

**MEMORANDUM ON  
CRIMINAL PROCEDURE CODE  
(AMENDMENT) BILL 2004, PENAL  
CODE (AMENDMENT) ACT 2003 AND  
DOMESTIC VIOLENCE LEGISLATION**

**Comments and Recommendations on:**

- 1. Criminal Procedure Code (Amendment) Bill 2004  
and Penal Code (Amendment) Act 2003**
- 2. Domestic Violence Legislation**

**Joint Action Group Against  
Violence Against Women (JAG)**

**Comprised of:**

**Women's Centre for Change, Penang (WCC)**

**Women's Aid Organisation (WAO)**

**Women's Development Collective (WDC)**

**All Women's Action Society (AWAM)**

**Sisters in Islam (SIS)**

**Malaysian Trades Union Congress (MTUC) – Women's Section**

*November 2004*

**MEMORANDUM ON CRIMINAL PROCEDURE CODE  
(AMENDMENT) BILL 2004, PENAL CODE (AMENDMENT)  
ACT 2003 AND DOMESTIC VIOLENCE LEGISLATION**

**Joint Action Group Against Violence Against Women (JAG)**

**November 2004**

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## I. INTRODUCTION

The Joint Action Group Against Violence Against Women (JAG)<sup>1</sup> is a coalition of women's organisations that was formed in March 1985 to address issues of violence against women in the Malaysian society. Since that time, JAG's advocacy has expanded to issues of rape, Islamic family law, sexual harassment, domestic violence, and other laws and policies that discriminate against women. In all of its work, JAG applies a rights framework that stresses both gender equality and non-discrimination.

On 16 August 2004, JAG met with the Special Select Committee on the Penal Code and Criminal Procedure Code to make recommendations focusing on the amendments to the *Penal Code* related to rape. On 28 October 2004, JAG made a follow-up presentation on other issues relevant to women at the Penang public hearing.

This memorandum presents JAG's comments and recommendations on the *Criminal Procedure Code (Amendment) Bill 2004* and *Penal Code (Amendment) Act 2003* as well as on domestic violence legislation.

JAG's comments on these items include:

- With regard to the *Criminal Procedure Code (Amendment) Bill 2004* and the *Penal Code (Amendment) Act 2003*, JAG proposes recommendations on the following provisions:
  - Amend the definition of “youthful offender” and establish appropriate sentences for youthful offenders (Section 2(1) and Section 293 of the CPC (Sections 2 and 16 of the Bill))
  - Limit the definition of “terrorist act” (Section 130B of the *Penal Code* (section 5 of the Act))
  - Provide safeguards on the ancillary investigative powers of the Public Prosecutor in relation to Terrorism Offences (New Section 106C of the CPC (Section 5 of the Bill))
  - Allow evidence to be given through live video and television links in all offences where it is appropriate (New Section 272B of the CPC (Section 13 of the Bill))
  - Expand the list of offences requiring police supervision (Section 295 of the CPC (section 18 of the Bill))
  - Introduce the legislative framework for the operation of the Compensation/ Assistance Board for rape survivors (New provision)
  - Require mandatory rehabilitative therapy for sexually based offences (New provision)
- With regard to the *Domestic Violence Act 1994* (DVA), provisions in the DVA that rely on the *Penal Code* and *Criminal Procedure Code* sometimes hamper the effectiveness of the Act. JAG proposes a number of recommendations on amending the *Penal Code* and *Criminal Procedure Code* to better protect victims

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<sup>1</sup> Currently JAG consists of Women's Centre for Change (WCC) Penang, Women's Aid Organisation (WAO), Women's Development Collective (WDC), All Women's Action Society (AWAM), Sisters in Islam (SIS) and Malaysian Trades Union Congress (MTUC) – Women's Section.

of domestic violence. In addition, JAG requests a comprehensive review and reform of the *Domestic Violence Act 1994*. These recommendations are the result of JAG's monitoring the implementation of the *Domestic Violence Act* since it came into effect in 1996.

JAG applauds the Special Select Committee for taking the time and effort to meet with NGOs and the public about reform of the Penal Code and Criminal Procedure Code. JAG believes that an open and transparent process of law reform benefits the entire country. JAG especially appreciates the government's efforts to improve legislation and procedures relating to violence against women.

## II. MEMORANDUM

### A. CRIMINAL PROCEDURE CODE (AMENDMENT) BILL 2004 AND PENAL CODE (AMENDMENT) ACT 2003

#### 1. Introduction

The *Criminal Procedure Code (Amendment) Bill 2004* (the Bill) consists of a range of amendments pertaining to the scope, investigation, powers of arrest, trial procedures and sentencing powers for various offences relating predominantly to sexual violence and terrorism. Some of the amendments proposed are in furtherance of the amendments made to the *Penal Code* via the *Penal Code (Amendment) Act 2003* (the Act) which came into force on 25 December 2003 and created a new category of offences relating to terrorism.

While welcoming many of the changes that have been proposed, the Joint Action Group Against Violence Against Women (JAG) wishes to express its concern as regards the implications of some of the amendments proposed under the Bill and those passed under the Act and to propose amendments considered appropriate in the circumstances.

#### 2. Criminal Procedure Code (Amendment) Bill 2004 and Penal Code (Amendment) Act 2003: Provisions, Comments and Recommendations

##### (A) Definition of “youthful offender” and sentences for youthful offenders Section 2(1) & Section 293 of the CPC (Sections 2 and 16 of the Bill)

###### **Proposed Amendment:**

The amendments propose to raise the age of “youthful offender” from that of a child “above the age of 10 and under the age of 16 years” to one “above the age of 18 and below the age of 21” whilst at the same time retaining the sentencing provisions for youthful offenders provided under section 293 save for subsection (2) which gives the Court a discretion to impose a small fine on the parent or guardian in addition to or instead of punishing the offender. The amendments also propose to substitute all references to the *Juvenile Courts Act* in section 293 with the *Child Act 2001*.

###### **Recommendation:**

Amend the definition of “youthful offenders” to mean children between 10 and 18 so that it covers all juveniles (ie children under 18) as the sentences prescribed under section 293 are appropriate only for offenders in that age group. Offenders between the ages of 18 and 21 can be dealt with under section 294 in appropriate cases as section 294 also provides for binding over of offenders under a bond. References to the *Juvenile Courts Act* in section 293 can then be substituted with the *Child Act*.

###### **Comments:**

It is to be noted that section 293 was framed to suit the sentencing of youthful offenders as currently defined ie children who would be liable to be sentenced pursuant to the provisions of the *Juvenile Courts Act* (now *Child Act*). When this definition is amended to cover only offenders between 18 and 21 then section 293 would not be appropriate. In addition, references to the *Juvenile Courts Act* cannot be substituted with the *Child Act* as the *Child Act* only applies to offenders under 18 years of age.

**(B) Definition of “terrorist act”**

**Section 130B of the *Penal Code* (section 5 of the Act)**

**Amendment :**

Section 130B(2) –“terrorist act” means any act or threat of action within or beyond Malaysia that – *inter alia*

- (a) .....
- (i) involves prejudice to national security or public safety; where the act or threat is intended or may reasonably be regarded as being intended to
- (aa) .....
- (bb) influence or compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organisation to do or refrain from doing any act.....

**Recommendation :**

Limit the definition of “terrorist act” by deleting 130B(2)(i) and (bb)

**Comments:**

Section 130B of the *Penal Code (Amendment) Act 2003* has defined “a terrorist act” to include amongst other things, acts which involves prejudice to national security or public safety where it is intended to influence or compel the Government to do or refrain from doing any act.

This definition appears to be exceedingly broad, especially where it states that any act which involves prejudice to national security or public safety intended to influence or compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or even any international organisation to do or refrain from doing any act can be considered a terrorist act. Such a definition is too wide and may be liable to abuse as the test to be applied of what involves prejudice to national security or public safety is very subjective and even an innocent act can be considered as being prejudicial to national security or public safety. Furthermore, a wide range of actions (eg the work of NGOs) involve work that is intended to influence or compel the Government to do or refrain from doing any act. Such a wide definition for what constitutes a terrorist act detracts from the main concern of the legislation, that is, to act against terrorism to protect national security.

**(C) Ancillary Investigative Powers in relation to Terrorism Offences – Public**

**Prosecutor given the power to intercept communications and admissibility of intercepted communications**  
**New Section 106C (Section 5 of the Bill)**

**Proposed Amendment:**

The Bill proposes to empower the Public Prosecutor to authorize a police officer to intercept certain communications if the Public Prosecutor considers that the communications are likely to contain information relating to the commission of a terrorism offence. The information so obtained, whether before or after the person concerned is charged, will be admissible at his trial in evidence.

**Recommendation:**

We recommend that the provision be amended so that this power be given to the Court to authorise interception on the application of the Public Prosecutor if he had reasonable grounds for believing that the communication will contain information relating to the commission of a terrorist offence and not otherwise.

There should be sufficient safeguards incorporated so that this power cannot be exercised arbitrarily against just any person. The Court should also be given the power to decide whether evidence thereby acquired may be admissible in evidence at the trial of the accused concerned.

**Comments:**

Like other powers by the Court to issue warrants, this power should similarly be given to the Court and not the Public Prosecutor. Furthermore, the power that is proposed to be given to the Public Prosecutor appears to be far too wide since it can be exercised so long as the Public Prosecutor “*considers that it is likely to contain information relating to the commission...*”. Such a power may be liable to abuse as the powers of a Public Prosecutor are generally exercisable by Deputy Public Prosecutors throughout the country unless otherwise expressly stated and there is no burden upon the Public Prosecutor to show that he had reasonable grounds for believing that the communication will contain information relating to the commission of a terrorism offence. It may also be used to infringe upon the privacy of any individual regardless of whether or not he is suspected of being involved in a terrorist offence as the provision does not limit the exercise of the said power only to communications pertaining to a person suspected of being involved in a terrorist offence. The power given also means that the Public Prosecutor can acquire and use the evidence acquired without the knowledge of the accused after he is charged.

**(D) Evidence through live video and television links allowed**  
**New Section 272B (Section 13 of the Bill)**

**Proposed Amendment:**

Subsection 1 of section 272B bill now proposes to introduce a new section into the act to enable a witness, other than the accused, with leave of the court, to give video or live evidence through a live video or live television link in any trial or inquiry if it is expedient and in the interest of justice.

Section 272B(2) then goes on to list specific offences in the Penal Code to which the court can apply this provision, including offences of rape, outrages on decency and inciting a child to an act of gross indecency.

**Recommendation:**

Amend section 272B(2)(c) to read “such other offences as the Court may in its discretion deem appropriate”

**Comments:**

While the introduction of the ability to give evidence through live video and television links is clearly a step in the right direction, we recommend that the Court be given the discretion to allow the giving of evidence through live video or live television link in appropriate cases.

The above proposal is in view of the fact that apart from the offences specifically mentioned, there are other offences under the Penal Code and Child Act where such a method of giving evidence may be appropriate and it would be too cumbersome if the power to determine for which offences such testimony should be allowed is vested in the Minister instead of the Courts. For instance, it may be appropriate to give evidence in cases of trafficking of children for prostitution (section 372 and 373 of Penal Code) via this method. The Court would be the best judge of when this would be the appropriate mode of giving evidence. However, these provisions have not been mentioned in section 272B.

Rather than having to list every offence where giving evidence through live video and television links may be appropriate, we recommend that the Court be given discretion to allow such a form of evidence.

**(E) Offences requiring police supervision  
Section 295 (section 18 of the Bill)**

**Proposed Amendment:**

The Bill has been amended to require the Court to direct an offender convicted for the sexual offences mentioned (sections 376, 377C & 377E) to undergo police supervision after the expiration of the sentence.

**Recommendation:**

Widen the range of offences that require police supervision after expiration of sentence

**Comments:**

We recommend that the range of offences where the offender is required to undergo police supervision upon expiration of the sentence be widened to include other offences such as offences involving the trafficking of women and offences under the *Child Act* as there is a greater likelihood of such offences being repeated elsewhere by the same offender.

**(F) Legislative framework for the operation of the Compensation/ Assistance Board for rape survivors**

**Proposed Amendment:**

None

**Recommendation:**

Introduce the legislative framework for the operation of the Compensation/ Assistance Board for rape survivors

We propose that the structure of the scheme ensure that the following aspects be clearly spelt out:

1. Administration of the scheme – outline the powers of the claims officers to assess applications and to decide on awards;
2. Eligibility to apply for compensation – set out the main types of injuries for which compensation will be available – in particular offences where sexual violence is present. This should include mental as well as physical injuries;
3. Eligibility to receive compensation – set out the circumstances in which the Board may refuse or reduce an award. This should include the applicant’s level of co-operation with the police, whether there is danger of the offender benefiting unfairly from the award;
4. Consideration of applicants – set out how and when the applicant must apply for compensation and how claims officers must decide the application. Importantly, set out the time limit for making and processing of applications and the standard of proof required;
5. Types and limits of compensation – set out the different types of compensation, that is, compensation for injuries suffered, loss of earning capacity and any other special costs that have to be endured by the survivor. Also set out the maximum and minimum monetary compensation available under the scheme;
6. Standard amount for compensation – set out the formula for working out awards for injuries under the tariff. The tariff should list injury descriptions and the levels that the Board can award for each of them;
7. Compensation for loss of earning – set out the conditions under which the applicant can claim for lost earnings or the ability to earn.
8. Compensation for special expenses – set out the conditions under which the applicant can claim for special expenses due to the criminal injury;
9. Compensation in fatal cases – set out the conditions under which compensation may be applied for and paid when the victim of a crime has died after a criminal injury that is covered by the scheme;
10. Effect of award on other payments – whether other relevant payments that the applicant may be entitled to or court awarded compensation will be taken into consideration when considering the award required for loss of earnings or care costs;
11. Determination of applications and payment of awards – set out the rules about deciding and notification regarding applications and method of paying awards;
12. Reconsideration, review and rehearing of cases;
13. Tariff of injuries – Listing of injuries and its associated tariff that in turn relates to a compensation level.

**Comments:**

There have been reports that the government has indicated support for the proposal made by the Anti-Rape Task Force in the Memorandum on Laws related to Rape that a Compensation/Assistance Board to offer financial compensation to the injuries suffered by victims of sexual violence be set up. However there is no legislative framework for the operation of such a Board as yet.

**(G) Mandatory therapy for sexually based offences**

**Proposed Amendment:**

None

**Recommendation:**

We recommend that in addition to requiring offenders to undergo police supervision, mandatory rehabilitative therapy be prescribed within the legislation for sexual offenders.

**Comments:**

Counselling, therapy and treatment have been shown to be effective ways of stopping sexual offenders from re-offending.

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## **B. DOMESTIC VIOLENCE LEGISLATION**

### **1. Introduction**

Domestic violence is one of the most serious crimes in Malaysia because of its pervasiveness in Malaysian society (an estimated 39 percent of Malaysian women have been abused by their partners) and the insidiousness and invisibility of its nature (the crime most often takes place in the intimate, “safe” space of a home).

The *Domestic Violence Act 1994* (DVA) is closely tied to provisions in the *Penal Code* and the *Criminal Procedure Code* (CPC). Section 3 of the DVA requires that the Act be read together with the provisions of the *Penal Code*. While the DVA sets out its own procedures for obtaining Interim Protection Orders (IPOs) and Protection Orders (POs), all of the procedures relating to police reports, appearing before courts, and arrests of offenders implicitly work together with provisions in the CPC.

JAG recognizes that several of the obstacles faced by domestic violence victims in obtaining protection from offenders derive from confusion over this interaction between the DVA and the *Penal Code* and *CPC*. This memo serves to present recommendations on how to clarify provisions in the *Penal Code* and *CPC* to better protect the victims of domestic violence. It also mentions a number of provisions in the DVA that should be reformed to clarify and strengthen the ways in which domestic violence is addressed.

### **2. Proposed Amendments to *Domestic Violence Act* and / or *Penal Code***

**(A) Broaden the definition of domestic violence under the *Domestic Violence Act* (Section 2)**

**(B) Provide domestic violence as a separate offence under the *Domestic Violence Act (DVA)* or the *Penal Code* with weighted punishments for varying levels of physical, psychological, emotional, or sexual violence**

#### **Proposed Amendments to *DVA* section 2:**

Whoever commits domestic violence, that is,

- (a) wilfully or knowingly placing or attempting to place the victim in fear of physical injury;
- (b) causing physical, *psychological or emotional* injury to the victim by such act which is known or ought to have known would result in physical *psychological or emotional* injury;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise ~~from which the victim has a right to abstain~~;
- (d) confining or detaining the victim against the victim’s will;
- (e) causing mischief or destruction of damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim;
- (f) *stalking or intimidating the victim by threats, persistent communications, persistent ridicule or belittlement or other forms of emotional or psychological abuse*;

***(g) giving, sending, transmitting or publishing offensive materials to the victim or in such a way that the offensive material will be found by or brought to the attention of the victim;***

***and the act is directed against –***

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

***shall be punished with imprisonment for a term which may extend to 7 years or with fine or with both.***

**Comments:**

The above provision is based on the definition of domestic violence as stipulated in Section 2 of the *Domestic Violence Act 1994* (DVA). A central aspect of the dynamics of domestic violence is psychological and emotional abuse, alone or accompanying cycles of violence and intimidation. Even when there is no physical abuse, victims can be subject to stalking, repeated phone calls, threats of withdrawing financial support, threats of harming or taking children away, ridicule or social isolationism. By broadening the definition of domestic violence, these forms of abuse can be addressed.

Section 3 of the DVA provides for the DVA to be read together with the *Penal Code*, but does not introduce domestic violence as a separate, individual offence in the *Penal Code*. This means that the charges under the *Penal Code* are treated like average offences, rather than reflecting the serious and persistent nature of domestic violence.

Because domestic violence is a unique type of crime, typified by repeated and habitual violence and intimidation used in an intimate setting, it cannot be adequately addressed by existing *Penal Code* measures, which are drafted to address individual acts of violence or intimidation rather than repetitive acts. Simply charging an offender with one, two, or even five individual counts of “voluntarily causing hurt” does not do justice to months or years of repetitive acts of physical, verbal, sexual, emotional, and psychological abuse a victim may have experienced. By including a separate offence called “Domestic Violence”, the seriousness of repetitive and intimate violence can be addressed. The offence should also be made seizable.

Failure to provide for domestic violence as a separate offence either in the DVA or the *Penal Code* would necessitate amendments to several sections of the *Penal Code*, such as Sections 503, 506 and 509, to provide for domestic violence and the punishments in relation thereto.

### **3. Proposed Amendments to Criminal Procedure Code**

#### **(A) Section 23 – Arrest without warrant**

### **Existing Provision**

Section 23 stipulates the circumstances under which a police officer or penghulu may arrest a person without a warrant.

### **Recommendations**

To add new subsection 23(1)(l) as follows:-

23 (1) Any police officer or penghulu may without an order from the Magistrate and without a warrant of arrest –

(a) any person who has been concerned with any offence in Malaysia which is a seizable offence ...

***(l) any person against whom an IPO has been issued under the Domestic Violence Act 1994 (DVA) who has contravened that IPO or PO as specified in section 7(2).***

### **Comments**

The existing Section 7 of DVA does not protect the victims from further violence. Adding a new subsection 23(1)(l) will provide a mandate to police officers to address contravention of the IPO or PO immediately. This will better protect victims of domestic violence from repetitive and persistent attacks.

## **(B) Section 108 – Special Powers only in Seizable Offences**

### **Existing Provision**

Section 108(2) No police officer shall in a non-seizable case exercise any of the special powers in relation to police investigations given by this Chapter without the order of the Public Prosecutor

### **Recommendations**

To amend add Subsection (2) to section 108 as follows:-

Section 108(2) No police officer shall in a non-seizable case ***except in cases involving domestic violence*** exercise any of the special powers in relation to police investigations given by this Chapter without the order of the Public Prosecutor.

### **Comments**

Domestic violence should be deemed a seizable offence so that victims do not need to wait for a Public Prosecutor to issue an Order to Investigate before they can file for an Interim Protection Order or a Protection Order and so that the police can commence investigation without an order to investigate from the Public Prosecutor.

Section 108 of the CPC should be amended to allow domestic violence cases to proceed immediately without waiting for an Order to Investigate (OTI) from the Public Prosecutor, so that Interim Protection Orders (IPOs) and Protection Orders (POs) can be obtained as quickly as possible. Many domestic violence cases are considered non-seizable offences, thus require an OTI issued by a Deputy Public Prosecutor to commence the investigation. This thwarts the aim of protecting

victims of domestic violence because the process for obtaining an IPO can be and often is significantly delayed.

#### **4. Proposed Amendments to the Domestic Violence Act**

##### **(A) Section 4 - Interim Protection Order & Section 5 - Protection Order**

###### **Existing Provision**

Application procedures for Interim Protection Order or Protection Order

###### **Recommendation**

Simplify and stipulate clearly procedures for applications and issuance of Interim Protection Orders (IPOs) and Protection Orders (POs).

###### **Comments**

The procedures for applying for and issuing IPOs and POs should be simplified, and either the DVA or its related regulations should carefully enumerate these simplified procedures. Otherwise, police officers, welfare officers, and the courts will establish their own individual procedures that vary from district to district and court to court. For example, some magistrates require the victim to return to court every 2 months for the magistrates to review the case as there is presently no requirement for the police to inform the courts of the status of investigations.

The requirement that investigations must be ongoing in order for the victim to apply for IPOs combined with the CPC requirement that non-seizable offences require an Order to Investigate (OTI) from the public prosecutor means that many victims have to wait for police to obtain an OTI to open investigations in order to apply for the IPOs. This process delays the issuance of the IPOs.

##### **(B) Section 6 - Types of Orders to be included in Protection Order**

###### **Existing Provision**

Section 6 – Provides for types of orders that may be included in Protection Order such as right of exclusive possession, restraining the aggressor from entering the victim's residence, ordering the aggressor from communicating with the victim and allowing victim continued use of vehicle

###### **Recommendations**

1. Require judges to specifically ask all victims whether orders (a) through (f) need be included in the IPO or PO
2. Expand the availability of the special orders (a) through (f) to Interim Protection Order

###### **Comments**

It is unclear whether the victim must request the inclusion of the orders specified in Section 6 to the PO or whether the court automatically considers adding them. These special orders should also be made available for IPOs and not only POs.

Victims who are traumatised by domestic violence might not know or think to ask for these special provisions when they come before the court. The DVA should require judges to specifically question victims on whether the victims require the special orders to be included so that the judge can determine whether to include such orders in the IPO or PO.

### **(C) Section 7 - Powers of Arrest to be attached to every IPOs and POs**

#### **Existing Provision**

(1) Where the court is satisfied that the person against whom a protection order .... is made is likely to cause physical injury to the protected person..., the court may attach a power of arrest to such protection order or interim protection order, as the case may be.

#### **Recommendation**

To amend as follows: *(1) The court shall attach a power of arrest to every protection order or interim protection order, as the case may be.*

#### **Comments**

Currently, powers of arrest may be attached to IPOs and POs if the court finds there is a likelihood that the protected person will suffer an actual physical injury at the hands of the person against whom the IPO is drawn. This allows for inconsistent attachment of powers of arrest depending on whether the victim requests it, whether the judge independently considers attaching powers of arrest and is satisfied of the potential for physical violence, and the amount of evidence the victim can and must provide about potential violence. As mentioned above, victims also do not always know to ask for powers of arrest to be attached or to provide evidence regarding likely physical injury. Furthermore, powers of arrest are only to be attached based on the likelihood of *actual physical* injury, which does not include trespass, harassment, retaliation, etc. This means that if a defendant is likely to violate the protection order in ways other than actual physical violence, the victim is not protected through the IPO with powers of arrest. It also means that victims are not protected from defendants who do not seem likely to cause physical injury but actually do commit such violence. Powers of arrest should be automatically attached to all IPOs and POs.

### **(D) Section 16 - Record of Complaints**

#### **Existing Provision**

Section 16 – Record of Complaints

#### **Recommendations**

Expand record-keeping requirements to include mandatory analysis of complaints, Interim Protection Orders (IPOs), and Protection Orders (POs), and making records and analysis accessible to the public

### **Comments**

In addition to requiring courts to maintain a registry of records, the Act should require an administrative agency or independent NGO to compile and analyse national statistics on domestic violence. All records and analysis should be accessible to the public. Additionally, reporting procedures should be standardized so that all police districts and all States maintain uniform practices.

## **(E) Section 17 – Proof of service of Protection Order**

### **Existing Provision:**

Section 17 – Proof of service of Protection Order to be filed with court within 7 days

### **Recommendations:**

Require service of Protection Order or Interim Protection Order on offender within 72 hours. Require police to notify complainant and Registrar of service of order within 72 hours after service.

### **Comments:**

The current Act has no requirement for informing the complainant whether the offender has been served. This results in already vulnerable complainants believing they are already protected before the offender has been served or fearing that they are not protected because they do not know whether service took place. The amendments to the Act should require that the police officer serve the IPO or PO on the offender within 72 hours from receipt of the order from the court, then provide proof of that service to the complainant and the Registrar within 72 hours of service.

## **(F) Section 19 - Duties of Enforcement Officers**

### **Existing Provision:**

Section 19(1) The duties of an enforcement officer shall include –  
(a) assisting a victim of domestic violence to file a complaint ...  
(b) providing or arranging transportation ...

### **Recommendations:**

Expand duties of enforcement officers to include: *“19(1)(f) informing the victim of the status of the investigation, status (including service) of the Interim Protection Order (IPO) or Protection Order (PO), and, if applicable, rights with regard to securing further protection against domestic violence”*.

### **Comments:**

Victims of domestic violence are vulnerable, especially after they report the abuse and file for IPOs and POs. Victims are made all the more vulnerable when they lack basic information about their cases. For instance, victims are not protected by an IPO until the IPO is served on the offender. Without knowing whether the IPO has been served, a victim does not know whether she is free to return to a daily routine. When the investigation ends, the IPO expires. Without knowing whether

the investigation is concluded, a victim will not know whether she is still safe from violence. Upon the commencement of the criminal proceedings the victim must apply for a Protection Order to retain protection.

**(G) To add provision for victims to represent themselves in Court**

**No Existing Provision**

**Recommendations**

Add a new section that explicitly affirms the right of victims to appear in court on their own behalf and the right of a lawyer to appear in court on behalf of a victim as follows, “*Nothing in this Act shall be interpreted to limit a victim’s right to appear in court on her own behalf or limit a lawyer’s right to appear in court on behalf of a victim-client*”.

**Comments**

Although nothing in the statute restricts victims from appearing in court on their own behalf, unaccompanied by welfare or enforcement officers, nor restricts a lawyer’s right to represent a victim in court, inconsistent implementation of the Act has left victims and lawyers unclear as to their rights of appearance.

**4. Conclusion**

While JAG acknowledges the importance of the *Domestic Violence Act* in the fight against domestic violence, it also recognises that several weaknesses in the Act that are intimately linked with the *Penal Code* and the *Criminal Procedure Code*. JAG requests the Government comprehensively review and reform the *Domestic Violence Act 1994* together with other laws that hinder its effectiveness. JAG believes that implementation of these recommendations will allow police officers, welfare officers, social workers, courts, social service providers, NGOs, and counsellors to better work together to protect victims of domestic violence.



### III. CONCLUSION

For nearly two decades, JAG has been lobbying for legal reforms on issues relating to women and children to effect gender equality and non-discrimination. This memorandum reflects on-going efforts of JAG to continue to campaign for women's rights and obligations in Malaysia.

The *Penal Code*, *Criminal Procedure Code*, and *Domestic Violence Act 1994* significantly impact the lives of Malaysian women. The recommendations and comments in this memorandum were drafted to reflect the changes in the law that would best uphold the rights of women.

JAG wishes to highlight the fact that Malaysia has been a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) since 1995. Under the Convention, Malaysia has the international obligation to implement policies and laws that eliminates discrimination against women and supports equality.

Conventionally, the courts do not consider international instruments ratified by the executive arm of the Government of Malaysia unless that instrument is tabled in Parliament and adopted through legislation as law of the nation. In the premise, it is crucial that the legal obligations of CEDAW be adopted through an act of Parliament. This adoption will ensure that the courts consider and enforce the obligations under CEDAW. It is important that the courts utilise this convention in its deliberations and decisions.

JAG hopes that Malaysia will make such a move to keep in line with international standards and uphold rights for all citizens.