

MEMORANDUM (REVISED)

REVIEW & PROPOSALS FOR AMENDMENTS

THE DOMESTIC VIOLENCE ACT 1994

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Introduction

The Domestic Violence Act (DVA), enacted in 1994, is widely recognized as an important measure in the broader goal to end domestic violence in Malaysia. In addition to acknowledging domestic violence as a public concern, the DVA aims to provide greater legal protection to domestic violence victims.

The utility of the DVA necessarily depends on effective implementation. As an organization dedicated to the eradication of domestic violence, the Women's Crisis Centre (WCC) in Penang has been closely monitoring the execution of the DVA since its implementation in 1996. Borne from the WCC's experiences, this memorandum identifies various implementation concerns and makes recommendations to improve the situation. The WCC hopes to stimulate an ongoing discussion about the needs of domestic violence victims and how the DVA can be best used to meet those needs.

The WCC makes the following recommendations, all of which will be further elaborated below:

1. Clarify the duties of public officers
2. Ensure efforts at reconciliation are initiated by victims and do not undermine their safety
3. Recognize lawyer's right of appearance at court
4. Recognize victim's ability to appear in court on her own behalf
5. Broaden the definition of domestic violence under the DVA
6. Broaden the availability of protection under the DVA to offences other than the Penal Code offences
7. Eliminate the requirement of obtaining an Order to Investigate for non-seizable offences before obtaining an Interim Protection Order
8. Allow the "pendency of investigations" requirement to be fulfilled by Magistrate's direction to investigate a crime under the Criminal Procedural Code
9. Expedite the issuance of the Interim Protection Order
10. Expedite service of Interim Protection Order on aggressors and inform victims when service is effected
11. Completion of investigations
12. Increase access to warrant of arrest power
13. Introduce presumption in favour of exclusive possession for protected persons
14. Increase access to exclusive possession for protected persons
15. Eliminate "suitable alternative residence" of victim as a ground for revoking an exclusive possession order
16. Confer right of occupation to victim who has been granted an exclusive possession order
17. Ensure that counselling adopts a stand that denounces domestic violence
18. Establish an appropriate counselling body with well trained counsellors
19. Ensure that informants shall not incur liability for making notification of an occurrence of domestic violence
20. Ensure that public officers are protected from prosecution for execution of their duties under the DVA

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II. Preliminary Observations

A. Domestic Violence and Abuse of Women

In its breadth, the DVA extends protection to any member of a family who is subject to domestic violence. The WCC is pleased that the law reflects the reality that no one is immune from domestic violence and thus offers protection to a wide range of people. At the same time, it is also important to recognize the reality that the most prevalent form of domestic violence is the abuse of a woman by her partner (or ex-partner). For this reason, the WCC's concerns pertain primarily to abused women and many of the recommendations in this memorandum revolve around abuse of women. Nevertheless, it is important to recognize that similar problems of dominance and control occur in all relationships where power inequalities result in domestic violence.

B. Aims of the Domestic Violence Act

The primary aim of the DVA is to assist victims of domestic violence with a view to ensuring their safety from future abuse. This goal provides a basic guide to interpretation of the Act. The provisions and procedures under the Act should therefore be interpreted expansively in accordance with its legislative purposes.

C. The Nature of Domestic Violence

In order to employ the DVA effectively, it is crucial to understand the distinct character of domestic violence as opposed to other types of violent crime. Domestic violence is characterized by at least five features:

- it is perpetrated by someone close to the victim, usually her partner or ex-partner;
- it happens in intimate settings which are presumed by society to be sites of support and care;
- it is a recurring form of abuse generally characterized by a cycle of violence in which the abuse is followed by a period of respite after which tensions build up again and eventually explode into another violent episode;
- the abuser uses domestic violence to control and coerce the victim; and
- the abuse has profound emotional and psychological effects on the victim, who often believes (and is often told by the abuser) that she is to blame for the violence.

Another distinctive aspect of domestic violence is that women who seek outside help to end the domestic violence usually do not come at the first instance of abuse. Often they have endured sustained abuse for years, and have reached a point where the violence has escalated or become intolerable.

It must therefore be recognized that any attempt to obtain external assistance may place the victim in grave danger of extremely violent repercussions. An abuser may become even more

irate at any independent action by the victim. Many women have been savagely beaten upon attempting to leave the abusive situation.

D. State Responsibilities Regarding Domestic Violence

For the above reasons, the point of contact with outside authorities is an absolutely critical period. State bodies bear a heavy responsibility to respond to the needs of the domestic violence victim quickly and effectively. This responsibility is heightened by the fact that the woman may have come forward for assistance based on the reasonable expectation that the DVA entitles her to legal protection.

III. Implementation Issues Under the DVA

1. Clarify duties of public officers (Sections 19(1) and 19(2))

Recommendation: clarify the responsibilities of public officers attending to domestic violence victims to encourage the adoption of a pro-active stance against domestic violence. Require medical and police officers need to be trained and sensitized with respect to domestic violence issues and to make speedy referrals to victims who require further assistance. Police actions should be interpreted in light of the purposes of the DVA, thus guided by the principle that their primary responsibility is to assist and protect victims of domestic violence.

A victim of domestic violence seeking help for the first time has various needs. At this stage she is extremely vulnerable and needs to feel safe. The victim needs to be assured that she is not to blame for the abuse. She also needs to speak to a caring person who can advise what options are available to her. She may need a safe place to stay or accompaniment to her home to safely collect personal belongings.

Medical Officers: The victim's first contact with outside authorities is often the hospital. Unlike the case of abused children under the Child Protection Act, there is no requirement that medical officers report suspected incidence of domestic violence. Be that as it may, medical officers at hospitals need to have thorough training on the detection of and sensitivity to domestic violence. They must be able to properly advise abused women of their options, and should have contact information for the police, welfare and other social service agencies readily available for referrals.

Medical Social Workers: Medical social workers who are attached to most major hospitals also play a crucial role in counselling and assisting victims of domestic violence. To this extent, the WCC recommends that such medical social workers be similarly recognized and be empowered under the act as "enforcement officers" (see below) in order that the victim may be spared the trauma of again relating her experiences to another social worker (from the Ministry of Social Welfare).

Police Officers: Recognizing that the police are also often the first point of contact, the DVA imposes duties on police officers to assist victims of domestic violence. The DVA defines police officers, together with welfare officers, as enforcement officers, whose duties are outlined in Section 19. These duties include:

- explaining the victim's right to protection against domestic violence;
- assisting her to file a complaint ;
- providing or arranging transportation to the nearest hospital for treatment;
- providing or arranging transportation to an alternative residence or safe shelter; and
- accompanying the victim to collect personal belongings.

From the WCC's experience, there is some confusion with respect to the nature and extent of police duties to domestic violence victims. The effectiveness of the DVA depends upon an interpretation of the duties that will provide victims with comprehensive assistance. For example, a police officer who accompanies a victim to her home in order to collect her belongings must also be prepared to compel an uncooperative aggressor to give the victim free access into the home. Failure to demonstrate such assertiveness means that the victim may not only be denied her belongings, but also exposes her to further intimidation by the abuser. Similarly, a police officer who witnesses a breach of an Interim Protection Order (IPO) or a Protection Order (PO) should intervene at the time of the violation, rather than withholding assistance until the woman files another complaint at the police station.

2. Ensure efforts at reconciliation are initiated by victims and do not undermine their safety (Section 11)

Recommendation: Reconciliation attempts should only be undertaken upon the request of the victim and only after an IPO has been obtained to ensure her safety.

Although abused women want domestic violence to stop, not all victims seek a permanent separation from the abuser. The desire to sustain the relationship may be based on financial needs, children's needs, emotional attachment or social pressures. In light of this reality, the WCC supports reconciliation attempts under the DVA provided that they are initiated by the victim and there is assurance that she will be protected from further violence. In order to engage in the efforts at reconciliation as an equal and valued participant, the woman must be confident that she is no longer vulnerable to domestic violence.

For this reason, an IPO must be obtained before reconciliation begins. The current policy of permitting reconciliation to ensue before an IPO has been obtained is highly problematic because it appears to prioritize reconciliation above protection. This inclination to pursue reconciliation efforts in a climate of fear of further abuse thwarts the goals of the DVA. Such a policy does not offer effective protection to domestic violence victims and offers little hope that reconciliation attempts will result in an improved family situation for the victim.

3. Recognise lawyer's right of appearance at court (Section 12)

Recommendation: the DVA should be interpreted to assume that victims enjoy the benefit of legal representation in all matters pertaining to domestic violence cases unless such benefit has been specifically withdrawn. Alternatively, amend the DVA to affirm the right of domestic violence victims to legal representation.

Previously, a woman seeking protection from an abuser could only apply for a restraining order upon filing (or undertaking to file) for divorce under the Law Reform (Marriage and Divorce) Act 1976 or the respective State Islamic Family Law Enactments. This technical process often denied access to abused women because it was expensive, required lawyers, and could only be instituted at the High Court.

The WCC is therefore pleased that the DVA attempts to make the process of obtaining protection more accessible than it has been in the past. The DVA permits enforcement officers to appear in court with women seeking protection. This step facilitates the process for victims, who might otherwise be unfamiliar with court settings.

Unfortunately, implementation of the DVA has curtailed legislative intent to improve access to protection. In some cases, Magistrates have questioned the right of women to be represented by lawyers when applying for an IPO (some women may have private lawyers relating to divorce proceedings or may have legal assistance from the Legal Aid Bureau). There appears to be no

valid rationale for such a restrictive reading of the DVA. There is nothing in the Act that withdraws the victim's right to legal representation. In fact, the DVA specifies that enforcement officers are to "assist" women in filing a complaint, not "represent" them. Moreover, this restrictive reading runs counter to the legislative provisions that are specifically geared to improve access to protection orders by the court.

The easiest way to remedy this situation would be to adopt a broad interpretation of the DVA without inserting unnecessary restrictions. In the alternative, the Act should be amended to openly state that domestic violence victims always have a right to legal representation.

4. Recognize victim's ability to appear in court on her own behalf (Section 12)

Recommendation: the DVA should be interpreted to assume that domestic violence victims are able to go directly to the court to seek protection orders on their own behalf.

Although most women applying for protection orders have been accompanied by an enforcement officer to date, there is nothing in the DVA that prevents a victim from applying for an IPO on her own. She should therefore be able to go directly to the court and seek protection on her own behalf without the aid of enforcement officers or lawyers. This interpretation naturally flows from the general principle to read the DVA in a way that facilitates access to protection from domestic violence.

5. Broaden definition of domestic violence under DVA (Sections 2 and 3)

Recommendation: The definition of domestic violence should be broadened to encompass all forms of abuse, including mental, psychological and emotional harm which threatens a person's personal well being or safety, or causes that person to fear for, or to be apprehensive about the same.

The DVA does not make domestic violence a crime. Rather, it simply defines domestic violence to encompass physical injury, threats of physical injury, forced acts, forced confinement and damage to property. This definition, while reasonably broad, does not reach the full ambit of domestic violence. Due to the fact that domestic violence is not a separate crime, it must be captured by provisions in the Penal Code in order to fall within the DVA. For example, domestic violence under the DVA includes compelling a person to engage in any conduct, including sexual acts, from which a victim has right to abstain (Section 2).

The WCC commends the recognition that a person has a right to engage or abstain from sexual acts. Yet this provision, which seems to protect a victim from sexual activity to which she has not consented, does not protect her if the abuse does not fall under a recognized crime. Thus, a woman who is forced by her husband to watch him have sex with another woman, view pornographic material, or pose nude for home video, are all acts from which a woman has a right to abstain, yet they are not crimes under the Penal Code. A victim of domestic violence in this position is thus left without relief under the DVA.

In addition, the current definition of domestic violence omits reference to mental, psychological and emotional forms of domestic violence. In light of the centrality of abuse of power and trust to all types of domestic violence, non-physical violence may be just as debilitating as physical injury. A few of the many examples of mental harm include: threats of withdrawing financial support; threats to send the children away, constant ridicule and belittlement; the abuse of drugs such that a woman fears injury to her partner, herself or her children and the moral corruption of children. A victim in these circumstances may have a serious need for protection.

For these reasons, the definition of domestic violence in the DVA must be broadened in order to protect all victims of domestic violence and thus allow for greater access to IPOs.

6. Broaden the availability of protection under the DVA to offences other than the Penal Code offences (Section 3)

Recommendation: the DVA and other legislation, in particular the Child Protection Act 1991 and the Women and Girls Protection Act 1973, should be read harmoniously such that the fullest protection possible is provided to victims of abuse. Protection orders under the DVA should therefore be available for abuses defined in other Acts.

Although the DVA limits itself to crimes under the Penal Code, there are other Acts dealing with issues that intersect with those implicated in the DVA. The Women and Girls Protection Act for example makes it an offence for a person to force a woman into prostitution and the Child Protection Act makes it an offence to abuse or traffic in children.

In addition to physical and sexual violence, the Child Protection Act also protects children against emotional abuse, neglect and exploitation, thus acknowledging the gravity of non-physical abuse.

In order to give women and children the fullest protection possible, the DVA should be interpreted in harmony with both these legislations. Protection orders under the DVA should therefore be available to prevent further incidence of abuse as defined in the Child Protection Act and the Women and Girls Protection Act 1973.

7. Eliminate the requirement of obtaining an Order to Investigate for non-seizable offences before obtaining an Interim Protection Order [IPO] (Section 4)

Recommendation: the DVA should be amended to allow issuance of IPO other than during the pendency of investigations. In the alternative classify domestic violence as a seizable offence either under a separate provision of the Criminal Procedure Code or under the DVA.

Early conceptions of the DVA posited domestic violence as a civil offence. However, this view produced a division of powers conflict due to the Syariah courts' jurisdiction over Muslim marriages. The WCC and other advocates of the DVA supported the move to transform the DVA into a criminal statute for two main reasons. First, it would overcome the jurisdictional division. Secondly, it would emphasize the fact that domestic violence is a crime and therefore a matter of public concern.

However, this change has produced unforeseen implementation concerns. Although domestic violence is defined under the DVA, it does not constitute a separate crime. Rather, the domestic violence offence must be contained under a suitable provision of the Penal Code.

The Criminal Procedure Code distinguishes crimes under the Penal Code as seizable offences (that is, offences involving grievous bodily hurt or the use of weapons and for which investigations may automatically commence) and non-seizable offences (for which an order to investigate must be issued by the Deputy Public Prosecutor prior to the commencement of investigations). This classification however does not take into account the unique nature of domestic violence; the fact that it is almost always a recurring crime naturally exacerbates the harm to the victim.

Since most domestic violence cases are considered non-seizable, the police cannot investigate unless explicitly instructed to do so by the Deputy Public Prosecutor.

Section 4(1) of the DVA specifies that an IPO may be issued "during the pendency of investigations" into the domestic violence.

Because an IPO can only be ordered during the pendency of investigations, this classification of offences presents an obstacle to domestic violence victims. In essence, victims of non-seizable offences cannot get an IPO unless the Deputy Public Prosecutor orders investigations to commence.

There is therefore a pressing need for public prosecutors to work closely with enforcement officers to ensure that investigations are undertaken whenever appropriate. Unfortunately, Deputy Public Prosecutors, are not necessarily readily accessible to abused women in small towns throughout Malaysia.

In Penang, the WCC is happy to report that the Deputy Public Prosecutor has been most responsive to the needs of domestic violence victims and has appropriately issued orders to investigate their cases.

It is also important to note that evidence of investigation must be brought before the court. Unless the investigating officer provides proof of investigation, the IPO may be set aside.

8. Allow "pendency of investigations" requirement to be fulfilled by Magistrate's direction to investigate a crime under the Criminal Procedural Code (Section 4(1))

Recommendation: Amend the DVA to provide that its requirement that investigations be pending prior to the issuance of an IPO is fulfilled when a Magistrate takes cognizance of an offence under s. 133 of the Criminal Procedure Code and directs investigations into the crime.

Under Section 133 of the Criminal Procedure Code, the Magistrate can, on his or her own initiative, direct investigations into crimes if s/he believes such actions are warranted. A Magistrate who so takes cognizance of an offence under s. 133 can issue a summons to bring the accused person before the court.

In this way, the Magistrate's actions should be considered sufficient to fulfil the "pendency of investigations" requirement with respect to applying for an IPO.

9. Expedite the issuance of the Interim Protection Order (Section 4)

Recommendation: the IPO should be obtained within 24 hours from the commencement of investigations (either 24 hours after an order to investigate is issued or 24 hours after a complaint of a seizable offence is made).

In light of the need to protect victims as quickly as possible, original proposals on the DVA asserted that the IPO should be issued within 24 hours from the time of complaint. As it stands, the Act is silent on time limits regarding the issuance of the IPO. Consequently, the WCC is aware of domestic violence cases in which the receipt of an IPO was delayed for two weeks.

The consequences of this delay can have disastrous results for victims of domestic violence. Still vulnerable to the abuser, whose rage is often intensified due to the victim's attempt to stop the violence, the victim cannot return home and may not have a safe alternative place to stay. Many women may be forced to be on the run, possibly with her children, while waiting for an IPO.

This delay in issuing the IPO must be rectified. In failing to provide quick and effective protection to victims of domestic violence, the delay thwarts the primary purpose of the DVA. The absence

of time limits regarding the issuance of the IPO is even more glaring in light of the DVA provision that an abuser arrested for the contravention of a protection order shall be brought before the judge within 24 hours (Section 7(3)(a)).

At a minimum, victims in danger of further violence should be treated with the expedience provided to their abusers.

10. Expedite service of Interim Protection Order on aggressors and inform victims when service is effected (Section 17)

Recommendation: Amend the DVA to require that service of the IPO shall be given priority by the police. Preferably the IPO should be served on the offender within 24 hours after being delivered to the police by the Registrar. In addition, the victim should be promptly informed when service is effected.

The WCC is concerned about the omission to specify a time limit for the service of the IPO on abusers. Although Section 17 of the DVA states that the IPO must be delivered to the police by the Registrar within 24 hours of being issued, it does not delineate a similar time period during which the officer must serve the IPO. Consequently, there may be a long and volatile gap of time for service during which the victim is vulnerable to the recurrence of domestic violence. Lawyers affiliated with the WCC have had cases where service of the IPO to the offender took over two months to be effected.

In addition, there is no requirement in the DVA to inform victims whether service has been effected or not. The victim consequently does not know if or when she is protected. Worse still, she may believe she is protected when she is not.

It is therefore crucial that the victim be informed of service and this responsibility should rest with the police who are already charged with the duty to serve the IPO.

11. Completion of Investigations (Section 4)

Recommendation: the police should be required to complete investigations speedily and inform domestic violence victims immediately of any change of status in the investigations pertaining to their case.

The IPO expires when investigations end. At that point, the aggressor is charged if circumstances mandate such action. A victim who feels she still needs the protection of a court order to ensure her safety must then apply for a PO.

This transition period is an important time for the victim. She needs to know the status of her case and the IPO in order to take appropriate steps to protect herself from further domestic violence. In practice, however, there is no obligation on the police to inform the victim of the status of her case. As a result, she does not know whether the abuser is being charged or when the IPO expires.

This uncertainty leaves her vulnerable to the abuser in at least two ways: firstly, she may conduct herself in ways that expose her to danger thinking she is under the protection of an IPO when in fact she is not; and secondly, she may not be aware that she can apply for a PO and thus lose the protection of a court order to which she is entitled. It is therefore essential that the police inform the victim immediately when there is a change of status in the domestic violence case, especially if the IPO will expire.

Lastly as the entitlement of the victim to a PO is dependant on charges being preferred against the abuser, the WCC is concerned that investigations be undertaken and concluded expeditiously and a provision be incorporated into the DVA to that effect.

12. Increase access to warrant of arrest power (Section 7(1))

Recommendation: the warrant of arrest power should be incorporated into all protection orders (POs) and interim protection orders (IPOs) as a matter of course.

The DVA permits the court to append a warrant of arrest to an IPO or a PO. The purpose of the warrant of arrest power is to empower the police to immediately apprehend someone suspected of violating a court order. The purpose of this power is to protect the victim from further violence while demonstrating that defiance against the court will not be tolerated.

The WCC is pleased that the DVA recognizes the gravity of domestic violence and the need to act quickly in order to prevent ongoing abuse. However, the Act currently requires the victim to request that the warrant of arrest power be attached to the protection order. A woman who attends court without representation or assistance is not likely to know that the warrant of arrest power exists, and therefore she cannot request it.

The WCC therefore recommends that the warrant of arrest power be incorporated into all protection orders (POs) and interim protection orders (IPOs) as a matter of course. This proactive step would simplify the process of obtaining protection, ease the burden on victims, and clarify the responsibilities of police officers.

13. Introduce presumption in favour of exclusive possession for protected persons (Section 6(4)(a))

Recommendation: Amend the DVA to include a default rule that confers exclusive possession of a shared residence to a protected person unless extenuating circumstances merit alternative arrangements.

Currently, the DVA permits the issuance of exclusive possession of a shared residence only when "there is no other way to secure the personal safety of any protected person for the time being" (Section 6(4)). The rationale for this condition appears to be based on maintaining the "status quo" and not uprooting persons from their homes except as a last resort.

However, this view of the situation unjustly privileges the interests of the abuser over the needs of the victim, especially since almost all victims, by definition, have less power than their abusers. Moreover, most domestic violence cases under the DVA involve women being abused by their partners and many of these women have children, who will follow their mothers.

In the spirit of preserving the family and minimizing disruption to the children's lives, it is more appropriate to award exclusive possession to the victim than to the abuser. For this reason, the WCC advocates the introduction of a default rule that would confer exclusive possession of a shared residence to the victim unless extenuating circumstances merit alternative arrangements. A default rule to this effect would appropriately recognize the needs of victims.

The WCC emphasizes that it does not advocate the default rule as a means of punishing the abuser. Punishment for violations of the law can only be determined by the court. Rather, the WCC's position is based on the need to find pragmatic and equitable solutions during a difficult

transition period for both parties. The reality is that exclusive possession must be awarded to one party while the other seeks shelter elsewhere.

In light of power inequalities, the hardship of uprooting a victim and most likely her children, and the respective resources available to the parties, there is a more compelling case for conferring exclusive possession to the protected person than to the abuser as a matter of course. If an abuser feels that there are special reasons why the presumption in favour of victims should not apply, he can make his arguments before the court. However, an order of exclusive possession in favour of the abuser should be granted only in exceptional circumstances when it is clear that he would suffer extreme hardship in comparison to the protected person.

14. Increase access to exclusive possession for protected persons (Section 6(1)(a))

Recommendation: the court's discretion to make orders of exclusive possession to protected persons should be available at both the IPO and PO.

Unlike the warrant of arrest power, the ability of the court to order exclusive possession of a shared residence to a protected person exists only for the PO (Section 6(1)(a)). However, the need to stay at home in safety may be equally important for a victim at the IPO stage as at the PO stage. Thus the exclusive occupation order should be available at both time periods.

Consonant with the proposal that the IPO be issued within 24 hours, this proposal to make available exclusive possession immediately upon occurrence of domestic violence will serve to minimise the trauma faced by the victim and her children.

15. Eliminate "suitable alternative residence" of victim as a ground for revoking exclusive possession order

Recommendation: Eliminate section 6(4)(a) of the DVA, which states that an order for exclusive possession for the protected person is to be revoked if a suitable alternative residence is found for the protected person.

The DVA presently states that an order of exclusive possession shall be revoked if "a suitable alternative residence is found for the protected person" (Section 6(4)(a)). The DVA's definition of "alternative residence" is "the premises or accommodation which the victim is or has been compelled to seek or move into as a result of domestic violence" (Section 2). This definition is broad enough to encompass the desperate and makeshift arrangements that women and children fleeing abuse manage to find with little or no resources. Such arrangements include temporary shelter at a crisis centre, hostel or the home of a friend or relative.

The DVA allows for the anomalous result that these clearly temporary arrangements may be considered a "suitable alternative residence", thus preventing victims from continuing to live in their homes. This situation is particularly unfair given that possession of the home may be granted to an abuser even though the home may be jointly owned or leased by the abuser and the victim.

The DVA effectively awards possession to the abuser while seriously disrupting the life of the victim and perhaps the lives of her children as well. From the perspective of the victim, this result may well resemble punishment for attempting to free herself from a violent situation. This result would be an affront to the ultimate aim of the legislation: to be an instrumental part of the fight to end domestic violence.

A final note should be made with respect to a victim who has fled her home. Her flight must not be construed as evidence that she does not need to live there anymore or that she has broken up the family and must therefore pay the consequences of her actions. A victim in these circumstances leaves because she is in danger. She has taken the extreme step of fleeing because she desperately needs an alternative to the domestic violence. She is not responsible for breaking up the family; the family is already severely damaged by domestic violence. Any argument favouring exclusive possession for the abuser that is based on the notion of the victim's wrongdoing in leaving the home is founded on fundamental misconceptions of the causes and effects of domestic violence.

16. Confer right of occupation to victim who has been granted exclusive possession order (Section 4(2))

Recommendation: Reform the DVA such that a protected person's right of exclusive occupation of a shared residence is recognised as a registrable interest.

In order to ensure that a protected person who is awarded exclusive possession be able to exercise that right of occupation where the abuser is the sole registered proprietor of the home, the WCC advocates for exclusive possession rights to be recognized as a registrable interest under the National Land Code. (Such interest to possession is already recognised under English law.)

Once the right to possession becomes a registrable interest, victims may lodge a caveat against the property. Such a caveat would protect the victim's right to possession from being overtaken by the right of a bona fide purchaser who acquires the property from the abuser for good consideration without notice of the victim's rights.

Once the right to exclusive possession is recognised, this can also serve to assist a person who has been granted similar rights to possession pursuant to divorce settlements to protect their interests from a partner who attempts to dispose of the property notwithstanding the first party's interest to possession.

17. Ensure that counselling adopts a stand that denounces domestic violence (Section 11)

Recommendation: court-ordered counselling should adopt a stand that firmly denounces domestic violence. The counsellor must affirm the victim's right to live free of violence and emphasize that no one deserves to be abused.

Section 11 of the DVA permits a court to refer one or both parties to conciliatory bodies for rehabilitation therapy or psychotherapy. Such court order could be issued along with, or instead of, an IPO.

The WCC is pleased that this remedial option is available under the Act. However, the option must be exercised only under appropriate circumstances. In addition to ensuring that such counselling is only pursued with the free consent of the victim when her safety has been assured, the WCC is also concerned about the types and goals of counselling that are adopted.

Victims of domestic violence, especially women abused by their partners, must not be advised to "be patient and wait for her reward in the afterlife". Counselling of this sort is detrimental to the needs of victims and does nothing to prevent future incidence of abuse.

Rather, victims need to be assured that they are not to blame for the abuse and that no one has the right to commit domestic violence. Abusers must be made to take responsibility for their actions.

18. Establish an appropriate counselling body with well-trained counsellors (Section 11(4))

Recommendation: a counselling body that is thoroughly trained on the dynamics of domestic violence and which is able to handle the volume of cases should be established.

At the present time, it is unclear what body will be responsible for administering the counselling orders of the court. If the conciliation tribunals set up under the Law Reform (Marriage and Divorce) Act or those of the Syariah courts are being considered for the purposes of the DVA, it must first be clear that the tribunals can effectively manage the increased demand in their services and that they freely espouse the purposes of the DVA.

The proper functioning of such a counselling body will also depend upon well-trained and highly sensitized counsellors (regard to be given to the Counselling Act) who understand the complexities of domestic violence. The safety of domestic violence victims and prevention of further abuse must be at the forefront of all counselling efforts.

19. Ensure that informants who make any notification of an occurrence of domestic violence shall not incur any liability

Recommendation: informants who make any notification of an occurrence of domestic violence shall not incur any civil or criminal liability (including breach of professional etiquette)

In the move to shift society's perception of domestic violence from a private matter to a public matter (as all crimes are matters of public concern), it is important that persons who witness or are aware of incidences of domestic violence report the said violence.

The WCC believes that providing immunity for such informants (e.g. as provided under the Child Protection Act) will emphasise the importance of the role of members of the public towards ensuring that every person in that most fundamental unit of society, namely the family, is safe.

20. Ensure that public officers who act in good faith in executing their duties under the DVA are immune from prosecution

Recommendation: public officers who act in good faith should be granted immunity from prosecution.

It has come to the WCC's attention that abusers, when exposed, have in the past retaliated by threatening public officers who assist victims of domestic violence. In order that public officers may discharge their duties fearlessly and diligently, such officers should not be subjected to prosecution by abusers.

Abusers must also be made to understand that domestic violence is wrong and further public officers are merely implementing the will of society in creating violence-free homes.

IV. Conclusion

Some of the reservations that have been directed against the DVA stem from the concern that the Act would encourage the disintegration of the family unit. This conceptualization of domestic violence is fundamentally flawed. In providing protection to an abused person, the DVA is assisting someone whose family is already attacked by domestic violence. In other words, a victim who seeks the assistance of the DVA is, by definition, seeking refuge from a broken family.

In fact, the DVA is attempting to protect the family unit from further attack by domestic violence. By providing protection to a victim and her children, the DVA may well play a crucial role in preserving a family that is attempting to recover from abuse. The DVA deals with the effects of domestic violence and must not be confused as its cause.

In Malaysia, there is the concept of "keluarga bahagia", or the ideal of the happy family. It is an ideal to which we must all strive. To do so, we must understand that a happy family is a family without violence where every member is valued and safe in the home.

In addition, we must recognize that a fundamental principle of every religion and every community is to strive for harmonious relationships within the family. We all share a grave duty to protect the family as a whole as well as its individual members.

The DVA is an important instrument in the struggle to end domestic violence in Malaysia. The DVA has already had a positive impact on the lives of some women by providing them with much needed protection orders. Yet the full potential of the DVA has yet to be realized.

The recommendations outlined in this memorandum advocate reforms to the legislation and to the implementation of the Act in order to bring us closer to attaining that potential. The introduction of the DVA is a critical first step, and it is our responsibility as a society to move onward from there with a firm commitment to ending domestic violence.

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Contact Person : Zarizana Abdul Aziz