USA's American 911, Bantay-bata specializes in the rescue of maltreated, abused or neglected children in collaboration with the DSWD and other agencies.

5. Children's Hours

Children's Hours is a fund raising campaign that taps individuals and companies to donate one hour's worth of earnings once a year to programmes committed to the welfare and development of marginalized Filipino children including education, shelter, rehabilitation, health, nutrition, and medical services.

6. Adoption of a Comprehensive Programme on Child Protection

In keeping with RA 7610 (Special Protection of Children Against Child Abuse), a comprehensive programme for the special protection of Filipino children was prepared by the Special Committee for the Protection of Children led by the Department of Justice and the DSWD. The programme addresses areas of prevention, reporting, rescue and investigation of child victims, the judicial trial involving children's cases and their eventual reintegration into society.

7. Proclamation No. 731

Proclamation No. 731 declared the second week of February of every year as "National Awareness Week for the Prevention of Child Sexual Abuse Exploitation" to highlight awareness of the issue.

8. Training Programmes for Personnel Handling and Managing Children's Cases

Initiated by the Philippine National Police Academy for policemen, the Philippine Judicial Academy for judges and the DSWD's Social Welfare Institute for social workers, these training programmes are meant to enhance the knowledge, skills and attitudes of the different groups of practitioners who handle or manage children's cases. Special training is given to police officers in charge of women and children's desks in police stations, for Family court judges and for social workers in charge of children who are abused/maltreated.

9. Conduct of Juvenile Justice Dialogues

Dialogues among the leaders of the community including representative of parents, the police, prosecutors, judges and correction officials are done at least once a year at the regional and sub-regional levels to take up issues and concerns such as child and youth development, including concerns about children in conflict with the law, substance and drug abuse, including victims of abuse and maltreatment. Recommendations at both policy and operational levels are made during these dialogues which are thereafter elevated to the concerned organization or entity.

10. Child Participation in Governance

In addition to the above practices and activities, children's participation in all aspects of life involving them, including in planning and decision making in the Philippine society, has been continuously encouraged and supported.

A concrete manifestation of this is the appointment of a child commissioner at the National Anti-Poverty Commission (NAPC), which is headed by the President, and which coordinates poverty alleviation efforts. The Child Commissioner spearheads and articulates the concerns of the Filipino children, including the victims of child abuse/maltreatment. A child/youth is now also a member of the Council for the Welfare of Children.

#### 11. International Linkages for Children's Welfare

Aside from local initiatives, the Philippines has also embarked on regional and international linkages to protect and nurture children. Among these are:

- tie up with the International Social Services in Hong Kong, Japan and Singapore through the secondment of social workers in these countries;
- the posting of social workers in certain areas (Taiwan, Dubai, Kuwait, Abu Dhabi, Riyadh) to focus attention on the threat to Filipino women and children;
- establishing a bilateral Working agreement with Malaysia to protect migrant's children particularly in Sabah;
- training on specialized services on children's protection with New Zealand, the Netherlands and the United States of America; and
- cooperating closely with international organizations and groups such as the ASEA, ILO, UNICEF, UNDP, etc. for children programmes.

### VII. LESSONS LEARNED, CHALLENGES MET

Child maltreatment or abuse is a threat to the safety, security, and development of young people everywhere. It is also a risk to the development of the country's human resources. The Philippines has its own share of the problem and has also its way of addressing and managing this challenge as described earlier. Thus, many lessons are learnt in addressing this phenomenon. However, problems and challenges also emerge in the process of managing child maltreatment.

Among the lessons learned are:

- Children are capable of much more than what adults believe them to be capable of, given the necessary nurture and support. A child's own qualities, characteristics and emerging competencies are themselves important protective factors that will prevent their abuse and maltreatment. By teaching them developmentally – appropriate ways to stay healthy and safe, children can be empowered to protect themselves. While young, children can participate actively in the process of self protection.
- Child abuse and maltreatment should always be understood in the context of the child's family and community, and therefore his/her environment. The family should thus be strengthened and supported to provide quality care and education for children. The family should thus be the focus and locus of all development efforts.
- The incidence of child abuse and maltreatment is exacerbated by the presence of drug abuse, alcoholism, vices, diseases, the separation of parents, poverty, and other social problems. Thus, there is a need to educate families and the communities on the menace and ills of these phenomenon and how to address them.
- The foremost objectives for prevention of child maltreatment are to reduce risks and vulnerabilities and enhance factors and capacities advantageous to the child, hence the need to have a wholesome, learning environment supportive of growth with quality.
- Governments must invest in education as it is the most potent element in the development of citizens and the nation and in child abuse prevention. Education must not just be for children, but for the parents and community as well.
- Clear laws, policies and procedures to protect children and policies advocating "children first" heighten people's awareness on the need to promote child welfare and development. The presence of a legal framework to protect children is thus a must. The adoption of Child 21 and the comprehensive programme for child protection are thus welcome developments.
- An efficient and effective system of identification, detection, reporting and processing/managing among the key members of society (government, non-government, business, church, media, the community) on the incidence of child abuse/maltreatment is crucial to reducing or eliminating this problem. A systematic, standard, integrated and comprehensive approach is therefore required to respond effectively to child maltreatment. Thus, a multi-disciplinary approach is called for in order to prevent and manage child maltreatment well.

### **A. Challenges Met and Encountered**

Protecting the rights of children and promoting their best interests is a challenging task. While the Philippines has initiated many laws, programmes, services and initiatives for children, a lot remains to be done, especially in regard to child abuse and maltreatment. Presently, these challenges include the following:

1. Unavailability, inappropriate or lack of alternative parental care and custody of some children, including street children. While foster care and adoption are alternatives, there are children who are hard-to-place. This situation puts the children at risk and makes them vulnerable further to abuse and exploitation.
2. Existing penalties and fines against child abuse are not sufficient thus fail to be deterrents against child maltreatment.
3. Incidents of child abuse inflicted by parents to children under the guise of discipline are at times tolerated and remain unchecked. While some cases are filed in courts, these do not prosper as the child victims often execute an affidavit of desistance for pity by other members of the family, or after being brain-washed by parents themselves.
4. In some areas, there is lack of professionally trained staff (psychiatrists, child psychologists, paediatricians) to attend to the victims of child abuse and maltreatment.
5. Confidentiality of records of children are sometimes breached especially by the media and the police.
6. Responses to reports of child abuse cases in the country are still viewed as segmented, as functions of each agency of government are compartmentalized, thus the possibility of “re-victimization”.
7. In view of the devolution, programmes and services for children at the local level are not as holistic and comprehensive as they were conceptualized especially in low income municipalities because of limited resources.
8. A continuing burgeoning young population and a very high dependency ratio present risks and hazards of child abuse/maltreatment.
9. The insufficient budget allocated for basic social services that directly impinge on children’s growth and development continues to be a problem and a challenge.
10. Globalization, especially in regard to economic aspects, and information technology, has also brought about challenges in children’s growth and development.

### **B. Future Prospects in Handling Child Maltreatment**

Child maltreatment or abuse is a traumatic experience that occurs throughout the world in many forms, with the victims belonging to a variety of socio-economic strata, culture and population. While almost all countries are state signatories to the United Nations Convention on the Rights of the Child, the international law that protects and promotes children’s rights, child maltreatment continues to be a challenge for these countries, the Philippines included.

From a review of what the Philippines has adopted and implemented for the prevention and management of child abuse/maltreatment, a great deal has been achieved, but more needs to be done. Having codes and laws that are specific to child protection, welfare and development has established the legal framework from which the Child 21 and Comprehensive Programme on Child Protection were built on. These laws and framework plan have likewise laid the network for an integrated and multi-disciplinary approach to tackle the phenomenon. It likewise somehow articulated the political will to prioritize the issues relating to children.

There remains a bright future for children, particularly those who are abused and maltreated. Among these prospects are the following:

1. The passage of the Comprehensive Juvenile Justice System (CJJS) Bill before 2007 when the present 13<sup>th</sup> congress will end. The CJSS Bill provides for a comprehensive and integrated programme on the prevention of juvenile delinquency and treatment of juveniles in conflict with the law. With its

passage, certain issues related to non-standardization of procedures and processes in handling children's cases will be addressed.

2. The strengthening of the Special Committee for the Protection of Children at the national level and the Regional sub-Committees for the Welfare of Children at the national level.
3. The launching of a convergence programme for poverty alleviation in the poorest provinces and municipalities of the country with a focus on disadvantaged and marginalized families.
4. The passage and implementation of the Early Childhood Care and Development programme to ensure the best interests of children. One of the significant features of this programme is the adoption of a child development checklist against which the development of each child is matched to ensure that they develop well in seven critical domains, namely: cognitive; gross motor; fine motor; receptive language; expressive language; social-emotional; and self-help.

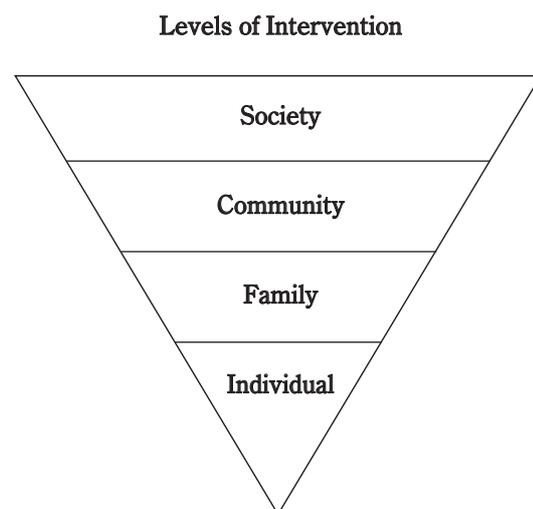
Preventing child abuse/maltreatment as a concern and intervention needs adjustment according to the size of the targeted population, whether these are individuals, families and communities or even an entire nation. At the individual level, interventions are primarily designed for children's healing recovery and rehabilitation which may be expensive and require individualized services from highly trained staff. At the level of the family, preventive interventions focus on the child within the context of his/her family both nuclear and extended, and on strategies to promote the well-being of the family as a unit, with special attention given to the parents or couples.

The next level of intervention addressed to the community include among others education of the public, training of service providers, support for community leaders, empowerment of local authorities and the community and preservation of local social infrastructures. At the national level, the interventions needed are designed for the entire population or general public such as laws, public policy, public institutions and services supporting child welfare, social protection and poverty alleviation. The aim at the societal level is to remedy the situations that are inherent in the social structure creating violence, inequality, injustice, exclusion or marginalization.

Thus, if we translate these preventive measures into an inverted pyramid with targets in descending order i.e., from society or nation to the individual, the resulting model will be as follows:

#### Examples of Preventive Measures

- Public policy (codes, laws)
- Pre-marriage counselling
- Early childhood care projects
- Public education and awareness raising
- Parent education
- Family enterprises
- Self-enhancement services
- Counselling
- Behaviour modification techniques



Clearly, the prevention of child abuse/maltreatment is everyone's duty. It involves the active participation and cooperation of the government, non-government organizations, the private and business sectors as well as the community and families. It entails the creation of an environment that is conducive to healthy, bright and productive children who will be the global citizens of tomorrow.

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# PARTICIPANTS' PAPERS

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## COUNTRY REPORT - INDONESIA

*By Irene Putrie\**

### I. BACKGROUND

In recent years, domestic violence and child abuse is no longer a local or a national issue, but has become an issue of concern for the international community. In 1978, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women and states parties agreed to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. Other international instruments are:

- Vienna Declaration and Programme of Action (1993)
- Convention on the Elimination of Violence against Women (1993)
- Beijing Declaration and Platform for Action (1995)

As an archipelago state from west to east, Indonesia has 200 million citizens and more than 85% of the population is Moslem. Belonging to nearly 500 linguistic groups and many ethnic groups, Indonesia is also concerned with domestic violence and child abuse.

### II. THE CRIMINAL JUSTICE SYSTEM IN INDONESIA

There are four pillars of the Indonesian Criminal Justice System. First, an investigation is carried out by the police. All investigations for criminal cases, except corruption cases, are carried out by the police, but during the investigation, the police have to inform the prosecutor about the case and if they arrest or detain the suspect.

Second, the Prosecution is carried out at the Public Prosecutor's Office. The Public prosecution service is a government institution that executes the state's power especially in the field of prosecution. The Attorney General, who is appointed by and responsible to the President, heads the public prosecution service. The Attorney General's Office is located in Jakarta, the High Public Prosecution Offices are located in the capital city of every province and the District Public Prosecution Offices. In criminal cases, the duties of the Public prosecutor are: to institute a prosecution in criminal cases; to execute a judge's stipulation and law in courts judgment; to supervise the execution of a verdict of parole; and to make a complete dossier of case (s) and to carry out the necessary additional examination.

Third, the pillar of the criminal justice system in Indonesia is Indonesia's judicial power, under the Supreme Court (*Mahatma Agung*) under Act No. 14/1970 and Act No. 35/1999. Indonesia has four types of court: General Court (for criminal cases and private disputes); Military Court; Administrative Court; and Religious Court. Indonesia has neither a jury nor lay judge system. All cases are handled by a three-judge panel.

The Fourth pillar is the execution power under the Ministry of Justice and Human Rights. Actually, the executor in Indonesia is a Public Prosecutor, but the prisons or correctional institutions are under the Ministry of Justice.

### III. CURRENT SITUATION OF DOMESTIC VIOLENCE AND CHILD ABUSE IN INDONESIA

#### A. Domestic Violence

*Mitra Perempuan*, a Women Crisis Centre in Jakarta through its Hotline Services receives complaints from their clients. In General, the clients do not want to report their cases to the police. In 1998, *Mitra Perempuan* handled 89 domestic violence cases. The cases concerned physical, emotional, psychological, sexual and economic violence. In 1999, 15.2% of its clients chose the criminal court to solve their problems. 45.7% left their homes and went to their parents' or relatives' homes. 23.9% remained silent and did nothing. It is important to note that victims of domestic violence show signs of post-traumatic stress disorder.

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\* Public Prosecutor, Indonesia.

A survey conducted by the Community Health and Nutrition Research Laboratory at Purworejo District in Central Java in 2000 has shown that many women in Central Java suffer physical and sexual violence from their husbands at different times in their lives. From a sample of the survey are 765 women (approximately 7.5% of the population in that region), data was collected by a longitudinal study on nutrition during pregnancy. Among them, the prevalence of partner violence against women: physical or sexual violence combined are 27%, sexual violence only is 22%, physical violence only is 11% and emotional violence is 34%.

The National Commission on Violence against Woman (*Komnas Perempuan*) stated that in 2003, they dealt with 5,934 incidents of domestic violence (Jakarta Post, June 30, 2004).

There are many “dark numbers” (not reported) of domestic violence. It is because of the perception of people or the community about domestic violence, lack of victim protection and/or rehabilitation programmes and a lack of consciousness of criminal justice agencies. Besides, the victims may be silent about the abuse and violence because of embarrassment, shame, fear that their batterers will hurt them if they tell other people about the violence and economic dependence on the batterers.

Domestic violence is rooted in a male dominating culture. In Indonesia, a patriarchal family system dominates domestic relations. Male domination and control over females, and parent's domination and control over children, were regarded as natural in the society where patriarchs predominate. The role and status of men and women is influenced by the interpretations of Islamic teaching: men are the heads and the leaders of the family and women are the household keepers. State policy emphasizes the importance of maintaining harmony and unity in the family.

Very few people identify themselves as abusers or victims. They may remain silent about the issue because of the havoc domestic violence creates in their workplace and family lives. Abusers may minimize their actions or blame the victims for provoking the violence. Both victims and abusers may characterize their experiences as family quarrels that “got out of control”.

There is no typical victim. Domestic violence occurs among all ages, races and socio-economic classes. It occurs in families of all educational backgrounds. Individuals may be living together or separated, divorced or prohibited from contact by temporary or permanent restraining orders. The majority of victims had little choice because they depended on the perpetrators for their survival.

Domestic (husband-wife) and gender violence are also common among socio-economically middle and high-class people with higher education. Some Indonesians argue that the law in Indonesia has failed to protect women from sexual abuse (ranging from verbal to physical abuse) because of the “phallic-centrism culture”, which is still dominant in the country. Another consequence of a phallic-centrism culture is that most traditional women in the culture are not used to expressing their own will, making them unable to differentiate between voluntary intimate relationships and rape. The research conducted by CHNRL in 2000 shows that most of the women who had been battered or sexually abused are those who accept traditional sex roles and most of the men who have battered or abused women are the ones who endorse more traditional gender roles. However, *gender violence and child abuse is not typical to Indonesian. Domestic violence prevails across racial and socio-economic boundaries.*

## **B. Child Abuse**

The most well known case of child abuse in Indonesia is the case of Arrie Hanggara, who was just 10 years old when he died after being tortured by his own father in the early 1980s in Jakarta. The boy's mother did not help him. The neighbours, who had heard Arrie's screams for days, also neither intervened nor called the police, because they considered it as a domestic affair. When interrogated by the police, the father justified himself by saying that his intention was just to discipline his son, which is not unusual for socio-economically lower class people like him. He even did not understand how his treatment of his son could cause his son's death.

Although this case concerns people from the lower class, it does not mean that violence happens only among the lower class.

Child abuse, such as the Arrie Hanggara case, is certainly under-reported in Indonesia. Partly it is because child abuse within the family is considered a private family affair and not a subject for outside intervention. Secondly, most of the abuse cases among lower class people are generally outside of the social work services. Thirdly, most caregivers failed to identify the children as being abused when they meet the abused mothers. Fourthly, many physicians also have barriers in the assessment of assault violence. Moreover, especially in Indonesia, medical services are hardly available to most lower class people.

The issue of child abuse is rife but the government has yet to take any necessary measures to reduce the number of cases across the country. Media reports in 2003 provide a figure of 2,184 child abuse cases, in which most victims were female. Most cases have been settled in court, but no measures have been taken to prevent future cases.

Hard data concerning the number of such children in Indonesia is non-existent, but the rate can perhaps be extrapolated from the number of cases of wife abuse.

For children, the impact of witnessing domestic violence can be devastating. Children may witness acts of domestic violence by being present in the room during the abusive incidents, by hearing the violence from another room or by seeing their mother's bruises, black eyes or broken limbs. Some children are so traumatized they need intensive therapeutic interventions after witnessing the abuse, while others may require only removal from the situation and support. Clearly, the impact of living in a home where domestic violence is present is detrimental to the emotional, developmental and physical well-being of such a child.

Children may be inadvertently injured during a violent episode. The children may lie terrified in their beds as the violence rages outside their bedroom doors or cower within the safety of a closet or other hiding place. In the worst case scenario, children may suffer serious injury or be killed in the batterer's continuing endeavour to control his victim completely.

Many children exhibit signs of post-traumatic stress disorder after witnessing domestic violence. Symptoms may include inability to sleep throughout the night, bedwetting, anger acted out through temper tantrums or anger directed inward manifested in such ways as withdrawal or disassociation. As children grow older, they may experience feelings of guilt for not protecting their mothers and may turn to drugs or alcohol to numb these feelings. School-aged children tend to have poor academic performance, are absent frequently from school and may have either behavioural or psychological problems such as withdrawal and disassociation.

Children who grow up in homes where domestic violence occur are also more likely to abuse others or become victims of abuse as adolescents or adults. At a very early age, male children who have witnessed their fathers' abusive behaviours may begin to behave similarly toward their mothers and female siblings. By age five or six, some children are disrespectful of the victim of domestic violence for her perceived weakness and begin identifying with the batterer. Female children learn early that their mothers are subjugated by the abusiveness of their partners. Unfortunately, those perceptions are normalized and children actually begin to believe that their experiences are no different from the experiences of their friends or classmates.

Witnessing violence can trigger an array of problems in terms of physical health, as well as cognitive, emotional and behavioural aspects. The impacts of conjugal violence on children vary, are multi-dimensional, and also depend on their emotional and intellectual maturity.

The more visible impacts upon these children are manifested in so-called mood related disorders such as excessive crying, sadness and anxiety. The child may suffer from sleeping and eating disturbances due to the disruption of the normal routine at home. The aftermath of violence also fosters lack of responsiveness to adult stimulation.

#### **IV. REGULATION OF DOMESTIC VIOLENCE AND CHILD ABUSE AND LIMITATIONS**

##### **A. Regulation of Domestic Violence and Child Abuse**

In the Indonesia Penal Code, there are several offences that may be applicable to domestic violence and

child abuse. They are:

- Violence (Article 89)  
Using physical violence - when one person uses force to inflict injury
- Harassment, stalking (Article 284, 289)
- Rape (Article 285)
- Abuse (Article 351-354)

These offences are still general and not specific enough to deal with domestic violence and child abuse. For example, the term “rape” does not include marital rape. This means marital rape is not a crime under the Indonesian Criminal Code. The Code defines rape as an act of forced penetration that takes place outside of marriage. So the “rape” occurs only between a man and a woman who is not the man’s wife. Article 285 explicitly states this, *“Those who...force a woman to have intercourse outside of marriage are under threat of imprisonment....because they have committed rape”*.

Indonesia has ratified the international documents concerning domestic violence and child abuse. The international documents that have been mentioned above influence Indonesian regulations.

The last decade has been marked by an increasing awareness of domestic violence and child abuse in Indonesia. On September 22, 2004, the country enacted the Domestic Violence Protection Act No. 23/2004 (*UU Perlindungan Kekerasan Dalam Rumah Tangga*), which aims at protecting and ensuring the safety of family members from violence within the domestic environment. This Act legally assures the protection of wives, husbands, children, relatives, domestic workers and any others who work and/or reside within the family.

However, Indonesian law does criminalize domestic violence specifically through the Domestic Violence Protection Act. Under this Act, the definition of domestic violence is:

*When the family members use physical violence, psychological violence, sexual abuse, and abandonment of family*

The offence of marital rape is enacted in Article 5 and Article 8 of the Act. Domestic violence in the Act includes physical, psychological and sexual violence and the abandonment of family member(s).

Victim’s protection and rehabilitation programmes are included in the Domestic violence Protection Act. In Article 16, the victim’s rights are:

1. protection from family, police, public prosecutor, court, advocate, social institution, or other party, for a while or based on court stipulation;
2. medical treatment;
3. special investigation related to victim’s secrecy;
4. social advice and advocacy through the legal process; and
5. Religious advice.

In 1997, the country enacted the Child Protection Act (Act No. 23/1997). A child is someone below 18 years old and includes the unborn baby. In Article 13-16, the child’s rights are protection from: discrimination; exploitation, economical or sexual; neglect; violence, abuse; unfairness; and others.

## **B. Treatment of Offenders**

Besides imprisonment and fines, Judge can give additional punishment such as:

- An order to refrain the offender from approaching the victim;
- An order to the offender to vacate if it is necessary to prevent the victim from having to meet the offender;
- An order for the offender to follow a counselling programme.

## **C. Legal and Implementation Problems**

Domestic violence is recognized as a criminal act, but it is still considered rather a family affair because the husband is seen as the leader who has the right to educate or to correct his wife. Besides, cultural attitudes toward the law do not support woman’s demands for legal rights.

Although Indonesia enacted the Domestic Violence Protection Act, the court process is not easy. Domestic violence is an offence that warrants a complaint (offences on complaint). The victim can give rights to her family to report the violence but still needs to frame it as a “victim” report. This means that if the victim does not report the incident of violence to the investigator, there is no case.

It must be noted that domestic violence in general is an under-reported crime. The actual number of incidents would be far greater if there was not such a strong social stigma attached to it, in addition to the limitation of services available to victims. However, based on the aforementioned statistics, we can assume that the number of children who suffer in silence from the effects of domestic violence is also significant.

In Indonesia, every criminal case is tried in a general court. There is no special court such as a family court to handle domestic violence cases.

## **V. STRATEGIES TO CONFRONT DOMESTIC VIOLENCE AND CHILD ABUSE**

In recent years due to the seriousness of their effects, domestic violence and child abuse is not just a local or a national issue, but has become an issue of concern to the international community.

In consideration of the above mentioned, domestic violence seems to be an interdisciplinary problem relating to politics, socio-culture, economics and others. A patriarchal family system has dominated domestic relations.

The strategies to confront domestic violence and child abuse, it is recommended, should be aware of three aspects of law: substance, structure and culture.

### **A. Substance**

Law reform especially the Domestic Violence Protection Act and Marriage Act.

### **B. Structure**

- Governments need to be aware that their actions may be considered an unreasonable invasion of family and personal privacy and parental rights when they intervene in such cases. Governments are required to establish appropriate legislation and guidelines for criminal justice practice and to monitor its implementation. (Article 11, 12).
- Criminal justice agencies are required to develop an integrated approach and to implement it into practice through networking with related sectors. This should include an integrated programme for victims witness protection and rehabilitation.
- Create Crisis Referral Services.

Another recommendation is to create local hotline or crisis referral services that can take calls from women or family members or concerned neighbours regarding a given case or incident, or an inquiry about legal, medical or psychological services. Such a service would allow organizations to reach those women who are less willing to come in person to a station or centre to access services and information. It would also give others the opportunity to speak on behalf of frightened women/children.

### **C. Culture**

The public should acknowledge that the issue of domestic violence and child abuse is not just a private, family matter, but also a serious crime, which needs to be prevented by the community as a whole.

It appears that proactive or holistic efforts to address domestic violence through community development schemes, women’s self-help collectives, efforts to raise public consciousness on the issue of domestic violence and on the economic and political empowerment of women, are also important. These strategies attempt to change conditions that might be responsible for domestic violence. These efforts can potentially reach the vast majority of women who do not or cannot come forward to complain about domestic violence.

Violence is a learned behaviour. Domestic violence is cyclical, which is often transferred across generations. This is a form of multigenerational violence and people just attempt to eradicate its prevalence through prevention, rehabilitation and advocacy. Nevertheless, it is recommended that woman’s and children’s activists in particular continue to promote this issue, otherwise we will be guilty of sanctioning

the legacy of multigenerational violence in our societies.

- Raise public awareness of women's rights through legal training:  
Public awareness programmes that are carefully imagined, designed and coherently oriented around economic and political initiatives, and that include gender sensitization components ought to be utilized in a variety of settings. In order to accomplish this, networks between organizations, between activists, and between state officers need to be strengthened; funding needs to be channelled towards improving mutual contact and communication between the state and voluntary sectors; and meetings and conferences to address strategies need to be systematically encouraged.
- Address physical and emotional trauma of victims and perpetrators:  
An awareness of the relationship between violence and trauma, the complexities of psychological health and/or the need for longer-term counselling is an important component, which needs to be further examined. Furthermore, efforts to reach the batterer or perpetrator of violence are currently nearly non-existent, yet important to develop.
- Raise awareness of criminal justice agencies.
- Raise awareness of the mass-media.

# COUNTRY REPORT - MALAYSIA

*By Nor Azilah Binti Haji Jonit\**

## I. INTRODUCTION

Malaysia has always been against any form of violence especially to women and children and in ratifying the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations Convention on the Rights of the Child (UNCRC), Malaysia has since developed programmes, legislation and education to protect them. The government has always regarded these issues as very important and very crucial to the nation.

In 1999 the government set up the Ministry of Women, Family and Community Development headed by a female minister to oversee, handle and resolve some of the issues surrounding women, family and children. Since then, there has been much focus and emphasis on women's development and child care, protection from violence and women's and child's rights. The development of legislature, programmes on awareness and community based projects are progressing tremendously.

Thousands of women and children from all communities, class, background, race and religion are experiencing these abuses daily in our society. Mostly, they suffer in silence. They do not know the options of getting help and support. They are not aware of the law and the legislation to get protection, to seek justice and demand their rights.

Domestic violence and child abuse are two profound areas that have been widely discussed by both the government and the non-government agencies. Over the years, Malaysia has developed its own strategies and plans to help protect women and children from violence and abuse.

## II. CURRENT SITUATION

Since the Domestic Violence Act 1994 and The Child Act 2001 being enforced, there has been wide coverage on this particular legislation in the media. Women and children are more aware of the laws that can protect them, voice their rights and demand justice for them. Though, cases of both domestic violence and child abuse are increasing yearly, this of course draws much concern for the fact that this violence is prevalent and the victims now know and are aware of the avenues to get help.

As for domestic violence, in the year 2004, the Royal Malaysia Police received 3101 reports of domestic violence as compared with 2555 in 2003, an increase of about 21.3%. In 2002, there were 200 more cases than in 2003. (Please refer to Appendix, Table 1).

Most of the perpetrators are family members, those who are closest to the victim and those they love so much. Table 2 shows the relationship of the perpetrators to the victims.

It is also noted that one of the main reason for domestic violence are misunderstandings besides jealousy, alcohol and drug abuse and money matters.

As for cases of child abuse (physical) it was noted that 158 cases were reported as compared with 134 cases in the previous year, an increase of about 17.9%. (Please refer to Table 3). Fathers are the most common child abusers in Malaysia (Please refer to Table 4).

As for incest, the reported number of cases are shown in Table 5. It shows an increase every year and is a cause of grave concern. Girls of 16 and below, are considered raped whether with or without their consent to the act (see Table 6).

Like domestic violence, most of the sexually abused children know their perpetrators. Table 7 shows the relationship of the perpetrators to the victims. For incest cases, the perpetrators are their own loved ones,

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\* Head, Sexual Investigation Unit, Criminal Investigation Department, Royal Malaysia Police, Kuala Lumpur, Malaysia.

those most dear to them. Section 376A of The Penal Code defines incest as having sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person.

### III. INTERVENTION AND PROTECTION OF VICTIMS

For the purpose of intervention, the Welfare Department has already provided a hotline number *1-800-883040* for any information from the public about any abuse that they know of. Any person who has reason to believe that an offence involving domestic violence is being or has been committed may give the information to an enforcement officer. No person who gives such information in good faith shall incur any liability for defamation or otherwise in respect of giving such information as stipulated in Section 18 (1) and (2) of the Domestic Violence Act.

Provisions under both Acts also provide protection to victims as below:

#### A. Domestic Violence Act (DVA)

Under this Act there are two types of protection the victims can ask for. They are:

##### 1. Interim Protection Order

This special provision is to protect women from further abuse after a complaint is formally lodged.

Section 4 (1) of DVA states that, the court may, during the pendency of investigations relating to the commission of an offence involving domestic violence, issue an interim protection order prohibiting the person against whom the order is made from using domestic violence against his or her spouse or former spouse or a child or an incapacitated adult or any other member of the family, as the case may be, as specified in the order.

Section 4 (2) states that an interim protection order shall cease to have effect upon the completion of the investigations.

##### 2. Protection Order

Section 5 (1) the court may, in proceedings involving a complaint of domestic violence, issue any one or more of the following protection orders:

- (i) a protection order restraining the person against whom the order is made from using domestic violence against the complainant;
- (ii) a protection order restraining the person against whom the order is made from using domestic violence against the child;
- (iii) a protection order restraining the person against whom the order is made from using domestic violence against the incapacitated adult.

Section 5 (2), the court in making a protection order under paragraph (1) (a) or (b) or (c) may include a provision that the person against whom the order is made may not incite any other person to commit violence against the person or persons.

One of the problems faced by the police is in serving the order upon the perpetrator as most of them try to avoid this by moving to a new address or place of work without leaving a forwarding address.

Other kinds of protection are:

- *Safe houses*

It's the option of the victim whether to choose to stay in a safe house or otherwise. The Welfare Department has 28 houses all over Malaysia to give temporary shelter to these women. More are being designed to meet the purpose at the state level and these premises are called 'Rumah Nur' or House of Light.

- *Court proceedings*  
Giving evidence in court against a person who is very close to the victim is another area that sometimes affects the smooth flow of the proceedings. Victims may request to give evidence through a video link in court. She/he will not be in the court room with the perpetrator/s.

## **B. Child Act 2001**

The Child Act provides provisions to protect abused children or children in need of care and protection as follows:

1. Restrictions on media reporting and publications;
2. Duty of Protector/Police Officer taking a child into temporary custody and putting them in a safe house;
3. Duty of medical officer to report any finding of abuse on a child to a protector or a police officer while examining the child; and
4. Duty of family member/child care provider to inform protector.

## **IV. CRIMINAL INVESTIGATION AND SENTENCING PROCESS**

All domestic violence and child abuse cases are classified under the Penal Code, except those not stated herein. There are two types of investigations. Firstly, investigations carried out by the Welfare Department where sometimes the victims or the family do not wish to indict the perpetrators for reasons best known to them. But if the officer finds that an offence has been committed the victims or any family members will be advised to file a formal complaint to the police. Secondly, an investigation carried out by the police commences once a report is formally lodged directly to the police.

Some of the common problems faced by the police during investigations are as follows:

### **A. Process of Investigation**

#### 1. Domestic Violence Offences

Under the Domestic Violence Act 1994, all provisions shall be read together with the provisions of the Penal Code. Though there are sufficient provisions for physical abuse, there is no provision for psychological abuse. Such abuses are quite commonly reported but in view of the absence of such an offence under the Penal Code, investigation procedures will not be initiated.

#### 2. Withdrawal of Reports

Almost 80 per cent of the cases reported ended up with a request of withdrawal by the complainants who are normally the victims of violence. Though the prerogative of granting withdrawals lies with the public prosecutors, it is quite apparent that the victim's request most of the time needs to be adhered to as they will foil prosecution by not giving their cooperation e.g. not attending court or giving unfavourable evidence during prosecution. Only 8.6% or 266 of the cases reported in 2004 were prosecuted.

#### 3. Lack of Cooperation

There are cases where victims do not get support from other witnesses who are family members. In such cases, victims will seek not to proceed with the case. There are also instances where victim themselves do not follow the requirement to be medically examined.

#### 4. Delay in Reporting

Victims of domestic violence cases, more often than not, will only report to the authorities after a certain "consultation" period. By such time physical evidence is no longer visible or has fully healed. His/her credibility will be questioned.

#### 5. Reluctance

Reluctance to seek assistance due to shame, fear of retaliation from their spouses and lack of awareness that domestic violence is a crime are some of the factors that contribute to continuous abuse.

#### 6. Attitude

All domestic violence cases are investigated by the police. Complaints regarding insensitivity of the law

enforcers from domestic violence survivors are seldom received. Nonetheless, efforts to consistently teach, remind and reinforce the practice are carried out at regular intervals.

As for child abuse cases, the limitations of investigation are as follows:

- (i) victim is too young to understand the questions posed to him/her;
- (ii) the answers given are not rational and do not answer the questions being asked;
- (iii) delay in lodging a police report and therefore it is hard to trace back the physical injuries suffered by the victim and to some extent the injuries are already fully healed;
- (iv) the abuser is closely related to the victim and therefore the victim is reluctant or refuses to cooperate with the authorities during the investigation for the following reasons:-
  - a) fear that they might lose their family ties and shelter;
  - b) being separated from the family;
  - c) that the abuser is the 'sole bread winner' of the family;
  - d) being accused as a problem maker in the family;
- (v) As far as sexual abuse is concerned, the police encounter difficulties in getting corroborative evidence. This is so as a 'rule of prudence', for the simple reason that it's very seldom that they get an independent witness to the act that mostly happened between the perpetrator and the victim only. Though corroboration can be in the form of a DNA test, chemistry reports and medical reports, the fact is that when these cases are reported to the Police, the victim has actually washed away all the evidence when he/she takes a bath.

In these types of cases too, the problem will only come to light when the child, mostly teenagers, get pregnant and other factors such as an infection of a sexually transmitted disease, is active in sexual activities while at a very young age and changes in behaviour.

## **B. Prosecution**

The prerogative to charge lies in the hands of the police and in more serious offences, the Deputy Public Prosecutor. In court the prosecutor can be either a Deputy Public Prosecutor or a Police Prosecutor.

Some of the problems in prosecuting are as follows:

1. the court proceedings take such a long time and therefore the victim or the witness finds it difficult to recall the fact of the case or evidence or sometimes they do not want to remember a bitter experience that had happened previously (emotionally disturbed/sad);
2. difficulties in tracing the witness/victim who have moved to other places;
3. application by the victim to withdraw the case after being induced by family members for reasons best known to them;
4. the victim feels uncomfortable, scared and ashamed especially when the accused person is in the same court room.

## **C. Sentencing**

The court takes into account the offence charged and the seriousness of the case when sentencing an accused. The court has to examine all the evidence put before it from all points of the law such as credibility and competency of witnesses and corroborative evidence before convicting an accused person. If the prosecutor or the defence counsel feels that the punishment is inappropriate, an appeal is filed in the High Court.

A child as a witness may affect the trial proceeding dynamics considering the child's age, mental and psychological development and language and literacy ability. The child's competency and understanding of the obligation of oath and telling the truth will be looked upon as vital before a court can make a decision.

## V. TREATMENT OF OFFENDERS

Convicted offenders will be sent to prison accordingly. As rehabilitation, they will undergo counselling sessions and also attend religious classes conducted by the appointed prison religious officers. They are also given vocational training and education. At the moment, there is no psychologist attached to the Department of Prisons in Malaysia to carry out psychological evaluation and treatment necessary for them. There are also no programmes yet to be developed, especially community based programmes for these ex-offenders.

However, proposals and recommendations for parole and probation systems are in the pipeline.

## VI. PROBLEMS

The statistics, which are only the tip of the iceberg, show that many women and children have come forward to get help. Undeniably, many women prefer not to report the violence because of factors stated below.

### A. Society

Women will stay in an abusive relationship/marriage because they may fear the stigma of being divorced. They will be looked upon as having failed in the marriage. They are also made to bear the burden of being responsible for the “make” and “break” of the marriage. Many women fear being branded as a bad mother and wife who does not keep the wedding vows they made. Her knowledge of available community services may be limited and therefore she believes she has no other choice but to stay in the abusive relationship.

### B. Emotional

The longer the woman lives in an abusive relationship the harder it is to leave as the woman loses her sense of worth and dignity along the way. This may cause her to have a very low self-esteem, and consequently contributes to her inability to leave. Other reasons may include her fear of the unknown and uncertain future, her love for the spouse and the hope that the spouse will change for the better. These women too are made to believe that they provoke the violence and that her children need their father, hence an abusive father is better than no father.

### C. Economic

In many cases involving domestic violence, husbands have made sure that their wives do not work even though they are unable to provide for the family. This is a form of control over his wife. It becomes a problem for the woman because she cannot leave home, having no money and being unemployed. One of the other reasons why women stay is because they may have nowhere else to go. The children may be young and therefore she is unable to get a fulltime job as she has to take care of the children. She may feel bad that she cannot provide her children with the best food, shelter and security.

## VII. THE CURRENT LEGISLATION

### A. The Domestic Violence Act (DVA) 1994

In 1985, women’s groups started campaigning to create awareness of violence against women. A special committee was formed in 1989 comprising of the Association of Women Lawyers, Women’s Aid Organization (WAO), All Women’s Action Society and other groups of societies to discuss and propose new legislation. Royal Malaysia Police (RMP) officers were invited in the discussion pertaining to investigation and prosecution of perpetrators. This enabled the RMP to contribute and played a major role in enacting the Act. Two years later, the draft was ready. In 1994 a special act was enacted to provide legal protection in situations of domestic violence and matters incidental thereto and is called the Domestic Violence Act 1994 (Act 521). It came into force in 1996.

The Domestic Violence Act 1994 was designed to grant both civil and criminal remedies for the survivors or victims of domestic violence, irrespective of race, religion, and cultural and family background differences. Domestic violence per se is not a specific crime under the Act. However, Section 3 of the DVA is to be read together with the provisions under the Penal Code and thus bind the investigation under the Criminal Procedure Code.

The Act provides protection to all persons in Malaysia including the spouse (including de facto spouse), former spouse, child, incapacitated adult or any member of the family.

This Act is enacted to curb the use of violence as a weapon to settle domestic disputes and to safeguard the marriage institution. It also acts as an instrument for the victims to seek protection and justice. It is not meant to destroy the family institutions.

1. Definition of Domestic Violence

Section 2 of the DVA states that – domestic violence means the commission of any of the following acts:

- (i) wilfully or knowingly placing or attempting to place the victim in fear of physical injury;
- (ii) causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;
- (iii) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (iv) confining or detaining the victim against the victim's will; or
- (v) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim,

by a person against –

- a) his or her spouse;
- b) his or her former spouse;
- c) a child;
- d) an incapacitated adult; or
- e) any other member of the family.

“Spouse” includes a de facto spouse, that is to say, a person who has gone through a form of ceremony according to the religion or custom of the parties concerned, notwithstanding that such ceremony is not registered or not capable of being registered under any written law relating to the solemnization and registration of marriages.

2. Enforcement Officers

- (i) the Police
- (ii) officers from the Social Welfare Department.

3. Duties of Enforcement Officers

- (i) assisting victim to file a complaint
- (ii) providing and arranging transportation to hospital
- (iii) explaining rights to protection available
- (iv) accompanying victim to collect their belongings
- (v) exercising power of arrest
- (vi) removing or supervising the removal of a person excluded from a shared residence.

**B. The Child Act 2001**

The death of baby Sundram, a two year old boy, in 1999 as a result of continuous abuse by an adult, triggered grave concern amongst the government, community and non-governmental organizations. There was a hue and cry by almost all walks of society that something had to be done to protect vulnerable children from being physically tortured. Although the Child Protection Act was in force at that time, there was a need for it to be reviewed together with the Juvenile Courts Act and the Young Women and Girls Protection Act that also concerned both the victims and young perpetrators, thus The Child Act 2001 (Act 611) was born.

Malaysia being a country that ratified the UNCRC has since developed and drawn-up programmes to protect children from physical, emotional and sexual abuse. Articles 19 and 20 specially demand the state party to be responsible for the well-being of abused children.

All cases are classified under the Penal Code except on ill-treatment, neglect, abandonment or exposure of children in a manner likely to cause him/her physical or emotional injury or causes or permits him/her to be abused, neglected or exposed which is an offence under this Act.

The Act also provides:

1. Protection of children in need of care and protection;
2. Temporary shelters and houses for victims;
3. Rehabilitation and Probation Institutions;
4. Powers of Investigation;
5. Roles and Responsibilities of the Court for Children.

### **VIII. INTEGRATED APPROACH**

1. Besides civil and criminal remedies and procedures, at the ministerial level action plans are being structured. The National Policy on Women Action Plan is one that responds to CEDAW. This plan was endorsed by the Malaysian Cabinet in 1989 and one of the special sectors that have drawn concern and active response is of course, violence against women. Positive and effective solutions to address the problems have been carried out by raising public awareness and to bring about positive attitude changes.
2. The Ministry of Health has set up One-Stop Crisis Centres in all major hospitals to handle survivors efficiently without having to go through much hassle queuing up with other patients.
3. A similar approach is being adopted by the Royal Malaysian Police Force in handling survivors of violence relating to sexual crime and also domestic violence. A "One stop centre" has been setup in a number of District Police Headquarters for victims of not only domestic violence but other criminal cases too, where they are put in a special room to be attended to. The newly set up Victim Care Centres, have conducive surroundings attended by trained police personnel who will facilitate and assist the survivor to lodge reports and to further furnish information about his/her encounter. Initial counselling sessions will be carried out by qualified counsellors. Referrals to appropriate agencies will be carried out accordingly.
4. They have the opportunity to be given an option whether to give evidence in the court room itself or through a video link facility when they testify in court. Even though there is only one court in Kuala Lumpur that has been equipped with such facility, the positive feedback from the public was very encouraging, enough for the government to equip other courts with the same facilities.
5. The Department of Social Welfare, under The Ministry of Women, Family and Community Development and related NGOs have carried out awareness campaigns periodically in the mass media but it's impact has been minimal and limited especially to the urban areas and the need to reach-out more widely is imperative. To address this issue, they have since in April 2002, begun a nationwide campaign through posters and billboards as the main source of medium. The posters were posted at various vantage locations for maximum coverage.
6. Another on-going programme launched by the Department of Women's Development under the same ministry is a campaign known as Wave (Women against Violence). This programme's major concern is to educate the public about their rights, the law and procedures governing them and also the different forms of abuse that are prevalent in society. It also provides information on options on how to deal with the situation when it occurs. Recently, the department has recruited, vetted and trained 388 volunteers nationwide to help these battered women.
7. The National Social Policy was recently launched. It is a holistic approach to incorporate physical, emotional and intellectual prowess in the race to attain economic development. The Social Welfare Department is one of the main referral resources. They provide shelter for abused women and to-date there are a total of 28 safe houses run by the Welfare Department. These facilities are adequately equipped to ensure the comfort and safety of the victims and their children.

### **IX. OTHER PROGRAMMES DEVELOPED**

There are other programmes developed by the various organizations such as follows.

1. Good parenting training – aimed at improving the emotional bonds between parents and their children, encouraging parents to use consistent child-rearing methods and helping them with the necessary skills to develop self-control in bringing up children. These programmes are on-going and being conducted by various organisations both government and non-government.

2. The non-governmental organizations are actively keeping abreast with these issues. There are also similar programmes carried out by them, such as AWAM (All Women against Violence in Malaysia) and WAO (Women's Aid Organisation). They have been very active, vocal and work hard to combat this menace. They also provide counselling; conduct training for trainers and organize seminars and workshops to enhance knowledge and awareness.

3. The Islamic Religions Department has set up temporary shelters for Muslim survivors of domestic violence throughout Malaysia. They also provide legal and counselling services to their clients.

#### **X. NEW LEGISLATION/PROCEDURES**

Giving evidence in court can be very traumatic for a child. A child has always been seen as a fragile witness, who doesn't understand or differentiate between fantasy and reality. Sometimes they are seen as liars in court. The rule of prudence requires corroboration for a child witness, and the adversarial system and cognitive level of development of a child, hinder a conviction of the perpetrators.

There are a number of programmes developed to help these children when they become victims to certain crimes perpetrated by adults. With the introduction of "child friendly policing" by the Royal Malaysia Police in 2000, and with the assistance by the British Government, a special committee was set up to help children testify in courts. The committee headed by The Legal Affairs Division; The Prime Minister's Department, with various agencies concerned, formed the technical committees as follows:

1. Legal Affairs Division (Policy) – Technical Committee on Working Together Documents;
2. Attorney General's Chambers - Technical Committee on Legal Frameworks;
3. Royal Malaysia Police – Technical Committee on Video Recording of Child Witnesses;
4. Welfare Department – Technical Committee on Witness Support Service; and
5. Judicial Department – Technical Committee on Infrastructure in Courts.

As of today, about 450 children have been given the opportunity to have their testimony recorded through video. Even though the proposed new legislation has not been passed yet, two tapes have been tendered in court through Section 65 of the Evidence Act that is about admittance of secondary documents such as video recording. When the new law is passed by Parliament, the evidence of the child will be accepted and admitted as direct oral evidence during examination-in-chief.

A distressed child needs intervention and support from their parents and other people. Through this project, the Welfare Department set up the Witness Support Service to help prepare these children for a court hearing. A social worker will be assigned to the child and to explain about the system, what a hearing is all about and take the child around the courthouse before the trial. This worker will attend to the child throughout the proceedings.

Working with an abused child requires an investigation by each of the various agencies from their own perspective. The Police have a different role and responsibility when treating a child as a victim of abuse, likewise the Welfare Department and the Health Department. After an investigation is completed, the Attorney General's Chambers will decide whether to prosecute after weighing all the evidence. These procedures and roles of the different agencies are compiled in a working together document and are now in the final stage to be forwarded to the Cabinet.

As for the perpetrators, recommendations have gone to Parliament to make it compulsory for ex-offenders in sexual offence cases to report to the nearest Police Station in the area he/she wishes to stay and be put under police supervision for the duration deemed by the court.

#### **XI. CONCLUSION**

The problem of domestic violence and child abuse cannot be solved by having laws and procedures alone, which must be seen as just one method of providing a solution to the problem. Legal methods of deterrence may in many cases simply not be an appropriate or effective method of preventing violence in the family.

More efforts have to be taken to make society aware of the dimensions of the problem through campaigns, seminars and conferences. Mass media must be more effectively used to create a respectful, concerned and highly moral society because violence and abuse are about self-respect and respect of other human beings, irrespective of their relationships.

Community based projects which involve the society at large should be developed to create awareness among the people that domestic violence and child abuse are crimes. They should be made well aware of the current situation, the law concerning the issues and measures taken by the government and non-government agencies.

The Prime Minister recently launched a new concept based on Fundamental Principles of Islam, Islam Hadhari or “Modern Islam” and introduced ten principles, one of which is protection of the minorities including protection of women. This is seen as one of the platforms for the advancement of women, family and the community as a whole in Malaysia and to steer the nation to be a well developed nation, economically and psychologically, by the year 2020.

**APPENDIX**

**Table 1: Reported Cases of Domestic Violence According to States in Malaysia for the Years 2002, 2003, 2004 and 2005 (January – February)**

State	2002	2003	2004	2005 (Jan – Feb)
Perlis	39	32	53	4
Kedah	177	179	264	44
P/Pinang	269	231	255	47
Perak	135	123	85	14
Selangor	942	805	932	151
K/Lumpur	131	96	95	16
N/Sembilan	242	301	262	23
Melaka	67	68	104	36
Johor	187	234	465	56
Pahang	202	188	206	31
Terengganu	10	9	21	2
Kelantan	47	19	27	2
Sabah	85	69	124	11
Sarawak	222	201	208	40
<b>Total</b>	<b>2755</b>	<b>2555</b>	<b>3101</b>	<b>477</b>

**Table 2: The Perpetrators in Domestic Violence Cases in Malaysia**

Relationship	2002	2003	2004	2005 (Jan – Feb)
Husbands	1700	1540	2018	300
Wives	47	49	41	6
Fathers	72	69	102	11
Mothers	18	17	30	4
Father-In-Laws	25	26	35	3
Mother-In-Laws	5	10	4	4
Sisters	13	16	23	1
Younger Brothers	91	74	112	20
Brothers	105	88	118	11
Sister-In-Laws	17	12	8	1
Brother-In-Laws	184	160	150	37
Ex-Wives	11	1	12	6
Ex-Husbands	91	95	88	16
Offspring	104	83	110	30
Others	272	315	250	27
<b>Total</b>	<b>2755</b>	<b>2555</b>	<b>3101</b>	<b>477</b>

**Table 3 : Child Abuse Cases (Physical Abuse)**

State	2000	2001	2002	2003	2004
Perlis	0	0	0	0	2
Kedah	7	8	8	8	15
P/Pinang	27	28	14	11	11
Perak	11	2	6	8	8
Selangor	40	49	43	34	56
K/Lumpur	16	15	13	6	7
N/Sembilan	6	7	4	12	7
Melaka	6	8	5	16	5
Johor	23	20	14	12	23
Pahang	7	6	7	5	6
Terengganu	0	2	2	3	3
Kelantan	3	1	1	3	2
Sabah	0	2	9	10	5
Sarawak	0	2	6	6	8
<b>Total</b>	<b>146</b>	<b>150</b>	<b>132</b>	<b>134</b>	<b>158</b>

**Table 4: The Perpetrators of Child Abuse**

	2000	2001	2002	2003	2004
Father	31	27	21	35	37
Mother	29	25	26	32	30
Step-Parents	3	18	11	16	15
Uncle	3	3	4	2	0
Aunty	2	6	2	2	2
Other Relatives	8	0	1	2	1
Guardian	28	25	15	12	24
Teacher	10	11	2	2	3
Unknown	19	27	47	24	42
Grandparents	1	1	2	7	3
Adopted Family	7	4	1	0	1
Neighbour	4	2	0	0	0
Employer	1	0	0	0	0
Brother	0	1	0	0	0
<b>Total</b>	<b>146</b>	<b>150</b>	<b>132</b>	<b>134</b>	<b>158</b>

**Table 5: The Number of Incest Cases in Malaysia**

State	2000	2001	2002	2003	2004
Perlis	1	1	4	1	4
Kedah	21	12	31	21	28
P/Pinang	6	13	11	3	11
Perak	16	14	27	29	27
Selangor	29	32	47	35	39
K/Lumpur	9	15	10	9	21
N/Sembilan	7	17	10	14	22
Melaka	13	8	10	15	14
Johor	29	34	47	47	52
Pahang	13	18	35	19	21
Terengganu	16	18	15	6	13
Kelantan	9	21	16	11	16
Sabah	24	30	27	29	44
Sarawak	20	13	16	15	25
<b>Total</b>	<b>213</b>	<b>246</b>	<b>306</b>	<b>254</b>	<b>334</b>

**Table 6: Age of Victims**

Victim's Age	2000	2001	2002	2003	2004
Below 16	137	166	196	166	214
Above 16	76	80	109	88	120
<b>Total</b>	<b>213</b>	<b>246</b>	<b>306</b>	<b>254</b>	<b>334</b>

**Table 7: Relationship of Perpetrators to Victims**

<b>Relationship</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Father	67	77	77	72	99
Uncle	34	42	65	42	60
Older Brother	13	15	29	22	24
Younger Brother	1	0	2	0	1
Cousin	15	18	33	33	41
Grandfather	6	6	14	8	7
Step Father	41	52	40	42	60
Brothers-In-Law	26	23	22	20	21
Step Brother	1	4	10	6	6
Fathers-In-Law	0	1	0	0	2
Step Grandfather	3	0	2	3	4
Step Children	0	1	0	0	0
Offspring	0	0	2	1	0
Nephew	0	0	0	0	2
Adopted Father	3	7	9	5	7
Adopted Brother	3	0	1	0	0
<b>Total</b>	<b>213</b>	<b>246</b>	<b>306</b>	<b>254</b>	<b>334</b>

# COUNTRY REPORT - PAKISTAN

*By Akbar Nasir Khan\**

## I. INTRODUCTION

Domestic Abuse includes spousal and child abuse by parents and/or guardians. Anyone can be a victim of domestic violence...young, old, rich or poor; white, brown, black, yellow or red; professional or unemployed; educated or uneducated; male or female. Domestic Violence encompasses mental, emotional, verbal, sexual or physical abuse such as constant demeaning and humiliating remarks, threats, slapping, kicking, hitting, choking, and destroying property, economic deprivation, forced sexual activity, isolation and starvation.

There have been no comprehensive studies of domestic violence in Pakistan. The main method of gauging domestic violence in the country is by interviewing the women in the shelters, from newspaper reports, and from interviewing the doctors and police who come in contact with the victims in extreme cases. From conversations with women at social gatherings, in shelters, in prisons, in government, in the profession of law and women organized into professional and social welfare groups, it seems that abuse of women at home and wife battering in particular is very commonplace. One informal study, conducted by the Women's Ministry, concluded that, at minimum, 80% of all women in Pakistan were subjected to Domestic violence' in their lifespan in one way or other.

### A. Cultural Understanding of the Issue

Approaching the subject from a human rights perspective, I believe that all forms of violence and child abuse, whatever their cultural justification, are wrong and need to be eradicated. While I stress the importance of recognizing cultural differences and avoiding essentialism when studying domestic violence in different countries, this is not from a cultural relativist stance that tries to avoid cultural imperialism by refusing to impose 'western' values on other cultures. I emphasize recognition of cultural differences in studying domestic violence for reasons of efficiency in effecting reforms.

It is only by recognizing culturally specific forms of violence and culturally defined perceptions of social relations that foster abuse that we can have the most workable and realistic means of combating domestic violence and child abuse.

### B. 'Public' and 'Private' Violence

To see the difficulty presented in addressing the issue of domestic violence and child abuse, we have to analyze the dichotomy created between (a) public and private lives and (b) public and private violence. 'Public' life facilitates people's struggle against violence insofar as it is easier to collectively act and organize against the violence. Seeing Lives as 'private' on the other hand, disempowers people—firstly, by failing to see their problems as one shared by many others; secondly by making it impossible to organize against this problem; and thirdly by constricting horizons and limiting options. The 'private' life becomes subservient to 'public' life because the later incorporates the former (or has the tendency to) while the former is excluded from the latter's sphere of action. As far as the nature of violence is concerned, 'public' violence has been much easier to address because it is open to public scrutiny and condemnation. 'Private' violence has been traditionally protected from public exposure. Privacy stands as the main impediment to recognition of violence. Firstly, private violence is shielded from public eye (as well as other private eyes). Secondly, even if this violence and abuse of children reaches public notice, public action is deterred by non-familiarity with the setting of the violence and the conditions that led to it. And thirdly, there is a hesitation on the part of people who lead public lives to interfere in aspects of their peers' 'private' lives for fear that such meddling could jeopardize their own 'privacy'.

'Women and children have, historically, been relegated to the 'private' sphere. In addition, the home is seen as a bastion of privacy, effectively taking domestic issues out of the public eye. Domestic violence and child abuse, thus suffers a double disadvantage to recognition (being recognised) in that (a) structurally it affects private lives and (b) it takes place in a 'private' sphere. If we link recognition of domestic violence and child abuse on a continuum from 'public' to 'private' (meaning that public violence will be recognized and

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\* District Police Officer, Chitral N.W.F.P., Pakistan.

addressed before private violence will) and we also view the development process as moving women and children's lives along the continuum from 'private' to 'private-public' to 'public' then it should come as no surprise that studies on domestic violence and child abuse, in particular, come from developed countries because it is only in these countries that this issue has transcended the 'private' sphere to a great extent. Women and children of most developing countries are still struggling to get recognition of 'public' violence against weaker sections of society (mainly women and children) and efforts to study or systematically deal with domestic violence are a distance away. It is only by making the home 'public' to the extent of the abuse it fosters and by exposing 'private' relationships to public view that child abuse and domestic violence can be seen as a social problem.

### C. Role of Religion

Pakistan is a Muslim country that purports to live by Islamic laws. However, the culture of Pakistan is not entirely shaped by ISLAM because historically the area that now forms Pakistan has been influenced by various other religions and cultures. There is no unified Pakistan culture due to variations in traditions in the four provinces and in different regions within each province. Nevertheless, on a broad scale it is possible to collectively talk about the ideology attached to the nature of the relationship in a Pakistani family. This ideology stems from, or is justified by, Islamic thought. But this does not mean that problems faced in domestic life are determined by Islam. While Islamic ideology of the roles of sexes may lie at the base of gender relations in Pakistan, the actual position of women, as manifested by social and legal attitudes towards women, is the result of overlying pre-Islamic tribal cultural trends. For example, *Honour Killings* of both men and women are pre-Islamic tribal customs that are not sanctioned by Islam. The perpetrators often try to give Islamic legitimacy to pre-Islamic culture.

Ironically, some of the religious leaders try to legitimize the maltreatment of women by men in their homes by quoting Quranic verses. The most problematic Quranic text for many women is the following where Allah states: "As for those women on whose part you fear disloyalty and ill-conduct admonish them first, then refuse to share their beds, and then (as a final measure) beat them lightly. If they heed your call then do not treat them unjustly" (Q. 4: 34). At the outset it would do us well to remind ourselves that the Quran is the last document in which we can expect to stumble across apologetics of any kind. In its diversity of expression it represents the very spirit of divine freedom. It is in this spirit that the Quran addresses in the most pragmatic of ways the physical, spiritual, intellectual, emotional, psychological, and even biological natures of humankind. The verse, however, cannot be used to support narrow chauvinistic designs or to underpin notions of privileged masculine authority. Shaykh Seraj Hendricks in his article 'Authority and the Abuse of Power in Muslim Marriages' describes that this is a total misinterpretation of the Quranic text. (Later discussion can also be seen at <http://www.crescentlife.com/articles/islamic/>.) The Theory of 'modern enlightenment' by President Pervaiz Musharraf can be very useful to address the issue in a more pragmatic way.

Islam condemns atrocities, arrogance and humiliation in the name of honour or baseless allegations. Therefore, the last Prophet Mohammed (Peace be upon him) advised all men to be fair, kind and courteous towards women. "You must treat those (women) with all kindness, "The best among you is the one who treats his family best."

## II. FORMS OF DOMESTIC VIOLENCE

Broad categories of domestic violence and child abuse include physical, sexual, psychological and emotional abuse. These types of violence tend to merge, and each abusive situation may involve different combinations of these types. Different classes of people may be subjected to different types of abuse. It is generally thought that victims of educated classes suffer more emotional and psychological abuse while those from feudal, tribal and lower classes are subjected to greater physical abuse. Forms of domestic violence and child abuse, other than beating, and that are common in Pakistan and that result in death or disfigurement include stove burning, acid burning and honour killing (locally known as *Karo-kari* murders of men and women allegedly involved in illicit relations). Forced marriages which include child marriages, *watta satta* marriages, Foregoing the right of marriage by a female (*Haq Bakhshwan*) and *swara* (giving of women in exchange of a compromise), are forms of domestic violence that incorporate elements of physical, psychological and emotional abuse. In addition there is the sexual abuse in the home which encompasses marital rape and incest.

We will try to focus on different forms of violence and child abuse according to the intensity of the violence from battering to honour killings. We have discussed the issue from the start of a marriage. Even the beginning is so violent that the end becomes automatically tragic. Most of the figures are from independent sources and can be challenged by official authorities. I have just included them to present their viewpoint to make this discussion more impartial.

### **A. Battering and Yelling**

In the context of Pakistani society, yelling is not taken as a violent action by partners in a home. Even children take it as very normal that their parents are arguing in high tones. This happens even in light modes. 'Curtain Lectures' are given in the open theatre of the home in most of the cases. But battering is not that easily digested in all strata's of society. It has deep psychological consequences. According to a survey, battered mothers are eight times more likely to hurt their children when they are being abused than when they are safe from violence. We have discussed the issue from the start of a marriage.

### **B. Non-consensual Sex**

The greatest risk of violence for women and children comes from the male family members i.e. husbands and in the case of children from their father or stepfather. Sexual abuse of women and children includes marital rape and incest. Marital rape is not a crime in Pakistan. Unwanted sexual attacks are seen as a part of the institution of marriage and the concept of exercising sexual choice does not exist in the majority of cases. In very few cases the status of women in the home and her status in the society do empower them to exercise this right but that is exceptional even in educated classes.

### **C. Stove Burning**

Incidents of women catching fire and burning to death while cooking on kerosene stoves is a common form of domestic violence by husbands and in-laws of the bride. This can be equated with 'Dowry deaths' in India. It is always regarded as an accident but in the majority of cases it has been observed that it has been used as a means of getting rid of unwanted female partners by their male partners and in-laws, including females.

According to the 'State of Human Rights 2004' published by the Human Rights Commission of Pakistan (HRCP), "statistics compiled by the HRCP until the end of October 2004 indicated that 91 women fell victim to burnings out of which 43 were burnt after accidents involving stoves and 48 were set on fire. The causes of the burns in other cases were not reported. The majority of the victims were critically burnt. The accused were in-laws and husbands in most of the cases. It was also thought that in a large number of cases, accidents caused by stoves may in fact have been deliberate burnings. A First Information Report (FIR) was registered in 22 cases, while only nine accused were arrested."

### **D. Acid Attacks**

It is a form of violence that takes place in the home and in the streets. In the first case the issue is domestic violence as the perpetrator is normally the husband or in-laws. In other cases the main motive is revenge. 'Private' cases of violence do not evoke the same response because there is a lingering feeling that the wife must have deserved it. HRCP opines that "acid attacks, a trend that is seen to be growing alarmingly over the past three years, continued to rise sharply in south Punjab. Figures compiled by HRCP showed at least 42 cases of acid attacks were reported from across the country up to the end of October 2004, mostly, over issues of a domestic and matrimonial nature. Thirty one victims were women and 11 men. An FIR was registered in ten cases while the accused were arrested in four cases". These domestic issues may vary from infertility to suspicion of illicit relations.

### **E. Honour Killing (Karo Kari)**

Domestic Violence knows no bounds, with murder being its ugliest manifestation; a former or current partner is responsible for half of all the women murdered in England and the United States. Honour killing is where a man murders a woman of his family due to her 'immorality'- that is, her actual or perceived involvement with a man who is not her husband. Although the murderer in this can be any relative of the female but in so many cases husbands are also involved actively in this crime. Statistics collected by the HRCP up to the end of October showed that 464 women fell victim to honour killings, including Karo Kari. Three hundred and eighty four killings have been carried out on allegations of having illicit relations. One hundred and fifty one murders were carried out by husbands....."

LHRLA, a Karachi based NGO, claim that 790 people were declared Karo Kari, 762 among them killed, across the country during the first seven months of 2004.

Domestic violence is not only restricted to partners in wedlock. It also includes child abuse. Some of its forms are specific to children which we will discuss now.

### III. CHILD ABUSE

Child abuse means physical, sexual and emotional abuse and neglect of a child by his/her (a) parents or (b) guardians. Generally, it is not believed that child abuse takes place by parents who are supposed to be the guardians and architects and most loving people of children in the world. Many people believe that parents who abuse their children are mentally ill. Studies show that only 10% of people suffer mental illnesses who abuse their children. The Daily Times reported a study by a non-governmental organization, Lawyers for Human Rights and Legal Aid (LHRLA) which suggests, from a newspaper scanning over the last five years, that a 280% increase in child abuse in Pakistan has taken place. The number of cases reported in the media went from 4530 in the year 2000 to 1612 in 2004.

#### A. Forms of Child Abuse

As we discussed above, physical abuse of children is coupled with emotional abuse. In the above discussion we have described child marriages and it is not a hidden fact that children are also sold by their parents due to economic reasons. Stories of camel jockeys as young as three years old trafficked from India and Pakistan are sufficient to shock any sane person.

##### 1. Physical Abuse

Battering is the most common form of physical abuse. This is not limited to partners only. This generates anger in the children in the family even if they are just spectators. If they are also subjected to violence by their parents, the situation is worse. It commonly includes repeated verbal abuse of a child in the form of shouting, threatening, or degrading or humiliating criticism. An interview study of 300 parents in Lahore, Pakistan found 83 per cent reporting that they used corporal punishment — mostly slaps or kicks. About three per cent reported using sticks, belts and other implements.

##### 2. Child Marriages

Child marriages, a common practice among the poor in the rural and tribal areas by definition seem to be acts of violence against the little couple who are married off at ages as young as five or six or even before that. The reasons for these marriages may be economic (when a child is sold off in marriage), *Watta satta* barter, compensation for the wrong doing of a family member (*Swara*), tribal custom, or simply concern for the well being of the daughter and the wish to see her settled as early as possible.

##### 3. Emotional Abuse

Other types of emotional abuse are confinement, such as shutting a child in dark closet and social isolation, such as denying the child a friend. The normal reactions to such hurts should be anger and pain; however, since children in this hurtful kind of environment, are forbidden to express their anger and since it would be unbearable to experience their pain all alone, they are compelled to suppress their feelings, repress all memory of trauma, and idealize those guilty of abuse. According to a report by the Ministry of Social Welfare, an average of 10,000 children flee their homes every year after being maltreated or tortured by their schoolteachers, parents and other family members. As per a survey by the NGOs' Coalition on Child Rights (NCCR), on the basis of data collected from eight districts in the NWFP last year, some 404 children ran away from home to escape torture by family members and teachers.

##### 4. Neglect

The most common form of child abuse is neglect. This emotional abuse destroys a child's self esteem. Physical neglect involves a parent's failure to provide adequate food, clothing, shelter, or medical care to a child. It may also include inadequate supervision and a consistent failure to protect a child from hazards or dangers. Emotional neglect occurs when a parent or caretaker fails to meet a child's basic need of affection and comfort and encourages him to engage in delinquency. Another form is depriving the child of his basic right to education, either by failing to enrol a child in school or by permitting him to skip school. In middle

and lower middle classes this behaviour is condoned by mothers and the father is not aware of the situation. Both do not address the issue and it often results in the child dropping out of school.

#### 5. Discrimination

In Pakistan parents pray to God to have a boy in their home. One of the major arguments for polygamy and an increase in population is a desire to have a 'crown prince'. It is not difficult to understand in a male dominated society like Pakistan where gender inequality lies at the root of most serious crimes like honour killings.

This generates an inferiority complex in girls at home and results in the inappropriate growth of the personality of the child. It also affects the personality of boys at home, where they learn to dominate their sisters by virtue of their gender only. This is a time of shaping their behaviours. The lessons learnt from home are repeated in their whole life. This generates a reaction and anger in sensitive children which may cause their poor performance at home and in school and result in them leaving home in extreme cases.

#### 6. Sexual Abuse

If Sexual abuse cannot be attributed directly to the parents then it definitely falls under the category of sheer neglect on their part as a failure to take care of their children allowing them to be exposed to such circumstances leading to this heinous crime. Sexual abuse of children has been defined as inappropriate sexual contact with a child, where the abused child is used as an object of sexual gratification.

Mona Koser, a sociologist, who has carried out research on child abuse, told IRIN that it was difficult for her to find accurate data because people were reluctant even to respond to introductory questions. "Child abuse is on the rise because of a lack of parental attention and sex education", she said. "There is a lot of repression of sexuality so this shows up in unhealthy forms. You rarely find healthy expressions of sexuality in everyday life [in Pakistan] so sexual abuse becomes very common", clinical psychologist Liaqat Tabssum told IRIN.

#### 7. Incest

Incest cases are seldom reported. The response of the public, police and courts is poor. A large number of cases are kept under the carpet. The victims are 'advised' to be silent. It involves extreme shame and dishonour for the family so the victim is pressurized from all quarters to hush up. Some NGO's note that this issue is seldom recognized by the courts as well. The judiciary gives maximum benefit to the accused in the name of 'saving' the family unit. In addition, incest usually involves the defilement of young girls which, if publicly acknowledged, would destroy their chances of marriage.

According to a non-governmental organization 'SAHIL' in the first four months of 2003, 39 cases of incest were reported and only eleven were dealt with in the courts, seven out of eleven accused were acquitted by the courts due to a lack of evidence. In 36.6 % of cases the father was accused, in 10.8% of cases stepfathers, in 6.8% cases grandfathers, in 15.10% cases paternal or maternal uncles and in 11.9% cases other relatives.

#### **B. Some Reasons for Child Abuse**

There are various reasons for abuse of children but a few are mentioned here:

1. Poverty is one main reason causing frustration and an inability of the parents to discharge their duties in an effective manner. Forced marriages, child marriages and giving away of daughters as a replacement of compromise stem from poverty. Child trafficking and bonded labour it's larger off-shoots.
2. Illiteracy is another big reason for abuse of children at home. Even educated people who are not aware of the subject keep on repeating the same cycle of violence which they have observed in their own childhood.
3. Social injustices, police tyranny, mental torture suffered by people in hospitals and district courts generate frustration in people, which makes them less caring parents.
4. Women who get married early and bear several children in a short span of time or those who are maltreated by their in-laws are most likely to abuse their own children.

5. Similarly, the ever-growing trend of violence in society and lack of appropriate laws to check domestic violence make children vulnerable to torture by their parents and other members of their family.
6. Religion is also used as a tool to justify disciplining children by parents. Obedience and respect to parents is always taken as keeping quiet for all kinds of atrocities by them.
7. Pakistan is a country situated in an area of wars for the last fifty years. Pakistan has had three wars with India and a long war in Afghanistan has been waged over the last three decades among different countries. India and China were also at war in the past. Being in one of the most dangerous battle grounds, having two nuclear neighbours, it has been in the eyeball of storms for the last five decades. There is no political stability and has been ruled by a military bureaucracy time and again. All this conflict has not allowed a sufficient peaceful time to develop a tolerant and prosperous society. This has directly affected the population and violent behaviour is common in many houses.

#### IV. LEGAL RESPONSE

##### A. International Obligations

Pakistan is bound to respond positively to implement the policies of CEDAW (1992) and the Beijing Declaration (2000) and platform of Action. In general Recommendation 19 (Para 11) of CEDAW it is clearly mentioned that “traditional attitudes by which women are regarded as subordinate to men or as having stereotype roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision”. These international binding agreements and so many other directives and laws are obligatory for the states to effectively deal with the issue of violence against women.

##### B. Constitutional Guarantees

In the present Constitution, Article 25 in the Chapter on Fundamental Rights of the Citizens states as follows:

- All citizens are equal before law and are entitled to equal protection of law.
- There shall be no discrimination on the basis of sex alone.
- Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Article 9: “no person shall be deprived of life or liberty except in accordance with law”. Article 8: Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the Fundamental Rights of citizens of Pakistan, shall, to the extent of such inconsistency, be void”.

##### C. Provisions of the Pakistan Penal Code to Confront Domestic Violence and Child Abuse

Domestic Violence is not treated under some specific law as a crime in Pakistan. Its different aspects are treated under different laws. As domestic violence ranges from minor injuries to causing death so all the laws related to injury and the death penalty are very crucial. It was in 1979 that *Hudood* Laws were enforced as part of the ‘Islamization processes’ of Gen Zia-ul-Haq in Pakistan. These laws included the *Zina* (Rape) ordinance and *Qazaf* (Allegation of adultery on the spouse) ordinance 1979 as well. Different categories of crimes and punishments ranging from criminal intimidation to murder are also available in the Pakistan Penal Code of 1860 but at this stage both the parties would have already decided to go their separate ways. When the parties go to a police station for registration of cases against each other then it is presumed that they are no longer in a spousal relationship, rather it is a sign of enmity and an end of all negotiation and mediation.

##### D. Family Laws

Family courts are established to resolve family disputes related to divorce in different circumstances. It also decides the issues related to custody of children in case of separation between the spouses. In normal conditions, the right of divorce rests with males in Islam; however, it can be given to women at the time of solemnizing the marriage. Even after that a wife can ask for *Khula* (a divorce claimed by the wife) through family courts. Under Family Laws if the husband treats the wife with ‘cruelty’ then she can get a divorce by the intervention of the court. Courts try to mediate the issue if both parties agree, otherwise the marriage can be dissolved. Similarly, issues of child care and non-provision of proper facilities of life for the wife and

children are the responsibility of the husband. If he fails to provide this, the wife can go to court for intervention. It is up to the court to decide whether she was treated with 'cruelty' or not.

In case of serious disputes, the family court judge nominates a three member committee, one from both parties i.e. husband and wife and a local responsible person to settle the issue amicably. In the light of a report submitted by this committee, the judge finalizes the case. In this way public participation is also ensured and so many cases do not result in separation or divorce. Family courts have been successful in mediation in a large number of cases. In a situation when there are no alternatives available for victims by the state or by the private sector, victims are left with no option but to compromise on the situation.

### **E. Convention on the Rights of Children**

In ratifying the CRC, governments committed themselves to protecting all the rights of the child - social and economic, as well as civil and political. Under the CRC, children are not only protected from abuses of state power, but from all forms of physical or mental violence or abuse while in the care of "parents, legal guardians or any other person who has the care of the child", including schools. The CRC affirms that every child has the right to an adequate education and standard of living. It establishes the right of the child to be free from sexual abuse and exploitation and the illicit use of drugs. It commits states to protecting children from economic exploitation and work that may interfere with education or damage their health.

The CRC clearly states in Article 28-2 and Article 37 that a child must be protected against all forms of physical and mental violence while in the care of parents or anyone for that matter. Article 37 of the CRC reads: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment".

The CRC, to which Pakistan is a signatory, clearly forbids corporal punishment. The Law Ministry seems determined to push through the legislation. Parents and teachers need to be educated about the psychology of a child to curb child abuse.

### **F. Child Marriages Restraint Act 1929**

Legally Child Marriages are prohibited under the Child Marriages Restraint Act, 1929 (CMRA). Although CMRA makes child marriages illegal, the punishment under this law act is minimal (one month imprisonment and/or a fine of Rupee 1000=16\$ app.) for marrying an adult person, the person who solemnizes the marriage and for the person who is the guardian/parent of the child. A conviction under this law does not serve to nullify the marriage.

### **G. National Commission on the Status of Women in Pakistan**

The Government established a National Commission on the Status of Women in 2000. It has been tasked with:

- Reviewing and recommending the amendment of laws, rules and regulations that affect women's rights;
- Examining the policies for women's development and making recommendations for their effective impact and implications;
- Monitoring violence against women, especially domestic violence; and
- Collaborating with NGOs at the national and international level.

The Commission also has a complaint resolution role.

The National Commission on the Status of Women Ordinance 2000 established the Commission and set out its procedures. According to the Ordinance, the Commission shall consist of a Chairperson and between ten and twenty members appointed by the Federal Government. Members shall be from persons "of integrity and standing having substantial experience in law, legislation and knowledge and standing on socio-economic and legal problems of women". The majority of members shall be women, including one member from each Province, Azad Jammu and Kashmir, Northern Areas and at least one member from the minorities (Art. 3 (2)). At present, the commission is performing its duties well as per its constitution. Serious attention has been paid by the advisor to the Prime Minister for Woman's Welfare Issues to get the authorities to give a timely response to complaints by victims.

## H. Recent Legislation

The most important step taken by the present government is increased (33%) representation of females in representative bodies from the council level to national assemblies. This is a sea change and it is expected to bring very positive results. The advisor to the prime minister for the welfare of women's affairs, being a woman, is also pursuing these issues earnestly at all levels.

As every journey begins with the first step and that step has already been taken by introducing the domestic violence bill in one of the four provinces. Member of the Punjab Assembly, Dr. Anjum Amjad, presented the bill on domestic violence in the assembly on October 14, 2003 but the MMA opposed it. With more women coming into parliament with a heavy mandate, recently a private bill against domestic violence has been introduced in the Punjab Assembly. All the bill needs is thorough support in terms of finance, judicial and legislature flexibility with transparent de jure accountability to curtail this injustice. The bill has not been passed yet.

The latest development in this scenario was seen on December 31, 2004 when a bill on honour crimes was passed. This bill amended the Pakistan Penal Code and detailed discussions were carried out before and after the bill was passed.

## I. Criticism by Human Right Activists and Limitations of Laws

The Criminal Law (Amendment) Bill 2004 against honour killings, however, did not address the real issue of waiver or compounding in which the perpetrators were given the advantage of seeking forgiveness from the heir of the victim. The major flaw in the *Qisas* and *Diyat* law, which covers all offences against the human body, is that it makes such offences compoundable (open to compromise as a private matter between two parties) by providing for *qisas* (retribution) or *diyat* (blood-money). The heirs of the victim can forgive the murderer in the name of God without receiving any compensation or *diyat* (Section 309), or compromise after receiving *diyat* (Section 310).

Often, the victims are the most vulnerable members of the family or community. In either case, if and when the case reaches a court of law, the victim's family may 'pardon' the murderer (who may well be one of them), or be pressurized to accept *diyat* ('blood-money') as compensation. The murderer then goes free. Impunity has been the single most important factor encouraging honour killings. As the Criminal Law Amendment Bill does not address the issue of waiving and compounding, the perpetrators will continue to be able to escape punishment.

Insufficient penalties are given by the Child Marriages Restraint Act 1929. It does not nullify a child marriage. The fines are too small i.e. \$16 and just one month imprisonment in no way helps to prevent child and forced marriages.

Marital Rape is not covered under any law. Hudood laws need to be amended as these are discriminatory laws directed against women. These laws do not cover the incidence of rape for minor girls under the age of twelve years. Similarly in the absence of four witnesses, the victim has the possibility of turning into the accused. The female has to face charges of adultery if she fails to prove that she has been raped.

## V. RECOURSE FOR VICTIMS

### A. First Information Report

Section 154 of the Criminal Procedure Code of 1898 clearly defines the procedure to launch a complaint to the Police about a cognizable crime in Pakistan. The victims have twenty four hour access to police stations and they can register a First Information Report (FIR) under section 154, free of cost. A verbal report over the telephone by any person is also sufficient to get the police involved. The legal proceedings of FIR can also be done on verification of these reports. It is only after registration of FIR that the law comes into motion and an investigation starts. After the completion of investigation the case is sent to the prosecution department which scrutinizes the case and the case goes to the courts which decide the case according to the available evidence.

### B. Quick Response Centres/Hot Lines

In the last five years greater stress has been given to improving the law and order situation and protection from terrorist attacks. This has, indirectly, resulted in equipping the police force with new

techniques and improved their response to all crime. Police manage Rescue 15 and Madadgar (meaning helper) managed by a non-governmental organization LHRLA) are steps in these directions. The response units Rescue 15 (mainly in urban areas) respond to information provided about heinous crimes that they receive by phone but also address the issues of domestic violence and child abuse and public complaints of all types. 'Madadgar' is a private hotline available only in Karachi to address the issues of women in the city. These centres have special information about missing children and they help in finding lost children.

### **C. Shelters**

Government run shelters are available in limited numbers which admit women and children referred by courts and other departments including the police. Due to limited capacity, and an ever increasing population and victims of a different nature, these shelters are unable to actually serve as Dar-ul-Aman (House of Peace). This has resulted in the establishment of shelters by non-government organizations. Due to increased pressure of victims and their helplessness the need for more shelters is on the rise.

There is no place available for children suffering from parental abuse and society views it as a 'private matter'. The situation has worsened due to a lack of financial resources and other material constraints for the people who want to help the victims. When the cases of child abuse are reported, law enforcement agencies are also left with no option but to rely on the relatives of the children. In emergency situations community members voluntarily come forward and local leaders, religious leaders or representatives are the available sources for the safety of victims.

### **D. Reporting of Cases**

The society, in general, does not think that domestic violence is a crime and due to extreme poverty and the subordinate culture of women in society, there are not many alternatives available to them. Where these facilities are available it is observed that the divorce ratio is increasing, especially in urban areas. One of major reasons is the violent attitudes of husbands against their wives. As divorce is considered a stigma for a woman in society so women, despite these sufferings, prefer to live with it. In this situation the social set up condones domestic violence. Even if the cases are referred to the police, both sides want to settle the issue one way or another. According to a police officer, they just try to pressurize the other party by getting the support of the law enforcement agency.

In practice, when cases of domestic violence are reported to a police station then it is normal to treat it as a non-criminal case. Police officers try to patch up the matter by consultations with elders of the locality or by elders of both families of the spouses. In most of the cases, this solution works. It becomes imperative for the police to do it because there is no other standard of practice available to support the victim or to proceed against the offenders. Normally, the efficiency of a police station is measured by the number of criminal cases handled by that station so it is normally taken as a non-police job and a service which will not be recognized by anybody including the victims. As a result the focus from victim is shifted to hush up the matter. This results in secondary victimization in most of the cases.

### **E. Legal Aid**

In the form of public prosecutors, the government is bound to provide legal help to the victim if he/she cannot afford the expenses. But victims do not rely on them and for better results they prefer private attorneys. Human Rights organizations and NGOs working in this area also claim to provide free legal aid to some victims.

### **F. Victim Support Programme**

Victims, as far as they are in government owned shelters, are provided all necessities by the government and their security and participation in the criminal proceedings is the responsibility of the state. However, no compensation is paid to them for any loss they have borne during this hardship. If victims are in a critical condition and do not want to go back or they do not have a safe haven, they are supposed to be protected by government owned Dar-ul-Aman (House of Peace), under the law. In the majority of cases these complainants are only witnesses as well.

### **G. Witness Protection Programme**

There is no witness protection programme available which is directly needed in the prevalent social settings. In very high profile cases, the government may take such steps for the victims or witnesses.

## **VI. DUE PROCESS FOR PERPETRATORS**

It is important to recognize that abusive relationships are painful for both parties. These relationships are usually highly reactive and drama driven, therefore mutually abusive on some level. Clear-cut lines are hard to draw, and the victim/abuser dichotomy is an oversimplification. Abusers don't make a conscious choice to be abusive, just as victims don't make a conscious choice to be victimized; they are generally doing the best they can - given the emotional and psychological issues they face. However, it is a choice to the extent that everyone is ultimately responsible for their own actions... whatever the underlying cause may be. Accountability is a concept that both have to learn.

The rights of perpetrator and his/her access to appellate authorities are never impeded by any means. If he/she is arrested then he/she cannot be detained more than 24 hours by the police and for further detention and interrogation and collection of evidence permission from the court is compulsory. One can argue about the problems faced by them in the criminal justice system but these problems are faced by all people who come across the system, they are not specific to perpetrators. Rather, it is generally believed that the police and courts favour these perpetrators due to the social status of these perpetrators or for some other ulterior motives.

Although, some vocational and academic activities are available in prisons these are not specifically aimed at addressing the psychological mindset of perpetrators or convicts. A systematic and organized plan of psychiatric treatment for offenders has not been established so far.

## **VII. CONFRONTING DOMESTIC VIOLENCE AND CHILD ABUSE**

It is imperative to develop an integrated strategy to combat domestic violence and child abuse as both issues are connected to the same place - home. So far the issue had been handled from a gender perspective now its time to act preventively with the support of the criminal justice system and on a long term basis from the parameters of public health as proposed by the World Health Organization. A long term strategy should be adopted to achieve the targets and in the meantime it is incumbent upon all concerned to implement a short term strategy in order to prevent further damage to individuals and society.

### **A. Long Term Strategy**

- Social Development and poverty alleviation are two sides of the same coin. By improving the social conditions, peace in homes can be restored.
- Education for all is a key to resolve all basic issues in all societies; the Government should stress universal primary education. Parents should be bound to educate their children and penal sanctions should be included in law for violators.
- There should be an integrated national strategy coordinated with different departments of the judiciary, social welfare departments, law enforcement agencies and with the participation of the public to devise such plans which ensure the proper treatment of victims and provide them sufficient support to settle their disputes and improve life.
- New Legislation should be made to criminalize domestic violence and child abuse. The state should promulgate relevant laws which bind the state organs to specifically intervene in cases of domestic violence and child abuse of any nature should become a 'public issue'. Like Japan and Malaysia, an easy procedure is needed for reporting and mandatory reporting for people who are directly involved with children and women at risk.
- The State should ensure that a structural imbalance in society does not destabilize the family units. As mentioned in the constitution of Pakistan, there should be no discrimination on the basis of gender and women and children should be given equal rights and opportunities in all policies. The Ministry for Women's Development should go out of their way to monitor its programme and to ensure proper implementation of its programmes.
- Viable alternatives should be provided to victims by helping them to establish themselves and shelters should work as safe havens. These centres should be equipped with better facilities and there number should be increased.

- Perpetrators Treatment programmes should be launched. Their supervision by local elders and a report to a local committee about their behaviour should be the basis of a lenient view taken by the court of their misconduct with their partner. Chances should be given to them to improve their conduct in their home.

## **B. Short Term Strategy**

A short term strategy should be implemented until the macro level goals are achieved. It should aim at preparing the ground for meeting the goals as envisaged in the long term strategy. From state authorities to an individual, all should be committed to this action plan. The different roles of state, society and individuals are given below.

### 1. Role of State

- There is need to conduct a nationwide survey to systematically assess the real situation of DV and CA. Government departments like police, health and social welfare departments should be tasked to record the cases and coordinate, regardless of any action taken by the state, in all cases. After gathering concrete data, necessary steps can be taken.
- Criminalizing domestic violence and child abuse is highly desired. Implementation of existing laws in their true spirit is highly recommended to achieve the desired results. There is a need to amend the Hudood laws as recommended by the National Commission for the Status of Women. Clauses like compounding deliberate murder and injury should be amended.
- Members of the judiciary, at the lower level, who deal with cases of domestic violence on a regular basis should be sensitized.
- Training of police officers and a coordinated effort by the police and the Judiciary through already established Criminal Justice Committees in the districts can bring fruitful results for victims.
- NGO'S are already working in this sector and with their collaboration new horizons can be explored. This private-public venture can improve the situation. At the moment the issue is owned by NGO's only. This should be changed and the Government should collaborate with NGO's to achieve their common goals.
- Victim friendly practices (free legal aid and/or establishing more women police stations, children response centres) should be adapted by establishing legal desks in rescue centres of the police and other departments of the district government. Incentives should be given to the workers to achieve better results.

### 2. Role of Society

- The importance of awareness campaigns cannot be underestimated and it is due to these raised voices that the situation is improving in Pakistan. People are more aware of the subject and in the urban classes and educated families there is a growing sense of treating the partners with care and affection, which is the basis of a happy married life.
- It will be pertinent to mention here that NGO's and the Pakistani media have played a vital role in highlighting this issue and enlightening the public at large. The media can play a vital role and with the increased number of TV channels the situation is further improving. It should present programmes and talk shows which sensitize the people about domestic violence and child abuse and about ways and means to counter it.
- The role of religious leaders cannot be underestimated. They can work as a catalyst if the true dimensions of the issue are brought to their notice. It is by winning partners from all strata of society which will yield a better output.
- Community participation should be ensured and citizens, supported by government, should come forward and take up the challenge of treatment of offenders and victims under the supervision of experts. They are the ultimate losers and gainers in this situation.

### 3. Role of the Individual

- Every citizen is bound to refrain from domestic violence and is responsible for his or her own behaviour and should also report to the responsible agencies any knowledge they have of potential victims i.e. in their neighbourhood or workplace.
- As mentioned in the domestic violence law in Japan, medical officers or other people giving any kind of aid to victims should also be brought into the network of early reporting as a measure to intervene by state authorities.

## VIII. CONCLUSION

Domestic violence and child abuse remains one of the least legally addressed topics in Pakistan. The number of domestic violence cases is alarming and there is no concrete information or data available which can gauge the magnitude. The home is a private place and every abuse inside the four walls is considered to be out of the realm of the law. Cultural and religious beliefs are used as a cover to legitimize the maltreatment by abusers. Different interpretations of quaint injunctions are given to get social approval for battering and physical abuse of partners and children.

Domestic violence is a structural rather than causal problem, says Human Rights Watch in its report 'Crime or Custom?' on the issue of violence. 'It is the structure of the family that leads to or legitimizes the acts, emotions, or phenomenon that are identified as causes of domestic violence under the causal analysis. This family structure is a "structure that is mirrored and confirmed in the structure of society, which condones the oppression of women (and men) and tolerates male (female) violence as one of the instruments in the perpetuation of this power balance". In order to change this structure, in the words of Ms. Nathalie Kimaro, a High court judge of Tanzania, 'It is imperative for people to bring a change in their attitude (towards the issue)'.

There is a dire need to bring the abuse of partners and children by their parents and guardians out into the public and make them accountable. This daunting task can be achieved by devising an integrated strategy in society. From awareness raising plans to proper implementation of existing and new laws, all requires a political will by the government and political parties. 'The failure to uphold the fundamental rights of people guaranteed under the Constitution is at the heart of the crisis, not lack of provisions in the Pakistan Penal Code to combat domestic violence and child abuse'.

The most neglected part is treatment of offenders and protection of their rights, rehabilitation and intervention by the state and society at the intermediate stage. This process should be started as soon as possible with the active participation of social welfare organizations, departments and the public. It is time to address the issue on a war footing to save future generations in Pakistan. Neglecting the perpetrators, who are in the majority, will result in a recurrence of the problem.

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# COUNTRY REPORT - ZIMBABWE

*By Foelane Chipo Muronda\**

## I. INTRODUCTION

Zimbabwe employs a dual system of law that is the traditional law and the Roman Dutch Law. The traditional law is mainly applied by the traditional chiefs, who are the custodians of the traditional law. The conventional law is the Roman Dutch Law. However, both laws are accepted and the decision arrived at based on each of these systems is legally binding.

The issues pertaining to child abuse and domestic violence are thus recognized in each of these systems. Zimbabwe is a signatory to some of the international conventions pertaining to Domestic Violence and Child Abuse.

The conventions have thus been assimilated into the justice system. This has greatly influenced the legal system and the approach to offences pertaining to domestic violence and child abuse. There is some legislation governing child abuse, but there is no legislation pertaining to domestic violence.

## II. THE CURRENT SITUATION AND PROBLEMS CONCERNING THE PREVALENCE OF DOMESTIC VIOLENCE

Recent research in Zimbabwe indicates that most acts of violence have gender aspects to them. The vast majority of acts of violence against women are perpetrated by men who have some sort of relationship with the victims be it in an intimate relationship, a working relationship or an acquaintance relationship.

A discussion on domestic violence must be based on an understanding of gender violence. Gender violence is defined "*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.*" (United Nations Declaration on the Elimination of Violence against Women).

Domestic violence therefore is the gender violence that occurs in private. This is because domestic violence specifically refers to any form of gender based violence that occurs in the home or in domestic, intimate relationships.

Domestic violence takes many forms; including:

### 1. Physical Abuse

Physical abuse takes the form of battery and sometimes results in permanent disability or death. This is the most common and can easily be identified since there is visible evidence of abuse.

### 2. Psychological Abuse

Psychological abuse may be verbal or psychological abuse which has the effect of undermining a woman's dignity, self worth and self confidence. This is a subtle form of violence as oftentimes there is no visible residual evidence of abuse.

### 3. Economic Abuse

Economic abuse is aimed at denying or controlling a person's financial resources. This form of violence is subtle for example, where a person is denied the right to work or a partner makes major financial decisions without consultation.

Research carried out in 2002 by a local non-governmental organization has shown that domestic violence

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in any of its forms is more likely to happen to women and girl children. Where 1.5 million women were abused or raped only 8% of that number were men who suffered partner abuse.

A survey was conducted on the prevalence of domestic violence in the Midlands Province, Zimbabwe, in 2002. This survey revealed that one in every three women has experienced domestic violence in one of its many forms at some point in life and more particularly in intimate relationships i.e. a love relationship or marriage.

#### 4. Wife Beating

Traditionally in our culture wife beating has been considered an appropriate way of correcting a woman's behaviour.

The position in customary law is that wife beating is not considered wrong or actionable under customary law. It is comparable to chastisement of a child. If a wife disobeys, or neglects any duty, her husband may punish her by assaulting her but he must not cause her any visible injury. The wife belongs to the husband. As head of the family he controls her and the children. If the beatings have reached unacceptable levels she may report to her in-laws who may intervene. If the family authorities rule that the husband's behaviour is unacceptable the husband must apologize with a gift.

However, the society is undergoing a process of rapid social change. This has an effect on how the issue of wife beating is regarded within our society. The change in the legal position may be summed up thus:

Under both customary and common law the husband had the right to physically chastise his wife as a correctional measure. There is no case law saying that the husband's right to chastise his wife is no more. Nonetheless it is quite clear that this purported right is no more. The legal position is therefore, that violence against wives is just as criminal as any other crime.

Husband battering has also been reported. However, there are no statistics, and also men are normally ashamed to make reports of assaults as this is normally seen as a sign of weakness.

#### 5. Sexual Assault

Sexual assault may take the form of unwanted sexual touching, attention, attempted or actual forced sexual intercourse.

In Zimbabwe the Sexual Offences Act now recognizes marital rape. A husband can rape his wife if she does not consent to the act. In the past, the law stated that a husband cannot rape his wife. However, if he forces her to be intimate, then he can be convicted of indecent assault and punished.

Although, The Sexual Offences Act is a progressive piece of legislation, cultural inhibitions make it difficult in this case for the women to report rape. As such it's rare for the criminal courts to handle cases of spousal rape.

### **III. CHILD ABUSE**

On the 20<sup>th</sup> of November 1989, the General Assembly of the United Nations, unanimously adopted the convention on the "Rights of the Child". This convention states that:

*"The state shall protect the child from all forms of maltreatment by parents or others responsible for child care and establish appropriate social programmes for the prevention of child abuse and treatment of victims (Art. 19), and the state shall protect the child from sexual exploitation, prostitution and involvement in pornography (Art 34)."*

Zimbabwe is a signatory and it began to work on examining the ways in which its laws reflected and protected children's rights. In 1992, Zimbabwe drew up a National Action Plan for Children, which considered issues such as child labour, abandonment of babies, child education and health. In Zimbabwe legal protection against abuse of children in various forms is provided for by the Marriage Act and the Sexual Offences Act. While the Zimbabwean law has its shortcomings it generally conforms to the United Nations Conventions.

A child is considered abused or at risk of abuse when the basic needs of the child are not met through avoidable acts of omission or commission. In the Children's Act, any person under the age of 16 is a child, while the legal age of majority states that anyone under the age of 18 is a minor.

#### **A. The Law on Rape and Sexual Abuse**

In Zimbabwe it is illegal to have sexual intercourse with a girl until she is sixteen, even if she is your wife. Sexual intercourse with a girl who is younger than sixteen is a crime of statutory rape which is governed by the Sexual Offences Act. It is a crime even if she agreed to have sex and even if she was physically sexually mature at the time. This is the law, but unfortunately in practice, this behaviour is often condoned. If the victim is less than 12 years the crime is called rape.

The law in this regard has been made to protect girls because at that age even if they consent they are not old enough to fully realize what it will mean in their lives if they have a sexual relationship.

Sexual offences against children also include indecent assault, sodomy, incest and abduction.

#### **B. Customary/Traditional Approach to Child Sexual Abuse**

Culturally, discussions pertaining to sexual issues have fallen away because of urbanization. Customarily, elders were elected to discuss this with children. This has made children susceptible to abuse. Below are a few traditional methods that leave a child open to abuse:

##### 1. Chikwambo and Ritual Murders

Chikwambo means the use of human organs and parts to make the holder richer. Even Customary law does not condone ritual murders, and the use of human portions to enhance wealth. Normally children are at risk; they are vulnerable and thus can easily be targeted in these rituals.

##### 2. Kuzvarira: Betrothment

This is when a young girl is forced into marrying usually an elderly man, by her parents and family.

##### 3. Inheritance of Right of Marriage

Normally, it is considered compulsory that in case of death of a wife the husband automatically gets the right to marry the sister of the deceased. In fact, it is the choice of the widow and her parents to agree to this. There should be clear message for all to avoid this misunderstanding as most people were abusing this customary concept.

##### 4. Chiramu: In-law

This is a practice in which a brother in law can indecently assault his young and unmarried sister in law under the guise of culture. This is meant to teach young girls how a man proposes and how to avoid him. The girl would also learn how to look after a husband, as she would be doing it for the brother-in-law. Many girl children have been abused as a result but most of these offences have gone unreported.

##### 5. Kuputsa or Kutengesha

This is a practice in which a young child is sold so as to benefit her family; this could also be referred to as trafficking.

##### 6. Customary Marriage

Customary law allows marriage to girls of 12 years. The consent of the girl child is required before the marriage is conceptualized. However, these girl children are still too young to marry and are also too young to give an informed consent.

Traditional beliefs have resulted in the increase of child abuse which in most cases is not reported since this happens in family circles. This is an example of where customary law and the Roman Dutch Law, though both recognized, conflict.

*The forms of reported sexual abuse include:*

- (i) Youth rape at music concerts.
- (ii) Rape and indecent assault by school teachers, school caretakers and headmasters. In 1988 the

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Minister of Education indicated that 800 school teachers were convicted of theft, statutory rape, and assault every year.

- (iii) Rape by family members, incest.
- (iv) Rape by traditional healers.
- (v) Rape when a man wants to claim a child as his bride to stake his claim.

**Official Data on Harare Rape Cases 1989 – 1995**

Records	1989-1995	1989-1992 Court Records
Age of victim	70% > 13 years	36% > 12 years
Sex of victim	All female	Not specified
Age of perpetrator	60% > 20 years	Not specified
Victim perpetrator relationship	9% strangers 29% family/relatives 29% domestic worker	98% strangers 7% family/relatives 4% lodgers
Use of threat/violence	42% of cases	Common
Means of disclosure	41% victims told someone	Not specified
Site of incident	27% injury discovered 39% in victims home	Often injury/STD discovered/reported
Offence to trial time lapse	Over one year 66%	
Trial outcome	57% found guilty and jailed	
Sentencing	Average 7 years	

Although rape is the most common offence against children, other forms of abuse of children occur. In 1998, 535 indecent assault cases involving boys living in the streets and rich men were reported.

**Number of Abused Children: City of Marondera**

Victims	Age 0-5 Yrs	Age 6-10 Yrs	Age 11-15 Yrs	Total
<b>2002</b> Girls	3	16	7	26
Boys	Nil	Nil	Nil	Nil
<b>2003</b> Girls	2	13	9	24
Boys	Nil	Nil	Nil	Nil
<b>2004</b> Girls	3	9	5	17
Boys	Nil	Nil	Nil	Nil

**Forms of Sexual Abuse: City of Marondera**

**Abuser/Accused**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
<b>Rape</b>	32	17	16	65
<b>Sodomy</b>	Nil	Nil	Nil	Nil
<b>Statutory Rape</b>	Nil	Nil	Nil	Nil
<b>Indecent Assault</b>	1	2	Nil	3

**Males**

<b>Age</b>	<b>13-17</b>	<b>18-19</b>	<b>20-30</b>	<b>31-60</b>	<b>61+</b>
<b>2002</b>	6	6	10	6	1
<b>2003</b>	3	5	1	9	2
<b>2004</b>	1	2	8	5	Nil

**Females**

<b>Age</b>	<b>13-17</b>	<b>18-19</b>	<b>20-30</b>	<b>31-60</b>	<b>61+</b>
<b>2002</b>	Nil	Nil	Nil	Nil	Nil
<b>2003</b>	Nil	Nil	Nil	Nil	Nil
<b>2004</b>	Nil	Nil	Nil	Nil	Nil

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**Data on Child Sexual Abuse in Harare Region**

**All Forms of Abuse**

Victims	Age 0-5	Age 6-10	Age 11-15	Total
<b>2002 – Girls</b>	26	35	58	119
<b>Boys</b>	4	3	2	9
<b>2003 – Girls</b>	21	37	72	130
<b>Boys</b>	3	2	-	5
<b>2004 – Girls</b>	33	64	120	217
<b>Boys</b>	-	2	-	2

**Forms of Sexual Abuse**

	2002	2003	2004	Total
<b>Rape</b>	119	122	207	448
<b>Sodomy</b>	3	8	2	13
<b>Statutory Rape</b>	1	4	3	8
<b>Indecent Assault</b>	5	1	7	13

**Abuser/Accused**

Males	Age 13-17	18-19	20-30	31-60	61+
<b>2002</b>	8	28	13	47	23
<b>2003</b>	29	32	12	40	17
<b>2004</b>	17	22	18	123	37
<b>Females</b>					
<b>2002</b>	1	2	-	6	-
<b>2003</b>	-	-	1	1	-
<b>2004</b>	-	-	2	-	-

**Risk Factors**

	2002	2003	2004
Abused at own home	86	78	95
Abused at abuser's home	12	18	73
Abused elsewhere	30	39	51

**Abused/Abuser Relationship**

Relationship	Number of Cases	Total
Father/Mother	97	97
Step-parent	93	93
Step-brother/sister	48	48
Uncle/aunt	84	84
Cousin (Male and female)	13	13
Brother/sister-in-law	43	43
Neighbour	60	60
Teacher	17	17
Stranger	15	15
Healer	6	6
Other	-	-

From the data available, it can be concluded that the children are abused by people known to them, whom they trust and who are related to them.

*Most of the information on the extent of sexual abuse is anecdotal at best. Studies indicated underreporting due to:*

- (i) Children unable to verbalize that abuse has taken place.
- (ii) Threats by offenders, especially those known to children.
- (iii) Difficulties faced by children in reporting to parents with cultural inhibitions making it difficult.
- (iv) Cultural factors involving family privacy.
- (v) Respect for adults by children.
- (vi) Barriers in the police and legal systems to accepting information from children.
- (vii) Affected children e.g. street children fear investigations.
- (viii) Children are unable to give adequate evidence in court.
- (ix) Stigma and social problems arising after reporting making people hide the problem.
- (x) Lack of time and awareness of professionals in contact with children.

It should be pointed out that many children and families do not report abuse to the system because they fear the unknown, do not understand the system or simply want to make the problem go away through denial, and also because there is a feeling that the system does not offer an appropriate remedy for them.

Child sexual abuse is a multi-dimensional problem. It is viewed as both a moral and legal wrong. It is a sexual act that entails the use of physical violence upon the child. It has individual family and social implications in both modern and traditional culture and has economic causes and consequences.

### **C. Child Trafficking and Children in the Commercial Sex Trade**

This is an area that has failed to attract adequate attention, despite the fact that many children and women have been victims of trafficking. This is more so with the advent of street children. They are more likely to be subjected to trafficking.

Trafficking involves the recruitment, or transportation of people within a country or across borders and involves some elements of deception, coercion, force, debt bondage or fraud and normally the reason is to put such people under situations of abuse or exploitation e.g. pornography, prostitution and slavery.

Trafficking, although not well documented, is happening in Zimbabwe because there is a high increase in incidents of commercial sex work involving adolescents living on the streets, where they have become obvious victims of commercial sexual exploitation and trafficking. Statistics pertaining to trafficking are so hard to come by since the syndicates involved in this are highly organized and are unlikely to release any data.

## **IV. THE CURRENT SITUATION OF ACTUAL CRIMINAL PROCEEDINGS (INVESTIGATION AND SENTENCING) AGAINST PERPETRATORS OF DOMESTIC VIOLENCE AND CHILD ABUSE AND THEIR LIMITATIONS**

In Zimbabwe, a "Victim Friendly System" was adopted. This system improved the way in which vulnerable witnesses could be treated in the criminal justice system. This is necessitated by the fact that if the victims were badly treated, the abusers, upon being taken to court, were acquitted. This was attributed to the threatening and intimidatory nature of the legal and court system to sexual abuse victims, from the police station to the courts.

This has all changed with the introduction of the "Victim Friendly System". All stakeholders, from the police, the social welfare services, the doctors, prosecutors and magistrates have all received training to be victim friendly.

### **A. The Investigations**

The courts in Zimbabwe do not carry out investigations but use information gathered by the police. If a victim is badly treated at this level secondary trauma will have been caused and careful handling at other levels will not be able to empower the child/victim as a witness.

*The changes that have been introduced at this level are:*

1. Place of interview
2. Interviewing techniques
3. Accurate recording of the complainant to avoid repeated questioning
4. Confidential handling of information from the complainant
5. Sensitivity of the investigating officer

In the past social welfare services did not play a role at the early stages and did not play a role in cases which did not need a probation officer's report. In the victim friendly system, they now come in to provide support for the victims at the investigation stage, medical examination, and the trial stage. They give advice to the investigators on how to communicate with the victim, and how to avoid secondary trauma. If a juvenile offender is involved, then a social welfare officer, appointed by a Minister for social welfare, in terms of the Children's Act, will carry out a thorough investigation into the juvenile's social and personal background. He will then give an opinion as to the factors that may have influenced the juvenile offender in committing the offence. The probation officer also gives recommendations on whether there is room for reform and will also recommend the nature of the punishment most suitable in the circumstances and what the recommended punishment is meant to achieve.

After preliminary investigation, the victim is referred to a hospital for an examination. The hospital

personnel and doctors are also trained to be victim friendly. There are special medical institutions, called “Family Support Units”, which have been set up. This examination of the victims is done in liaison with the social welfare services. Based on the examination, a medical report is prepared which forms part of the docket.

These documents are referred to the court. At the court, the evidence is assessed by the prosecutor, who may then make a decision to take the matter to court. The trial prosecutor has also received training in the handling of victims of abuse.

When the matter is taken to court criminal proceedings start. The Criminal Procedure and Evidence Act brought changes to the handling of vulnerable witnesses in the courtroom. The victim can testify in a separate room in the presence of an intermediary using closed circuit television.

The important aspect of the Victim Friendly System is that the victim does not have to see the accused and is able to give evidence freely. This system is for vulnerable witnesses regardless of age sex, or offence.

A key player in the victim friendly court is the intermediary, who acts as a buffer by absorbing the hostile question from the accused, and conveys it to the Victim, in a friendly way. The role of the intermediary is not only interpreting from one language to another, but to tone down the question. The Criminal Procedure and Evidence Act provides for the prosecution to make an application to the court, showing cause why the witness should be treated differently. Where the perpetrator does not oppose the application the case is held in the victim friendly court. The court can also order that the matter be held in the Victim Friendly Court.

### **B. Anatomically Correct Dolls**

There are some anatomically correct dolls, in the Victim Friendly Court, with which the child can demonstrate what happened to him or her. The purpose of the dolls is to encourage the witness especially child witnesses to talk about the alleged abuse. However, the use of the dolls is not covered by the Criminal Procedure and Evidence Act.

The victim friendly courts have got their practical constraints. These constraints affect the effectiveness of the victim friendly court procedures.

Firstly there is a shortage of manpower and shortage of resources. Secondly most of the people who could ordinarily benefit from the victim friendly courts are not aware of its existence. Thirdly, in some instances, the geographical location of the victim friendly courts make it difficult for the otherwise deserving victims to benefit from the system.

### **C. The Juvenile Offender**

The procedures for the arraignment or indictment of juvenile offenders are generally the same as those of adult persons as outlined in the Criminal Procedure and Evidence Act. Minors can be prosecuted and sentenced by the ordinary courts. However, in practice minors of tender age, for example ten years and below are normally referred to the juvenile court. If the matter is dealt with in the magistrates’ court, after conviction, the matter can be referred to the Juvenile court.

The Juvenile Court in terms of the Children’s Act, can order placement of a child in a certified institution or training institution or the placement of the offender in the hands of a suitable person or return of the juvenile offender to the custody of the parents.

Where a minor/Juvenile offender is charged with the commission of an offence the magistrate may instead of releasing him into the custody of the parents, refer him to a place of safety in terms of the Children’s Act. A juvenile offender should not be detained in a prison cell or lock up unless his detention is necessary and no suitable place of safety is conveniently available for his detention.

The juvenile court effectively protects the interests of children. Zimbabwe Law, through the Children’s Act, provides for the establishment of these courts. These courts are not bound by rules relating to civil or criminal procedure. They are required to conduct their business in such a manner, as the officer presiding deems best suited to do substantial justice.

The proceedings in the juvenile courts are held in camera. This means that only those persons whose presence is necessary or the legal practitioners involved or any other persons authorized by the court will be allowed to be present. It should also be pointed out that in terms of the Criminal Procedure and Evidence Act, an ordinary court which is not a juvenile court has the power to exclude from attendance any person whose presence is not required when the court is dealing with a juvenile accused or with a juvenile witness. Furthermore the publication of the identity or the name, address, school or place of occupation of any juvenile accused or witness is prohibited except where the court has authorized such publication where it is satisfied that this is not prejudicial to the interests of the minor or juvenile involved.

The exclusion of the public is intended to protect the dignity, self respect and general interest of the minor children involved in judicial proceedings.

## **V. OUTLINE OF APPLICABLE PUNISHMENTS AND SANCTIONS AGAINST PERPETRATORS**

The juvenile offender has got a peculiar vulnerability and this has to be considered in meting punishment. There are three important considerations with respect to juvenile offenders:

1. These offenders are themselves children and require assistance if the cycle of the abuse is to be broken.
2. Many offenders have witnessed or been victims of similar and related traumas in their lives.
3. Young offenders are likely to benefit from psychological intervention. Imprisonment is not the way to prepare young offenders for a healthy adult sex life.

It is well established that sexual offenders have a high propensity to re-offend and therefore a successful programme of intervention for young offenders would have considerable benefits for society.

### **A. Sentencing Options when Dealing with Juveniles and their Limitations**

There are various options open to the court when considering how to treat a juvenile after conviction. A probation officer's report is a requirement and should be made available to the court before the juvenile is sentenced. The probation officer's report makes the court's task easier in arriving at the sentence but the court is not bound by the report.

1. Imprisonment: Generally imprisonment is inappropriate for juveniles and should only be imposed as a last resort and only after obtaining a probation officer's report. Imprisonment is likely to be confined to adult juveniles or those approaching adulthood say 17 to 20.

The limitation in this regard is that imprisonment does not curb recidivism. This is likely to harden the juveniles. In the case of juveniles a number of offences committed relate to homelessness and other offences are a result of adolescent reaction to difficult socio-economic family circumstances and need for survival in a harsh environment. There is therefore a need to shift away from imprisonment as this is punitive and retributive and advance towards rehabilitation, education and restoration of the juvenile.

2. Fines: small fines may be suitable in some cases but the court should always consider the fact that it is the juvenile's parents or guardian who is likely to foot the bill.
3. Community Service: this can be one of the most effective penalties for juveniles. In a case where the court intends that the juvenile experiences the punishment, rather than impose a fine that is likely to be paid by an adult, this is an appropriate punishment. This is generally more suitable for those who are 16 years or older.
4. Corporal Punishment: in appropriate cases this can be useful alternative to imprisonment. It is normally imposed in cases where imprisonment would have been appropriate had the offender been an adult. This is normally used in sexual offences like rape, attempted rape and indecent assault.

However, the constitution of Zimbabwe prohibits the infliction of inhuman and degrading punishment or treatment. This is in line with article 37 of the Convention on the Rights of the Child, which mandates states to ensure that no child is subjected to cruel, inhuman or degrading treatment. Corporal punishment is thought to be degrading and inhuman.

### **B. Wholly Suspended Sentence of a Fine or Imprisonment**

The court should be particularly careful with wholly suspended prison sentences on juveniles as such a sentence may be too burdensome on the juvenile. The court should keep in mind that if the condition of suspension is breached a very young and immature offender may end up in prison, an eventuality which the court may be trying to avoid.

### **C. Outline of Applicable Punishment and Sanctions against Perpetrators: Adults**

In Zimbabwe in 1995, studies revealed that domestic violence accounted for more than 66% of murder cases that were going through the High Court in Harare. In looking at the sentencing patterns in these femicide cases it is worthwhile having some further background details of the nature of the crimes so as to compare this information with the sentence passed. The types of femicide cases identified related to:

1. Intimate femicide where women were killed by boyfriends or husbands in so called domestic disputes.
2. Women killed by other family members usually male, who wish to control the behaviour of the woman or girl.
3. Sexual murders where rape is often followed by murder either to cover up the rape or leave no witnesses or simply because the killer enjoys this form of ultimate violation.
4. Witch killings and ritualistic murder where for instance, in Zimbabwe, they maybe stoned when accused of being witches. There are also cases in which women and children were killed and organs removed for ritual purposes.
5. Suicides by women experiencing violence usually at the hands of the husband or other male family relatives.
6. Women killed by thieves in the course of robberies and because women are vulnerable both within their homes and on the streets.

The causes of death per the autopsies showed that the immediate cause of death was often a result of assaults, beatings and whippings. 14% of deaths in Zimbabwe were through stabbing, 10% were killed using axes. This shows just how many femicides are connected to some form of torture where the women are brutalized using a range of weapons and methods mainly by people with whom they are in some form of relationship.

The age range of the victims of femicide in Zimbabwe in a survey carried out by the National Sentencing Committee in 2002 showed the majority to be in the 21 – 30 age group, followed by the 31 – 40 age group and the 51 and over age group.

This is slightly different from the age analysis of the rape victims who tended to be younger; predominantly in their teens.

In the Zimbabwean High Court which has the jurisdiction to try these matters 36% were convicted of murder, 51% convicted of manslaughter, 13% a special verdict was returned, (that is a plea of insanity is returned) and 7% were acquitted.

The possible punishments and sanctions which can be passed against perpetrators include:

- (i) imprisonment
- (ii) fines
- (iii) customary law: compensation at times the victim's family is paid compensation and this is acceptable as settling the matter
- (iv) referral for psychiatric treatment for those who committed offences due to an underlying psychiatric illness
- (v) compensation can also be ordered by the court.

In conclusion, when dealing with cases of rape, sexual or physical abuse and femicide, there is need to enact laws specifically outlawing domestic violence, marital rape and other crimes. These would enable the presiding courts to pass sentences which effectively curb the continued abuse of both women and children.

### **D. The Current Treatment Programmes for Perpetrators and their Limitations**

Under traditional law and culture, offences pertaining to child sexual abuse are serious and are heavily

punished. The abused is taken away to an elder for counselling. The abuser is barred from visiting the area. The abuser would undergo traditional forms of punishment. However, the limitation of such form of punishment lies in the fact that the abuser may not reform, and the compensation paid does not benefit the victim but her family.

In Zimbabwe 'Rehabilitation' of the abuser is even well less provided for. The department of social welfare deals only with people under the age of 18 and has no jurisdiction to deal with adult offenders. If the abuser is the father of the victim and goes to jail, social welfare can provide some support for the family through public assistance.

In cases involving minor abusers, the Department of Social Welfare prepares a probation officer's report to assist the court in sentencing the abuser, outlining the abuser's family surroundings, and peer influence. Those between 16 and 18 are referred to a training institute which is like a prison. At both institutions the minor abusers undergo normal schooling, receive training in vocational courses and receive counselling. While this is in the interests of the juvenile offender the problem is that the minor abusers are not separated by crime such that sexual abusers are mixed with other offenders. The Department of Social Welfare should not only provide counselling to the offender, but also provide counselling to the minor abuser's family.

It was noted however that counselling resources are still inadequate relative to need. A wider range of community institutions needs to be supported in healing the family and child.

The other shortcoming in the treatment of the offender is the omission of rehabilitation. The law needs to incorporate knowledge of criminal psychology. The following are also some suggestions for sentencing which could be considered alongside the conventional sentences:

1. Psychotherapy and other character building opinions especially for young offenders.
2. Marital counselling should be mandatory to prevent domestic violence.
3. Drug rehabilitation/alcoholism and other anti-drug programmes should also be made available especially where it is proven that the commission of the offence is directly linked to the abuse of substances.

The weakness of the Zimbabwean system is that after conviction there is no follow up. A case follow up database would be a useful tool for monitoring the different types of interventions for individual offenders. This would enable us to move closer to punishment that suits the crime and rehabilitation that rebuilds the society.

In terms of the Criminal Procedure and Evidence Act, there are a number of non-custodial alternatives that need to be developed.

- (i) Payment of compensation or damage or pecuniary loss caused by the offence. This is particularly suitable in cases of arson or malicious injury to property. The person should be made to pay restitution. This should be encouraged to ensure that the convicted pays compensation to his victim. This is one way in which the victim could benefit from the criminal justice system.
- (ii) Submission to an institution for treatment. This could be useful in cases involving delinquent juveniles, youthful offenders and drug addicts. The perpetrators can be directed to undergo instruction at a particular institution or undergo therapy under the supervision of a medical expert.
- (iii) Submission to the control of a probation officer, appointed in terms of the Children's Act, or submission to the supervision of any other suitable person. This option would apply in situations in which the perpetrator is a juvenile. The juvenile could be directed to submit to the control of a probation officer or other persons occupying positions of authority in the community such as school headmasters or heads of institutions involved in child welfare.
- (iv) Compulsory attendance or residence at some specified centre for a specific purpose. The perpetrator can be directed to attend a particular place for training purposes. This option is well developed in western countries. Juvenile offenders are made to attend certain training or other educational institutions during the day or even reside at some of those training institutions for a specified period.

One other option which has hardly been applied is periodical imprisonment. In terms of the Criminal Procedure and Evidence Act, such a sentence can be imposed on people who fail to pay maintenance. This option should be revisited to cater for infractions of the law.

## **VI. THE CURRENT SITUATION OF CIVIL, ADMINISTRATIVE OR OTHER MEASURES AGAINST DOMESTIC VIOLENCE AND CHILD ABUSE AND THEIR LIMITATIONS**

One of the most serious problems for women who have been abused is how to keep the violent man away or how to stop him from beating his partner. This is when the abused seeks remedies in the civil courts.

In Zimbabwe the only way to do this is by getting a binding over order or an interdict. A binding over order is issued by a magistrate whereas an interdict is issued by a judge of the High Court. Both are court orders to stop the assailant's violent or threatening behaviour. However, an interdict naturally carries more weight since it is issued by the High Court.

The Criminal Procedure and Evidence Act provides for the issuing of peace, binding over orders or interdicts against violent people, including husbands or boyfriends and or women who assault their partners. This kind of order instructs the spouse not to behave violently towards the partner.

This Act also allows a court to order the 'abuser' to make payment to his victim in compensation for damages. This may be ordered if the victim specifically asks for compensation.

It should be noted that an interdict will only be issued if attached to a more substantial claim, for example divorce. A court may issue an interdict ordering a husband not to assault his wife if a divorce or judicial separation has been applied for.

In deciding whether or not to interdict a violent spouse, the judge is supposed to look at how likely the other claim is to succeed. If for example he thinks that the woman will change her mind about divorce, he will probably not consider her application for an interdict favourably. The limitation of this procedure therefore is that this limits the usefulness of interdicts for abused parties. This procedure is clearly not easy.

What makes it more difficult is that a woman can only go ahead with an interdict application if she has a certificate of urgency signed by a legal practitioner. Although the interdict procedure is relatively simple, she cannot get an interdict unless she can afford a lawyer.

The interdict carries far more weight than a binding over order from the magistrates court. Unfortunately, this is only one example of justice for those who can afford it.

## **VII. THE LAW AND STATUTES DEALING WITH ISSUES PERTAINING TO CHILD ABUSE**

### **A. Children's Act**

There is a need to prevent child sexual abuse by including in the Children's Act provisions prohibiting forced sexual acts or forced marriages with minors, first as a responsibility of the parent or guardian and where this fails, through state intervention.

### **B. Sexual Offences Act**

This Act is mainly aimed at:

1. Protecting young persons and persons with disabilities from sexual exploitation.
2. To combat prostitution.
3. To punish the deliberate transmission of H.I.V and Aids.
4. To provide for the compulsory H.I.V and Aids testing of sexual offenders.
5. To remove discriminatory acts against women.

The limitations of this piece of legislation are that the Act recognizes that it is a defence to claim ignorance of the victim's age and disability.

- The act requires that one has to have prior knowledge of one's H.I.V status prior to the

commission of the offence. In a situation in which one has not been tested then that person is not liable.

- The Act is silent to crucial issues of restorative justice - that is reparation of victims and rehabilitation of offenders.
- Although the Customary Marriage Act forbids the pledging of young girls and women in marriage the Act does not set a minimum age for marriage. According to Zimbabwean Customary law, the parent or guardian of a minor girl can facilitate a valid marriage to be contracted with the girl even if she is below the age of 16.
- It is important to note that while the Act ruled out the irrebutable presumption that a boy under the age of fourteen years is incapable of sexual intercourse by lowering this presumption to boys below the age of 12, the Act is silent on rehabilitative programmes for juvenile sex offenders.
- Although this Act does not deal specifically with youth, it may have been important in determining the degree of culpability of an offender or in establishing a basis for departure from a sentence proportionate to the seriousness of the offence.

*The other acts which apply to child abuse are:*

1. Censorship and Entertainment Act
2. Customary Marriage Act
3. Labour Act

*The limitations of these pieces of legislations are that:*

- (i) Most of this legislation is in English and legal jargon is used. This may be difficult for most people to understand. As such members of the public and the abused remain ignorant of their rights. There has been a suggestion that some pieces of legislation should be in vernacular.
- (ii) There is generally a lack of awareness campaigns and at times copies of the legislation are not distributed to the intended target.

### **C. An Integrated Approach to Domestic Violence and Child Abuse**

The criminal justice system in Zimbabwe should be made to work in order to reduce the incidence of Domestic Violence and Child Abuse.

It is important to have appropriate legislation that sends a message to communities that such behaviour is unacceptable. Legislation should stipulate sentences that act as a deterrent. To this end the sentence that is stipulated for a given crime is a determinant in the consideration of whether the crime is seriously regarded or not and increases or decreases the probabilities of the recurrence of the crime. A sentencing committee was therefore established to address people's concerns with regards the sentences passed on abusers and whether they are effective in reducing the incidence of domestic violence.

The second major point of intervention is to make court procedures accessible to survivors of violence. This has been achieved to a large extent by setting up the Victim Friendly Court. These were set up as a legal response to victims of sexual assault and other violence and allowed the victims to give evidence without intimidation from the accused person or counsel. However, there is a need to set up Victim Friendly Courts throughout the country so that they are accessible to all victims. Resources have to be made available.

The other intervention that should/could be resorted to is the imposition of mandatory sentences. There have been pleas to legislators for the imposition of mandatory sentences. The arguments are that legislative intervention takes away judicial discretion.

In Zimbabwe there is a Domestic Violence Bill, specifically dealing with issues pertaining to domestic violence. This has been tabled before Parliament but has not yet been enacted into law.

It is also important to note that many women who wish to pursue a legal remedy to their problems but

lack finances may eventually consult a non-governmental organization as a way of accessing legal advice and assistance to pursue their claim. The clientele of most non-governmental organizations are mostly women. For instance the Musasa Project a local non-governmental organization has women constituting 95% of its clientele. This non-governmental organization specializes in domestic violence. There is the Zimbabwe Women Lawyers Association and the Catholic Commission for Justice and Peace, which are local non-governmental organizations.

These organizations complement each other and have developed a broad based assistance and referral network amongst themselves and also with the justice delivery system. The justice delivery system and the government also refer cases to non-governmental organizations. This system is advantageous since there is a reciprocal relationship between the courts and the organizations that is beneficial to the victims.

The Zimbabwe Republic Police and state prosecutors have also received training from the non-governmental organizations on domestic violence and child abuse. Networking has yielded some practical advantages given the limitations of capacity (human and material). The victim's needs are addressed. Non-governmental organizations have mainly shouldered the burden of information dissemination on the issues pertaining to child abuse and domestic violence. The result has been that there has been an increase in the number of reported domestic violence cases. The non-governmental organizations in collaboration with the government agencies have played a pivotal role in providing services to women which include counselling, shelter, rehabilitation and legal representation.

With regards children's rights, the bulk of the burden has also been shouldered by some non-governmental organizations such as Girl Child Network, Child Law Foundation. They provide shelter and counselling. These link up with the justice delivery system on behalf of the children. Awareness campaigns to sensitize people on the plight of children have also been carried out through:

- (i) Awareness campaigns in schools
- (ii) The establishment of a help line for children
- (iii) The erection of billboards with information on child abuse and what constitutes child abuse
- (iv) The media has been used to inform people of children's rights. The effect is that there has been an increase in the number of children who have reported abuse, be it physical or sexual.

There is a need for continued networking and cooperation between players in the justice delivery system so as to produce a system that can better serve the needs of the victims, especially in the realm of domestic violence and child abuse. Traditional leaders who are the leaders of the customary law courts should also be included in the network. This will help fight abuse in the name of culture or tradition through the traditional chiefs. The community at large can be sensitized on issues involving domestic violence and child sexual abuse.

## VIII. CONCLUSION

It is recognized that the issue pertaining to Domestic Violence and Child Abuse is a multi-sectoral dimensional problem. These are viewed as both a moral and legal wrong. There are individual family and social implications in both modern and traditional culture and it has economic causes and consequences. The causes of abuse should be curbed. Although Zimbabwe has not yet enacted a domestic violence act, the legislation available can adequately deal with the issues arising from domestic violence. With regard to children it has been stated that the laws generally conform to United Nations regulations. What is required is a lot of education for the public so as to counter some of the cultural practices that encourage domestic violence and child abuse. The continued networking between various organizations and the justice system will go a long way in relieving the plight of the victims and assisting victims of child abuse and domestic violence.

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## REPORTS OF THE COURSE

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### GROUP 1

#### EFFECTIVE CRIMINAL JUSTICE RESPONSES TO CHILD ABUSE AND DOMESTIC VIOLENCE

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<i>Chairperson (GW 1-6)</i>	Mr. Lim Thong	(Cambodia)
<i>Chairperson (GW 7-12)</i>	Mr. Hossam Eldin Mohamed Aly Abo Helw	(Egypt)
<i>Rapporteur</i>	Ms. Irene Putrie	(Indonesia)
<i>Co-Rapporteur</i>	Ms. Foelane Chipo Muronda	(Zimbabwe)
	Mr. Hironori Yokoyama	(Japan)
<i>Members</i>	Ms. Ligia Yvette Turcios Torres	(El Salvador)
	Mr. Hiroshi Aoki	(Japan)
	Mr. Masaki Nagai	(Japan)
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### I. INTRODUCTION

The Group was assigned to discuss “Effective Criminal Justice Responses to Child Abuse (herein after referred as “CA”) and Domestic Violence (herein after referred as “DV”)” and conducted its discussion in accordance with the following agenda:

1. Problems inherent in the investigation/adjudication of CA/DV
  - (i) Criminalizing CA and DV
  - (ii) Evidential sparseness
  - (iii) Need for a multidisciplinary approach to victim protection and support
2. Beginning of Investigation
  - (i) Means to induce and maximize reports from relevant agencies, personnel, etc.
  - (ii) Ways and extent of criminal intervention
3. Technical improvements of criminal justice procedures
  - (i) Prioritizing victim safety
  - (ii) Speediness
  - (iii) Obtaining valid and admissible testimony from children/DV Victims
  - (iv) Minimizing secondary victimization
4. Effective dispositions
  - (i) Desirable dispositions
  - (ii) Utilization of diversion
  - (iii) Holistic legal approach (Ex. Unified Family Court)

### II. PROBLEMS INHERENT IN INVESTIGATION AND ADJUDICATION OF CHILD ABUSE AND DOMESTIC VIOLENCE

The Group first reviewed the problems inherent in investigation/adjudication of CA/DV such that those problems set the limit to criminal justice intervention.

The first subtopic, criminalizing CA and DV literally limits the authority of criminal justice agencies because criminal justice agencies are basically institutions for pursuing the criminal responsibilities of offenders. The Group considered three points, (1) there are two types of offence, generic and procedural, (2) in which laws the acts of CA/DV are prescribed as crimes and (3) to what extent should psychological

violence and neglect be criminalized.

In regard to the first point, the Group identified generic offences in CA/DV as, in accordance with the United Nations guidelines, physical, sexual and psychological violence for DV and with the addition of neglect for CA. The procedural offences in CA/DV are those offences which penalize disobedience of protective legal measures, such as a restriction order, to further condemn those acts of CA/DV.

For the second point, the Group agreed that formality of the law is irrelevant as long as the necessary acts of CA/DV are prescribed as crimes. In Zimbabwe, there are two types of law, traditional law and modern law. Ms. Muronda (Zimbabwe) said that in traditional law, CA and DV are not criminalized and people generally follow traditional law. The participant from Indonesia, Ms. Irene, said that in her country CA/DV are increasing in numbers. As a result, Indonesia enacted new legislation in September 2004, the "Domestic Violence Protection Act". Ms. Turcios (El Salvador) said that her country criminalizes DV in a special Domestic Violence Act but CA is criminalized only in the Penal Code. Law reforms in El Salvador are not easy. Mr. Lim, participant from Cambodia, said that CA/DV are considered as a private matter in Cambodia. There is no specific law dealing with CA/DV. Such offences are normally dealt with as rape, assault and murder and these are criminalized in Cambodia by the Penal Code. Mr. Hossam, the participant from Egypt, said that there is no specific law of CA/DV because it is criminalized under the Penal Code. Mr. Aoki and Mr. Yokoyama, participants from Japan, said that Japan enacted special laws for CA/DV but these are not to criminalize the violent act itself and criminalization is stipulated in the Penal Code.

Most of the participants agreed that acts pertaining to CA/DV should be criminalized. The fact that the violence takes place within a marriage or a family is irrelevant. CA/DV should be taken as seriously as other crimes of violence.

For the third point of discussion, most of the participants said that neglecting children constitutes a crime but most countries do not criminalize neglect of a spouse. In Japan, however, neglecting a spouse could be a crime when a person abandons his/her spouse who is in need of help by reason of senility, immaturity, deformity, or illness.

Psychological violence is not criminalized in most countries either. However, if the verbal abuse is so grave, it may constitute the crime of threat (intimidation). Also, if the psychological damage became so serious to reach the point that doctors could diagnose it as post-traumatic stress disorder (PTSD) or some other illness, it may constitute the crime of bodily injury (Japan).

Mr. Lim (Cambodia) and Mr. Hossam (Egypt) pointed out the evidential and investigation difficulties in cases of neglect or psychological abuse if those were criminalized. Yet considering the grave damage caused by those acts, guidelines pertaining to the criminalization of neglect and psychological violence should be put into place.

Subtopic two is evidential sparseness. There may be some difficulties in gathering evidence of CA/DV, particularly in cases of repeated abuse. The difficulties are:

- There may be lack of witnesses because the offence was committed in a private setting, or the wife/children as the victim may be the only witness.
- Difficulties in determining whether the injuries were accidental or were the result of violence.
- The victim (wife/child) may wish to protect the offender (husband/parent, guardian).
- The victim may be unable to report the violence because of such factors as fear and dependency.

Due to the difficulties mentioned above, in some countries, such as Indonesia, evidential law is eased for the prosecution such that a single witness is sufficient to prove a case of CA/DV when a regular crime requires corroborating evidence. Most of the participants also confirmed that for CA/DV, a single witness is normally sufficient to prove the crime.

However, as Ms. Muronda (Zimbabwe) said, the crucial problem of evidential sparseness in CA/DV is not about the amount of evidence to be submitted to trial because if the case is being prosecuted, that means the prosecutor found enough credibility in that evidence. The problem in CA/DV is that the evidence is so scarce, such that the investigator cannot distinguish the cause of the incident as intentional abuse or an

accident, thus it is hard to proceed it as a criminal case. In these aspects, the level of evidential sparseness sets another limit to criminal justice intervention in CA/DV cases.

For subtopic three, reflecting the above two limitations of criminal justice agencies to handle CA/DV cases, all participants agreed that there is a need for a multidisciplinary approach to victim protection and support. Victim protection and support is needed not only in terms of practical living support but also emotional support. Even during investigation/adjudication, it is necessary for criminal justice agencies to work together with other fields such as social workers, educators, psychiatrists and medical personnel to make a proper assessment of the case to deliver the most plausible outcome. Victim support is necessary for both the short and long-term period, but some participants stated that their state lacks sufficient finances for long-term support.

### III. BEGINNING OF INVESTIGATION

The first subtopic was means to induce and maximize reports from relevant agencies, personnel, etc. As Mr. Lim (Cambodia) analyzed, the Group agreed that criminal agencies come to know about the incident of CA/DV from the report of the victim, eye witnesses or relevant agencies.

To maximize the reports from victims, Ms. Turcios (El Salvador) pointed out, and the Group agreed, that at first the victim needs to know what has been done to him/her, so promoting education/public awareness of the mechanism of abuse is important.

The Group also agreed that priority should be given to protect the victim after the incident has become known to the police so victims do not have to fear their lives are endangered because of reporting. At least for the police, Ms. Turcios (El Salvador) said that the police need to respond to an emergency call or they could be held accountable for neglecting their occupational obligations. Also to not embarrass victims of sexual abuse or of marital rape, Mr. Yokoyama (Japan) proposed for police to assign female officers to receive the complaint. In regard to that proposal, the Group generally agreed on the importance of having a special unit of police to be well-trained to handle CA/DV.

On the other hand, Mr. Lim (Cambodia) pointed out the fact that many victims of CA/DV do not want to report an incident fearing that the perpetrator, who tends to be the person earning the means of living in the household, may be kept in custody thus leaving the household without any income. Therefore, to assess the true needs of victims and not to go overboard with excessive criminal intervention against the victims' will, Mr. Hossam (Egypt) stressed the importance of good judgement in each criminal proceeding by receiving help from other disciplines such as welfare services and psychiatrists.

To maximize reports from eye witnesses, Ms. Muronda introduced the Zimbabwean practice of anonymous suggestion boxes. Also, if the witness takes the injured child to hospital, the law requires the incident be reported to the police before the hospital treats the child on the state's expense. To expedite reporting to the police and hospital treatment, Mr. Hossam stated that in Egypt, there are police officers present in every public hospital.

Ms. Turcios spoke about the Salvadorian practice to obligate medical professionals to report suspected incidents of CA/DV to the police instead of the victim or witnesses having to report the incident. Mr. Hossam also added that it is the same for private hospitals in Egypt. By obligating, the Group also found that it is necessary to exempt these reporters from their professional confidentiality obligation. Further, the Group generally agreed to obligate not only medical personnel but to obligate school/kindergarten teachers, welfare agencies, or other relevant agencies to report to the police. The establishment of the before mentioned special unit of police and notifying its hotline number to those relevant agencies should make it easier for them to report.

The second subtopic was ways and extent of criminal intervention.

The Group based its discussion on the Canadian policy of mandatory arrest when there is evidence to indicate CA/DV. However, at first, the Group found that the term "arrest" infers different legal contexts depending on the system. Therefore, the Group decided to use "mandatory intervention" instead of

“mandatory arrest” to mean “mandating police officers to initiate a criminal investigation on the reported incidents of DV or CA”.

The Group did not reach agreement on three points. First, there was no consensus whether to deal with DV similarly to CA. An opinion was raised that the victims’ opinions should be respected in DV cases with regard to handling the case criminally but the policy of mandatory intervention should be applied in CA cases. This is due to the fact that victims in DV are mature enough to be able to make an informed decision, whereas victims in CA cases are often very young and need protection.

A second point of disagreement was whether to mandate police officers to intervene in every incident as a beginning of criminal procedure. In this, Mr. Nagai (Japan) disagrees with a mandatory intervention policy given the current Japanese criminal justice practice which has a possible detrimental effect on future family reintegration. Therefore, he considers the police should be given the discretion on whether or not to intervene. Irene also suggested that police should not be mandated to intervene in all cases of DV.

Mr. Aoki (Japan), on the other hand, believes that the prosecutor should make the decision whether or not to go further with the criminal procedure when he/she prosecutes the case. He says the decision of whether or not to intervene criminally should not be left entirely to the police’s decision because the prosecutor would have more information as a result of investigation and could assess the needs of the particular family better. Ms. Muronda (Zimbabwe) also suggested that a mandatory intervention policy should be affected in all cases of CA/DV since criminal intervention has deterrent effects and could serve to modify the abuser’s behaviour.

The third point of disagreement was whether there is need to take offenders into custody. Ms. Turcios (El Salvador) suggested that perpetrators should be detained for the victim’s safety but for a short time only and there should be respect for human rights. Mr. Hossam (Egypt) indicated that victim protection should be given priority. He then preferred to respond in terms of restriction orders instead of detaining the offender.

#### **IV. TECHNICAL IMPROVEMENTS OF CRIMINAL JUSTICE PROCEDURES**

At first, the Group discussed the first two subtopics together; prioritizing victim safety and speediness of criminal justice procedures, because the Group agreed that delays in the criminal justice system compromise victim safety.

So in order to achieve speediness and not to sacrifice the victim’s needs, the Group agreed that criminal justice agencies need to be aware of the victims’ needs for safety, security and a restored sense of well being. There also is a need to change the attitude of criminal justice agencies towards the offences of CA/DV. Criminal justice agencies that are in contact with potential victims should be specially trained to recognize the signs of CA/DV. They also need to know the appropriate steps to respond to the problem.

There also were several suggestions to prevent re-offending and thus protect victims from further violence. The first strategy is to reduce the offenders’ access to means of violence. For example, where the abuse is mainly linked to firearms, there is a need to limit accessibility to firearms. Likewise, where violence is linked to alcohol, there is need to reduce availability of alcohol. One of the visiting experts, Dr. Butchard, introduced in his lecture a study, which found this method to be very effective to reduce the prevalence of abuse and thus protect victims from re-victimization. Secondly, Ms. Muronda (Zimbabwe) suggested that making a database on CA/DV offenders would make follow-ups by law enforcement easier. She said that many countries lack such a database but this database, if made not only after conviction but right after arrest or prosecution may benefit courts to see whether the offender went through behavioural changes because of criminal intervention and then may make wiser decisions in the selection of punishment or other means of rehabilitation.

In terms of speediness, it was generally agreed that cases of CA/DV have to be dealt with speedily. However, in some countries, for instance, the police may lack even basic tools, such as transportation. Ms. Muronda (Zimbabwe) raised this problem, that it is difficult to process cases quickly due to the overload of cases compared to the few number of police officers, prosecutors and courts. However, considering victim’s safety issues, an opinion was offered that the police need to respond to the initial report of the incident as

soon as possible to assess the seriousness of the case and even if there are not enough officers to dispose of the case quickly, the police, by cooperating with welfare agencies, need to follow-up on the case in a timely manner to make sure the victim is not endangered.

Also, Mr. Hossam (Egypt) said that the first intervention does not have to be a criminal intervention. He added victims of violence and abuse require practical, emotional and legal support. These may not be given by criminal justice agencies but may be obtained by networking with various agencies such as health, social welfare and non-governmental organizations. Mr. Lim (Cambodia) also agreed that these organizations complement each other in their activities, thus, ensuring the victims' safety. Networking is thus advantageous in meeting the victims' short-term and long-term needs. Ms. Irene (Indonesia) also added that legal intervention, such as a protection order, injunction or interdict, can also be put in place to ensure the victims' safety even if a speedy criminal response is not possible. The advantage of such an order is that these orders prevent perpetration of violence on the victim without penalizing the perpetrator.

Mr. Yokoyama (Japan) remarked that delays in the criminal proceedings may not always contradict victim's safety because victims may be traumatized to such an extent that they are unable to testify. Delays are also occasioned by the fact that some of the witnesses of CA/DV may be too young to testify. There is a need to establish a rapport with the child before commencement of trial; this could also result in a delay.

In general, the Group agreed that the criminal justice procedure needs to respect the offenders' rights but the Group also agreed to Ms. Deol's, the visiting expert's comment, that protection of the accused should not jeopardize the victim's safety. To make a compromise between the offenders' right to a speedy trial with the possible delays of a court date due to the victim's incapability to testify, Ms. Turcios introduced the Salvadorian practice to allow the prosecution to postpone the trial date one time for a reason but not a second time for the same reason. The Japanese members of the Group also introduced the Japanese evidential rule that allows, under limitation, usage of victims' statements taken at the investigative stage instead of court testimony where the victim is unable to give proper facts due to psychological strain.

For the third topic, obtaining valid and admissible testimony from children/DV victims, in some countries, such as in Indonesia, the spouse is not allowed to testify under an oath thus theoretically has limited credibility compared to testimony given under oath. However, since this limitation is a legal categorization of testimony and judges have authority to determine the credibility of particular testimony in relation with other details of the case, the lack of oath does not present any problems with admissibility of such testimony.

In terms of child witnesses, some countries, like Egypt have similar legal limitations such that a person under 14 years old cannot take the stand in a trial as a "witness". However, Mr. Hossam (Egypt) added that even a child under the legal age may make a statement in the court as a different category of evidence thus this age limitation does not present any problems with admissibility of child witness testimony.

In terms of validity of the context of testimony, the Group did not find the particular necessity to view DV victims any different from other adult witnesses in other types of crime. Mr. Hossam (Egypt) considered the issue of psychological strain on DV victims to present private issues in a public trial thus the Group decided to address the issue under the subtopic of "minimizing secondary victimization".

For child witnesses, Mr. Yokoyama (Japan) raised two possibilities for the child to give false statements. First, the child faces the psychological burden of presenting negative statements against the offender, the parent of the child. This point overlaps with the psychological strain of DV victims; therefore, the Group addressed the issue of minimizing secondary victimization. The second possibility is the suggestibility of a child to adult opinions. Ms. Turcios also explained that in El Salvador, some mothers pressure their children not to testify against the defendant; the father. She suggested that there is a need for the involvement of social welfare services in the initial stages of investigation, to protect the victims. In this context, Mr. Yokoyama (Japan) suggested the need to educate the legal importance of the statement to initial interviewers. Ms. Muronda (Zimbabwe) introduced her country's "victim friendly practice". This practice is to question the child through an intermediary or interpreter who is trained to work with children. This practice may allow the intermediary to block prosecutors or defence counsel's suggestive questioning.

The last subtopic for technical improvements of criminal justice procedure is to minimize secondary

victimization. The Group understood the meaning of “secondary victimization” as victimizing the victim by having him/her go through the criminal justice procedure.

In the context of giving testimony at trial, Ms. Irene (Indonesia) said that a video link system is useful for obtaining valid testimony from children and the victims of DV. Members from Japan stated that some technological improvements in most countries have actually enhanced victims’ safety when testifying for instance:

- (i) the use of a screen;
- (ii) the use of Video-link; and
- (iii) the recording of evidence by the court in the absence of the accused.

Where countries are not technologically advanced, they have developed alternative strategies which seek to protect the victim. Many allow cases of CA/DV to proceed behind closed doors away from the public.

The Group also recognized the need to try to make full use of expert testimony or other means to prove the case without the victim’s statement so criminal justice agencies can minimize the number of cases in which the victim has to go through the criminal justice procedure.

## V. EFFECTIVE DISPOSITIONS

The subtopics were: desirable disposition, utilization of diversion and holistic legal approach but the Group discussed all issues together as possible dispositions.

Ms. Muronda (Zimbabwe) suggested that pre-trial diversion is preferable because there are a number of situations where a prosecution does not meet the best interests of the victim, the offender, the criminal justice system and society. In terms of diversion, Ms. Turcios introduced three types of diversion in El Salvador. First, when the accused admits the offence, the prosecutor or court may suspend the procedure under the condition to refer the offender to some rehabilitation programme such as drug rehabilitation or alcoholics anonymous. Second, where the offender pleads guilty, he/she may be diverted to a rehabilitation programme instead of incarceration. In this procedure, the penitentiary judge is to intervene when he/she finds it necessary to protect the rights of the victims. However, the problem in El Salvador is that there are no officers to assist the judge thus the judge is over-burdened to make proper decisions. Third, conciliation, or mutual agreement between the offender and victim, could suspend the procedure even if the offender does not admit his/her conduct. Ms. Turcios pointed out that there is a need for the involvement of an officer to ensure the victim’s free will but the current Salvadorian system lacks such a process.

Ms. Muronda (Zimbabwe) said even when the case is not suitable to incarcerate the offender, there should be some way to hold the offender accountable for his/her conduct. In this context, she offered an example of Zimbabwean practice to order the perpetrator to compensate the victim. The Group generally found this compensation practice favourable and believed it would give the victim a benefit from the criminal justice system unlike in the past where he/she had been just used as evidence to prove the state’s case without any reward. However Mr. Yokoyama (Japan) questioned the realistic advantage of a compensation order in the case of CA/DV where the income of the offender and victim are common if the victim is not separated from the offender.

The Group generally agreed on the need to rehabilitate offenders alongside of compensation to prevent re-offending. In this context, Mr. Aoki said that in Japanese practice, the public prosecutor has no means to follow-up on the offenders after suspending the prosecution. Mr. Aoki realizes the importance of diversion to rehabilitation programmes but said that it would be difficult to obligate offenders to go through such a programme under current laws without a conviction. Mr. Yokoyama (Japan) indicated the difference between the purpose of the criminal justice system and rehabilitation programmes. He stated that the criminal justice procedures are designed to clarify the facts and the extent of criminal liability for offences committed in the past but rehabilitation needs to assess the future thus it may go beyond the ability of criminal justice agencies. In addition, he said, to determine from various options including diversion to rehabilitation programmes, it is necessary for the criminal justice agencies to consult psychologists or someone with expertise on CA/DV to make an appropriate decision. The Group then agreed on the need to collaborate with outside agencies.

Members disagreed with the idea of a unified court to handle criminal cases and civil cases together because of the legal difficulty of combining two types of procedures together. Mr. Hossam (Egypt), however, offered a favourable opinion about one court to deal with criminal and its relevant civil case simultaneously. The other members saw a difficulty with the idea because it still requires changes in the law of jurisdiction of courts in most countries. Instead, Mr. Aoki (Japan) said it would be better to utilize the result of criminal proceedings in related civil suits.

## VI. CONCLUSION AND RECOMMENDATIONS

### A. Conclusion

The Group agreed on the general importance of education/public awareness of the mechanism of abuse but as criminal justice agencies, the Group agreed that:

1. Acts pertaining to CA/DV should be criminalized.
2. There is a need for a multidisciplinary approach for victim protection and support.
3. Victim protection should not compromise the accused's right to due process and a speedy criminal procedure.
4. There is a need to rehabilitate offenders to prevent re-offending.

### B. Recommendations

The Group, emphasizing the international perspective on the issue of CA/DV obtained from this training course and through discussion among members, agreed to make the following recommendations:

1. Criminalize CA/DV acts to ensure the purposes underlined by relevant UN instruments.
2. Train all stakeholders of the criminal justice system who deal with CA/DV.
3. Cooperate and collaborate with other agencies outside of the criminal justice system.
4. Search for a possibility to develop programmes to treat offenders.
5. Utilize experts and technological improvements for better performance as criminal justice agencies.

## GROUP 2

### PROTECTIVE MEASURES FOR VICTIMS OF CHILD ABUSE AND DOMESTIC VIOLENCE

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## I. INTRODUCTION

The Group discussed the following agenda:

### A. General Prevention

Raising public awareness through publicity and education

### B. Minimizing Victimization

1. Encouragement to increase reporting
  - (i) Exemption from confidentiality
  - (ii) Mandatory reporting
  - (iii) Increasing channels to report victimization
2. Interdisciplinary coordination to respond to a report for early intervention
3. Providing safety to victims
  - (i) Seclusion from the perpetrator
  - (ii) Shelters and other living support
  - (iii) Counselling
  - (iv) Minimizing secondary victimization

### C. Legal and Policy Solutions

1. Prompt and effective protective orders and criminalizing violation
2. Holistic legal affirmations

## II. SUMMARY OF DISCUSSION

### A. General Prevention Situations of Public Awareness in each Member's Country

#### 1. General Discussion

The Group agreed that this topic is very important since domestic violence and child abuse are prevalent everywhere in the world. Some societies regard domestic violence and child abuse as private matters and they are not crimes.

The discussions started with the member from Kenya describing her country's effort in raising public awareness especially to children with the setting up of a Children's Department. Campaigns and seminars were organized by trained officers at the grassroots levels. They also have plays and songs to promote children's rights among the children and their teachers. The member from Sri Lanka said that his country has elected 300 CRPO (Child Rights Promotion Officers) to promote child rights to school teachers and staff, parents and also children. They have a 'flag day' for the children to create awareness among them and distribute leaflets and posters. The member from Malaysia spoke about the commitment of NGOs in her country to promote the same kind of awareness.

## 2. Proposed Measures

### (i) *Public awareness through publicity and education*

The discussion continued focusing on public awareness programmes and measures for prevention of domestic violence and child abuse. The Group unanimously agreed that education about the subject is important and it should be publicized. Publicity, depending upon available resources in each country, comes in the form of print and electronic media and the contents should include:

- a) Understanding of the problems of domestic violence and child abuse is important and needs to be publicized widely. The nature, the extent and the causes of both issues should be understood by the general public. The examples in this case can be quoted from Japan and Malaysia where it has already been carried out by producing booklets, brochures and billboards on the subject. The same can be done in other countries in official and native/local/national languages.
- b) Rights of women and children should be made public. These target Groups should be well aware of their rights and this will make them realize that they have to play an active role in the restoration of these rights.
- c) The present position of the legislation and legal framework available in each country is another important step so that everyone knows the protection provided by the state.
- d) Cultural and religious values are the core of all societies. In some countries like Pakistan and Malaysia it is vital to inform the religious leaders to play a positive role in this drive against domestic violence. Fiji has Community Leaders and Kenya has churches to help deal with these issues.

It is important for people to know what support is available and provided by the government and non-government agencies. They need to be educated on the following issues:

- The reporting system available in the society;
- Counselling session outlets and their locations;
- Victim protection facilities i.e., shelters, kinds of treatment provided to victims and their interests; and
- Help centres established by state and private organizations (for example, TOUCH Child and Family Support Centre in Fuchu) and other social and awareness activities promoted by different organizations.

There is a need to publicize these issues in an effective manner. The Group discussed what mechanisms should be adopted in a persistent way to bring these points home for the public. These methods vary from country to country depending on their social and political set up and according to the demographic realities of each country. The Group discussed and agreed on the following points:

- Use of electronic and print media should be properly exploited to form public opinion in favour of protection of women and children's rights. Even in the absence of these facilities the message can be delivered by reaching the community in the home and playing dramas or street plays as mentioned by the Pakistani member.
- Approaching educational institutions and informing teachers and children about domestic violence and child abuse will be an effective tool to equip children with knowledge. The subjects should include all forms of violence – physical violence to sexual abuse and taught to children at an early age in a proper way by their teachers. The same can be done at colleges and universities.

- These publicity campaigns should not be limited to children and women only but the whole community should be involved. There is a need to approach the community leaders, notables, elders and religious leaders who matter in the social set up of each society. Youth leaders and unmarried young men and women should also be the targets of these education campaigns as they are potential parents and can work as watchdogs in their own specific spheres.
- These target groups should be involved in discussions, workshops and seminars. Training workshops should be arranged by state departments and NGO's to raise the level of public awareness. Youth leaders and community representatives should be educated in these workshops about the subject and they can carry this message to the community as their own.
- Government departments like the police, social welfare agencies, and women related departments, ministries of religious and cultural affairs and similarly all concerned official stakeholders should take an active part in publicizing and educating the general public about the issue.
- In this campaign, Non-Governmental Organizations should also be encouraged to come forward and play their part. Human Rights NGOs should also take this objective farther in collaboration with all interested Groups.
- Celebrating the special days of children and women is another way to highlight the issues specific to them. If the issue of domestic violence and child abuse is addressed particularly, then it can also help to stir the minds of the public.
- Continuity of these programmes should be stressed. Countries, which have severe financial constraints, should try to ensure proper funding beforehand. Continuous availability of resources is a prerequisite for these programmes and a source of satisfaction for all who are committed to this uphill task.
- Follow up campaigns should be carried out to assess the ongoing campaigns and any problems resolved.

The Group, after long deliberations, reached the above conclusions. One advisor pointed out that sometimes even educated people like doctors or teachers become perpetrators of domestic violence and child abuse. He raised the question whether the education system had not been successful in these cases to prevent violence by these people. However, most of the members expressed the view that although education may not be perfect and sometimes not effective, it is very important and the only means of creating public awareness and prevention.

## **B. Minimizing Victimization**

### **1. Encouragement to Increase Reporting**

#### *(i) Exemption from confidentiality*

Public servants and professionals, such as medical doctors and teachers, should be exempted from confidentiality as these are the persons most likely to recognize problems with regards to domestic violence and child abuse cases. A Japanese member reported a recent amendment on the exemption of confidentiality of doctors and lawyers, who are legally bound to keep their clients matters confidential on domestic violence and child abuse cases. In mandatory reporting, it might be a good option to exempt them from confidentiality.

#### *(ii) Protection of the reporting source*

The general public should also be encouraged to report freely and their identities should remain confidential. The Malaysian member explained that their DV Law provides protection of the source because they are not liable to incur any liability for defamation providing the reporting is done in good faith. A Japanese member pointed out that in spite of such provisions it is quite easy for the perpetrators to recognize the source of information.

(iii) *Mandatory reporting*

a) Child abuse

One of the approaches for encouraging reporting in child abuse incidents is mandatory reporting because a child is vulnerable and not capable of making decisions for himself/herself and usually dependent on the abuser. He/she might not be able to relay to other persons his/her plight. So it is very important and necessary that we should consider imposing mandatory reporting on those who are likely to discover child abuse first-hand such as:

- medical practitioners;
- law enforcement agents;
- child care takers/service providers;
- teachers; and
- family members other than parents.

An adviser explained the mandatory reporting policy in some states in the USA, where failure to report suspected child abuse can result in criminal liability (although the liability is typically a misdemeanour punishable by a fine) and can also result in civil liability. We then discussed the range of persons to be mandated to report suspected child abuse. In Malaysia, as reported by its member, medical practitioners, family members and child care providers are subject to mandatory reporting and failure to report constitutes an offence. A Japanese member, opposed to the mandatory reporting policy with criminal sanctions, pointed out that if doctors and teachers are forced to report then it might result in breaking the trust of the parents of the teachers and patients of the doctors.

With regard to family members being responsible for reporting violence and abuse in the home, a Japanese member questioned whether this imposed an excessive responsibility and penalization on them. On the other hand, the Pakistani member opined that it is important to impose these responsibilities on family members so that they do not become mere spectators of abuse. It was his view that they should play an active role to end this cycle of violence, especially in extended family systems.

During a plenary meeting the Group proposed discussing views and opinions on having mandatory reporting for third parties such as family members, neighbours and the public at large. A Japanese participant pointed out that making reporting mandatory for medical doctors could be a heavy responsibility for them and may discourage people sending their children to the doctor. The visiting expert from Canada pointed out that in Canada, as for child abuse cases, all citizens have to report because it is a crime, and medical doctors, teachers and psychologists are required by law, and they are exempted from confidentiality.

After the plenary meeting, the Group discussed the issue of mandatory reporting at length. Many of the members were in favour of mandatory reporting. The Malaysian member remarked that in case a person fails to report abuse then he/she can be fined in Malaysia but in practice, this has not happened so far. The members from Fiji and Sri Lanka were also in favour of penalizing those who failed to fulfil the requirements of mandatory reporting. However, there were reservations about penalizing third parties in case of non-reporting. One Japanese member pointed out that this will amount to penalizing the public for an act they didn't do. So there should be some other means to involve the general public in reporting crimes of violence and abuse. One adviser mentioned that if someone reports such crime and it results in saving and protecting the victims then he/she might be rewarded for this noble act of exposing the violence and for helping the victim. According to him, a reward system might be a possible alternative to mandatory reporting with criminal sanctions.

b) Domestic violence

Members discussed the difference between violence to children and violence suffered by an adult. Children are vulnerable and may not be able to make decisions about their own safety and therefore mandatory reporting is important, whereas for adults mandatory reporting may not be necessary.

In regard to cases of domestic violence, a Japanese member pointed out that the consent of

victims should be respected. The professionals, such as medical doctors examining the victims, should ask the victim if they wish to report it or not. It should only be made mandatory to report regardless of her/his wish in cases where the injury is very serious and is suspected to constitute a criminal offence.

The Pakistani member suggested that reporting of violence is very important and even after reporting by a third party, the consent of the victim to proceed against the perpetrator/s through the criminal justice system can be ensured.

(iv) *Increasing channels of reporting*

Most of the members agreed that more channels for the victims should be made available in:

- the public sector (welfare, police, hospitals, courts, child guidance centres, one stop centres, etc.) and
- non-government organisations and human rights organisations.

However, one Japanese member thought that if there were too many channels, these would confuse the victim, or third persons going to report, because they basically have little knowledge of available channels.

Although some countries have hotlines or toll free lines, usually they are too long and not many people are aware of such numbers. All members agreed that the numbers should be simplified and easy to remember.

In domestic violence and/or child abuse cases, sometimes the victim or the third party does not want to initiate an investigation or penalize the perpetrator but merely wants to have psychological support or wants to prevent further abuse/violence. In this context, the number and types of channels, besides the police, should be increased. Here the Pakistani member mentioned the community police in some parts of Europe, like Kosovo where it is the police's job to settle domestic disputes and they may or may not follow it up by an official investigation.

Sometimes not only the victims and/or a third parties but also the perpetrators themselves report the abuse in order to receive support and help them overcome the problem. So there should also be outlets for them such as Child and Family Support Centres (like the one in Fuchu, Japan) where parents can consult with experts to resolve their problems.

## 2. Interdisciplinary Coordination for Early Intervention

Members listed up a number of agencies involved in interdisciplinary coordination, which can be government, or non-government agencies such as follows:

- Child guidance centres
- Schools (teachers/principals)
- Police and other law enforcement agencies
- Consultation support centres
- Hospital/medical services
- Courts
- Peer groups/community leaders/NGOs
- Welfare departments
- Children councils (as in Kenya and Sri Lanka)
- International organizations (UNICEF, JICA, Red Cross, etc)
- Media

The Group agreed that the key players in coordinating would be the first agency to receive the report, to form the Multi Disciplinary Team or Inter Disciplinary Team which are currently practiced in some countries.

From here the Group explored the current situation of interdisciplinary coordination for early intervention in the respective countries. The Malaysian member explained the establishment of a Child Protection Team where three permanent members i.e. protector (welfare department), medical officer and the police are required under the Child Act. A Japanese member explained that in Japan when a report is received in a centre for domestic violence, then they guide the victim and ensure her/his security. Then

necessary steps follow, for her/his financial support by the welfare department if she/he is in need of such support. She mentioned that it is one practical example of interdisciplinary coordination. The member from Kenya mentioned that there cannot be a single method of coordination and a single agency cannot always be the lead agency because the nature of domestic violence and child abuse cases varies enormously. So depending upon each case the response for intervention may be varied and key players also vary looking at the abuse from different perspectives.

The Pakistani member suggested that there should be a core group of departments who can play an active role to protect the victims and can intervene effectively. They should share the information and the kind of help they can extend for intervention. He mentioned that this core group should also invite private groups who run shelters and work for the common cause.

Members agreed that not only intervention after the incident occurred is important, but early intervention by inter disciplinary coordination prior to the serious/severe incident would act as prevention.

One of the advisors mentioned that before any kind of intervention, it is important to assess the nature of the report and to decide about the possible responses. He further elaborated that in 'minor cases' there may not be any requirement of exhaustive coordination and it may be tackled by even a single agency. To this, another advisor mentioned that in many cases intervention by a single agency, like the police, creates problems for frontline officers who are not able to make decisions on their own due to limitations imposed by human rights directives. The Pakistani member mentioned the need to involve different agencies to expand the possibilities of intervention to avoid this situation.

After exploring the current situation of the respective countries, the Group discussed the effective implementation of interdisciplinary coordination. A Japanese member remarked that in all such groups where different departments are represented there is always a problem of conflicting interests and a lack of transparency of individual departments and this results in poor coordination. He further raised the question why there should not be a single department having the authority and capability to deal with the problem of domestic violence and child abuse.

On the other hand, the Malaysian member thought that the capability and role of each department is altogether different from other departments in essence. It is one common goal and objective which requires their input from different angles and it cannot be accomplished by one single department. One of the advisors mentioned that there may be some crisis management cells to deal with different issues on war footings. He mentioned the Homeland Security Department of the US as an example but he remarked that the overall cost and expense of such a set up would be far more than most countries could afford, so it is better to avail of the existing resources to deal with the issue.

The visiting expert from the World Health Organization (WHO) mentioned best practices models like US, Canada and Australia where they have established Child Protection Units. He also suggested setting up Child Death Review Teams, like the USA and Canada, in order to closely monitor the circumstances every time the death of a child takes place due to some kind of abuse. The team may comprise of different disciplines that share information.

He stressed the necessity of studying the weaknesses and bad practices of the system, and then came up with recommendations for future reference and guidelines. These guidelines must be formalized. Agreeing to that, the member from Malaysia mentioned again a 'working together document': guidelines on roles and responsibilities of each agency. The visiting expert from the WHO also mentioned joint training of those officers/workers concerned in order to strengthen the network and further understanding of the issue and response from all concerned agencies.

### 3. Providing Safety to Victims

#### (i) *Seclusion of victims from perpetrators, shelters and other living support:*

##### a) Domestic violence victims

All members agreed that seclusion of domestic violence victims from perpetrators is a very complex situation. Nevertheless, it's the victim's option to go out and get help in shelters provided both by government and non-government agencies and this seclusion is only on a

temporary basis to buy time to get out of a tense situation or maybe before a petition for a protection order (like Japan) or any other legal remedy, if available. A Japanese member was concerned about maintaining the secrecy of the movement of victims, because despite seclusion, the victim may not be actually 'safe' at the shelters.

The member from Kenya raised the point that this approach may not work in her community because of local traditions where cultural values are very strong. In Kenya when a husband pays Dowry money then it becomes almost impossible for the society to seclude the wife from him. Moreover, if she is not financially stable, the financial cost of bearing this victim along with her children becomes a liability for her parents or supporters. The member from Pakistan also supported this point of view and it was further corroborated by the Sri Lankan member. Both members voiced their opinion that this option of seclusion of the victim is possible only in those circumstances where there is an organized support mechanism available for victims.

The Pakistani member pointed out that in case of rural areas where there are no shelters made available by the state or any other agency, normally relatives of victims or some local elders do come forward to help the victim and seclude them from the perpetrators. One advisor mentioned that in Japan before setting up these shelters, some temples, mainly managed by women, were informally facilitating female victims suffering different hardships, including domestic violence. The member from Sri Lanka mentioned that there was no such activity in temples of his country. The member from Fiji mentioned that in his society shelters do not exist and this is still a private matter dealt with by the elders of each family.

The member from Kenya raised the point about the duration of stay of victims in these shelters. A visiting expert opined that in most of the cases it is for a very short duration but depending on the situation they may stay for either a long or short period of time. So along with counselling, the provision of vocational training skills is important for long term victims. The visiting expert from WHO mentioned that such arrangements incur a huge amount of resources.

In the second plenary meeting, commenting on the issue of seclusion of victims from perpetrators where there are no shelters or living support available, the member from Zimbabwe stated that the residence of a community leader becomes a temporary shelter and he/she provides all necessary support. The government also supports these leaders to discharge this responsibility effectively. A member from Japan stated that in these special circumstances the existing public buildings can be used for temporary relief for victims.

b) Child Abuse Victims

The Group agreed that children's seclusion from perpetrators is necessary in certain situations to secure their safety. A Japanese member mentioned that the Child Guidance Centre can take away a child from the parents even without the parent's permission with a Family Court order. A Kenyan member said in her country, seclusion of children depends on the report submitted by a Children's Officer to the Juvenile Court. From three to eight years old, the child can be taken to a Children's Home. From eight to twelve years old, the child can be sent to a rehabilitation centre until they attain the age of eighteen. While in the centres, the children are given formal education and vocational training. At the age of seventeen to eighteen, they will be committed to a National Youth Camp. There, they are also given vocational training in areas like carpentry and welding so they can get a job from the government for self-sustenance.

A visiting expert explained that in the Philippines, there was a protection order for the family to protect the whole family. The perpetrator is removed from the family by the Police to reduce the trauma on the child rather than taking the child away from the perpetrator. She also pointed out that if both the parents are abusive, then the child will be given to a suitable member of the extended family, who can give financial, emotional and psychological support to the child, or community services. The government will provide funds to support the child.

The Sri Lankan member said in his country, if a child of ten years and above has to be taken from the family it must be with the consent of the child. The member from Fiji mentioned that in his country, there is no standard law for seclusion of perpetrators. An adviser reminded the Group that the seclusion of a child from the family should be the last resort, because separation

can be more stressful for the child.

(ii) *Counselling*

The Group shared the view that it is important to provide counselling for domestic violence and child abuse victims and also for perpetrators. Counselling, a visiting expert said, is about behaviour modification; change from abnormal behaviour to normal behaviour and finding a solution with the information available. She added that counselling of perpetrators should not be ignored, and was also relevant in child abuse cases because it is important to modify their behaviour.

A Japanese member mentioned that in Japan, there is a shortage of professional counsellors, and they do it on a part-time basis. An adviser also suggested that school counsellors in every school should be trained by the Criminal Justice System to help abused children attend school. A Japanese member mentioned that in Japan, where a regular medical check for children is provided, public health officers, can also give counselling to children and perpetrators.

In regard to counselling programmes for perpetrators, a visiting expert stated that in the Philippines, there are counselling programmes for perpetrators to break the cycle of violence and to prevent repeated victimization. She also mentioned that there should be a case conference to exchange the good experiences and to find out best practices to deal with issues of children between concerned authorities. The Kenyan member said that in her country a Probation Officer will deal with the offender but not in a proactive manner like Canada or Japan. The Pakistani member suggested that home visitation can be used as a kind of counselling. The visiting expert thought targeting young perpetrators would be productive since they would be more receptive to new ways of thinking. The Malaysian member stated that in domestic violence cases, when a protection order is sought, the court may order counselling for the perpetrator with a protection order or either one of them or both.

As it relates to counselling programmes for victims, an adviser suggested that counsellors should be equipped with accurate information on the criminal justice system as well as social resources, which are available for victims. In regard to counselling child abuse victims, it was agreed by all members that in the case of children it has more intervention characteristics rather than just counselling. A visiting expert mentioned that a role-play or usage of dolls or sand play therapy will help the child better understand the situations and at the same time freely express what has happened to him/her.

(iii) *Minimizing secondary victimization*

The Group agreed on the scope of this topic; discussing victimization after the incident, by third parties, including the criminal justice system e.g. law enforcement agents, the media, members of the community and relatives. All the members were of the view that an interdisciplinary approach should be adopted to minimize secondary victimization. All members agreed to examine this subject by dividing it into four stages:

- a) reception of reports and investigation process;
- b) during the trial;
- c) post trial; and
- d) others, among the community in particular.

a) *Reception of reports and investigation process*

- Attitude towards victims in evidence collection  
All members shared the view that, in the case of domestic violence, officers and investigators should be considerate to victims without bias and be empathetic with victims to understand their situation. In the case of child abuse, they should have a 'child friendly approach' to deal with the victims.
- Training and education for front desk officers and investigators  
In order to change the attitude of officers and investigators, more training and education is necessary. It is more important for front desk officers who deal with these issues first-hand.
- Presence of female officers/volunteers  
The Malaysian member mentioned that it was important to appoint female investigators to record testimony of the victims in domestic violence cases. Where there are no female

officers available, the presence of a female social worker or relative should be ensured to assist the victim.

- Single desk approach  
OSC (one stop centre in Police Stations and OSCC (one stop crisis centre) in hospitals can lighten the physical/psychological burden of victims.
- Guidelines for questioning by different Agencies  
A visiting expert mentioned that principle officers from agencies such as police, prosecutors, social workers and correction officers should organize workshops and decide the minimum required questions to be answered by victims to save her/him from the trauma of repeating her/his plight to different agencies.
- Sharing victim's testimony  
As the Malaysian member explained, a video recording of a child's testimony can be shared by other agencies, if applicable.

b) During the trial

- All members were in favour of *in camera* proceedings for certain cases in order to remove the presence of spectators in the courtroom.
- A legal response for victim friendly procedures e.g. video recorded testimony & video link testimony can be adopted like in Japan and similar steps, at the introductory level in Malaysia and Pakistan, as mentioned by their members in the Group.
- A shield between the perpetrators and the witness/victim are effective to prevent victims from facing perpetrators.
- A different perspective of court officials towards testimony of a child also could cause secondary victimization as mentioned by the Malaysian member. It was also suggested by two visiting experts that not only judges should be trained but also police officers, public prosecutors and lawyers should be aware of the sensitivity of the issue. Moreover, a code of ethics in law schools and institutions should be taught with special focus on victim friendly practices.

c) Post trial

In some countries, such as Japan, they have a system to inform victims of the date of the release of offenders in order to prevent victims from 're-victimization'. However, this may result in a flashback and trauma for the victims and is another form of secondary victimization.

d) By the community

Secondary victimization by the community, such as the stigma of being abused that is attached to victims through no fault of their own. The member from Fiji mentioned that the victim is normally ignored by the community and even family members start avoiding her/him in many cases. One visiting expert stated that in many cases it's the victim's own family which stops her/him being accepted by the community. She/he is taunted and targeted by friends as being abused and this results in secondary victimization from the people who are supposed to support the victim in her rehabilitation and reintegration in society. The Pakistani member mentioned that it is crucial for the community to be aware that such allusions and references and whispers are detrimental to the victim and cause secondary victimization. All members agreed that only public awareness can result in minimizing secondary victimization by society.

In the second plenary meeting members discussed the issue of the role of community in minimizing secondary victimization. A visiting expert mentioned that public education is one vital means of creating mass awareness and this may start from schools to higher levels as a form of primary prevention. A member from Japan mentioned that seminars in public by the police, with close coordination in the community, may result in better understanding of the common problem and this issue of secondary victimization can be addressed effectively.

## C. Legal and Policy Solutions

### 1. Prompt and Effective Protective Orders and Criminalizing Violations

#### (i) *Domestic violence cases*

In Japan, Malaysia and Sri Lanka the court is entitled to issue protection orders. Regarding the promptness of the issuance of protective orders, in Malaysia, an interim protection order can be issued by the court once an investigation of the abused has commenced and it has to be accompanied with a medical report of the victim which may take a little bit of time. A Japanese member said that in Japan there are no temporary protection orders. It takes about one week to issue a protection order after the receipt of a petition from a victim because of the time taken for official correspondence between the court and the perpetrators. An adviser introduced here the Stalking Prevention Law of Japan, which stipulates that each Prefectural Public Safety Commission, instead of the courts, is authorized to issue Stalking Protective orders, so timely action can be taken for the safety of victims of stalking. A Japanese member stated that in Japan victims who ask for protection orders from the court are usually protected by shelters or by their own families and since the contents of the protection orders includes strict restrictions on the perpetrators rights, such as a prohibition against going home, which might be his own property, hearing from the perpetrator is necessary.

Likewise, the Kenyan member mentioned that in her country a community leader in remote areas has the same power to issue protective orders and violation of these orders is also criminalized. The Pakistani member agreed that the same is being done by elders in his country informally. The visiting expert from the Philippines mentioned that the Barangay (the village leader) is given the authority to issue an interim protection order before the actual proceedings of the court.

Relating to the contents of the protection order, a Japanese member asked whether counselling can also be included in the order. Most of the members supported the Malaysian practice, where the court may issue a protection order, counselling, either one or both depending on the case.

The Group agreed that violation of the order should be criminalized like in Malaysia and in Japan. A Japanese member thought that having only a fine for such a violation is not enough. The Malaysian member added that both a fine and imprisonment are stipulated in the Malaysia DV law for contravention of the order. A Japanese member explained that it is the discretion of the court to impose either a fine or imprisonment depending upon the severity of the case.

#### (ii) *Child abuse cases*

As for the child, the Group thinks that a protection order is important and should be delivered as early as possible for the safety of the child. Criminalizing a violation is necessary and even tougher penalties should be imposed upon the violator. The Pakistani member mentioned in case both parents are perpetrators, then a protection order should be issued for the child. The Malaysia member mentioned that a protection order for a child can be issued to the perpetrators in domestic violence cases as stipulated in DV law and the perpetrators can be the parents.

### 2. Holistic Approach (ex. Unified Family Courts)

Most of the members expressed their agreement on the idea of having a legal holistic approach such as Unified Family Courts. Members considered whether the idea could be implemented in their own countries by exploring each circumstance. A Japanese member explained that in Japan there are three types of courts. district civil courts are responsible for issuing protective orders. Then if there is any case of domestic violence then it is dealt with by a district penal court as there are no separate domestic violence and child abuse courts in Japan. The family courts do exist in Japan but they are used to disposing of cases of divorce and matters of granting custody of children to the parents. So he explained that there is no unified family court in Japan. It was suggested by the member that if these protection orders are issued by family courts then it's also a type of holistic approach.

One advisor explained that a holistic approach aims at dealing with all the cases of a family by one judge only. He elaborated that if there is a domestic violence case between a couple and there is another case concerning their delinquent child then it may be dealt with in the same court so that the judge can be aware of all the issues of the family; an ideal holistic approach. The Pakistani member expressed his understanding

that a holistic approach may be adopted to deal with all the cases between the same litigants, whether of a civil, criminal or familial nature between the same couple. He explained that this will involve professional training of all the staff and will require a legal basis to establish such courts. The Malaysian member added that in her country, family courts are about to be established but their formation and full scope is not clear yet. Notwithstanding, the idea of a holistic approach still exists as the magistrates who issue the protection orders is also hearing the criminal proceedings in the same case between the litigants. Therefore, victims do not have to approach different courts and different judges.

Some members mentioned that it is difficult to set up such a specialized branch of the judiciary due to a scarcity of resources in underdeveloped and developing countries. An advisor mentioned that it is not necessary to establish a new building and resources can also be allocated to deal with these issues separately.

The Pakistani member said that they have family courts and this holistic approach can be experimented with if the prerequisites of the promulgation of DV law and proper funding are met. An advisor added that a holistic approach of unified courts also requires cross training and long tenures for judges in the same court. She pointed to the drawbacks of such an approach that if the judge is biased then one party will be suffering in all cases. The Group agreed that a unified family court can be very easy from a victim's point of view, but its administrative and operational implications should be carefully examined before a final implementation of this approach.

### III. RECOMMENDATIONS

After detailed deliberations the Group came up with the following recommendations which can help protect victims of domestic violence and child abuse.

1. In order to promote general prevention the role of education and public awareness is critical. Media and private sector participation at the grass roots level in this campaign is a key to success.
2. The target of these awareness raising campaigns should be people from all strata of society including public officers, community and religious leaders, young couples, children, victims and perpetrators.
3. In order to encourage reporting, protection of the source of the information should be ensured and professionals with information on victims should be exempted from confidentiality.
4. Depending on different social and cultural backgrounds, a system of mandatory reporting may be implemented to encourage the public to report domestic violence and child abuse.
5. Maximum channels should be available to the public to approach in order to get relief and a well organized interdisciplinary coordination mechanism can result in providing relief to the victims at their doorstep.
6. A timely and appropriate level of intervention is vital to provide safety to victims by secluding the victims from the perpetrators to prevent repeated victimization and victims should be encouraged to approach shelters and other help centres.
7. Counselling is not only important for victims to empower them to deal with the situations but perpetrators should also be targeted to improve their behaviour and break the cycle of violence.
8. Public education is a major way of minimizing secondary victimization by the community. Moreover, criminal justice practitioners should also be aware of the plight of the victims and equipped with skills to deal with victims appropriately.
9. A legal framework for effective and prompt protective orders should be in place and violations of these orders should be criminalized.
10. A Holistic approach e.g. Unified Family Courts is an alternative solution to the problem but its practical difficulties should be taken into account. The prime importance is providing relief and protection to victims and it should be envisaged in existing and future judicial set-ups.

## **GROUP 3**

### **TREATMENT PROGRAMMES FOR PERPETRATORS**

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<i>Chairperson</i>	Mr. Jae Ho Lee	(Korea)
<i>Co-Chairpersons</i>	Mr. Hiroki Sugimoto	(Japan)
	Mr. Lameck M.H. Bankobeza	(Tanzania)
<i>Rapporteur</i>	Mr. Chi Keung Kan	(Hong Kong)
<i>Co-Rapporteurs</i>	Mr. Koji Miura	(Japan)
	Mr. Hilbert Macagaling Flor	(Philippines)
<i>Members</i>	Mr. Eiichi Suzuki	(Japan)
	Mr. Thuya Thein Tun Aung	(Myanmar)
	Mr. Peleniseaila Ifo	(Samoa)
<i>Visiting Expert</i>	Dr. Harry Stefanakis	(Canada)
<i>Advisers</i>	Prof. Tamaki Yokochi	(UNAFEI)
	Prof. Hiroyuki Shinkai	(UNAFEI)
	Prof. Masato Uchida	(UNAFEI)

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#### **I. INTRODUCTION**

Group three was assigned to discuss “Treatment Programmes for Perpetrators of Domestic Violence (“DV”) and Child Abuse (“CA”)”. A tentative agenda for discussion was worked out as follows:

- (1) The treatment programmes for perpetrators (“the Programme”) in respective countries;
- (2) The purposes of the Programme;
- (3) The target participants of the Programme;
- (4) The Programme setting;
- (5) The methodology of the Programme;
- (6) The time frame of the Programme;
- (7) The funding of the Programme;
- (8) The staffing arrangements of the Programme;
- (9) The schedule of the Programme; and
- (10) The title of the Programme.

#### **II. THE TREATMENT PROGRAMMES FOR PERPETRATORS IN RESPECTIVE COUNTRIES**

The Group first reviewed the Programmes of the participants’ countries. While some participants stated that their countries did not have any specific Programmes for DV and CA, other participants said they had some for certain categories of perpetrators. Detailed situations in respective countries are as in Appendix A.

The Group proceeded to discuss the definitions of perpetrators and offenders which would be used throughout this study. After discussion, the Group agreed with the following definitions:

- (1) “Perpetrator” means any person who commits the act of DV/CA or both, whether convicted or not.
- (2) “Offender” means any person who commits the offences of DV/CA, or both.

#### **III. THE PURPOSES OF THE PROGRAMME**

In the course of discussing the purposes of the Programme, participants of the Group raised different issues for consideration including reducing the perpetrators’ violent behaviour, protecting the victims’ safety, promoting the awareness of the perpetrators, preventing further violence of perpetrators and reintegrating the perpetrators into their family. After discussion, the Group agreed that the main purposes of the Programme could be summarized as preventing further violence, rehabilitating perpetrators and protecting victims’ safety.

However, the Group was divided on whether to include reintegration of perpetrators into their family as one of the Programme purposes or not. As pointed out by the Japanese participants, most victims of DV and CA in Japan might not welcome the return of perpetrators to their families. Hence, the Group would only recommend including “reintegration” as one of the Programme purposes when both the perpetrators and the victims wished for a family reunion. The detailed opinions of each participant are contained in Appendix B.

In order to obtain opinions on the “reintegration” issue from the participants of other Groups, this issue was tabled in the first plenary session for further discussion. The visiting experts said that we had to consider many factors when we provided perpetrators with any treatment Programme such as the wishes of perpetrators and their family members or partners, the safety of the perpetrators’ new family, the possibilities of perpetrators’ rehabilitation, and the accommodation needs of the perpetrators after release. While it was good to include reintegration as one of the elements of the Programme, we should not force reintegration in principle. Another advisor drew our attention to a sexual abuse case in which the victim was removed away from her family after the perpetrator had returned home. The victim was deprived of her family’s protection because she had to live alone from the family and we had to consider providing her with necessary protection.

The participant from Egypt would like us to consider the possibilities that an offender might take revenge against a victim who reported the case to the Police and led to his incarceration. The participant from Malaysia suggested if we could consider making reference to the arrangement of sexual offenders being adopted in the USA which made known the offenders’ identity to their neighbours.

#### IV. TARGET PARTICIPANTS

The Group went on to discuss the target participants of this Programme. In general, the Group agreed that perpetrators included two main categories, i.e. perpetrators who had been arrested by the Police, and perpetrators who had not been arrested but they requested to take part in the treatment Programme. The former category included perpetrators who had been charged by Police and convicted by a court, probationers and Parolees.

Some Group participants suggested focusing our studies on the treatment Programmes taking place inside prisons due to their personal interest and work experience. A Group participant from Japan suggested our target participants should also cover probationers and parolees in order to study the issue of victim’s safety after the offenders returned to the community. Another Group participant from Japan suggested we should cover more target participants in order to have a fuller picture of the problem. Besides, it would not be too time-consuming to do so because the components of each programme were similar to each other.

With advice from Dr. Stefanakis, the Group identified four types of target participants including inmates, parolees/probationers, persons given a suspended sentence/conditional sentence, and persons taking part in the programme voluntarily. After deliberation, the Group agreed to focus our studies on the former two types of perpetrators which were of more interest to the Group participants. The Group then went on to discuss the advantages and disadvantages of the treatment Programmes for them.

##### A. Programme for Inmates

The programme for inmates had many advantages. Firstly, inmates were more risky than non-inmates since inmates had committed more serious crimes than non-inmates. It was necessary to provide them with a treatment Programme in order to change their behaviour and reduce recidivism. Secondly, it was more economical to conduct an intensive treatment programme on inmates who were kept in custody. Thirdly, it was convenient to conduct the treatment Programme for both service providers and inmates, and as a result, the dropout rate might be reduced. However, this Programme also had many disadvantages. Some inmates might join the Programme only because they wished to secure a better opportunity of parole. The effectiveness of the Programme was in doubt because its content would be very general and did not suit the specific needs of each individual inmate. Moreover, as a prison setting was very different from their home environment, the effectiveness of the Programme might be affected after the release of inmates from prison. Mr. Miura stated that it was always difficult for an inmate to reform himself. Some Group participants also said that the length of imprisonment terms for some inmates might be shorter than the duration of the

treatment Programme. As a result, inmates were unable to complete the Programme before the expiration of their sentences. Besides, some inmates would prefer not to take part in the Programme as no sanction would be taken against them. A participant raised a concern over the cost-effectiveness to run the Programme. Sometimes, the number of target participants incarcerated in a particular prison was very small and we had to group them together to participate in the treatment programme in one single prison.

### **B. Programme for Probationers/Parolees**

Regarding the advantages of the Programme for probationers/parolees, the Group agreed that it was easier for relevant authorities to set conditions requiring probationers/parolees to attend the programme. The motivation for them to take part in the Programme would be higher because it was laid down as one of the conditions in the Probation/Parole Orders and breach of such condition would be met by appropriate sanction. Moreover, the Programme content was more geared to the home environment. Research results in many countries showed that the Programme conducted in the community was more effective in reducing re-offending behaviour than in penal institutions. Besides, probationers/parolees could voluntarily continue to take part in the Programme even if they could not complete the Programme after the expiration of Probation/Parole terms. The community could also offer assistance to the Programme. Mr. Miura suggested that probationers would be more likely to change their behaviour than inmates because probationers had a lower criminal tendency. However, Dr. Stefanakis pointed out that probationers were found to have a “medium to high” level of risk to commit DV according to the studies conducted in Canada.

On the other hand, the programme for probationers/parolees had its disadvantages. First of all, the dropout rate for this group of perpetrators would be higher as they were not incarcerated and might not attend the Programme. The probationers/parolees could access the victims while inmates could not.

A Group participant from Myanmar commented that there was a problem with the aftercare system in his country. While most perpetrators would need post-release supervision, some of them were subject to such requirements unnecessarily.

Dr. Stefanakis suggested that in order to establish any treatment programmes, it was necessary to consider the available options based on research evidence.

## **V. CHARACTERISTICS OF PERPETRATORS AND PROGRAMME SETTING**

### **A. Characteristics of Perpetrators**

Mr. Miura suggested that we should amend our agenda by studying the characteristics of DV perpetrators such as their behaviour, attitude and thinking before proceeding to discuss the Programme setting. He explained that we should identify the common characteristics of DV perpetrators and target the traits. We should then select an appropriate approach such as education or counselling in correcting perpetrators' behaviour, attitude and thinking. Mr. Suzuki and Mr. Flor agreed with his suggestion. However, Mr. Bankobeza pointed out that firstly, there was no treatment Programme for perpetrators in his home country and secondly, the proposal of Mr. Miura was very difficult to understand by some Group participants. He opined that we should study the relationship between the Programme and the perpetrators' characteristics such as age, sentence, number of previous offences, etc. Mr. Suzuki considered it was necessary for us to understand the cause of the perpetrators' behaviour before mapping out their correction plans and Dr. Stefanakis agreed with him.

Mr. Suzuki suggested that we deal with DV and CA perpetrators altogether, as most of their characteristics were common. For example, they usually committed the offence against their family members and would try to rationalize their behaviour or put the blame on the victims. Mr. Miura suggested that male adult DV perpetrators, the majority group of perpetrators, as our target of intervention. Dr. Stefanakis supported this idea because the characteristics of DV and CA perpetrators were similar, and we could avoid confusion by only focusing on male adult DV perpetrators.

The Group then proceeded to discuss the typical attitude, cognition/thinking, competence and behaviour of perpetrators based on a literature review and their personal experience. The observations of the Group are summarised in Appendix C.

Mr. Ifo commented that in Samoa, the perpetrators would usually show respect to the Police when being investigated. Perpetrators would cooperate with the Police and give all the information required. Sometimes, perpetrators would argue that the victims had first stirred up the confrontation. Mr. Miura and Sugimoto shared their experience in handling perpetrators and both of them had similar observations on perpetrators. The perpetrators would be nice persons in the community but turned out to be tyrannical in the family. The Group interpreted such behaviour as a typical example of perpetrators who were the dominator in the family, tended to shift responsibilities to others, and had the ability to control when to use violence.

### **B. Feedback from the Second Plenary Meeting**

The Group consulted the opinions of other participants on selecting the target participants for the Programme in the 2<sup>nd</sup> Plenary Meeting on 15<sup>th</sup> June 2005 and Mr. Ifo gave the presentation on behalf of the Group.

During the meeting, Professor Ikeda opined that selection of target participants depended very much on which agencies were responsible to provide the services. Of course, it would be desirable to provide the service to all perpetrators particularly those who joined the Programme voluntarily. Dr. Stefanakis suggested that even though the criminal justice system had a mandate to treat court ordered offenders, one to two persons could be allowed to receive the treatment voluntarily if space permitted. Professor Senta suggested classifying the perpetrators into three main groups including inmates, persons undergoing mandatory treatment programmes in the community, and persons undergoing a voluntary treatment programme. The group of persons undergoing a mandatory treatment programme could include probationers, parolees, and persons given suspended/conditional sentence. While the Group discussed and agreed on the suggested classifications made by Professor Senta, it decided to focus solely on probationers/parolees among the big group of persons undergoing mandatory treatment programmes for the continuity of the discussion.

### **C. Programme Setting**

After an explanation by Mr. Miura, the Group agreed to adopt the “Common Hybrid Model” when considering treatment Programmes for inmates and probationers/parolees based on the successful results in Canada. A brief description of the model is shown in Appendix D.

In order to speed up the discussion process, the Group also agreed to split itself into two sub-groups chaired by the Chairperson and the Co-chairperson and to work out the details of the treatment Programme for inmates and probationers/parolees respectively in their leisure time. Each Group would submit their observations in the formal meeting for the consultation of the entire Group.

## **VI. DETAILED ARRANGEMENTS OF THE TREATMENT PROGRAMME FOR INMATES AND PROBATIONERS/PAROLEES**

The Group conducted an in-depth discussion on the arrangements of the treatment Programme for inmates and probationers/parolees. It examined relevant issues including the service providers, time frame, funding, venue, staffing arrangements, staff training curriculum and treatment curriculum. The observations of the Group on the programmes for inmates and probationers/parolees are summarised in Appendix E and F respectively.

## **VII. CONCLUSION**

Group three agreed that the perpetrators of DV/CA need to undertake a special perpetrators programme, then we decided to utilize the “Common Hybrid Model” as a model programme/model guideline. In order to implement this programme/guideline in each field, we have to consider the different settings in respective countries. For implementation, the following issues should be considered:

1. States are obliged to promote treatment programmes for DV/CA perpetrators.
2. Treatment programmes must address the risks, needs and characteristics of target perpetrators.
3. States must consider the status of perpetrators such as inmates, probationers/parolees.
4. States can utilize programmes which are proven to be effective based on research evidence. States may change such programmes depending on the particular conditions of respective countries.
5. State government needs to co-operate with other stakeholders, such as, civil organizations, etc.

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6. Staff competency is important for successful treatment programmes; therefore, appropriate training is essential.
7. Proper evaluation of the treatment programmes is important.
8. Safety of victims and their family members should be considered in developing treatment programmes.

## APPENDIX A

### Treatment Programmes for Perpetrators in Different Countries

Countries	Treatment Programmes for Perpetrators
Hong Kong	<ul style="list-style-type: none"> <li>• There are some programmes for offenders in prisons and in society.</li> <li>• Also, some programmes are available for victims as provided by the government NGOs.</li> </ul>
Japan	<ul style="list-style-type: none"> <li>• There is one pilot programme for DV offenders within prisons.</li> <li>• There are specified manuals on DV and CA for the Probation Office to follow when handling parolees who are under supervision, with the assistance of Volunteer Probation Officers.</li> <li>• Some programmes are provided by NGOs.</li> </ul>
Korea	<ul style="list-style-type: none"> <li>• There are programmes organized by social welfare services and within prison.</li> <li>• Similar services may be introduced to prisons by NGOs.</li> </ul>
Myanmar	<ul style="list-style-type: none"> <li>• There is no specific programme.</li> <li>• However, perpetrators including the families and police should be educated on DV and CA with a view to modifying their behaviour.</li> </ul>
Philippines	Some treatment programmes for DV and CA perpetrators are treated under the Penal Code before enactment of a new law.
Samoa	<ul style="list-style-type: none"> <li>• The Police and Women’s Commission arrange a periodic publicity campaign to promote public awareness of DV and CA.</li> <li>• Also, inmates will also be given lectures to prevent them from committing DV and CA.</li> </ul>
Tanzania	<ul style="list-style-type: none"> <li>• DV and CA are seen as serious problems.</li> <li>• They are treated as crimes under the existing criminal law in order to protect the victims.</li> <li>• However, there is no specific treatment programme for perpetrators of DV and CA</li> </ul>

## APPENDIX B

### Opinions as to whether “Reintegration of Perpetrators into their Family” should be one of the Programme Purposes

Agreement	Disagreement
A perpetrator deserves an opportunity to change his behaviour and support his family.	Some victims of DV and CA and their family members might not welcome the return of perpetrators. This amounts to undesirable and unwanted reintegration.
In some countries of different cultural background, a family may have to depend on the perpetrators to support them.	Unfounded expectation of the perpetrator: A perpetrator may think that if he participates in the programme, he could go back to his family automatically.
To evaluate the performance of the perpetrator and the effectiveness of the treatment programme	Victim’s safety cannot be secured.
Burden on the government or non-governmental organizations to take care of the perpetrators’ family members particularly when the family is large.	The purpose of this programme should be only “rehabilitation of offenders” and “prevention of violence” and should not be “re-integration” because we should respect victims’ will firstly.

**APPENDIX C**

**Observations on the Attitude, Cognition/Thinking, Competence and Behaviour of Perpetrators**

Attitude	<ul style="list-style-type: none"> <li>• Attitude is similar to belief, it talks about the way that one thinks and feels about something.</li> <li>• Typical examples of perpetrators' attitudes are gender dominance, power dominance and believing that violence can solve problems.</li> <li>• Life examples include "a wife must obey her husband", "my wife must take care of me", "if my partner makes me angry, I can hit her and teach her what is correct", "men are superior to women".</li> </ul>
Cognition/ thinking	<ul style="list-style-type: none"> <li>• It refers to the mental process of understanding that affects how one sees and understands an event. If one person has an improper cognition, he often misinterprets the situation.</li> <li>• Typical examples of perpetrators' cognition/thinking are cognitive distortion, minimization/denial/justification/lack of awareness of violence.</li> <li>• A life example is that when a man watches his wife talking with her colleague, he may think that she is having an affair with that guy.</li> </ul>
Competence	<ul style="list-style-type: none"> <li>• Refers to whether the perpetrators have the skills or not.</li> <li>• Typical examples of perpetrators include lack of empathy for others/understanding of others behaviour, and lack of skills in problem solving/communication/conflict-resolution/assertiveness/anger management.</li> </ul>
Behaviour	<ul style="list-style-type: none"> <li>• Refers to acts of people.</li> <li>• Typical examples of perpetrators' behaviour include physical abuse, sexual abuse, neglect, psychological abuse (e.g. emotional abuse, use of abusive language, low respect for family), shifting the blame to the victims, abuse of alcohol or drugs, inconsiderate, superficial obedience to authority and selective use of violence.</li> </ul>

## APPENDIX D

### BRIEF DESCRIPTION OF THE COMMON HYBRID MODEL

In 1990, the B.C. Association of Counsellors of Abusive Men (ACAM) (recently re-named the Ending Relationship Abuse Society) introduced the term “The Common Hybrid Model” to describe multi-model programmes that emphasize safety, personal responsibility, self-awareness, compassion, skill development and the promotion of attitudes of equality and respect that support the maintenance of non-violent relationships. All programmes tend to have the following: a cognitive-behavioural foundation; are pro-feminist based (view violence as tactics of power and control and promote equality); hold offenders accountable for their behaviour; confront rationalizations and excuses; challenge beliefs, attitudes and expectations that support violence and inequality; help offenders identify high risk situations; teach skills which include emotions management, conflict resolution, problem solving, assertiveness and respectful communication. Some programmes also incorporate family systems strategies, trauma work, couple work, a focus on attachment theories and psychodynamic approaches to meet some of the individual needs of the men in the programmes, but all within the framework of promoting personal responsibility and motivation to behave non-abusively toward others. Modelling of respectful relationships in interactions with the participants and between co-therapists is a foundation of the ACAM model. The emotional and physical safety of women, children and men is the primary goal of programme delivery and is reflected not only in the treatment programme itself but also in pro-active participation in a coordinated community response.

The Correctional Services of Canada programmes for moderate and high intensity family violence offenders are accredited based on the following eight criteria that have shown to be effective:

- An explicit empirically based model of change
- Targeting of criminogenic needs
- Use of proven effective methods of facilitating
- A skills development orientation
- Attention to responsivity issues (e.g. culture)
- Continuity of care or relapse prevention
- Sufficient intensity or dosage
- Ongoing monitoring of the integrity of programme delivery and programme evaluation.

#### Framework for Change

Dr. Stefanakis identified the following transitional processes in men who desist from violence in relationships: Acknowledging the Abuse, Creating Commitment, Stopping the Violence, and Sustaining Change. The five stages of change are referred to as the *Precontemplation* (lack of awareness or acknowledgement of the problem, feel coerced into changing, no intention to change), *Contemplation* (some awareness/acknowledgement of the problem but no commitment to change, not accepting responsibility), *Preparation* (accepting responsibility, intention to change), *Action* (accepting full responsibility, taking consistent steps to change) and *Maintenance* (relapse prevention) stages.

#### Programme Content

Programmes for male domestic violence offenders include the following areas:

- Identifying abusive behaviours
- Identifying the elements of respectful relationships
- Identifying individual factors that get in the way of having stable relationships and high risk situations
- Confronting minimization, denial and blame
- Changing beliefs that lead to violence
- Teaching skills for managing difficult emotions
- Conflict resolution skills and assertiveness skills
- Understanding the impact of abuse on self, partner and children
- Empathy and compassion building
- Communication skills; problem solving skills
- Self-care
- Managing jealousy
- Family of origin work
- Parenting skills
- Financial management

- Healthy intimacy and sexual interactions

### **Victim Safety**

This work with men has as its primary goal the safety of women and children in relationships. This doesn't suggest that the man's needs are second. In fact, it is easily argued that the programmes are also about keeping the men safe. It takes time for change to occur, however, and programmes need to provide external structures for safety while the men are building internal structures. These need to include:

- Contact with women partners before and during the programme.
- Referral to resources such as counselling, shelters and legal aid.
- Notification if the man stops attending the programme or if there is any indication she may be at risk.
- A clear message that simply because a man is attending treatment does not ensure her safety. (programmes must not be used as part of her safety plan.)
- Safety takes priority over confidentiality.
- Programme facilitators do not advocate for custody, removal of no-contact orders or reconciliation.
- While the men are often very likeable in the group programmes it is important to remember the potential for violence that exists in the primary relationship.
- The development of clear standards of practice regarding safety.

### **Community Coordination**

One of the strengths of the response to domestic violence was the strong focus on community coordination. Many communities had committees comprised of representatives from victim services, women's shelters, police, crown counsel, probation, hospitals, mental health services, child welfare services, clergy and other family services. A key component of these committees was to recognize their shared vision of stopping violence and to work in their own agencies and together to develop policies which would be more likely to lead to reduction of violence against women in relationships. The following are recommendations that will help make coordination effective:

- Get the right people on board. Include people with power to make change in their organizations.
- Make a commitment to collaboration and hold regular meetings.
- Work together on mission, vision and values.
- Have the courage to speak up about personal experiences and problems in the system. Address territoriality, confidentiality and inequality in status and power of those at the table.
- Honour each other's work.
- Coordinate activities within and between organizations and initiate multi-disciplinary and inter-agency education and training.
- Establish protocols for interdisciplinary collaboration and service delivery.
- Collaborate on projects.
- Build trust by undertaking concrete, achievable tasks.
- Work together to educate and engage the public.

*Extracted from the paper on "The Implementation of Programmes for Offenders of Intimate Partner Violence in British Columbia" presented by Dr. Harry Stefanakis at UNAFEI in June 2005.*

## APPENDIX E

### Treatment Programme for Inmates

<b>Service Providers</b>	<p>Service providers include the government (e.g. Prisons, Social Welfare Department), NGOs (with expertise in handling inmates, family affairs and treatment programmes), and religious groups.</p> <p>Good collaboration will be maintained among all service providers. Training for relevant personnel should be conducted by experts.</p>
<b>Time Frame</b>	<p>Based on the Canadian experience, the treatment programme should last from six months to one year. According to the Risk Principle, higher risk cases benefit most from higher levels of service, whereas lower risk cases should have a low level of service.</p> <p>However, if the imprisonment term is shorter than the duration of the treatment programme, the aftercare office should be empowered by the law to arrange for ex-convicts to undergo the remaining treatment programme after release. Alternatively, we can arrange ex-convicts to take part in the Programme voluntarily in NGOs, or a modified Programme should be worked out for the short-termers.</p>
<b>Funding</b>	Funding can come from national and local governments and NGOs.
<b>Venue</b>	Prison should be the venue considering the security requirements.
<b>Staffing Arrangement</b>	<p>Prison officers, psychologist, psychiatrist, and relevant professionals in the government and NGOs could be employed to deliver the service. According to the Canadian experience, the typical therapeutic team should be mixed gender. It should include at least two counsellors with interns.</p> <p>All staff engaged should possess professional qualifications to ensure standards of ethics and practice are maintained in providing the treatment programme. Staff should also have knowledge of the dynamics of abuse, skills at therapeutic engagement and the attitudes that are respectful to men and women</p>
<b>Staff Training Curriculum</b>	<p>All staff assigned to conduct the treatment Programme must have the minimum academic qualifications and attend induction training on the programmes provided in the organizations.</p> <p>Any staff that do not have the professional qualifications should work under the guidance of qualified staff. They should be provided with on-the-job training.</p> <p>All staff should attend regular refresher and development courses, e.g. seminars, workshops, conferences, international training courses, etc.</p>
<b>Treatment Curriculum</b>	<p>According to the Canadian experience, the treatment should start with an assessment stage first which will identify risk, suitability, and other treatment needs. Preferably, the inmates' partner should be contacted at the assessment stage to obtain more information.</p> <p>“The stages of change” include pre-contemplation, contemplation, preparation, action, maintenance. A detailed description of each stage can be found in this report. If there is not adequate time to complete the whole programme in prison, we may conduct only pre-contemplation/contemplation/preparation in the prison, and collaborate with the aftercare office to follow up the remaining parts of the programme.</p> <p>The content of the treatment programme should include identifying abusive behaviours/the elements of respectful relationships/individual factors that get in the way of having stable relationships/high risk situations, confronting minimization, denial and blame, challenging beliefs that lead to violence, teaching skills for managing difficult emotions/gender issues/conflict resolution/communication/problem-solving/assertiveness/parenting/empathy &amp; compassion building, understanding the impact of abuse on self, partner and children/jealousy/healthy intimacy and there should be relapse prevention plans.</p>
<b>Others</b>	<p>In order to make the treatment programme successful, the service providers should bear in mind that safety and support of the victims and their family members and perpetrators are of vital importance.</p> <p>Besides, good liaison and collaboration must be maintained among all parties involved.</p> <p>Programme evaluation should be carried out regularly.</p>

**APPENDIX F**

**Treatment Programme for Probationers/Parolees**

<b>Service Providers</b>	<p>Service providers include government agencies (e.g. Social Welfare Department, Probation Office, Prisons), NGOs (with expertise of handling family affairs and relevant treatment programmes), religious groups, etc.</p> <p>The government must take part in the services. It is essential for the government to provide adequate protection to both victims and perpetrators. The government should also work hand in hand with other NGOs so that their services can be complementary with each other, e.g. the government could provide resources while the NGO could provide expertise and other assistance.</p> <p>The Group is open to the idea of allowing private professional associations like psychologists and psychiatrists to take up the services provided they have the competence and expertise. The standard of services should be properly monitored by the government through contracts, memorandums of understanding, etc.</p>
<b>Time Frame</b>	<p>The Group has studied the Japanese Model (18 sessions) and the Canadian Model (27 sessions in 52 weeks). Considering that the Japanese Model is still under trial and targeted to voluntary participants, the Canadian Model is a better option which runs once every two weeks. The Group considers that the sessions should not be too frequent as it may affect the job of probationers/parolees.</p> <p>Judges should preferably be asked to take note of the programme requirements for probationers/parolees when passing sentences. In the Philippines, Korea, and Hong Kong, probation reports on the offenders will be submitted to the judge for consideration.</p> <p>Mr. Bankobeza considered that the subjects' consent should be a prerequisite for participating in the treatment programmes considering the practical difficulties in providing treatment programmes to reluctant clients. Some other participants considered that the experts should determine which offenders should take part in the treatment programme based on different factors, e.g. the safety of the victim and offenders. However, Dr. Stefanakis stated that in Canada, offenders ordered to take a mandatory programme would be sanctioned if they did not attend the programme or they turned hostile in the programme. He remarked that if offenders could have the choice, most of them would not take part in the programme. Anyhow, trained personnel could handle reluctant clients effectively in most cases.</p> <p>The Group also considered the question of whether it is strictly necessary to immediately send a probationer/parolee back to jail for breaching any probation/parole conditions. While the practices vary between countries, the Group agreed that each country should promulgate relevant guidelines for enforcing the Probation and Parole Orders.</p>
<b>Funding</b>	<p>Possible sources of funding include national and local governments, NGOs, religious bodies, donations from a Trust Fund or individuals, and overseas funding such as Official Development Assistance. Probationers and parolees should pay some fees fixed at a rate affordable for them.</p>
<b>Venue</b>	<p>The venues can be provided in the Probation Offices, NGO offices, Community Centres, or religious houses.</p> <p>The venue should be comfortable, warm and friendly so that probationers/parolees can take part in the treatment programme more easily. The venue design should allow the identities of probationers/paroles to be kept confidential and not cause any embarrassment to them.</p>
<b>Staffing Arrangement</b>	<p>The service should be delivered by qualified staff from the government/NGOs/religious groups such as competent professional social workers, clinical psychologists, psychotherapists, prison officers (with relevant training) and probation officers. Mixed gender teams should be employed in providing the services.</p> <p>A suitable staff and participants ratio should be fixed and the group size for a Psycho-educational orientation group should be 15-20 participants whereas a Therapeutic group should be 8-12 men.</p> <p>Staff should preferably be multi-skilled and willing to work shifts.</p>

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<p><b>Staff Training Curriculum</b></p>	<p>All staff assigned to conduct the treatment Programme must have the minimum academic qualifications and attend induction training on the programmes provided by the organizations.</p> <p>Staff who do not have the professional qualifications should work under the guidance of qualified staff. They should be provided with on-the-job training.</p> <p>All staff should attend regular refresher and development courses, e.g. seminars, workshops, conferences, international training courses, etc.</p>
<p><b>Treatment Curriculum</b></p>	<p>The treatment content should have three stages, i.e. Assessment stage, Therapeutic stage and Post-parole Supervision stage. The former two stages were similar to the Assessment Stage and provisions of “Stages of Change” specified in the Programmes for inmates.</p>
<p><b>Others</b></p>	<p>In order to make the treatment programme successful, the service providers should bear in mind that the safety and support of the victims and their family members and perpetrators is of vital importance.</p> <p>Besides, good liaison and collaboration must be maintained among all involved parties.</p> <p>Programme evaluation should be carried out regularly.</p>

**PART THREE**

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**Work Product of the Seventh Special Training Course  
on Corruption Control in Criminal Justice**

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# VISITING EXPERTS

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## INVESTIGATING CORRUPTION

By Tony KWOK Man-wai\*



### I. INTRODUCTION

The Hong Kong ICAC is popularly regarded as a successful model in fighting corruption, turning a very corrupt city under colonial government into one of the relatively corruption free places in the world. One of the success factors is its three-pronged strategy - fighting corruption through deterrence, prevention and education. All three are important but in my view, deterrence is the most important. That is the reason why the ICAC devoted over 70% of its resources into its Operations Department, which is responsible for investigating corruption. Nearly all of the major corruption cases I have dealt with were committed by people in high authority.

For them, they have certainly been educated about the evil of corruption and they may also be subject to a certain degree of corruption prevention control. But what inspired them to commit corruption? The answer is simply greed, as they would weigh the fortune they could get from corruption with the chance of them being discovered. So how can we deter them from being corrupt? The only way is to make them realize that there is a high risk of them being caught, which is therefore the mission of the ICAC Operations Department - *to make corruption a high risk crime*. To do that, you need a professional and dedicated investigative force.

### II. DIFFICULTIES OF INVESTIGATING CORRUPTION

Corruption is regarded as one of the most difficult crimes to investigate. There is often no crime scene, no fingerprints, no eye-witnesses to follow up. It is by nature a very secret crime and can involve just two satisfied parties, so there is no incentive to divulge the truth. Even if there are witnesses, they are often parties to the corruption themselves, hence tainted with doubtful credibility when they become prosecution witnesses in court. The offenders can be equally as professional as the investigators and know how to cover up their trails of corruption. The offenders can also be very powerful and ruthless in enforcing a code of silence amongst related persons through intimidation and violence to abort any investigation. In this modern age, the sophisticated corrupt offenders will take full advantage of the loopholes in cross jurisdictions and acquire the assistance of other professionals, such as lawyers, accountants and computer experts in their clandestine operations and to help them launder their corrupt proceeds.

### III. CORRUPTION AND ORGANIZED CRIME

Corruption rarely exists alone. It is often a tool to facilitate organized crime. Over the years, the ICAC has investigated a wide range of organized crimes facilitated by corruption. Law enforcement officers have been arrested and convicted for corruptly assisting drug traffickers and smugglers of various kinds; bank managers for covering up money laundering for the organized crime syndicates; and hotel and retail staff for perpetuating credit card fraud. In these cases, we need to investigate not only corruption, but some very sophisticated organized crime syndicates.

### IV. PREREQUISITES FOR AN EFFECTIVE INVESTIGATION

Hence, there is an essential need for professionalism in corruption investigation. There are several prerequisites to an effective corruption investigation:

#### A. Independent

A corruption investigation can be politically sensitive and embarrassing to the Government. The

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investigation can only be effective if it is truly independent and free from undue interference. This depends very much on whether there is a top political will to fight corruption in the country, and whether the head of the anti-corruption agency has the moral courage to stand against any interference.

### **B. Adequate Investigative Power**

Because corruption is so difficult to investigate, you need adequate investigative power. The HK ICAC enjoys wide investigative power. Apart from the normal police power of search, arrest and detention, it has power to check bank accounts, require suspects to declare their assets, require witnesses to answer questions on oath, restrain properties suspected to be derived from corruption, and hold the suspects' travel documents to prevent them from fleeing the jurisdiction. Not only is the ICAC empowered to investigate corruption offences, both in the Government and private sectors, they can investigate all crimes which are connected with corruption. I must hasten to add that there is an elaborate check and balance system to prevent abuse of such wide power.

### **C. Adequate Resources**

Investigating corruption can be very time-consuming and resource intensive, particularly if the cases involve cross jurisdiction. In 2002, the HK ICAC's annual budget amounted to US \$90 million, about US \$15 per capita. You may wish to multiply this figure with your own country's population and work out the anti-corruption budget that needs to be given to the equivalent of ours! However, looking at our budget from another angle - it represents only 0.3% of our entire Government budget or 0.05% of our Gross Domestic Product (GDP). I think you will agree that such a small "premium" is a most worthwhile investment for a clean society.

### **D. Confidentiality**

It is crucial that all corruption investigations should be conducted covertly and confidentially, at least before arrest action is ready, so as to reduce the opportunities for compromise or interference. On the other hand, many targets under investigation may prove to be innocent and it is only fair to preserve their reputation before there is clear evidence of their corrupt deeds. Hence in Hong Kong, we have a law prohibiting anyone, including the media, from disclosing any details of the ICAC investigations until overt action such as arrests and searches have been taken. The media once described this as a "press gag law" but they now come to accept it as the right balance between press freedom and effective law enforcement.

### **E. International Mutual Assistance**

Many corruption cases are now cross jurisdictional and it is important that you can obtain international assistance in the areas such as locating witnesses and suspects; money trails, surveillance, exchange of intelligence, arrest, search and extradition, and even joint investigation and operation.

### **F. Professionalism**

All the investigators must be properly trained and professional in their investigation. The HK ICAC strives to be one of the most professional law enforcement agencies in the world. The ICAC was one of the first agencies in the world to interview all suspects under video, because professional interview technique and the need to protect the integrity of the interview evidence are crucial in any successful corruption prosecution. The investigators must be persons of high integrity. They must adhere strictly to the rule of confidentiality, act fairly and just in the discharge of their duties, respect the rights of others, including the suspects and should never abuse their power. As corruption is so difficult to investigate, they need to be vigilant, innovative and be prepared to spend long hours to complete their investigation. The ICAC officers are often proud of their sense of mission and this is the single most important ingredient of the success of the ICAC.

### **G. An Effective Complaint System**

No anti-corruption agency is in a position to discover all corrupt dealings in the society by itself. They rely heavily on an effective complaint system. The system must be able to encourage quality complaints from members of the public or institutions, and at the same time, deter frivolous or malicious complaints. It should provide assurance to the complainants on the confidentiality of their reports and if necessary, offer them protection. Since the strategy is to welcome complaints, customer service should be offered, making it convenient to report corruption. A 24 hours reporting hotline should be established and there should be a quick response system to deal with any complaints that require prompt action. All complaints, as long as there is substance in them, should be investigated, irrespective of how minor the corruption allegation. What

appears to be minor in the eyes of the authorities may be very serious in the eyes of the general public!

## V. METHODS TO INVESTIGATE CORRUPTION

Investigating corruption can broadly be divided into two categories:

- Investigating past corruption offences
- Investigating current corruption offences

### A. Investigating Past Offences

The investigation normally commences with a report of corruption and the normal criminal investigation techniques should apply. Much will depend on the information provided by the informant and from there, the case should be developed to obtain direct, corroborative and circumstantial evidence. The success of such investigation relies on the meticulous approach taken by the investigators to ensure that “no stone is left unturned”. Areas of investigation can include detailed checking of the related bank accounts and company ledgers, obtaining information from various witnesses and sources to corroborate any meetings or corrupt transaction, etc. At this stage, the investigation should be covert and kept confidential. If there is no evidence discovered at this stage, the investigation should normally be curtailed and the suspects should not be interviewed. This would protect the suspects, who are often public servants, from undue harassment. When there is a reasonable suspicion or evidence discovered in the covert stage, the investigation can enter its overt stage. Action can then be taken to interview the suspects to seek their explanation and if appropriate, the suspects’ home and office can be searched for further evidence. Normally a further follow-up investigation is necessary to check the suspects explanation or to go through the money trails as a result of evidence found during searches. The investigation is usually time-consuming.

### B. Investigating Current Corruption Offences

Such an investigation will enable greater scope for ingenuity. Apart from the conventional methods mentioned above, a proactive strategy should always be preferred, with a view to catch the corrupt person red-handed. In appropriate cases, with proper authorities obtained, surveillance and telephone interception can be mounted on the suspects and suspicious meetings monitored. A co-operative party can be deployed to set up a meeting with a view to entrap the suspects. An undercover operation can also be considered to infiltrate a corruption syndicate. The pre-requisite to all these proactive investigation methods are professional training, adequate operational support and a comprehensive supervisory system to ensure that they are effective and in compliance with the rule of evidence.

One unique feature of corruption investigation is that the investigators must not be content with obtaining evidence against one single offender. Corruption is always linked and can be syndicated. Every effort should be explored to ascertain if the individual offender is prepared to implicate other accomplices or the mastermind. In Hong Kong, there is a judicial directive to allow a reduction of 2/3 of the sentence of those corrupt offenders who are prepared to provide full information to the ICAC and give evidence against their accomplices in court. The ICAC provides special facilities to enable such “resident informants” to be detained in ICAC premises for the purpose of de-briefing and protection. This “resident informant” system has proved to be very effective in dealing with syndicated or high-level corruption.

### C. Interview Technique

As corruption is a secret crime involving parties who are often sworn to the code of secrecy and silence, a successful corruption investigator should always be a good interviewer, so as to break the code of silence. Interview technique always forms a very important part of the professional training of corruption investigators. Interview techniques should include the following elements:

- Proper preparation and planning before the interview – the interviewer must study the case thoroughly – the background of the interviewee, the available evidence against him, the list of question areas, etc. He should then formulate the structure of the interview.
- Ability to deal with a reluctant witness – it is fully understandable that the interviewees in corruption cases are reluctant to come forward in the interview. The interviewer must have the ability to identify the reasons behind the interviewee’s reluctance, whether it is due to his dislike of the agency, fear of intimidation, fear of going to court, his relations with the corrupt offenders, etc.

- Ability to build rapport – by putting the interviewee at ease in a hospitable environment, giving him reassurance, and handling him with patience and sympathy.
- Need for active listening and flexibility in the line of questioning, depending on what the interviewee has said.
- Maintain eye-contact and watch the body language, which often give you a clue as to the truthfulness of what the interviewee is saying. Always attempt to test the truth and to identify the motive of the statements made by the interviewee.
- If the interviewee is prepared to relate the full version, ensure that maximum details are obtained – when, where, who, what and how, in chronological sequence, and most important of all, who else is also involved in the corruption.
- Always retain control of the interview.

#### **D. Investigative Support**

Apart from the core investigation units, there should be strong operational support units, and the following are essential for the reasons given:

##### 1. Intelligence Section

As a central point to collect, collate, analyze and disseminate all intelligence and investigation data, otherwise there may be major breakdown in communication and operations.

##### 2. Surveillance Section

A very important source of evidence and intelligence. The Hong Kong ICAC has a dedicated surveillance unit of over 120 surveillance agents and they have made a significant contribution to the success of a number of major cases.

##### 3. Technical Services Section

This section provides essential technical support to surveillance and operations.

##### 4. Information Technology Section

It is important that all investigation data should be managed by computer for easy retrieval and proper analysis. In this regard, computers can be an extremely useful aid to investigation. On the other hand, computers are also a threat. In this modern age, most personal and company data are stored in computers. The anti-corruption agency must possess the ability to break into these computers seized during searches to examine their stored data. Computer forensics is regarded as vital for all law enforcement agencies worldwide these days.

##### 5. Financial Investigation Section

The corruption investigations these days often involve a sophisticated money trail of proceeds of corruption, which can go through a web of off-shore companies and bank accounts, funds, etc. It is necessary to employ professionally qualified investigative accountants to assist in such investigation and in presenting such evidence in an acceptable format in court.

##### 6. Witness Protection Section

The ICAC has experienced cases where crucial witnesses were compromised, with one even murdered, before giving evidence. There should be a comprehensive system to protect crucial witnesses, including 24 hour armed protection, safe housing, a new identity and overseas relocation. Some of these measures require legislative backing.

## **VI. CONCLUSION AND OBSERVATIONS**

In conclusion, the success factors for an effective corruption investigation include:

- An effective complaint system to attract quality corruption reports

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- An intelligence system to supplement the complaint system and to provide intelligence support to investigations
- Professional & dedicated investigators who need to be particularly effective in interviewing techniques and financial investigation
- More use of proactive investigation methods, such as entrapment and undercover operations
- A good system of protection for whistle-blowers and key witnesses
- International co-operation

It is obvious that corruption is getting more and more difficult to investigate. The offenders have taken full advantage of the high technology and cross jurisdiction loopholes. The conventional investigation method and the current legal system may not be adequate to win the battle against the corrupt. We should adopt a more proactive approach in investigation such as the wider use of undercover operations and the use of telephone interception. In addition, there is also a need to strengthen the legislation to provide a better balance between human rights and effective law enforcement. There are two proposals:

**A. Right of Silence**

Corruption is a secret crime and there is a need to break the secrecy if we want to find out the truth. Many countries follow the old British system of allowing the suspect to exercise their right of silence when questioned by the investigators. If they have a lawyer, the first thing the lawyer will advise them is to maintain his right of silence! However, when the case comes to court, the offender will have ample time to concoct a story, which does not allow the prosecution sufficient time to verify its truthfulness. In the end, it defeats the objective of the criminal justice system in enabling full facts to be presented to the court so as to arrive at a fair verdict. Under the new British cautioning system, the suspects are now warned that any delayed response to questions may prejudice their defence in subsequent legal proceedings. The new caution reads like this, *“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence”*. I believe this new caution strikes a better balance between the human rights of suspects and the public interest to investigate crime. Alternatively, we should also consider adopting the Continental system where the suspect can be interviewed by an examining magistrate where he cannot exercise any right of silence.

**B. Telephone Intercept**

It is no longer a secret to the criminal world that most law enforcement agencies have access to telephone intercept in their investigation. There appears to be two broad ways in dealing with telephone intercept in different countries. In the United States, Canada and Australia, telephone intercept requires judicial approval authority and its products can be used as evidence in court. In Britain and some other countries, telephone intercept is approved by the Executive and cannot be used as evidence in any courts. Experience over the world has proven that telephone intercept is an extremely useful tool in investigating high level organized crime and corruption and its production in court often forms the crucial evidence against the mastermind offenders. To disallow the use of telephone intercept evidence in court is in my view simply to hamper the effective investigation and prosecution of major corrupt offenders. So long as there is a proper check and balance system built into the use of telephone intercept, there is no valid reason why the evidence obtained from it should not be used as evidence in the criminal trial.

In addition, consideration should also be given to introducing new legislation to protect whistle-blowers, offer witness protection and allow a greater degree of entrapment to facilitate successful undercover operations, and the international mutual assistance in corruption investigation and money laundering.

Finally, the key to successful enforcement against corruption can be summarized in the new Mission Statement of the Operations Department of the Hong Kong ICAC: “By enforcing the law vigilantly and professionally, we are determined to seek out and eradicate corruption wherever it exists”

# FORMULATING AN EFFECTIVE ANTI-CORRUPTION STRATEGY – THE EXPERIENCE OF HONG KONG ICAC

*By Mr Tony KWOK Man-wai\**

## I. SHORT HISTORY AND THE ACHIEVEMENTS OF THE ICAC

Let me explain briefly about the Hong Kong ICAC which has a particularly interesting history and story to tell. It was established in 1974 at the time when corruption was widespread, and Hong Kong, as a British Colony, was probably one of the most corrupt cities in the world. Corruption was a way of life and existed “from womb to tomb”. There was at that time a particularly close “business” association between law enforcement agencies and organized crime syndicates. Nearly all types of organized crimes, vice, gambling and drugs were protected. As a taxi-driver, you could even buy a monthly label stuck on your taxi and it would guarantee you from any traffic prosecution. Such was the scale of open corruption in Hong Kong.

When ICAC was set up in 1974, very few people in Hong Kong believed that it would be successful. They called that “Mission Impossible”. Within three years, the ICAC smashed all corruption syndicates in the Government and prosecuted 247 government officials, including 143 police officers. In its thirty years of history the ICAC has achieved the following success:

- Eradicated all the overt types of corruption in the Government. Corruption now exists as a highly secretive crime, and often involves only satisfied parties.
- Amongst the first in the world to effectively enforce private sector corruption.
- Ensures that Hong Kong has clean elections.
- Changed the public’s attitude to no longer tolerating corruption as a way of life; and support the fight against corruption and are not only willing to report corruption, but are prepared to identify themselves in the reports.
- As an active partner in the international arena in promoting international co-operation. ICAC is the co-founder of the International Anti Corruption Conference (IACC).

No doubt the fight against corruption in Hong Kong is a success story and has had wide ramifications to the change of culture in Hong Kong. In the Year 2000 Millennium public opinion survey in Hong Kong, the establishment of the ICAC was voted the 6th most important event in the 150 years of history in Hong Kong. In promoting Hong Kong as an ideal place for foreign investment, we use this slogan: “The competitive advantage of Hong Kong is the ICAC”!

## II. NEED FOR A COMPREHENSIVE STRATEGY IN FIGHTING CORRUPTION

The experience of Hong Kong is that you cannot rely on one single solution to fight corruption. Fighting corruption requires a well thought out and comprehensive strategic plan. I have been running a number of strategic planning workshops in different countries and I recommend the following model.

### A. Step 1 – Taking an External Environmental Scanning

You should examine the various external factors that may affect the fight against corruption in the country and through this process, identify the problems:

#### 1. Political Environment

- Is there adequate political will to fight corruption?
- Is there any political interference in investigating corruption?
- Is the political system defective? Are there any political elections? Is there any corruption in the election process?
- Is there support from the Legislature in fighting corruption?
- Is there adequate accountability and transparency in the government?

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2. Economic Environment

- Is the poverty of the state related to corruption?
- Are the salaries of the civil servants adequate and comparable with the business sector?
- Is the Government providing sufficient funding in its budget for fighting corruption?
- How prevalent is corruption in the business sector?

3. Social Environment

- What is the public attitude towards corruption?
- Are people willing to report corruption? Anonymously or non-anonymously?
- What is the public perception of the government's effectiveness in fighting corruption?
- Is there any ethics education in school and universities?
- Is the media supportive of fighting corruption?

4. Legal Environment

- Is the anti-corruption legislation adequate and effective?
- Is the election law adequate in preventing corruption?
- Is there a right balance between effective enforcement and human rights? And between effective prosecution of corrupt offenders and protection of the innocent?
- What is the standard of the public prosecutors and judges?

The above list of questions is not exhaustive. They are merely guidelines to assist you to examine the unique environment of your countries to identify the barriers in fighting corruption.

**B. Step 2 – Taking an Internal Environmental Scanning**

The next step is to examine the designated agency tasked with fighting corruption to assess its effectiveness. One common method is the use of the Seven S model, i.e. you examine the agency's Structure, System, Style, Staff, Skill, Strategy and its Shared Values, so as to analyze its respective Strengths, Weaknesses, Opportunities and Threat (SWOT analysis). The followings are some of the areas you can go through in this analysis:

1. System

- Is the system conducive to efficiency, value for money and accountability?
- Is there a review mechanism to review enforcement decisions and results?
- Are there adequate operational guidelines for staff?
- Is there a strict confidentiality rule to protect the integrity of the corruption investigation?

2. Staff

- Are the human resources management, i.e. recruitment, promotion, termination built on the emphasis of staff integrity and professionalism?
- Is there an internal monitoring system to ensure staff integrity?

3. Skill

- Is there a comprehensive skill list?
- Is there adequate training and refresher training to ensure the professionalism of staff?
- Is there adequate professional support service?

4. Structure

- Is the structure based on priority targets in fighting corruption?
- Is the structure built on professionalism?
- Does the structure ensure supervisory accountability?

5. Style

- What is the management style?
- Is there effective communication and staff consultation?

6. Strategy

- Is there a comprehensive corporate plan?

- Is the fight against corruption based on a reactive or proactive approach?
- Is there a clear strategy in formulating partnerships with outside agencies in fighting corruption?
- Is there a strategy in dealing with the media?

#### 7. Shared Values

- Is the leadership setting a good example?
- Does the staff have a passion and sense of mission to fight corruption?
- Is there a code of ethics for staff? With adequate training?
- Is there a fair reward and sanction system?

#### **C. Step 3 – Identify the Major Problems**

Having scanned through the external and internal environment, it should not be difficult to identify the major problems or barriers in effectively fighting corruption. In most of the corruption-prevalent countries, they usually share the following major problems:

- Lack of or inadequate top political will to fight corruption.
- Lack of independence in investigating corruption. Investigations are often subject to political interference.
- The law is inadequate in dealing with corruption.
- There are inadequate resources in fighting corruption.
- There is public apathy to corruption.
- Low salary of public servants.
- Widespread corruption in law enforcement agencies and judiciary seen as a mockery of the law.
- Anti-corruption agency is ineffective, lack of professionalism and determination.
- Lack of strategic partnership in fighting corruption.
- Lack of international assistance in tackling extra-territorial corruption offences and tracing of corrupt assets.

#### **D. Step 4 – Formulation of Strategy and Strategic Plans**

Having identified the major problems, it would be up to the country to come up with a comprehensive anti-corruption strategy, and then to translate the strategy into an action plan for implementation.

### **III. WHAT IS THE HONG KONG ICAC STRATEGY**

As a result of the success of the Hong Kong model in fighting corruption, many countries followed Hong Kong's example in setting up a dedicated anti-corruption agency. However, many of them are not effective and hence there are queries as to whether the Hong Kong model can be successfully applied to other countries. The point is whether there is a thorough understanding of the working of the Hong Kong model. In my view, it consists of the following eleven components

#### **A. Three Pronged Strategy**

As stated earlier, there is no single solution in fighting corruption. Hong Kong ICAC adopts a three pronged approach: deterrence, prevention and education. As a result, the Commission consists of three separate departments: the Operations Department to investigate corruption; the Corruption Prevention Department to examine the systems and procedures in the public sector, to identify corruption opportunities and to make recommendations to plug the loopholes; and the Community Relations Department to educate the public against the evil of corruption and to enlist their support and partnership in fighting corruption.

#### **B. Enforcement Led**

The three prongs are equally important, but ICAC devotes over 70% of its resources to the Operations Department. The reasons are that any successful fight against corruption must start with effective enforcement on major targets, so as to demonstrate to the public the government's determination to fight corruption at all costs, as well as to demonstrate the effectiveness of the anti-corruption agencies. Without that, the public would be reluctant to come forward to report corruption. Successful enforcement assists in identifying problem areas for corruption prevention review and can clear any human obstacle in the review. The successful enforcement stories also provide a basis for public education and act as deterrence for the other corrupt officials.

### **C. Professional Staff**

Fighting corruption is a very difficult task, because you are confronting people who are probably very intelligent, knowledgeable and powerful. Thus the corruption fighters must be very professional in their jobs. The ICAC ensures that their staff are professionals in their diverse responsibilities – the Operations Department has professional investigators, intelligence experts, computer experts, accountants and lawyers on their staff. The Corruption Prevention Department has management/technical experts and the Community Relations Department pools together education, ethics and public relations experts. Apart from professionalism, all ICAC staff are expected to uphold a high level of integrity and to possess a passion and sense of mission in carrying out their duties. The ICAC strives to be highly professional in their investigations. The ICAC is one of the first agencies in the world to videotape interviews of all suspects; they have a dedicated surveillance team with over 120 specially trained agents for whom surveillance is their life-long career. They also have a number of specialized units such as witness protection, computer forensics and financial investigation.

### **D. Effective Deterrence Strategy**

The ICAC's strategy to ensure effective enforcement consists of the following components:

- An effective public complaint system to encourage reporting of corruption by members of the public and referrals from other institutions. The ICAC has a report centre manned on a 24 hours basis and there is a highly publicized telephone hotline to facilitate public reporting.
- A quick response system to deal with complaints that require prompt action. At any time, there is an investigation team standing by, ready to be called into action.
- The ICAC adopts a zero tolerance policy. So long as there is reasonable suspicion, all reports of corruption, irrespective of whether it is serious or relatively minor in nature, will be properly investigated.
- There is a review system to ensure all investigations are professionally and promptly investigated.
- Any successful enforcement will be publicized in the media to demonstrate effectiveness and to deter the corrupt.

### **E. Effective Prevention Strategy**

The corruption prevention strategy aims at reducing the corruption opportunities in government departments and public institutions, through the following methodology:

- Enhance system control
- Enhance staff integrity
- Streamline procedures
- Ensure proper supervisory checks and control
- Ensure efficiency, transparency and accountability
- Promote a staff code of ethics

### **F. Effective Education Strategy**

The ICAC has a very wide range of education strategies, in order to enlist the support of the entire community in a partnership to fight corruption. It includes:

- Media publicity to ensure effective enforcement cases are well publicized, through press releases, media conferences and interviews, as well as the making of a TV drama series based on successful cases.
- Media education – use of mass media commercials to encourage the public to report corruption; promote public awareness of the evils of corruption and the need for a fair and just society, and as a deterrence to the corrupt.
- School ethics education programme, starting in kindergarten up to the universities.
- Establish an ICAC Club to accept members who wish to perform voluntary work for the ICAC in community education.
- Corruption prevention talks and ethics development seminars for public servants and business sectors.
- Issue corruption prevention best practices and guidelines.
- In partnership with the business sector, set up an Ethics Development Centre as a resource centre for the promotion of a staff code of ethics.
- Organize exhibitions, fairs, television variety shows to spread the message of a clean society.

- Wide use of websites for publicity and reference, youth education and ethics development

### **G. Adequate Law**

Hong Kong has comprehensive legislation to deal with corruption. In terms of offences, apart from the normal bribery offences, it created two unique offences:

1. Offence for any civil servant to accept gifts, loans, discounts and passage, even if there is no related corrupt dealings, unless specific permission is given.
2. Offence for any civil servant to be in possession of assets disproportionate to his official income; or living above means.

On investigative power, apart from the normal police power of search, arrest and detention, the ICAC has the power to check bank accounts, require witnesses to answer questions on oath, restrain properties suspected to be derived from corruption, and hold the suspects' travel documents to prevent them from fleeing the jurisdiction. Not only are they empowered to investigate corruption offences, both in the Government and private sectors, they can investigate all crimes which are connected with corruption.

### **H. Review Mechanism**

With the provision of wide investigative power, there is an elaborate check and balance system to prevent abuse of such wide power. One unique feature is the Operations Review Committee. It is a high powered committee, with the majority of its members coming from the private sector, appointed by the Chief Executive. The committee reviews each and every report of corruption and investigation, to ensure all complaints are properly dealt with and there is no "whitewashing". It publishes an annual report, to be tabled before the Legislature for debate, thus ensuring public transparency and accountability. In addition, there is an independent Complaint Committee where members of the public can lodge any complaint against the ICAC and/or its officers and there will be an independent investigation. It also publishes an annual report to be tabled before the Legislature.

### **I. Equal Emphasis on Public & Private Sector Corruption**

Hong Kong is amongst one of the earliest jurisdictions to criminalize private sector corruption. The ICAC places equal emphasis on public and private sector corruption. The rationale is that there should not be double standards in society. Private sector corruption can cause as much damage to society, if not more so than public sector corruption. Serious corruption in financial institutions can cause market instability; corruption in the construction sector can result in dangerous structures. Effective enforcement against private sector corruption can be seen as a safeguard for foreign investment and ensures Hong Kong maintains a level playing field in its business environment.

### **J. Partnership Approach**

You cannot rely on one single agency to fight corruption. Every one in the community and every institution has a role to play. The ICAC adopts a partnership approach to mobilize all sectors to fight corruption together. The key strategic partners of ICAC include:

1. Civil Service Commission
2. All government departments
3. Business community
4. Professional bodies
5. Civic societies & community organizations
6. Educational institutions
7. Mass media
8. International networking

### **K. Top political Will, Independence and Adequate Resources**

In Hong Kong, there is clearly a top political will to eradicate corruption, which enables the ICAC to be a truly independent agency. The ICAC is directly responsible to the very top, the Chief Executive of Hong Kong. This ensures that the ICAC is free from any interference in conducting their investigations. The strong political support was translated into financial support. The ICAC is probably one of the most expensive anti-corruption agencies in the world! In 2002, its annual budget amounted to US\$90M, about US\$15 per capita. You may wish to multiply this figure with your own country's population and work out the

anti-corruption budget that needs to be given to the equivalent of Hong Kong's! However, looking at the ICAC budget from another angle – it represents only 0.3% of the entire Government budget or 0.05% of Hong Kong Gross Domestic Product (GDP). I think you will agree that such a small “premium” is a most worthwhile investment for a clean society.

#### **IV. CONCLUSION**

There is no single solution in fighting corruption. Every country has to examine its unique circumstances and come up with a comprehensive strategy, which should embrace the three pronged approach - deterrence, prevention and education. Ideally there should be a dedicated and independent anti-corruption agency tasked to co-ordinate and implement such strategy, and to mobilize support from the community.

The Hong Kong experience offers hope to countries which have a serious corruption problem which appears to be insurmountable. Hong Kong's experience proved that given a top political will, a dedicated anti-corruption agency and a correct strategy, even the most corrupt place like Hong Kong can be transformed into a clean society.

# INTRODUCTION TO THE NEW SOUTH WALES INDEPENDENT COMMISSION AGAINST CORRUPTION

*By John Pritchard\**



## I. INTRODUCTION

The New South Wales (NSW) Independent Commission Against Corruption is a statutory body established by the *Independent Commission Against Corruption Act 1988* (“the Act” or “the ICAC Act”) by the NSW (State) Parliament.

It is not a national body and its jurisdiction is limited to the state of New South Wales, the largest state in the Commonwealth of Australia.

There are similar bodies in the states of Western Australia (the Corruption and Crime Commission) and Queensland (the Crime and Misconduct Commission).

In NSW there is also a Crime Commission, an Ombudsman and a Police Integrity Commission, all of which have separate jurisdiction over varying aspects of misconduct, criminal conduct and corruption.

The Commission is headed by a Commissioner who is appointed for a term not exceeding five years and which cannot be renewed. The ICAC Act also provides for the appointment of Assistant Commissioners (of which the writer is one) who assist the Commissioner in the exercise of the Commission’s powers and the overall management of the organization. Assistant Commissioners may also only be appointed for a non-renewable period of up to five years. The Commissioner or an Assistant Commissioner presides at hearings of the Commission.

To be eligible for appointment as a Commissioner or Assistant Commissioner, a persons must be admitted as a barrister and/or solicitor and be eligible for appointment as a Judge of the NSW Supreme Court or the Federal or High Court of Australia.

## II. THE ESTABLISHMENT OF THE ICAC

The comments made in the Second Reading speech of the *Independent Commission Against Corruption Bill* in May 1988 by the Hon. Nick Greiner, MP, the then NSW Premier, Treasurer and Minister for Ethnic Affairs, describes the background leading to the establishment of the Commission:

*There was a general perception that people in high office in this State were susceptible to impropriety and corruption. In some cases that has been shown to be true.*

*In recent years, in New South Wales we have seen: a Minister of the Crown gaoled for bribery; an inquiry into a second, and indeed a third, former Minister for alleged corruption; the former Chief Stipendiary Magistrate gaoled for perverting the course of justice; a former Commissioner of Police in the courts on a criminal charge; the former Deputy Commissioner of Police charged with bribery; a series of investigations and court cases involving judicial figures including a High Court Judge; and a disturbing number of dismissals, retirements and convictions of senior police officers for offences involving corrupt conduct.<sup>1</sup>*

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\* Deputy Commissioner, Independent Commission Against Corruption Sydney, Australia.

<sup>1</sup> Hansard, 26 May 1988 (Volume 507, pp. 672-678).

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As spelled out in the Second Reading speech, the major points or strategies underlining the establishment of the Commission were as follows:

- Restoring the integrity and accountability of public administration through:
  - reform of practices and procedures for awarding government contracts
  - reform and clarification of the criminal law in relation to corruption, graft and perverting the course of justice
  - review of codes of conduct operating across the public sector.
- Establishing a body charged with the responsibility not just to investigate public corruption but also the very specific purpose of preventing corruption and enhancing integrity in the public sector.
- Giving to it an extensive jurisdiction that applies across the entire ambit of the public sector including Ministers, Members of Parliament, the judiciary, all holders of public offices and all employees of departments and authorities, local government members and employees.
- Establishing a body truly independent from the Executive, with the discretion to decide what it will investigate and how it will be investigated, subject only to being required to investigate matters referred to it by both Houses of Parliament.
- Acknowledging the secretive nature of corruption and the associated difficulty in detecting it, the Act would vest the Commission with very formidable powers akin to the coercive powers of a Royal Commission.
- Obliging and empowering the Commission to make definite findings about persons directly and substantially involved in allegations of corrupt conduct and not simply to allow such persons' reputations to be impugned publicly by allegations without coming to some definite conclusions.

Having enunciated these underlying principles or objectives, Mr Greiner commented:

*The bottom line is simply this; the people of this State are fed up with half hearted and cosmetic approaches to preventing public sector corruption. This legislation will establish an institution that has strong and effective powers and has jurisdiction to look at the entire public sector. That is what the people expect. It is our responsibility to ensure that that expectation is met and not disappointed.<sup>2</sup>*

It is also clear that Mr Greiner saw the Commission as having a continued existence beyond responding to the immediate public sector integrity problems of the late 1980s:

*Indeed, in the long term I would expect its primary role to become more and more one of advising departments and authorities on strategies, practices and procedures to enhance administrative integrity. In preventing corruption in the long term, the educative and consultancy functions of the commission will be far more important than its investigatory functions.*

Although the then Premier envisioned the primary role of the Commission would over time become that of corruption prevention, it is clear from the experience of the Commission that the investigation and prevention roles are mutually complementary functions, both of which are needed for an anti-corruption organisation to effectively meet the responsibility of monitoring and improving integrity in the public sector and to deal effectively with an ever-changing public sector landscape.

Following assent given to the *Independent Commission Against Corruption Act 1988* ("the Act") on 6 July 1988, the Commission commenced operations with a public sitting on 13 March 1989.

#### **A. Fifteen Years of Operation of the ICAC**

Since commencement the Commission has received over 25,000 complaints or reports. It is relevant here to note that in its first year of operation the Commission reported receiving 1,091 complaints while in

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<sup>2</sup> Hansard *ibid.*

the last financial year (2003-2004) the Commission received 1,884 complaints or reports relating to corruption. It is clear that there continues to be a demand for the investigative, corruption prevention and education functions of the Commission.

To date the Commission has:<sup>3</sup>

- published over 90 formal investigation reports
- made over 800 corruption prevention recommendations<sup>4</sup> in Commission publications, the majority of which have been implemented<sup>5</sup>
- held over 2,000 days of hearings
- published over 60 corruption prevention reports and resources
- published over 25 research reports
- provided formal corruption prevention advice in response to over 3,000 requests
- delivered over 1,000 training sessions and public presentations.

In addition to the above, Commission investigations which have exposed corrupt conduct by an individual have been followed by their resignation – in terms of outcomes, removal of a corrupt public official from public office is an important outcome regardless of whether it is achieved through a disciplinary process or resignation.

Since the inception of the Commission, public administration in New South Wales has undergone significant cultural change and improvement – this has been due in no small part to the efforts and successes of the Commission.

ICAC research has also shown that wide ranges of public sector organisations have adopted corruption prevention strategies and the implementation of these types of strategies across organisations continues to increase. Similarly the broader community see a continuing role for the Commission.

## **B. The ICAC Today**

The Commission currently has a budget of \$16.45 million and employs approximately 118 staff.<sup>6</sup> The organisational structure is based on the principal functions of the Act and is comprised of five sections:

- Strategic Operations Division
- Corruption Prevention, Education and Research Division
- Legal Division
- Corporate Services Division
- Assessments

The operational areas comprise staff from a wide range of professions and disciplines including criminal investigators, intelligence and financial analysts, research and policy officers, forensic accountants and lawyers.

The jurisdiction of the Commission extends to over 130 public sector organisations, employing over 300,000 people across the State. This is approximately 12 per cent of the entire NSW labour force.<sup>7</sup> In addition, the Commission has jurisdiction over some 159 NSW Councils, comprising approximately 1,800 Councillors and more than 40,000 employees<sup>8</sup>, as well as NSW-based universities and NSW Boards and Committees.<sup>9</sup>

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<sup>3</sup> These figures are approximate only. Data sources are annual reports (including unpublished data for the 2003-2004 period), internal figures for the period 1 July 2004 to 16 August 2004, and the ICAC Publication List.

<sup>4</sup> Corruption prevention recommendations range from those concerning changes to legislation to those concerning the internal policies and procedures of an organisation.

<sup>5</sup> Recommendation for corruption prevention action - RECOS (ICAC website).

<sup>6</sup> NSW Budget Estimates 2004-05, Budget Paper No. 3 - Volume 1 Page 2-61. Budget is for 2004-2005. Staff number represents the estimated average full time equivalent staff for 2004-05.

<sup>7</sup> Source: NSW Premiers Department – Public Employment Office. Site visited 16 August 2004.

<http://www.premiers.nsw.gov.au/WorkAndBusiness/WorkingForGovernment/>.

<sup>8</sup> Source: Local Government and Shires Association. Site visited 16 August 2004. <http://www.lgsa.org.au/site/councils.html>.

<sup>9</sup> There are 10 universities within the ICAC jurisdiction and it is estimated there are over 1000 NSW boards and committees.

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Major investigations conducted by the Commission have revealed extensive and systemic corrupt conduct resulting in corrupt conduct findings against a number of different individuals, recommendations for consideration of prosecution action arising from those findings and recommendations for changes to legislation and improvements to corruption prevention and risk management systems, policies and procedures.

The functions of investigation and public reporting play an important role in corruption prevention and education. While these functions are often referred to in the context of the Commission “exposing” corrupt conduct, this term is not used in the ICAC Act. The focus of the Commission’s investigative and reporting work is broader than simply the exposure of corrupt conduct and corrupt individuals.

The duality of functions to “expose” corruption continues today to be an important element as problems of corruption and serious systemic issues continually emerge. Most recently, the Commission has heard in public hearings evidence to suggest systemic and possible widespread problems in the area of building licensing. Another soon to be released report will highlight the systemic issues in the production of false trade and vocational qualifications and fraudulent documents. In both cases the Commission will have a significant corruption prevention response.

As an integral part of investigating and reporting on specific instances of corrupt conduct, the Commission investigates and reports on any systems deficiencies that may have provided opportunities for the corrupt conduct to occur. The Commission makes detailed recommendations to the relevant public sector organisations to help them redress these deficiencies. The Commission also seeks to analyse and emphasise the impact of corrupt conduct upon public sector systems.

A clear example is the Commission’s recent (June 2004) report on investigation into the fraudulent issue of competency and safety certification in the NSW construction industry. In investigating and reporting on the corrupt conduct of a number of accredited assessors, the Commission also analysed and emphasised the systems weaknesses that related to the actual conduct, and analysed the potential impact of the conduct on public safety, including the potential for holders of fraudulent safety and competency certification to work interstate under national accreditation arrangements.

Outside of investigations, the Commission undertakes other significant corruption prevention and education work, recent examples include:

- The delivery of a state-wide train-the-trainer programme for dealing with conflicts of interest in Local Government.
- A campaign to raise awareness of corruption issues in Non-English Speaking Background communities.
- The release of a number of publications including:
  - *Developing a statement of business ethics.*
  - *Providing advice on corruption issues: A guide for Members of NSW Parliament.*
  - *Providing advice on corruption issues: A guide for NSW Government Councillors.*
  - *Fact-Finder. A 20-step guide to conducting an inquiry in your organisation.*
  - *Regulation of secondary employment for Members of the NSW Legislative Assembly: Report to the Speaker of the Legislative Assembly.*

The increasing trend for Governments to outsource and contract important public functions and vital infrastructure has opened up different and challenging issues calling for the attention of the Commission. Similarly, continual changes to systems of administration, restructuring of government infrastructure and trends toward greater reliance on information technology systems creates new corruption risks that require identification and attention.

One important issue to note is that the jurisdiction of the Commission does not cover sworn police officers of the NSW Police Service. In 1996, following the Royal Commission into the NSW Police, the Police Integrity Commission (“the PIC”) was established.

Under its Act the PIC is now responsible for dealing with complaints of misconduct and corrupt conduct involving sworn officers of the NSW Police. The definition of “public official” under the ICAC Act however still includes “police officer” and the corruption prevention and education function for the NSW Police still remains with the Commission. The Commission also retains responsibility for investigating corrupt conduct concerning civilian employees of the NSW Police.

### **C. Functions of the ICAC**

The principal functions of the Commission are set out under section 13 of the Act and can be summarised as follows:

- To investigate allegations of corrupt conduct and where appropriate report the results of those investigations.
- To provide advice and assistance to the public sector on preventing and eliminating corrupt conduct and to do so in co-operation with public authorities and public officials.
- To advise and educate the public sector and the community at large on strategies to eliminate and prevent corrupt conduct and to generally enlist and foster public support in the task of doing so.

The “other functions” set out in section 14 of the Act include assembling evidence that may be admissible in subsequent criminal proceedings, furnishing this evidence to the Director of Public Prosecutions and providing other evidence or information as appropriate to other authorities.

## **III. MEASURING THE ICAC’S EFFECTIVENESS**

For agencies like the ICAC it is sometimes suggested that the success of its activities may be measured by the success of prosecutions arising from its investigations.

Advocating the use of conviction rates to measure the overall effectiveness of the Commission in achieving its objectives or functions demonstrates a failure to understand that the Commission is first and foremost a fact-finding and investigative body. This fails to understand the synergy between the functions of investigation, prevention and education in respect to corrupt conduct and that these functions are inextricably linked.

In noting the importance of this duality of objectives, Mr Greiner in his Second Reading Speech commented as follows:

*Honourable members will note that the Commission is given specific functions to educate and advise public authorities and to co-operate with the Auditor General ... and similar bodies. For these sorts of reasons it would be crass and naive to measure the success of the ... Commission by how many convictions it gets or how much corruption it uncovers. The simple fact is that the measure of its success will be enhancement of integrity and most importantly of community confidence in public administration in this State.<sup>10</sup>*

While it is impossible to quantitatively measure the extent to which integrity in public administration in New South Wales has been enhanced or to measure the prevalence of corruption, it is possible to comment on some indirect measures relating to implementation of key corruption prevention policies and procedures with New South Wales public sector organisations. Comment can also be made on community perception about corruption in NSW.

### **A. Implementation of Corruption Resistance Strategies and Corruption Prevention Recommendations**

In late 2001, the Commission commenced a major research project to develop a snapshot of corruption-related issues facing the diverse NSW public sector. The subsequent report published in January 2003 showed a generally healthy picture of the NSW public sector’s current identification and management of corruption risks – among the positive findings, it was particularly significant that a wide range of public

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<sup>10</sup> Hansard *ibid.*

sector organisations had, or were in the process of, implementing a range of corruption resistance strategies that have been promoted by the Commission.

In 2004 the Commission commenced further research to follow up on its findings in the January 2003 report. Preliminary unpublished results indicate that since publication of the report:<sup>11</sup>

- implementation of a Code of Conduct had increased from 82% to 93%, with an additional 1% of organisations in the process of implementation
- implementation of a Risk Management Strategy had increased from 56% to 66%, with an additional 12% of organisations in the process of implementation
- implementation of an Internal Audit Plan had increased from 78% to 88%
- implementation of an Internal Auditor had increased from 72% to 86%, with an additional 1% of organisations in the process of implementation
- implementation of a Gifts and Benefits Policy had increased from 69% to 83%, with an additional 3% of organisations in the process of implementation
- implementation of an internal investigation system had increased from 82% to 93%, with an additional 4% of organisations in the process of implementation.

The Commission has also sought to follow up on the corruption prevention recommendations made in ICAC investigation reports. A review of the information available indicates the majority of recommendations have been implemented in some form by the public sector organisations concerned.<sup>12</sup>

### **B. Public Perceptions of Corruption and the ICAC**

Since 1993, the Commission has conducted a series of surveys of the NSW community to ascertain perceptions of corruption and its effects. It is relevant to note that in 1993 92% of respondents thought corruption to be a problem in NSW as opposed to 82% in 2003 – it is very difficult to change public perception on such issues, so this decrease is very positive. Another important element is the proportion of respondents who perceived corruption to be a “major” problem in NSW versus a “minor” problem in NSW. As the following table demonstrates, while there is still concern about corruption in NSW there has been a shift in the perception of how serious that problem is.

Date	Major Problem	Minor Problem	Total
1993	55%	37%	92%
2003	31%	51%	82%

Source: *Community attitudes to corruption and the ICAC* (December 2003).

The public perception that “the ICAC is a good thing for the people of NSW” has remained stable over time (93% in 1993 and 94% in 2003). The public perception is that the ICAC has also succeeded in exposing corruption in NSW (80% in 1993 and 74% in 2003). Similarly, the public perception of the Commission’s success in reducing corruption has also remained stable (53% in 1993 and 55% in 2003).

### **C. ICAC Recommendations for Consideration of Prosecution**

The above two sections highlight the achievements of the ICAC in the context of prevention and public perception. This is not to ignore however the prosecution action resulting from ICAC investigations, but to recognise that prosecution is not a principal function of the Commission under the Act – nor should it be.

Section 14(1)(a) of the Act provides as one of the “other functions” of the Commission to assemble briefs

<sup>11</sup> Preliminary unpublished data, August 2004. The recent example does not include boards or committees or Local Government organisations.

<sup>12</sup> Recommendation for corruption prevention action - RECOS (ICAC website).

of evidence that may be admissible in the prosecution of a person for an offence in connection with corrupt conduct and to provide that evidence to the Director of Public Prosecutions (“the DPP”). This complements the function of the Commission to form opinions as to whether consideration should be given to, amongst other things, prosecution action against particular persons. Further, when preparing investigation reports under section 74A of the Act, in respect of “affected” persons,<sup>13</sup> the report must include a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the prosecution of the persons for a specified criminal offence.

These provisions emphasise the role that the Commission plays in the prosecution process relating to corrupt conduct – to recommend consideration of prosecution action by the independent body charged with the statutory duty of making that decision and conducting those proceedings, being the DPP.

#### IV. PRINCIPAL FUNCTIONS - SECTION 13 ICAC ACT

Section 13 of the Act sets out the principal functions of the Commission:

##### **13. Principal functions**

*(1) The principal functions of the Commission are as follows:*

- (a) to investigate any allegation or complaint that, or any circumstances which in the Commission’s opinion imply that:
 
  - (i) corrupt conduct, or*
  - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
  - (iii) conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur,**
- (b) to investigate any matter referred to the Commission by both Houses of Parliament,*
- (c) to communicate to appropriate authorities the results of its investigations,*
- (d) to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct,*
- (e) to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated,*
- (f) to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct,*
- (g) to co-operate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct,*
- (h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct,*
- (i) to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration,*
- (j) to enlist and foster public support in combating corrupt conduct,*
- (k) to develop, arrange, supervise, participate in or conduct such educational or advisory*

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<sup>13</sup> As defined in section 74A(3).

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*programmes as may be described in a reference made to the Commission by both Houses of Parliament.*

- (2) *The Commission is to conduct its investigations with a view to determining:*
- (a) *whether any corrupt conduct, or any other conduct referred to in subsection (1) (a), has occurred, is occurring or is about to occur, and*
  - (b) *whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and*
  - (c) *whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.*
- (3) *The principal functions of the Commission also include:*
- (a) *the power to make findings and form opinions, on the basis of the results of its investigations, in respect of any conduct, circumstances or events with which its investigations are concerned, whether or not the findings or opinions relate to corrupt conduct, and*
  - (b) *the power to formulate recommendations for the taking of action that the Commission considers should be taken in relation to its findings or opinions or the results of its investigations.*
- (4) *The Commission is not to make a finding, form an opinion or formulate a recommendation which section 74B (Report not to include findings, etc. of guilt or recommending prosecution) prevents the Commission from including in a report, but this section is the only restriction imposed by this Act on the Commission's powers under subsection (3).*
- (5) *The following are examples of the findings and opinions permissible under subsection (3) but do not limit the Commission's power to make findings and form opinions:*
- (a) *findings that particular persons have engaged, are engaged or are about to engage in corrupt conduct,*
  - (b) *opinions as to whether consideration should or should not be given to the prosecution or the taking of other action against particular persons,*
  - (c) *findings of fact.*

These principal functions (or objectives) as set out above are valid and appropriate for an anti-corruption agency - that is to investigate, prevent and educate. The Commission was created because of a need to respond to issues of public concern that could not be dealt with through traditional law enforcement/criminal investigation and criminal courts processes – to suggest that the primary objectives or functions of the Commission should align to such processes would defeat the very purpose for which the Commission was established.

It is the balance of investigating, examining laws, work practices and procedures of public authorities and public officials and exposure that enable the Commission to operate so effectively. Since the commencement of the Commission there is now general acceptance, both at a community level and by other investigative and complaint handling agencies, that the Commission through the experience, knowledge and expertise that it has accumulated on the subject, is the premier or lead agency ideally placed to deal with allegations of public sector-related corruption, in terms of investigation and corruption prevention and education, regardless of whether the alleged conduct could amount to a criminal offence.

The ever-increasing numbers of complaints of corruption and requests for corruption prevention advice and training that the Commission receives suggests that the Commission is considered the lead agency for dealing with allegations and issues of corruption or other misconduct within the public sector. It would be fair to say that the Commission has successfully created a branding that associates its name with these

functions in the public mind. Reinforcing the importance of the branding associated with the “ICAC” are the results of the most recent Community Attitude Survey. Most respondents (88%) were able to recognise the “ICAC” name when they heard it. In addition, most respondents recognised the ICAC to be independent of the government of the day and to also have jurisdiction in respect of corruption in local government and Members of Parliament.<sup>14</sup>

The Commission also provides information and assistance to counterpart bodies interstate and overseas, as well as providing input to the development of transnational legal instruments such as the UN Convention against Corruption. The level and frequency of requests for information, advice and collaboration that the Commission receives testifies to the Commission’s profile and reputation as a lead anti-corruption agency.

Directly linked with the principal function of investigating allegations of corrupt conduct is the Commission’s function to make findings or reach conclusions about the truth or otherwise of the allegations that are referred to it as provided for in section 13(3) of the Act.

The complementary nature of the functions to investigate allegations and reach conclusions on those allegations was highlighted during the Second Reading speech on the Bill. In the course of that speech Mr. Greiner noted the importance of empowering a fact-finding agency such as the Commission to make definite findings about persons directly and substantially involved in allegations of corrupt conduct and not simply to allow such persons’ reputations to be impugned publicly by allegations without coming to some definite conclusions.<sup>15</sup>

The efforts of the Commission in dealing with specific allegations of corruption through a dual process of investigation and corruption prevention, however, has been balanced against the other principal functions of providing advice and assistance more generally on corruption prevention and education/community awareness outside of investigations. In this respect, as the PJC has recently noted, the Commission is widely respected for its role and activity in corruption prevention by building corruption resistance in the New South Wales public sector.<sup>16</sup>

The Commission’s proactive corruption prevention and education functions, that is those which are not initiated as part of the Commission’s response to specific corruption allegations, are based on information and intelligence drawn from a range of sources. These sources include complaints and reporting data, information acquired during investigations and enquiries, research activity and other intelligence information.

The effective discharge of all the Commission’s principal functions relies on the fact that relevant information and activities are housed together in the one organization – this ensures the resources that are available for proactive prevention and education work are strategically directed toward the most significant and current corruption issues.

## **V. OTHER FUNCTIONS OF THE COMMISSION - SECTION 14 ICAC ACT**

Section 14 sets out the “other” or secondary functions of the Commission.

### ***14. Other functions of the Commission***

**(1)** *Other functions of the Commission are as follows:*

- (a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the State in connection with corrupt conduct and to furnish any such evidence to the Director of Public Prosecutions,*

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<sup>14</sup> ICAC, *Community Attitudes to Corruption and the ICAC*. December 2003.

<sup>15</sup> Hansard, 26 May 1988 (Volume 507, pp. 672-678).

<sup>16</sup> PJC Report No 1/53 May 2004 – at paragraph 3.10.

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*(b) to furnish other evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against a law of another State, the Commonwealth or a Territory) to the Attorney General or to the appropriate authority of the jurisdiction concerned.*

**(1A)** *Evidence of the kind referred to in subsection (1) (b) may be accompanied by any observations that the Commission considers appropriate and (in the case of evidence furnished to the Attorney General) recommendations as to what action the Commission considers should be taken in relation to the evidence.*

**(1B)** *A copy or detailed description of any evidence furnished to the appropriate authority of another jurisdiction, together with a copy of any accompanying observations, is to be furnished to the Attorney General.*

**(2)** *If the Commission obtains any information in the course of its investigations relating to the exercise of the functions of a public authority, the Commission may, if it considers it desirable to do so:*

*(a) furnish the information or a report on the information to the authority or to the Minister for the authority, and*

*(b) make to the authority or the Minister for the authority such recommendations (if any) relating to the exercise of the functions of the authority as the Commission considers appropriate.*

**(2A)** *A copy of any information or report furnished to a public authority under subsection (2), together with a copy of any such recommendation, is to be furnished to the Minister for the authority.*

**(3)** *If the Commission furnishes any evidence or information to a person under this section on the understanding that the information is confidential, the person is subject to the secrecy provisions of section 111 in relation to the information.*

These “other” functions of the Commission are secondary to the principal functions set out in section 13 of the Act. These functions permit the Commission to provide information to other bodies or agencies that is appropriate to the broader landscape of law enforcement, public sector accountability and criminal prosecution.

The Commission has the power to compel witnesses to answer questions when summoned to appear before the Commission, regardless of whether the answers will tend to incriminate the witness, on the basis that in doing so, their answers are not admissible against them in any later civil or criminal proceedings<sup>17</sup> - this reflects the primacy of the Commission’s fact-finding function compared to other functions, as set out in the Act.

The Commission’s ability to assemble admissible evidence in support of prosecution action would be greater if evidence it received under compulsion such as answers to questions or documents produced during hearings was admissible in subsequent criminal proceedings. However, long-established and fundamental principles of the criminal justice system, particularly the privilege against self-incrimination and the requirement that admissions and confessions be made voluntarily, would have to be set aside in order to allow the admissibility of such evidence.

Section 17 of the Act also provides that the Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it consider appropriate. This section also reflects the role of the Commission as a fact-finding body and assists in avoiding unnecessary formalism in the manner it goes about this task especially during the conduct of its hearings.

The Commission is like any other investigative agency that collects information or evidence with a view

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<sup>17</sup> Section 37 of the Act.

to supporting prosecution action. The Commission also has available to it other extensive means for collecting admissible evidence in later prosecution proceedings such as powers under the *Listening Devices Act 1984* (NSW), the *Telecommunications (Interception) Act 1979* (Cth) and search warrant powers under the ICAC Act.

## VI. PUBLIC INTEREST TO BE PARAMOUNT - SECTION 12 ICAC ACT

Section 12 of the Act states:

*In exercising its functions, the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns.*

## VII. DEFINITION OF CORRUPT CONDUCT – SECTIONS 8 AND 9 ICAC ACT

The definition of corrupt conduct is provided for in sections 8 and 9 of the Act.

The definition is very broad and covers a wide range of conduct not necessarily amounting to criminal conduct.

Section 8(1) provides as follows;

### **8. General nature of corrupt conduct**

(1) *Corrupt conduct is:*

- (a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
- (b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
- (c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
- (d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*

(2) *Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:*

- (a) *official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),*
- (b) *bribery,*
- (c) *blackmail,*
- (d) *obtaining or offering secret commissions,*
- (e) *fraud,*
- (f) *theft,*
- (g) *perverting the course of justice,*
- (h) *embezzlement,*
- (i) *election bribery,*
- (j) *election funding offences,*
- (k) *election fraud,*
- (l) *treating,*
- (m) *tax evasion,*
- (n) *revenue evasion,*
- (o) *currency violations,*
- (p) *illegal drug dealings,*
- (q) *illegal gambling,*

- (r) *obtaining financial benefit by vice engaged in by others,*
- (s) *bankruptcy and company violations,*
- (t) *harbouring criminals,*
- (u) *forgery,*
- (v) *treason or other offences against the Sovereign,*
- (w) *homicide or violence,*
- (x) *matters of the same or a similar nature to any listed above,*
- (y) *any conspiracy or attempt in relation to any of the above.*

The second limb - or test of seriousness - of the definition is provided for in section 9 of the Act. It provides as follows:

**9. Limitation on nature of corrupt conduct**

- (1) *Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:*
- (a) *a criminal offence, or*
  - (b) *a disciplinary offence, or*
  - (c) *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
  - (d) *in the case of conduct of a Minister of the Crown or a member of a House of Parliament---a substantial breach of an applicable code of conduct.*
- (2) *It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.*
- (3) *For the purposes of this section:*

**“applicable code of conduct”** means, in relation to:

- (a) *a Minister of the Crown---a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or*
- (b) *a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)---a code of conduct adopted for the purposes of this section by resolution of the House concerned.*

**“criminal offence”** means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

**“disciplinary offence”** includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

The key concepts behind this definition are honesty, impartiality and upholding the public trust. These remain as relevant today as when the ICAC Act was first enacted.

The current definition of corrupt conduct is not limited to conduct that could constitute or involve a criminal offence.

As recognised by those who drafted the original legislation, and those responsible for subsequent amendments, notions of corrupt conduct are wider than the commission of a crime.

Whilst the commission of a crime, within the context of ss. 8 and 9 of the ICAC Act, continues to be an important indicator of corrupt conduct, there is other conduct which, although not necessarily amounting to criminal conduct, may, depending on the circumstances, nevertheless be widely regarded as no less corrupt. For example, the intentional release of confidential tendering information by a public official to a private company, which allows that company to gain an unfair advantage over its competitors, may not necessarily constitute a criminal offence. Nevertheless, such conduct would likely involve a disciplinary offence or grounds for termination of employment and would be regarded by ordinary members of the community as being corrupt. It is certainly the type of conduct that the Commission should have jurisdiction to investigate and determine.

### **A. Capacity to Make Corrupt Conduct Findings**

Under section 13 of the Act as set out above, the Commission is specifically empowered to make findings of corrupt conduct.

The ability to make findings of corrupt conduct is highly relevant to the Commission's deterrent and educative roles.

The ability to make findings as to whether or not particular conduct is corrupt has become well established in the public mind. Any removal or diminution of this power is likely to create public unease.

Furthermore, the seriousness of the conduct in question, and the effect of that conduct, cannot be determined exclusively by reference to whether or not it may, in all the circumstances, constitute a criminal offence.

It is often argued that the use of a two-track system may avoid criticism that the "stigma" of corrupt conduct may be attached to individuals whose actions are relatively minor. What constitutes "minor" conduct, in the context of corruption, is largely subjective. As demonstrated below the process adopted by the Commission in considering whether a finding of corrupt conduct is available is unlikely to produce unjust results or to be based on "minor" conduct. In any event it is not clear that labelling a person's conduct as "official misconduct" etcetera would ultimately produce any less of a "stigma".

Some of the concerns previously expressed about the ability of the Commission to make findings of corrupt conduct appear to arise out of a concern that conduct might be labelled as corrupt conduct where it "technically" comes within the definition, even though the person whose conduct is in question acted innocently and without any corrupt intention. These concerns however do not reflect the reality of the process that the Commission must follow in order to form an opinion that corrupt conduct has occurred.

### **B. Findings of Fact and Findings of Corrupt Conduct**

In accordance with the judgement of the NSW Court of Appeal, Mahoney JA in *Greiner -v- ICAC* (1992) 28NSWLR125 (in particular pages 155-158, 167-169), the process by which a determination of corrupt conduct is made in a particular case involves three essential steps. First, findings need to be made as to the basic facts. Secondly, there is a need to classify the factual matters in order to be able to determine whether the conduct in question falls within one of the categories in s. 8(1) and/or s. 8(2) of the ICAC Act. The third stage is to determine whether the conduct then satisfies s. 9 of the ICAC Act.

Findings of fact are only made after taking into account the totality of evidence before the Commission, and those affected by that evidence have been afforded an opportunity to respond to that evidence. Those responses are part of the material considered in drawing conclusions as to the factual matters. In reaching such conclusions, the civil standard of proof is applied however, the degree of persuasion necessary to establish findings on the balance of probabilities will vary according to seriousness of the issues involved (see *Briginshaw -v- Briginshaw* (1938) 60CLR336).

While often referred to as the civil standard of proof it is by no means an easy standard to meet. The Commission recently expanded upon this standard and what it involved:

*As has already been observed, the ICAC does not sit as a criminal or civil court. It does not determine the rights of any person. Nevertheless, a finding of corrupt conduct against an individual is a serious matter. It may affect the individual's reputation. It is appropriate to observe that the standard of proof to be applied by the ICAC in making findings of fact and findings of corrupt conduct is the civil standard, proof on the balance of probabilities, being qualified having regard to the gravity of the questions to be determined. The test has been said to be whether the issue has been proved to the reasonable satisfaction of the Tribunal, such satisfaction not being produced by inexact proofs, indefinite testimony or indirect inferences: Briginshaw -v- Briginshaw (1938) 60 CLR 336 at 362; Rejtek -v- McElroy (1965) 112 CLR 517 at 521. Before an adverse finding of fact is made or a finding of corrupt conduct is reached, the ICAC should be comfortably satisfied on the balance of probabilities that the finding should be made:*

*Bannister -v- Walton* (1993) 30 NSWLR 699 and 711-712 (at p13)<sup>18</sup>.

Findings of fact are only made after taking into the account the seriousness of the issues and the degree of persuasion required to reach such conclusions.

Partiality and the exercise of official functions is potentially a broad concept. A decision which favours a person may be regarded as “partial” but should not come within s.8(1) simply because it is “wrong” in administrative law terms, or negligent in a civil law sense. In considering s.8, the Commission takes into account the state of mind of each person whose conduct is in question.

The Commission considers whether there was an actual or imputed appreciation that what was being done was, in the context in which it was done, carried out for a reason that is unacceptable (see Mahoney JA at 162 in *Greiner*). This does not, however, mean that simply because a person does not at the relevant time believe that his or her conduct is corrupt, the Commission is precluded from making an adverse finding (see Gleeson CJ at 140 in *Greiner*). Apart from dishonest conduct, conduct beyond negligence but not amounting to dishonesty in the accepted meaning of that term, may be conduct within s.8(1) of the ICAC Act if, for example, it amounts to a reckless disregard of indicators of dishonest or partial behaviour of others. Conflict between an official’s duty and his personal interest is also significant. Emphasis was placed on this latter aspect by Gleeson CJ in *Greiner*.

Finally, it is necessary to consider s.9 of the ICAC Act. It is appropriate to apply the provisions of s.9 to conduct found to be in s.8 in accordance with the approach of Priestley JA outlined in *Greiner* where by the word “could” was construed as meaning “would if proved”. In relation to s.9(1), the approach is to consider whether, in the case of a criminal charge which would be tried before a jury, the facts found by the Commission would, if the jury were to accept them as proved beyond reasonable doubt, constitute the offence charged. The approaches required in relation to s.9(1)(b), s.9 (1)(c) and s.9(d) are similar.

The above illustrates the seriousness and care with which the Commission approaches its capacity to make findings of corrupt conduct.

### VIII. JURISDICTION OF THE ICAC

The key definitions relating to the jurisdiction of the Commission under the ICAC Act are “public official” and “public authority which are to be found in section 3 of the Act. They are defined as follows:

**“Public authority”** includes the following:

- (a) a Government Department, Administrative Office or Teaching Service,
- (b) a statutory body representing the Crown,
- (c) a declared authority under the Public Service Act 1979,
- (d) a person or body in relation to whom or to whose functions an account is kept of administration or working expenses, where the account:
  - (i) is part of the accounts prepared under the Public Finance and Audit Act 1983, or
  - (ii) is required by or under any Act to be audited by the Auditor-General, or
  - (iii) is an account with respect to which the Auditor-General has powers under any law, or
  - (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts if requested to do so by a Minister of the Crown,
- (e) a local government authority,
- (f) the Police Force,
- (g) a body, or the holder of an office, declared by the regulations to be a body or office within this definition.

**“Public official”** means an individual having public official functions or acting in a public official capacity, and includes any of the following:

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<sup>18</sup> Report into conduct of the Hon. J Richard Face, (June 2004) at p 46.

- (a) the Governor (whether or not acting with the advice of the Executive Council),
- (b) a person appointed to an office by the Governor,
- (c) a Minister of the Crown, a member of the Executive Council or a Parliamentary Secretary,
- (d) a member of the Legislative Council or of the Legislative Assembly,
- (e) a person employed by the President of the Legislative Council or the Speaker of the Legislative Assembly or both,
- (f) a judge, a magistrate or the holder of any other judicial office (whether exercising judicial, ministerial or other functions),
- (g) an officer or temporary employee of the Public Service or a Teaching Service,
- (h) an individual who constitutes or is a member of a public authority,
- (i) a person in the service of the Crown or of a public authority,
- (j) an individual entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (d) of the definition of "public authority" is kept, of attending meetings or carrying out the business of any body constituted by an Act,
- (k) member of the Police Force,
- (k1) an accredited certifier within the meaning of the Environmental Planning and Assessment Act 1979,
- (l) the holder of an office declared by the regulations to be an office within this definition,
- (m) an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs.

The Commission was established to investigate, prevent and educate in respect of corruption affecting the NSW public sector. This role continues to remain relevant.

To fulfil this role the Commission was given jurisdiction not only over public officials and public authorities but also over others whose conduct could or does adversely affect either directly or indirectly the honest or impartial exercise of official functions by a public official or public authority. It is important to its role that the Commission continue to have jurisdiction to examine the conduct of those who seek to corrupt public officials or public authorities.

#### **A. Government Businesses**

As in other jurisdictions throughout the world a number of Government service providers have been corporatised (e.g. electricity generators, water, rail services). In NSW the *State Owned Corporations Act 1989* covers State owned corporations. Section 36(2) of that Act provides:

*For the purposes of the Independent Commission Against Corruption Act 1988:*

- (a) State owned corporations and their subsidiaries are public authorities, and
- (b) directors, officers and employees of State owned corporations or their subsidiaries are public officials,

*but s.23 of (the ICAC Act) does not apply in relation to a Company State Owned Corporation or any of its subsidiaries or to persons who are public officials by virtue of their connection with a Company State Owned Corporation or any of its subsidiaries.*

Schedule 1 of the *State Owned Corporations Act* operates as a list of "Company State Owned Corporations". Presently, it does not appear that there are any such organisations.

The Auditor General also has certain powers in respect to State owned corporations (e.g. s.24 and s.24A of the *State Owned Corporations Act*) which, irrespective of s.36, would bring State owned corporations within the definition of "public authority" in s.3 of the ICAC Act.

Although set up as corporations, these organisations remain in public ownership and are accountable to the public, through the State Government, for the way in which they exercise their functions and utilise their resources. Whilst these organisations continue to be in public ownership it is appropriate that the Commission continue to have jurisdiction over them.

## **B. Outsourced Government Functions**

The current trend for contracting and tendering out Government services, and for privatising or corporatising Government enterprises, raises general questions about the continuing accountability for those services.

In considering the Commission's jurisdiction over contracted-out Government services, care needs to be taken to ensure that there remains a nexus between the conduct being investigated and public official functions. It is not, and should not be, the role of the Commission to investigate conduct in the private sector where such conduct has no nexus with the exercise of public official functions.

In this context it is also important to note that the meaning of "public official functions" is changing. Some services, which were traditionally seen as the province of Government are being or have been completely privatised. The former State Bank of NSW is an example. Since its sale by the Government, however, the State Bank ceased to be a public authority and accordingly, and appropriately, the Commission no longer has jurisdiction.

In other cases, however, the position will be less clear. This is particularly the case where a Government agency remains responsible for the provision of services to the public but elects to contract-out to the private sector the provision of those services. In these instances the provision of the services remains a public function.

Corruption in the provision of such services is likely to undermine confidence in the public sector agency responsible for the service, and may have a flow-on detrimental effect on the confidence of the community in the processes of the public sector and Government as a whole. Given that public money is being paid to private sector organisations to provide public services, it is important that the State have a role in overseeing how the money is utilised and ensuring that the appropriate corruption prevention and investigation mechanisms are in place. This argues strongly that the Commission should continue to have a role in this area.

Contracted-out services are likely to fall within the Commission's current jurisdiction given the definition of "public official" in s.3 of the ICAC Act.

This definition includes an individual having public official functions or acting in a public official capacity and includes "...an employee of or any person otherwise engaged by or acting for or on behalf of, or in place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs".

An example of this extended definition is instructive.

The Commission also recently examined the role of WorkCover NSW outsourced accredited assessors responsible for assessing the competency of operators of certain heavy plant and equipment (*Report on Investigation into Safety Certification and Training in the NSW Construction Industry* – June 2004). Although not directly employed by WorkCover, these assessors were fulfilling WorkCover responsibilities and accordingly the Commission found they were exercising "public official functions" within the meaning of s.3(1) of the ICAC Act and undertook assessments on behalf of WorkCover within the meaning of s.3(1)(m) of the ICAC Act. The Commission was also satisfied that WorkCover accredited trainers are "public officials" as they exercise public official functions and do work on behalf of WorkCover.

## **C. Members of Parliament**

From the time of its inception the ICAC Act was intended to apply to Members of Parliament. The definition of "public official" specifically includes Ministers and members of the Legislative Council and Legislative Assembly, being the two houses of the NSW Parliament. This inclusion is clearly in line with community expectations that Members of Parliament be in the same position as other public officials for the purpose of the Commission's jurisdiction.

Section 9(3) of the Act provides that a substantial breach of the applicable code of conduct shall bring Members of Parliament under the jurisdiction of the Commission for the purposes of section 9(1)(b).

Sections 9(4) and (5) apply only to Members of Parliament.

The Commission has a unique relationship with the Parliament and its Members. The nature of this relationship was considered by the Commission in its *Report on investigation into conduct of the Hon. J Richard Face* (June 2004). In that report Assistant Commissioner Johnson quoted (p.42) with approval the following comments of the current Clerk of the Legislative Assembly;

*The ICAC has a special relationship with the Parliament. In general terms the Parliament created the ICAC to protect the public interest, prevent breaches of public trust and guide the conduct of public officials. The legislation gives the ICAC significant powers and discretion to expose corruption through investigations, to prevent corruption by giving advice and developing resistance to corrupt practices in public sector organisations, and to educate the public sector and the community about corruption and the role of the Commission. Viewed from one perspective, the ICAC Commissioner is one among a number of public officials who assist the Parliament to carry out its role of scrutinising the executive and thereby holding it accountable. Such officials are often referred to as ‘officers of Parliament’ as they perform the work that the House, if it wished, might perform. The ICAC reports to Parliament and there is oversight of its work by a parliamentary committee. On the other hand, under section 3 of the ICAC Act the Commission has jurisdiction over all Members of Parliament, their staffs and the staff of Parliament generally. In respect to the Parliament therefore the ICAC plays a number of distinct roles, including an active role in educating members of Parliament about their rights and obligations.<sup>19</sup>*

It is appropriate that the Commission continue to be able to investigate allegations of corruption involving Members of Parliament to help maintain public confidence in our political administration and system of government.

#### IX. POWERS OF THE ICAC

Under its Act, the Commission is entrusted with extensive and coercive powers. These powers are essential to the Commission’s performance of its functions under the Act. In particular they also reflect the nature of the Commission’s role or function as a fact-finding body charged with getting to the truth of allegations and complaints that are referred to it. As the Commission said in its *Report on the Investigation into North Coast Development (Volume 5)*:<sup>20</sup>

*The rules that apply in our courts, particularly in our criminal courts, are not designed to ferret out the truth. They serve a different purpose. From time to time, matters arise which cause concern in the community, and lead to a decision that other methods are necessary. It is felt that it is more important to get to the truth, than simply to pursue offenders. Disclosure and control are the prime goals, rather than conviction and punishment. The opportunity for conviction and punishment will not be lost, if what is revealed can lead to criminal proceedings, within the constraints imposed by the system, and the need to maintain scrupulous fairness in the prosecution and trial process. But they are not the main objective.*

*A number of matters disclosed in the course of this Inquiry, had been the subject of rumour for years. Traditional methods of criminal investigation lacked the powers necessary to uncover them. That is why it was appropriate for the Commission to undertake the investigation, with the special powers conferred by Parliament for the control of corruption in the public sector. It is the same approach that leads, from time to time, to the establishment of Royal Commissions.*

*The objective was more limited. It was to disclose sufficient to enable corrupt practices, and practices conducive to corruption, to be identified. That disclosure enables the problem to be met, not only by changes to the law, as are recommended, but also by public awareness, which provides the opportunity for public attitudes to be developed, and community expectations to be made clear to all in public life.*

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<sup>19</sup> “Constitutional and Parliamentary Reform Issues in the Reform of Parliament” contained in *Peace, Order and Good Government: State Constitutional and Parliamentary Reform* (edited by Macintyre and Williams), Wakefield Press, 2003, at 261-262.

<sup>20</sup> 1990, pp 35-36.

Amongst other things, the Commission is empowered to:

- compel public officials to produce a statement of information (section 21)
- compel any person or agency to produce documents and other material (section 22)
- enter the premises occupied by a public authority and inspect and copy documents (section 23)
- conduct private and public hearings (section 30)
- summon witnesses to appear before its hearings (section 35) and
- apply for and obtain search warrants (section 40).<sup>21</sup>

The Commission may also apply for listening devices under the *Listening Devices Act 1984* and for telephone intercepts under the *Telecommunications (Interception) Act 1979*.

#### **A. Power to Obtain Information – Section 21 ICAC Act**

Section 21 of the Act gives the Commission the power to require, by notice in writing, a public authority or public official to produce a statement of information. Section 21 notices are often used to obtain details of a person's financial situation so that the Commission can prepare a financial profile. Public officials can write in the relevant information in answer to the questions in the notice. It is not necessary for them to provide original documentation such as bank statements, receipts, etc. For persons who are not public officials, a section 22 notice requiring the production of relevant original documentation can be issued, however this requires the recipient to locate and produce original documentation, thereby causing possible inconvenience to the individual concerned.

#### **B. Power to Enter Public Premises - Section 23 ICAC Act**

Section 23 empowers the Commission to enter public premises, inspect documents and take copies of those documents. It provides as follows:

##### ***23. Power to enter public premises***

- (1) *For the purposes of an investigation, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time:*
  - (a) *enter and inspect any premises occupied or used by a public authority or public official in that capacity, and*
  - (b) *inspect any document or other thing in or on the premises, and*
  - (a) *take copies of any document in or on the premises.*
- (2) *(Repealed)*
- (3) *The public authority or public official shall make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.*

Section 23 is potentially a very useful power. This is especially so where the Commission wishes to obtain highly relevant documents and material quickly but unlike a search warrant, it does not require any threshold of belief or suspicion to be satisfied about the existence of documents or material on the premises before it may be issued. It also lends itself to be executed covertly where the Commission does not wish its interest in a matter to be known. Unlike a section 22 notice it also allows the Commission to obtain the documents or material directly through its own inspections without having to rely on the searches of a third party.

#### **C. Hearings - Division 3 ICAC Act**

Under its Act the Commission has the power to conduct hearings. These hearings may be either in public or private or both. In considering whether to hold hearings as part of an investigation the Commission is required to have regard to what it considers relevant to the public interest under section 31 of the Act. That section provides as follows:

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<sup>21</sup> The power for the Commissioner to issue search warrants under section 40(4) of the Act has never been exercised.

**31. Public and private hearings**

- (1) *A hearing may be held in public or in private, or partly in public and partly in private, as decided by the Commission.*
- (2) *Without limiting the above, the Commission may decide to hear closing submissions in private. This extends to a closing submission by a person appearing before the Commission or by a legal practitioner representing such a person, as well as to a closing submission by a legal practitioner assisting the Commission as counsel.*
- (3) *In reaching these decisions, the Commission is obliged to have regard to any matters which it considers to be related to the public interest.*
- (4) *The Commission may give directions as to the persons who may be present at a hearing when it is being held in private. A person must not be present at a hearing in contravention of any such direction.*

Significantly, contrary to the position with the common law applicable to the criminal courts of Australia, the Commission during its hearings can compel a person to answer questions and produce documents notwithstanding that to do so may tend to incriminate them in the commission of a criminal offence; in effect the privilege against self incrimination is overridden and a witness must answer questions and produce documents regardless.

This is provided for by section 37 of the Act as follows:

**37. Privilege as regards answers, documents, etc.**

- (1) *A witness summoned to attend or appearing before the Commission at a hearing is not entitled to refuse:*
  - (a) *to be sworn or to make an affirmation, or*
  - (b) *to answer any question relevant to an investigation put to the witness by the Commissioner or other person presiding at a hearing, or*
  - (c) *to produce any document or other thing in the witness's custody or control which the witness is required by the summons or by the person presiding to produce.*
- (2) *A witness summoned to attend or appearing before the Commission at a hearing is not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.*
- (3) *An answer made, or document or other thing produced, by a witness at a hearing before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.*
- (4) *Nothing in this section makes inadmissible:*
  - (a) *any answer, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or*
  - (b) *any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (2), or*
  - (c) *any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.*
- (5) *Where:*
  - (a) *a legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Commission, and*
  - (b) *the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal*

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*practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Commission,*

*the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.*

The qualification to this requirement is that any evidence given by the witness cannot be subsequently used against them in any later criminal or civil proceedings.

A legal practitioner may be granted leave to appear on behalf of the witness who has been summonsed to appear before a hearing of the Commission.

The power to conduct hearings, particularly public hearings, has attracted considerable attention since the Commission's inception.

In particular, the decision whether to hold public hearings as part of an investigation is a significant one. The Commission is well aware of the publicity and media attention that its public hearings attract and the potential effects on the reputation of those appearing as witnesses before them. In this respect, when conducting public hearings the Commission is obliged to observe the rules of natural justice. The Commission's obligation in this regard follows from the possibility that a hearing might result in an adverse report and consequent harm to the reputation of persons against whom allegations are made.<sup>22</sup>

In determining whether to hold public hearings the Commission will have regard to such issues as:

- the investigative purpose and value of hearings
- their deterrent effect
- their educative value, particularly in addressing significant, widespread or systemic corruption
- the accountability and transparency of the Commission in the conduct of its investigations.

In deciding to hold private hearings, the Commission may have regard to:

- the need to define the issues to be further investigated
- the integrity of the investigation, particularly the opportunity to test evidence to establish its potential value to the investigation, and obtain evidence from a number of persons without them being aware of evidence given by others
- protection of reputations from unnecessary damage
- potential impact on other investigations or proceedings.

In considering the role of public hearings for the Commission, it must be remembered that the Commission is not a judicial body. It is an investigative body, and hearings are conducted with that function in mind.

#### 1. Public Versus Private Hearings

To assist in determining whether it is in the public interest to hold public hearings, the Commission has regard to a list of possible considerations. These considerations include:

- the integrity of the investigation (it may be prejudicial to the investigation to publicly divulge the fact the Commission is conducting an investigation, to identify the witnesses or make known the extent of evidence obtained)
- protection of reputation from anticipated but untested or unverified evidence
- whether information is being sought at a preliminary stage for the purposes of determining whether further investigative effort is required. In this regard if it is ultimately decided not to proceed further there is no requirement for the Commission to prepare a report in relation to the matter (see s.74(3))

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<sup>22</sup> ICAC v. Chaffey (1993) 30 NSWLR 21 per Gleeson CJ at 30.

of the ICAC Act)

- the need to protect the identity of a witness or an informant
- the requirements of s.18(2) of the ICAC Act which requires that where there are proceedings for an indictable offence conducted by or on behalf of the Crown, in order to ensure that the accused's right to a fair trial is not prejudiced, the Commission must, to the extent it thinks necessary, ensure that, as far as practicable, any hearings are conducted in private during the currency of the proceedings
- any application made by, or on behalf of those appearing before the Commission that it is in the public interest for the hearing to be conducted in private
- whether the hearing involves closing submissions. Section 31(2) of the ICAC Act provides that the Commission may decide to hear closing submissions in private.

The possible advantages of holding hearings in public include:

- public hearings allow a wide exposure of corrupt conduct
- public hearings are an important mechanism for educating the public about corruption
- public hearings provide a mechanism for public officials to be publicly accountable for their actions
- public hearings can be an important deterrent to corrupt conduct. If people know their conduct may be subject to public exposure they may be less likely to engage in corrupt activity
- public hearings sometimes encourage others to come forward with information, including information relevant to the investigation
- public hearings provide transparency to the Commission's fact-finding process and as such enhance public confidence in that process.

Private hearings allow the detection of inconsistencies in evidence given by different parties, as witnesses give their evidence unaware of what else might have been said by other parties. This is particularly the case where the investigation plan involves hearing from key individuals towards the end of a hearing to test their evidence against that provided by other witnesses earlier in the proceedings.

There have been occasions where witnesses have given much more full and frank evidence in private than when they have been recalled to give evidence in public hearings. This may be due to concern or trepidation about having their evidence exposed to colleagues and associates by way of a public forum. It has also been observed that some witnesses at public hearings seem to play up to the media or the public gallery.

Hearings are merely one tool in the investigative arsenal for the Commission. As previously indicated the Commission is not a court and nor does it attempt to operate like one (such as requiring the equivalent standard of proof beyond reasonable doubt). The Commission's hearings are part of the investigative process. A court only hears matters at the conclusion of an investigation where there are grounds to consider a case. As an investigative tool, it will not always be appropriate for the Commission to conduct hearings in public.

## 2. Private Hearings – Public Reports

The Commission is required under its Act to prepare a report to Parliament of the results of its investigation where it has conducted public hearings.

It should also be appreciated that the Commission has the capacity to conduct hearings in private but produce a public report to account for the findings made in the matter.

The power to conduct public hearings is particularly important in carrying out the Commission's functions. Public hearings are perhaps best used to highlight corrupt conduct that may be significant, systemic or widespread. Given that public hearings involve significant Commission resources, consideration must also be given to maximizing the impact of public hearings, particularly in addressing systemic corruption risks.

The Commission employs public hearings as appropriate, but undertakes other measures, including the collection and dissemination of evidence to the appropriate authorities in individual instances, and the conduct of systemic reviews of corruption risks, as a means of addressing and preventing corruption. The

pre-occupation with the Commission's public hearings must also be seen against the regularity with which they are now held. As previously noted, for the 2002/03 reporting year, the Commission conducted just 18 days of public hearings involving four investigations.

A further relevant consideration is that public hearings are of little value unless sufficient evidence is gathered beforehand. Unless they are underpinned by effective prior investigative work, public hearings will become a blunt tool for investigating corruption.

It is often said that the Commission's hearing powers amount to no more than "naming and shaming". This suggestion fails to understand the roles that hearings play in the Commission meeting its objectives and carrying out its functions under the Act, as outlined in this section.

The Commission submits that the current regime, where it must consider the public interest in making the decision to hold hearings, as well as the requirements of procedural fairness established by the Courts<sup>23</sup> is sufficient to ensure consideration is given to the protection of the rights of individuals. Furthermore, the decision to hold a public hearing does not in itself involve a denial of natural justice.<sup>24</sup>

In deciding whether to hold public hearings, the Commission also gives consideration to the possibility of interfering with pending criminal proceedings. While the Commission is given authority by s.18 of the ICAC Act to run public hearings alongside court proceedings, it is also required to ensure that as far as possible Commission hearings do not prejudice proceedings for Crown prosecution of indictable offences.

Section 18 provides that:

- (1) *The Commission may do any or all of the following:*
- (a) *commence, continue, discontinue or complete any investigation,*
  - (b) *furnish reports in connection with any investigation,*
  - (c) *do all such acts and things as are necessary or expedient for those purposes,*

*despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person.*

- (2) *If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commission must, to the extent to which the Commission thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:*
- (a) *ensure that, as far as practicable, any hearing or other matters relating to the investigation are conducted in private during the currency of the proceedings, and*
  - (b) *give directions under section 112, having effect during the currency of the proceedings, and*
  - (c) *defer making a report to Parliament in relation to the investigation during the currency of the proceedings.*

(2A) *Subsection (2) does not apply:*

- (a) *(in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings, and*
- (b) *(in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.*

- (3) *This section has effect whether or not the proceedings commenced before or after the relevant investigation commenced and has effect whether or not the Commission or an officer of the Commission is a party to the proceedings.*

In practical terms, court proceedings are one of the matters given consideration in determining whether

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<sup>23</sup> *ibid* at ICAC v. Chaffey (1993) 30 NSWLR 21 per Gleeson CJ at 30.

<sup>24</sup> *ibid* at 31.

it is in the public interest to hold public hearings. In fact, in conducting its investigations prior to hearings, the Commission has due regard to any relevant court proceedings that may be under way at the time.

It has been suggested that public hearings may operate to poison the evidence that may be relied upon in any subsequent prosecution proceedings. This suggestion appears to be based on the notion that the publicity that public hearings attract somehow taints the evidence that might be adduced in any later prosecution proceedings.

The Commission submits that it is highly unlikely that public hearings could have this effect on evidence adduced at those hearings. There are different rules governing the admissibility of evidence during criminal proceedings and there is often a considerable delay (often between one and two years) between the Commission's public hearings, its report and any later criminal proceedings flowing from its recommendations.

## X. ACCOUNTABILITY MECHANISMS OF THE ICAC

As can be appreciated, the Commission is entrusted with extensive and significant coercive powers. Those powers reflect the Commission's role as a fact-finding body and are essential to assist the Commission in its primary functions of investigating and preventing corrupt conduct. As a corollary, the Commission accepts that it must be held accountable for the exercise of those powers.

Under the current provisions of the Act, there are two major mechanisms by which the Commission is held accountable in exercising its powers under the Act. These are:

- The Parliamentary Joint Committee
- The Operations Review Committee

There are other mechanisms of accountability or external supervision aside from those found in the Act such as judicial review and legislative accountability (for example, various inspection powers given to the NSW Ombudsman in relation to powers under other legislation such as the *Telecommunications Interception Act 1979* and the *Law Enforcement (Controlled Operations) Act 1998*).

### A. The Parliamentary Joint Committee (“the PJC”)

The PJC is provided for under Part 7 of the Act. It is comprised of eleven members drawn from both houses of the NSW Parliament.

The primary functions of the PJC are to:

- monitor and review the exercise by the Commission of its functions
- report to both Houses of Parliament matters appertaining to the Commission or connected with the exercise of its functions to which, the attention of Parliament should be directed
- examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report
- examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission
- inquire into any question in connection with its functions that is referred to it by both Houses of Parliament, and report to both Houses on that question.

In particular the provisions of s.64(2) of the Act should also be noted. That section provides as follows:

- (2) *Nothing in this Part authorises the Joint Committee:*
- (a) *to investigate a matter relating to particular conduct, or*
  - (b) *to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or*
  - (c) *to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.*

As the PJC itself has noted, the rationale for this is clear;

*The Committee [PJC] does not have the ability to review the Commission's decisions and findings, to investigate, or to examine the legality and propriety of the Commission's actions with respect to particular complaints. It is the Committee's opinion that these statutory restrictions imposed upon the Committee under s. 64(2) are appropriate. Committee members have neither the qualifications nor expertise to conduct investigations, nor does the Committee have the resources to serve as an appeal mechanism for individuals dissatisfied with the decisions and findings of the Commission.*

*Moreover, it is the Committee's opinion that since Committee Members (in common with all Members of Parliament) fall within the investigative jurisdiction of the ICAC, it would be inappropriate for Members to be involved in investigating complaints against the ICAC. The Committee is concerned that such a circular oversight system could give rise to allegations of either conflicts of interest or "paybacks" for previous investigations (paragraph 2.2.3).*

It would be undesirable for a class or category of public officials subject to the jurisdiction of the Act to be also able to investigate or review particular investigative decisions taken by the Commission in relation to persons from that same class or category.

#### **B. The Operations Review Committee ("the ORC")**

The ORC has eight members, comprising the Commissioner (chairperson), Assistant Commissioner nominated by the Commissioner (the Deputy Commissioner), one<sup>25</sup> person appointed on the recommendation of the Attorney General and four<sup>26</sup> persons appointed on recommendation of the Minister and with the concurrence of the Commissioner. Pursuant to s.60 of the ICAC Act, the Commissioner of Police is also a statutory member of the ORC. Under the provisions of the *Police Act 1990*, this function cannot be delegated.

Under the current provisions of the Act the ORC operates as a consultative mechanism, providing advice to the Commissioner on whether the Commission should investigate a complaint or discontinue the investigation of a complaint. The functions of the ORC are provided for under part 6 of the Act. Section 59(1) in particular provides as follows:

- (a) *to advise the Commissioner whether the Commission should investigate a complaint made under this Act or discontinue an investigation of such a complaint;*
- (b) *to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.*

It should be noted however that while the ORC must be consulted in relation to complaints made under s.10 of the Act there is no statutory requirement to consult the ORC regarding complaints referred to it by principal officers under s.11 of the Act nor any matter received by the Commission that is categorised as "Information" rather than as a complaint. The Commission itself makes the determination on classifying or categorising a complaint.

It is also important to bear in mind that the ORC's function is to provide advice, and that advice is not binding on the Commissioner.

Notwithstanding these statutory provisions, it has been the practice of the Commission to refer s.11 complaints to the ORC where those complaints have proceeded to a formal investigation or what the Commission now refers to as a Category 1 investigation, that is the more serious and lengthier complex investigations. A schedule of matters that are also classified as 'Information' is also provided at each meeting of the ORC.

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<sup>25</sup> Governor appointed position.

<sup>26</sup> Governor appointed positions.

Under the Act the Commissioner must also meet with the ORC at least every three months. Originally the ORC met once every month, however, since March 2002 the ORC has met every two months, its members noting the increased quality and high standard of reports that it now receives.

The statutory relationship between the ORC and the Commission has, however, been supplemented by broad terms of reference which extends its functions beyond those provided for under the Act.

## **XI. CONCLUSION**

The ICAC continues to play an important and strategic part in public administration and the body politic generally in New South Wales. Reference has already been made to the importance of the dual role of corruption investigation and prevention – the two activities are inextricably linked. The success of the prevention function depends on it being linked to that of investigation.

Bodies like the ICAC must however continue to be ever vigilant in identifying and anticipating new and changing forms of corruption and be innovative in their response to dealing with this. They must also be prepared to accept that their success in carrying out their functions and tasks will not always meet with universal approval, often least of all from their political masters who create them. It remains, however, a most noble and essential pursuit necessary to any system of fair and equitable public administration.

# CASE STUDIES OF ACTUAL CORRUPTION INVESTIGATIONS

*By John Pritchard\**

## CASE I: INVESTIGATION INTO THE HANDLING OF APPLICATIONS FOR PUBLIC HOUSING BY AN OFFICER OF THE DEPARTMENT OF HOUSING

### **A. The Investigation**

On 27 June 2002, the ICAC received a report from the Department of Housing that a Client Service Officer (CSO) of the Department had solicited a bribe from an applicant for housing. It was alleged that the applicant paid \$2000 to the CSO as part payment to approve an application for priority housing. It was alleged that further payments were to take place.

The ICAC commenced its formal investigations of this matter on 1 July 2002, under the direction of ICAC Commissioner Irene Moss AO.

The investigation focused on whether any officials of the Department of Housing or anyone acting on their account had attempted to solicit a corrupt payment in relation to attempting or agreeing to place any applicant on a priority list for housing.

The ICAC made use of a range of its powers in this investigation.

ICAC investigators searched through all files that were handled by the suspect person from January 2001 to June 2002, served a number of notices to produce relevant documents, obtained a search warrant to search the premises of the suspect person and obtained warrants to listen to and record telephone conversations and private conversations between specific persons.

The ICAC also held a number of private hearings between 4 July 2002 and 19 August 2002. Public hearings were held on 18 and 19 September 2002. Ten witnesses were summonsed, examined and cross-examined during those hearings.

### **B. Why did the ICAC Investigate these Matters?**

Housing is one of the most basic of personal and social needs in our society. For those who cannot obtain suitable accommodation in the private sector, whether through cost or other needs, public housing is a vital social support. Just over 5% of householders are in public housing in New South Wales. It is a scarce resource that needs to be allocated fairly and equitably and there is a public interest in ensuring that this occurs.

There is a long waiting list for public housing, and those in greatest need may apply for priority housing. It is damaging to community confidence in the integrity of allocating scarce public resources if the processes used to allocate public housing and priority housing are tainted by corruption or other improper means. It is in the public interest to ensure the maintenance of a fair and equitable system designed to provide for those in real need.

It is also in the public interest to expose conduct by public officials which may weaken the integrity of public institutions. It is essential to the proper functioning of our society that the public has complete confidence in our public institutions, especially when it concerns the allocation of scarce resources.

The investigation also assessed some suggestions as to how the integrity of allocating housing may be preserved and how some of the identified risks of corruption and misallocation of public resources may be minimised.

There was a high level of public interest in the ICAC's hearings, reflecting the substantial importance to the community of the fair and equitable provision of public housing.

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\* Deputy Commissioner, Independent Commission Against Corruption Sydney, Australia.

### **C. What Happened?**

Steven Klimoski was employed as Client Service Officer (CSO) in the Burwood office of the Department of Housing. His responsibilities included assessing client needs, determining applicants' eligibility for public housing, including priority housing, and providing recommendations to his team leader.

Priority housing is available for those in urgent need of public housing through factors such as unstable housing circumstances, 'at risk' factors such as being a victim of domestic violence and inappropriateness of current accommodation. The median waiting time for priority housing was 1.7 months in 2001-02, while the median waiting time for all applicants for public housing was 39 months in the same period.

The ICAC investigation found that Klimoski, using his position as a CSO responsible for assessing and providing recommendations on applications for priority housing, had offered to expedite an applicant's application for priority housing in return for a cash payment of \$8000.

In early 2002, the applicant had met an acquaintance, Anthony Severino, and asked him if he knew anyone working for the Department of Housing who might be able to assist her with an application for public housing.

Severino contacted Klimoski and arranged a meeting with the applicant. At this meeting Klimoski informed the applicant that he could assist her to obtain priority public housing, but that he would require payment. Severino was to secure a portion of the total payment for his role in facilitating the arrangement.

After making an initial payment of \$2000 to Klimoski, the applicant told a friend about the payment and after determining that the payment was improper, informed the Department. The Department reported the matter to the ICAC, pursuant to Section 11 of the ICAC Act.

The ICAC lawfully recorded and videotaped a subsequent meeting between the applicant, Severino and Klimoski during which arrangements for the payment of money to Klimoski were confirmed. At this meeting the applicant gave Klimoski a further \$2000 in cash.

Following this meeting, Klimoski was made aware that the ICAC was conducting an investigation into matters including his role in processing applications for priority housing. Klimoski subsequently gave evidence to the ICAC in a private hearing on 4 July 2002.

### **D. What were the ICAC's Findings?**

The ICAC's investigation found evidence that Steven Klimoski, an officer of the Department and Anthony Severino, a tenant of the Department, engaged in corrupt conduct.

There is no evidence that any other person employed with the Department discharged their duties corruptly.

Recommendations are made in the report that the Director of Public Prosecutions give consideration to the prosecution of Steven Klimoski for the offences of corruptly obtaining benefit [Section 249B of the *Crimes Act 1900* (NSW)] and the prosecution of Anthony Severino for the offences of aiding and abetting the receipt of corrupt benefit [Section 249F of the *Crimes Act 1900* (NSW)] and giving false and/or misleading evidence pursuant to Section 87 of the *Independent Commission Against Corruption Act 1988*.

A recommendation is made in the report that consideration be given to disciplinary action by the Department against Steven Klimoski pursuant to s.74A(2)(b) of the ICAC Act.

The report also makes a number of specific recommendations to the Department for it to review its systems and policies for priority housing, establish appropriate audit processes to review allocation decisions and verify the assets of applicants; and strengthen and promote its policy on gifts, benefits and bribes.

**CASE II: INVESTIGATION INTO CORRUPT CONDUCT ASSOCIATED WITH  
DEVELOPMENT PROPOSALS AT ROCKDALE CITY COUNCIL**

**A. The Investigation**

This ICAC investigation examined the conduct of two Rockdale City Council (RCC) councillors, Adam McCormick, the Deputy Mayor, and Andrew Smyrnis in relation to corrupt dealings with certain property developers. The conduct of persons who acted as intermediaries between Councillor Smyrnis and these developers in soliciting bribes is also examined.

**B. Why did the ICAC Investigate?**

Over one third of the matters currently received by the ICAC concern local government. The one issue that is the subject of most complaints to the ICAC from the public concerns planning decisions made by councils. Over 16% of all the complaints received by the ICAC from the public concern development approvals.

Development Applications represent a significant economic investment. Councillors make decisions daily on a vast range of projects that impact on our economy, our community and our quality of life. It is vital that the public is assured that planning decisions are made on their merits and not out of self interest or financial gain for the decision makers.

In the present case there was evidence to suggest that two councillors were involved in soliciting substantial bribes from developers in return for supporting their development proposals. Such actions go to the core of the integrity of the planning process. There was a clear public interest for such allegations to be thoroughly investigated to determine if they were accurate and if so to identify those involved.

**C. What Happened?**

There were four areas of interest to the Commission's investigation

1. In October 2000 Manuel Limberis, at the request of Andrew Smyrnis sought money from the developer of property at 2-4 Parker Street, Rockdale, knowing that in return Smyrnis would give favourable consideration as an RCC councillor to the Development Application. The amount of money sought was \$150,000 to obtain approval for a five level development and \$90,000 for a four level development. He did not tell the developer the money was to be a bribe but was to pay him to lobby Councillor Smyrnis. The developer rejected the offer.
2. In July/August 2001, Manuel Limberis entered into an agreement with Con Chartofillis, who was proposing a development at 2-4 Frederick Street, Rockdale, for a payment of up to \$320,000 depending upon the number of floors approved by RCC. Money was sought and obtained from Chartofillis on behalf of Smyrnis with the purpose of influencing Smyrnis in relation to the Development Application and for Smyrnis to organise support from other councillors for the Development Application. Between 28 August 2001 and 14 January 2002, Chartofillis made payments to Limberis totalling \$54,500. Of this sum, \$49,500 was transferred to Smyrnis, the balance being retained by Limberis.

Smyrnis agreed with Councillor Adam McCormick to pay McCormick \$70,000 in return for McCormick supporting the Chartofillis Development Application and obtaining the support of other ALP RCC councillors. Later, McCormick sought to renegotiate this agreement for the purpose of obtaining a larger sum of money.

3. Between October and December 2001 Anthony Retsos, at the request of Andrew Smyrnis, met with a developer codenamed R1 and sought payment from him of between \$240,000 and \$250,000 in return for Smyrnis giving favourable consideration as an RCC councillor to R1's Development Application for a proposed development in Rockdale.

Retsos understood that in return for dealing with R1 on behalf of Smyrnis he could expect to receive a payment of money of at least \$20,000 to \$25,000.

Smyrnis agreed with Councillor Adam McCormick to pay McCormick \$70,000 in return for McCormick supporting R1's Development Application for Site 1, and obtaining the support of other ALP RCC councillors.

No monies were paid by R1 to Retsos, Smyrnis or McCormick, either directly or indirectly.

In early 2002, a developer, Terry Andriotakis, offered to provide benefits to Councillor Smyrnis by way of free advice in relation to property deals (which Andriotakis told Smyrnis was worth a lot of money), referring potential customers to a mortgage business in which Smyrnis said he was involved, and assisting Smyrnis in joint ventures, including the possibility of Smyrnis becoming a beneficiary in a development. These offers were made by Andriotakis and accepted by Smyrnis with the intention that Smyrnis would, in his capacity as a councillor of RCC, lobby other RCC councillors to ensure that a draft Development Control Plan proposed by Andriotakis for sites at Arncliffe, was approved by RCC as soon as possible.

#### **D. What Were the ICAC's Findings?**

The ICAC's report: *Report into Corrupt Conduct Associated with Development Proposals at Rockdale City Council*, published in July 2002, at the conclusion of the investigation, contains findings that Andrew Smyrnis, Adam McCormick, Manuel Limberis, Tony Retsos, Con Chartofilis and Terry Andriotakis engaged in corrupt conduct.

Recommendations are made in the report that the Director of Public Prosecutions give consideration to the prosecution of Andrew Smyrnis, Adam McCormick, Manuel Limberis, Con Chartofilis and Tony Retsos for bribery-related offences and offences of giving false and misleading evidence to the ICAC. A recommendation is made that the Director of Public Prosecutions give consideration to the prosecution of Terry Andriotakis for bribery-related offences.

Recommendations were made that consideration be given to the suspension of Councillor Adam McCormick from civic office under s.440C of the Local Government Act 1993 with a view to his dismissal for serious corrupt conduct. Councillor McCormick resigned however, the day the report was released. No such recommendation was made in respect of Smyrnis as he resigned from RCC during the course of the ICAC hearings.

The evidence before the ICAC did not indicate the level of systemic corruption within RCC to warrant a recommendation that consideration be given to the dismissal of all councillors.

There was no evidence that any staff member of RCC acted other than professionally and properly in the discharge of their duties and no suggestion that they had acted corruptly.

The report canvasses the need for reform of development control systems, and controls on political donations and influence at the local government level. Recommendations addressing these issues will be made in a subsequent report.

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## REPORT OF THE GENERAL DISCUSSION

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<i>Chairperson</i>	Mr. Georgi Rupchev	(Bulgaria)
<i>Co-Chairperson</i>	Ms. Ana Maria Rosero Rivas	(Ecuador)
<i>Rapporteur</i>	Mr. Raymundo Julio A. Olaguer	(Philippines)
<i>Co-Rapporteur</i>	Mr. Saito Masato	(Japan)
<i>Co-Rapporteur</i>	Mr. Kaspars Dreimanis	(Latvia)
<i>Members</i>	Ms. Mariana Lara Palacios	(Guatemala)
	Ms. Soraya Lizette Morales	(Honduras)
	Mr. Souphy Norintha	(Lao PDR)
	Mr. Jacques Randrianasolo	(Madagascar)
	Mr. Ganesh Babu Aryal	(Nepal)
	Mr. Rana Zahoor Ahmad	(Pakistan)
	Mr. Fred Saeni	(Solomon Islands)
	Mr. Sukit Chua-intra	(Thailand)
	Mr. Thammarat Limkulpong	(Thailand)
	Mr. Tashiro Masahiro	(Japan)
	Mr. Tomita Kan	(Japan)
<i>Visiting Experts</i>	Mr. Kwok Man-wai, Tony	(Hong Kong)
	Mr. John Pritchard	(Australia)
<i>Advisers</i>	Director Kunihiko Sakai	(UNAFEI)
	Deputy Director Tomoko Akane	(UNAFEI)
	Prof. Motoo Noguchi	(UNAFEI)
	Prof. Keisuke Senta	(UNAFEI)
	Prof. Takafumi Sato	(UNAFEI)
	Prof. Ichiro Sakata	(UNAFEI)

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### I. INTRODUCTION

This Final Report is the result of four General Discussion sessions which were conducted over two days by the above course participants, visiting experts and advisers.

#### Paradigm Shift

History reveals that the idea of corruption has not always been an open topic. Discussions on corruption are usually made in whispers and in secret to prevent possible persecution, ostracism, and alienation. Consequently, tyranny and corruption characterized most governments and corrupt government officials enjoyed the fruits of corruption without obstacle.

The last three decades have seen a radical shift in the perception of corruption. The social malaise has come to be recognized and the general public has become aware, not only of its existence, but more importantly, its adverse effects on society. The fear and anxiety that came with discussion of corruption in the open slowly melted in the sunshine of public awareness. Significantly, peoples of the world grew to abhor corruption.

The present course marks a gigantic step in the paradigm shift the world is presently experiencing.

### II. WEAKNESSES IN ANTI-CORRUPTION MEASURES

#### A. Legislation

Most of the participating countries have corruption punishable by the Penal Code only. A great majority of the participants believe that their laws are sufficient to criminalize corrupt acts. The problem, however, is in the actual implementation of those laws and the corrupt officials in government.

## **B. Investigation**

### 1. Investigation Authorities

Most of the participating countries have specialized investigative authorities against corruption.

The majority of the participating countries do not appear to have functionally independent agencies which are capable enough to be relied upon. It seems that the investigators and prosecutors in these countries do not deal with corruption properly. This is because their anti-corruption agencies may be open to informal influence by high-ranking officials that constitute several levels of hierarchical bureaucracy. If their investigators or prosecutors do not adhere to the decisions of their superiors they may risk losing their jobs.

### 2. Investigative Tools

- (i) Most participating countries do not have the power to conduct wiretapping which is inadmissible in evidence while the majority of the participating countries have access to bank accounts during the investigation stage.
- (ii) Almost all participating countries have the power to conduct compulsory investigation (arrest, search, etc.) as well as use undercover agents and the power of entrapment. Most of the participant countries do not have judicial bargaining.

### 3. Reporting from the Public

Most participating countries do not have measures for anonymous complaints, thus complaints against officials for corruption are quite rare due to fear of reprisal. Not much protection is given to whistle-blowers.

## **C. Trials**

It appears that a minority of the participating countries have a judiciary that enjoys the trust of the general public. The judiciary in the other countries is not sufficiently independent to make fair judgments in corruption cases. Sometimes even the judiciary itself is corrupt.

## **D. Lack of Political Will**

The majority of the participating countries experience lack of political will in stamping out corruption in their respective measures against negative bureaucratic behaviour. Political will to eradicate corruption can be described as the readiness and willingness on the part of the government and the citizenry as a whole do so. It cannot be denied that, unfortunately, the governments of the participating countries consist mostly of officials who belong to the old paradigm wherein corruption was still considered as normal bureaucratic behaviour. This old school of thought obviously is crumbling in highly developed countries of the world but is still predominant in developing countries.

Due to the prevailing culture of corruption in governments of developing states, it is quite natural that their citizenry would adhere to such an arrangement. Obviously, they are left with no choice but to be part of such a culture lest they be ostracized as social deviants.

## **E. Lack of a Code of Ethics**

The majority of the participating countries do not possess a code of ethics. A code of ethics serves as a general guideline for government officials and employees to observe in the course of their official duties and functions. It is usually embodied in legislation. It underlines moral uprightness, official honesty and transparency, an appropriate standard of living, and such other matters related to clean and honest governance at the personal level. This may be viewed as closely linked with lack of political will as, naturally; a government characterized by rampant corruption would not be minded to draw up a code of ethics.

A country where a code of ethics is wanting surely cannot have effective measures to fight corruption as there would not be a crucible on which corrupt activity is measured and identified.

## **F. Low Salaries of Government Officials and Employees**

Again, all the participating countries, save for Japan, have low salaries for their government officials and employees. In Japan, every year, the salaries of public servants are compared and adjusted to those of employees in the private sector. This process is automatic. Unfortunately, such is not the case for the other

participating countries. The average take-home pay of an ordinary government employee in a typical developing country is barely enough to answer for their periodic expenses such as, but not limited to, food, clothing, shelter, education, electricity, and telephone bills.

The low salary of government employees was identified as one of the main causes of corruption. Due to the scarcity of funds, government employees are often forced to engage in activities that are not entirely accepted as correct bureaucratic behaviour. It is not uncommon that an ordinary policeman or a clerk in the vehicle licensing agency in a developing country would not think twice about receiving, worse, even demanding, a certain amount from traffic rules violators or applicants for renewal of vehicle registration.

It is, however, posited that the low salary of government employees is non sequitur and should not be underscored as a major cause of corruption since corruption is even more rampant and on a larger scale when it comes to high-ranking officials. Also, it cannot be said that the low salary of government employees is part of a vicious cycle revolving around corruption. Public servants suffer low salaries due to a corrupt government that, in turn, suffers lack of public funds to raise the salaries of government employees due to erosion of public funds lost to corruption.

### **G. Lack of Education Concerning Corruption**

Education is undoubtedly a very important factor in the fight against corruption. The general public must be immersed in the knowledge of the existence of corruption, its pernicious effects on society and the economy, and, most of all that corruption does not pay.

A great majority of the participating countries have no education with regard to corruption. As a result, the masses have accepted corruption as a normal occurrence in their culture and social life. Such a situation creates the defeatist impression that nothing can be done about corruption. In some countries, corrupt officials occupying high-ranking positions are bestowed respect by the poor and uneducated people.

### **H. Lack of Cooperation between the Citizens and the Government in Anti-Corruption Measures**

It is a fact that no measure against corruption can be entirely successful without the active cooperation of the public. Anti-corruption agencies should have the full cooperation of the citizenry. This is not true in the participating countries.

The general public does not cooperate with anti-corruption measures because of the fear of possible negative repercussions and because of the loss of trust and confidence in the government. Hence, citizens are in a lethargic state and do not report corrupt practices and instead turn a blind eye on shenanigans in government. Even victims of corrupt acts suffer in silence rather than live a life of endless paranoia of what might happen to them if they report the corrupt act.

### **I. Lack of Personnel in Anti-Corruption Agencies**

Anti-corruption agencies in some of the participating countries are lacking investigators and prosecutors. Consequently, investigators and prosecutors handle more than the number of cases they can effectively handle.

This is also related to the low salary of investigators and prosecutors. Most often, the best lawyers do not find it practical to pursue a career in government, especially in a high-risk, thankless, and low-paying job in anti-corruption agencies. Consequently, the anti-corruption agencies are undermanned which is a major obstacle in the war against corruption.

### **J. Lack of Training**

Anti-corruption agencies also suffer from a lack of training in basic skills in anti-corruption measures in investigation and prosecution. Most often, investigators and prosecutors merely learn the rudiments of investigation and prosecution in the course of their work. Thus, we see a scenario where an inexperienced neophyte investigator or prosecutor handles cases of corruption resulting in the eventual dismissal of the case due to lack of training.

The weaknesses of a lack of personnel training are caused by a lack of budgetary support. Most governments in developing countries still do not regard corruption as a major problem. Again, we have a

vicious cycle consisting of a lack of resources to fund effective anti-corruption machinery which is itself caused by a cash-strapped corrupt government.

### **III. SOLUTIONS**

#### **A. Legislation**

More vigilance, involvement, awareness, and strategy on the part of anti-corruption agency officials and more political will should be harnessed.

The participating countries stated that their Penal Codes or special laws on corruption do not specifically define the term – corruption, but define crimes of corruption. All agree that the definition of corruption itself is not necessary in the Penal Code. All participants have the same understanding regarding public officials. The laws of most participants` countries do not have differences in penalty corresponding to the official rank of the public official. However, in practice a higher penalty is imposed on higher ranking officials according to the discretion of the Court.

#### **B. Investigation**

The specialized agencies should be independent constitutionally, structurally, functionally and financially. Financially means a fixed budget e.g. ICAC Hong Kong which enjoys 0.3% of the annual budget. Legislation allowing wiretapping and access to bank accounts in the investigation of corruption. The right to privacy must be balanced with the interests of the state and public welfare in accordance with the doctrine of police power.

The requirements for access to the transaction records of banks and financial institutions should be liberalized and made easier for investigations to prosper.

#### **C. Reporting from the Public**

Anonymous complaints should be allowed and report centres should be established to receive these complaints. Protection should be given to whistle-blowers by means of legislation (safe houses, bodyguards, etc.) for serious cases.

#### **D. Trials**

The system of appointment of judges should be transparent and based strictly on integrity and skill. In the course of the training, it was found that the judicial system of Japan has been working successfully, and this experience helped the participants to bring some positive ideas for their respective judicial systems. For example, in Japan, the applicants for the position of judges are trained by the Legal Training and Research Institute and chosen by the Supreme Court which nominates them to the Cabinet for approval. The Cabinet almost always approves such nominations in practice.

#### **E. Education**

As mentioned above, education is the primary tool to instil the necessity of a clean and honest government for the attainment of a socially just society. The norms of conduct that tolerated corruption as an accepted way of life can only be removed by education.

Education should come in the form of school orientation as well as media advertisements depicting the undesirable effects of corruption on the society as a whole, and on the individual, in particular.

#### **F. Legislation of a Code of Ethics for Government Officials and Employees**

Legislative bodies should enact laws embodying a code of ethics to be strictly enforced by anti-corruption agencies and the courts. This code of ethics should be completely disseminated to all public servants and seminars and workshops should be held to ensure that all public servants are aware of this.

#### **G. Adequate Opportunity for the Mass Media to Investigate and Report Corruption**

In many countries, depending on their institutional structures, mass communication should be equipped with adequate opportunities to inquire into government transactions and to detect corruption objectively. Reporting corruption to the public is an effective deterrent on government officials and employees from committing corruption as no one would want to be known as a corrupt official. In fact, this deterrent comes

even before actual conviction for a crime in a court of law.

#### **H. A Sound Recruitment System for Public Servants Based on Merit, Skill, and Integrity**

An independent Civil Service Commission should be in place to oversee the recruitment and promotion process of government officials and employees. It should be independent so as not to be unduly influenced by the powers that be. Recruitment and promotion should truly be based on exact measurements of merit, integrity and skill.

#### **I. Higher Salaries for Government Officials and Employees**

An effective incentive for government officials and employees to forget about corruption is a salary that would best cover their expenses for decent and comfortable living conditions. This should include provisions for education of their children to provide them with a bright future.

#### **J. Higher Mandatory Budgetary Allocations for Anti-Corruption Agencies and Measures**

Anti-corruption measures cannot be truly effective without the budgetary support of government. As mentioned above, a fixed budget commensurate to a reasonable percentage of the annual budget should be allocated for anti-corruption measures. This will ultimately solve the problem of the low salaries of investigators and prosecutors, the lack of investigators and prosecutors, and their lack of training.

#### **K. Domestic and International Training of Investigators and Prosecutors in Anti-corruption Agencies and Justice Departments in the Skills, Techniques, and Strategies in Anti-Corruption Activities**

With financially viable anti-corruption machinery, training of investigators and prosecutors, both domestic and international, is possible. This will spurn a truly effective campaign against corruption with personnel specially trained in the field of anti-corruption measures. As a result, ICAC Hong Kong and ICAC Australia may be replicated in our countries.

#### **L. International Cooperation in the Field of Anti-Corruption Measures**

Participation in international conventions such as the U. N. Convention against Corruption is a must if we want to see a holistic approach against corruption. The provisions in these international instruments should serve as a model for all anti-corruption legislation. Further, international cooperation in terms of extradition, transfer of persons, and transfer of proceedings would surely produce a favourable impact in the fight against corruption.

In addition, informal international help measures should also be resorted to for a flexible and quick response against corrupt officials who have fled the country and are seeking refuge in a foreign land.

### **IV. CONCLUSION**

Fighting corruption is a lonely and risky job; lonely, because societies in developing countries still cling to the myth that corruption is an accepted way of life, and risky, because the persons being investigated and prosecuted occupy positions in the government. It is just and proper that considerable significance must be afforded to anti-corruption measures. This is to protect the very government from itself and avert the moral degradation and economic crisis that is indubitably caused by the cancer of corruption. It's a tough job but somebody's got to do it.

The participants of this course have to do it. The investigators and prosecutors in the anti-corruption agencies have to do it. And the citizens also have to do it. To complete the paradigm shift, every single individual in society must do his or her share in eradicating corruption. At the end of the day, no one is spared from being a victim of this social scourge.

Corruption is the effect of the mistaken notion of short-cuts to financial success. Corrupt officials don't want to wait in line, don't want to work hard for their compensation, and don't want to live simple and honest lives. One finds truth in the adage that money is the root of all evil. Siddhartha Gautama, otherwise known as Buddha, said that desire leads to suffering. As long as we desire material wealth and the good life, we will continually suffer since nothing in this material world can ever satisfy our wants. In short, desire takes away our freedom.

It is our duty to keep our peoples free. Freedom from corruption is our goal. This can only be achieved by strong political will, an educated citizenry, and an effective anti-corruption campaign. Sending corrupt officials to jail will send a clear message to all that corruption does not and will not pay. This will have the effect of deterrence on the part of government officials and employees who are minded to commit corrupt acts.

Only with this environment will the government regain the trust and confidence of its people. Only then shall we enjoy the fruits of a truly just society.

## **APPENDIX**

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### ***COMMEMORATIVE PHOTOGRAPHS***

- *130th International Training Course*
  - *Seventh Special Training Course on Corruption Control in Criminal Justice*
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# The 130th International Training Course



**Left to Right:**

**Above:**

Ms. Yangco (Philippines), Dr. Butchart (WHO), Prof. Noguchi, Prof. Uryu

**4th Row:**

Mr. Saito (Staff), Mr. Tanuma (Staff), Mr. Inoue (Staff), Mr. Yamagami (Chef), Ms. Yanagisawa (Staff), Ms. Matsuoka (Staff), Ms. Tanaka (Staff)

**3rd Row:**

Mr. Tada (Staff), Mr. Tatsuda (Staff), Mr. Kasai (Japan), Mr. Nagai (Japan), Mr. Suzuki (Japan), Mr. Miura (Japan), Mr. Flor (Philippines), Mr. Bankobeza (Tanzania), Mr. Ifo (Samoa), Mr. Sugimoto (Japan), Mr. Hatakeyama (Japan), Ms. Minemura (JICA), Ms. Inamasu (Staff)

**2nd Row:**

Mr. Yokoyama (Japan), Mr. Aoki (Japan), Mr. Lee (Korea), Mr. Aung (Myanmar), Mr. Kan (Hong Kong), Mr. Abo Helw (Egypt), Ms. Binti HJ Jonit (Malaysia), Ms. Putrie (Indonesia), Mr. Thong (Cambodia), Mr. Sarath (Sri Lanka), Mr. Caginidaveta (Fiji), Ms. Muronda (Zimbabwe), Ms. Nabwana (Kenya), Ms. Takashima (Japan), Ms. Turcios (El Salvador), Ms. Ishikawa (Staff), Mr. Khan (Pakistan)

**1st Row:**

Mr. Iida (Staff), Prof. Sakata, Prof. Uchida, Prof. Sugiyama, Prof. Ikeda, Prof. Sato, Dr. Stefanakis (Canada), Director Sakai, Ms. Deol (India), Deputy Director Senta, Prof. Yokochi, Prof. Higuchi, Prof. Shinkai, Prof. Noge, Mr. Ebara (Staff), Mr. Cornell (L.A.)

# Seventh Special Training Course on Corruption Control in Criminal Justice



**Left to Right:**

**Above:**

Mr. Pritchard (Australia), Prof. Someda, Prof. Yokochi, Prof. Shinkai, Prof. Uchida

**4th Row:**

Mr. Koyama (Staff), Mr. Sano (Staff), Ms. Aruga (Staff), Ms. Yamashita (Staff), Ms. Yanagisawa (Staff)

**3rd Row:**

Mr. Saito (Chef), Mr. Tatsuda (Staff), Mr. Yamagami (Staff), Mr. Tada (Staff), Mr. Miyake (Staff), Mr. Miyakawa (Staff), Ms. Rosero (Ecuador), Ms. Morales Romero (Honduras), Ms. Palacios (Guatemala), Mr. Norintha (Laos), Ms. Nakamura (JICA), Ms. Miyagawa (Staff), Ms. Ishikawa (Staff)

**2nd Row:**

Mr. Tomita (Japan), Mr. Saito (Japan), Mr. Limkulpong (Thailand), Mr. Tashiro (Japan), Mr. Saeni (Solomon Islands), Mr. Olaguer (Philippines), Mr. Aryal (Nepal), Mr. Rana (Pakistan), Mr. Chua-Intra (Thailand), Mr. Randrianasolo (Madagascar), Mr. Rupchev (Bulgaria), Mr. Dreimanis (Latvia)

**1st Row:**

Mr. Iida (Staff), Prof. Sato, Prof. Noguchi, Deputy Director Akane, Director Sakai, Mr. Kwok (Hong Kong), Prof. Senta, Prof. Sakata, Mr. Edura (Staff), Mr. Cornell (L.A.)