

MEMORANDUM ON PROPOSED AMENDMENTS TO THE PENAL CODE AND CRIMINAL PROCEDURE CODE

Submitted by:



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INTRODUCTION

The Women's Centre for Change, Penang (WCC) welcomes the Select Committee Report which was prepared after many hours of consultation with NGOs and members of the public¹. The WCC applauds the government in adopting a consultative approach in the process of undertaking law reform to meet the challenges and dynamism of today's Malaysian society.

Whilst the Joint Action Group (JAG)² against Violence against Women (which includes the WCC) had the opportunity to make presentations to the Select Committee³, the WCC views with concern some of the proposals put forward by the Select Committee in its Report as a number of JAG's recommendations were either not adopted or were adopted in piecemeal fashion, thereby reducing the effectiveness of the proposed sections.

For instance, JAG in its earlier proposals had comprehensively dealt with pressing issues in relation to rape and other sexual offences and had proposed amendments which were adapted from the responses of other countries to the same issues. Whilst the Select Committee responded positively to JAG's recommendations, unfortunately the proposals actually put forward by the Select Committee in their Report do not adequately address the issues and may even be counter-productive.

JAG had also proposed that a separate crime of "domestic violence" be introduced because domestic violence is characterised by repetitive acts of violence over a period of time and the trauma caused by such repetitive violence must be distinguished from isolated incidents of hurt in a non-domestic situation. However, the Domestic Violence

¹ See the Laporan Jawatankuasa Pilihan Khas Dewan Rakyat Untuk Mengkaji Rang Undang-Undang Kanun Keseksaan (Pindaan) 2004 dan Rang Undang-Undang Kanun Tatacara Jenayah (Pindaan) 2004 ("the Select Committee Report").

² JAG comprises the WCC, Women's Aid Organisation (WAO), Women's Development Collective (WDC), All Women's Action Society (AWAM), Sisters in Islam (SIS) and Malaysian Union Trade Congress (MTUC) Women's Committee.

³ See JAG's Memorandum to the Special Select Committee on Penal Code (Amendment) 2004 and Criminal Procedure Code (Amendment) 2004 dated 28th October 2004 ("the 2004 Memorandum") and Memorandum to the Special Select Committee on the Penal Code and Criminal Procedure Code dated August 2005 ("the 2005 Memorandum"), respectively. The full text of these Memoranda may be accessed at WCC's website, www.wccpenang.org (under the links 'Activities' and 'Legal Reform') or more specifically at the following URL:

http://www.wccpenang.org/wcc/index.php?option=com_content&task=category§ionid=4&id=16&Itemid=101

Act does not make domestic violence a crime as such, thus leaving the police with no alternative but to charge the perpetrators of domestic violence for causing hurt under the Penal Code. The WCC is therefore deeply disappointed that the Select Committee had not considered it important enough to criminalise domestic violence.

JAG had further proposed that “stalking” be made an offence because studies in other countries demonstrate a strong link between stalking and other forms of physical violence including rape and murder. This proposal, too, was not taken up by the Select Committee.

It is the WCC’s hope that the above as well as other issues and concerns contained herein will be studied further by this august house to ensure that the amendments proposed to our criminal laws may fully address the spectrum of concerns brought about by the reality of the experiences faced by Malaysian women and men.

WCC wishes to acknowledge the input of the other members of JAG in this Memorandum.

PROPOSED AMENDMENTS TO THE PENAL CODE

I. Rape & Other Sexual Offences

A. Section 375, Penal Code Definition of “rape”

Select Committee’s recommendation

The Select Committee proposes to extend the definition of rape to include, vide a new paragraph (f), the following :-

“(f) [rape] with consent, when the consent is obtained by using his **position of authority** over her or because of **professional relationship or other relationship of trust** in relation to her;” [emphasis added]

The WCC’s comments

The WCC welcomes the Select Committee’s attempt to address the many complaints of rape by persons who abuse their positions of power or trust vis-à-vis the victims, for example cases of rape by bomohs and mediums as well as rape of persons in custody or persons residing in institutions. The consent of women in such positions should be deemed vitiated and rendered inoperative due to the imbalance of power in the relationship.

However, the WCC would like to suggest that more emphasis be placed on the element of abuse of power that is an essential ingredient of this offence.

The WCC therefore recommends that the earlier draft section proposed by JAG in the 2005 Memorandum, which reads as follows, be adopted :-

“(f) with her consent, when the accused being a public servant or a person in a position of trust, power or authority or a person with whom the complainant is in a relationship of dependency abuses such position to obtain consent.”⁴ [emphasis added]

In addition to the above, the following elements of the definition and scope of rape which were proposed in the 2004 and 2005 Memoranda have been left out and should be addressed or incorporated accordingly:-

(a) *rape with consent when the woman is incapable of understanding the nature and consequences of that to which she gives consent* [emphasis added] (e.g. mentally disabled women); and

⁴ Please note that this provision addressing rape / sexual intercourse by persons in authority is adapted from equivalent provisions in the Indian Penal Code 1860 and the Canadian Criminal Code.

- (b) *rape where the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in sexual intercourse [emphasis added].*

The following explanatory notes should also be incorporated, ie. :-

- (i) *that penetration to any extent is sufficient to constitute sexual intercourse [emphasis added];*
- (ii) *it is not a defence if the accused believed that the complainant consented, if the accused's belief arose from self-induced intoxication, recklessness or willful blindness or if the accused did not take reasonable steps to ascertain that the complainant was consenting; and*
- (iii) *it is not a defence to the charge of rape that the accused believed that the complainant is over 16 years of age if the accused did not take reasonable steps to ascertain her age.*

These proposed amendments reinforce the principle that the key element in rape is the absence of consent to sexual intercourse and that it is necessary for a man to take active steps to ascertain whether the woman consents to sexual intercourse notwithstanding her level of engagement in other forms of sexual activity. Apart from that, the amendments also seek to protect women with mental or physical disability from being taken advantage of.

B. Exception to Section 375 & Proposed new Section 375A, Penal Code
Marital rape

Select Committee's recommendation

The Select Committee does not propose that the marital rape exception be removed from Section 375.

However, the Select Committee proposes to introduce the following new offence :-

New Section 375A – Husband causing hurt in order to have sexual intercourse

“**375A.** Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.”

The WCC's comments

The WCC commends the Select Committee for their recognition of sexual violence within marriage. However, this new section is **not** a substitute for the removal of the marital rape exception to Section 375. The Select Committee's retention of the existing exemption of marital rape amounts to a failure to recognise that a husband can commit rape of his wife.

Marital rape is an extremely serious crime, prevalent throughout Western and Eastern societies. Women who experience rape in marriage suffer severe physical and psychological trauma from the abuse, which is often repeated many times. In Asia and around the world, many countries have abolished the marital rape exception, thereby providing for the possibility of prosecuting husbands who rape their wives. This has been extremely important symbolically in these countries, as it demonstrated the government and society's evolving respect for women and the need to protect women from all forms of violence. Eliminating the marital rape exception sends a clear signal that any rape – within or outside a marriage – is inherently wrong and unacceptable in a modern society.

The WCC is therefore unwavering in its opposition to the marital rape exception and we maintain our stand accordingly.

C. Section 376, Penal Code Punishment for rape

Select Committee's recommendation

The Select Committee proposes that sentences of different weight be imposed on rape in varying circumstances. The amendments proposed by the Committee include the removal of the minimum sentence of 5 years' imprisonment in cases of rape in general and the inclusion of a variety of circumstances under which heavier sentences would be imposed accordingly, including punishment with death in cases where the death of the woman is caused.⁵

The WCC's comments

The WCC is of the view that the **minimum sentence of 5 years' imprisonment ought to be retained** in cases of rape in general in order to reflect the severity of the crime. Failure to impose a minimum sentence may lead to rapists getting away with a one or two year jail term (or even less), a sentence that could in fact be lighter than the theft of a motorcycle, as was the situation prior to the introduction of the minimum rape sentence.

⁵ It is to be noted that JAG is against corporal and capital punishment in line with universal human rights principles. JAG therefore urges the government to introduce effective forms of punishment and deterrence for different crimes in the light of new evidence and good practices.

The Select Committee's basis for removing the minimum sentence is to avoid injustice towards young offenders in "suka sama suka"- type situations. If so, then ***the removal of the minimum sentence should apply only to these situations and not across the board.***

In any event, the sentencing of young offenders is dealt with under the Criminal Procedure Code (CPC) both in Sections 293 (youthful offenders) and 294 (first offenders).

The WCC lauds the inclusion of the circumstances warranting heavier sentencing as a commendable measure towards the effective (if not express) recognition of *aggravated rape* as an offence under our criminal law.

However, the following circumstances amounting to aggravated rape proposed in the 2004 and 2005 Memoranda have been omitted and ought to be included or addressed as such:-

- (a) where the offender is infected with communicable diseases such as HIV/AIDS or other STDs;
- (b) where the victim is mentally ill or physically or mentally disabled;
- (c) where the offence is committed by more than one man [i.e. gang rape]; and
- (d) where the victim is intoxicated or drugged.

With reference to the Select Committee's proposed new Section 376(2)(c) which prescribes higher penalty for rape where "the offence was committed in the company of or in the presence of any other person", it is important to note that this subsection does not cover situations of gang rape where the rape is perpetrated by a group of offenders who take turns to rape the victim separately in another room or place.

It is also important that the application of this subsection be expressly extended to cover situations where the offence is committed in the company of or in the presence of any other person ***virtually or where the commission of the offence is recorded.***

The WCC also notes that the Select Committee has not recognised ***second or subsequent rape*** as a offence warranting a heavier sentence, as was proposed in the JAG's 2005 Memorandum.

D. Section 376A, Penal Code
Incest

Select Committee's recommendation

The Select Committee does not propose any amendments to this section in its Report.

The WCC's comments

The WCC is of the view that the definition of incest under this section should include, in addition to sexual intercourse, sexual connection as defined under the proposed new Section 377CA below.

The WCC also recommends that the following be incorporated into the definition of incest:

- (a) an explanatory note stating that penetration to any extent is sufficient to constitute the sexual intercourse or sexual connection;
- (b) exceptions to the offence of incest, i.e. a person is not said to have committed incest:
 - (i) if the person has sexual intercourse or sexual connection under fear of injury or under a misconception of fact; or
 - (ii) if the person has sexual intercourse or sexual connection due to unsoundness of mind or mental incapacity, whether temporary or otherwise, or inability to understand the nature and the consequence of incest; or
 - (iii) if the person has sexual intercourse or sexual connection due to coercion, manipulation, undue influence, assertion of authority, or breach of trust exercised or committed by the other person doing the act; or
 - (iv) if a person is under sixteen years of age;
- (c) an explanatory note stating that for the purposes of this section, reference to the (prohibited degrees of) relationships under this section includes relationships corresponding to a step relationship, arising out of cohabitation in a de facto relationship or because of a foster relationship or a legal arrangement.

“Sexual connection” must be included so that the offence of incest is not confined to cases where sexual intercourse can be proven and by the same token to cover cases of incest committed by family members of the same sex.

The exceptions proposed by the WCC serve to protect victims of incest from being charged with the offence themselves when they report it and to encourage victims to come forward and report these incidents accordingly.

All situations in which consent ought to be deemed vitiated must be adequately addressed, as often there is a power imbalance between the perpetrator and the victim by nature of the familial relationship between them.

The meaning of “relationship” should be extended to include de facto familial relationships, e.g. in cases of adoption or fostering.

**E. Section 376B, Penal Code
Punishment for incest**

Select Committee’s recommendation

The Select Committee does not propose any amendments to this section in its Report.

The WCC’s comments

Whilst the WCC agrees that the existing minimum and maximum sentences of 6 to 20 years’ imprisonment are sufficient, we are of the view that it would be more appropriate to prescribe heavier minimum sentences in cases of incest committed against juveniles and for second or subsequent offences to distinguish the various degrees of offences.

It is also felt that the Court ought to be given the power to direct, in addition to any other sentence pronounced, that the offender be referred to rehabilitation treatment such as counselling.

**F. Sections 377A, 377B and 377C
Carnal intercourse against the order of nature, punishment thereof and
carnal intercourse against the order of nature without consent, etc.**

Select Committee’s recommendation

The Select Committee does not propose any amendments to these sections in its Report.

The WCC’s recommendations

The WCC recommends that these sections be deleted altogether, in the light of our recommendations on proposed new Section 377CA below.

**G. Proposed new Section 377CA, Penal Code
Sexual connection by object**

Select Committee's recommendation

The Select Committee proposes to introduce a new offence of sexual connection by object as follows:-

Sexual connection by object

“**377CA.** Any person who has sexual connection with another person by the introduction of any object into the vagina or anus of the other person without the other person’s consent shall be punished with imprisonment for a term which may extend to twenty years and shall also be liable to whipping.

Exception – This section does not extend to where the introduction of any object into the vagina or anus of any person is carried out for medical or law enforcement purposes.”

The WCC's comments

While the WCC welcomes the introduction of Section 377CA, we feel that the section should also include the following:-

- (a) the insertion of other parts of the body, e.g. fingers, into the victim’s bodily orifices, as the Select Committee has pointed out that “object” merely carries its ordinary meaning and by implication does not include other parts of the body;
- (b) the introduction of objects or parts of the body into the victim’s **mouth**;
- (c) the circumstances in which the victim’s consent is vitiated under Section 375;
- (d) a minimum sentence of 5 years’ imprisonment;
- (e) that the commission of the offence must be for sexual gratification; and
- (f) an explanatory note to the section to state that penetration to any extent is sufficient to constitute the sexual connection necessary to the offence described in this section.

II. Enticing or Taking Away or Detaining with a Criminal Intent a Married Woman

**A. Section 498, Penal Code
Enticing or taking away or detaining with a criminal intent a married woman**

Select Committee's recommendation

The Select Committee does not propose any amendments to these section in its Report.

The WCC's comments

The WCC recommends that this section be deleted altogether since it demeans women and violates their dignity. This section objectifies women and denies them the ability to decide for themselves. As much as there is no crime of enticing a married man, there should not be a crime of enticing a married woman.

III. Domestic Violence

A. Proposed new offence of domestic violence

Select Committee's recommendation

The Select Committee report is silent on the incorporation of a new offence of domestic violence and there are no recommendations by the Committee to extend the existing provisions on assault, etc. to cover cases of domestic violence.

The WCC's comments

The WCC recommends that a separate offence of domestic violence be introduced in the Penal Code.

The definition of this new offence of domestic violence under the Penal Code should not only espouse the existing definition provided under the Domestic Violence Act, it should also be extended, where relevant, to include :

- (a) causing psychological or emotional injury;
- (b) stalking or intimidating the victim by threats, persistent communications, persistent ridicule or belittlement or other forms of emotional or psychological abuse;
- (c) 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;
- (d) willfully or knowingly placing the victim in fear of physical, psychological or emotional injury;
 - (e) instances where the act is directed against the offender's spouse whether de jure or de facto, the offender's former spouse, a member of the family, a person who ordinarily shares a household with the offender and a person who has a close personal relationship with the offender (to be determined with regard to the nature and intensity of the relationship); and
 - (f) in instances where the offender compels the victim to engage in any conduct or act, the said conduct or act need not be an act from which the victim has a right to abstain (unlike in the existing Domestic Violence Act).

Domestic violence is a unique type of crime, characterised by repetitive and habitual violence and intimidation 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 which a victim may have experienced. By including a separate offence called "Domestic Violence", the seriousness of repetitive violence in an intimate setting can be addressed.

The WCC recommends punishment of imprisonment for a term which may extend to 10 years or with fine which may extend to RM5,000-00 or with both and that the offender may also be ordered to participate in an appropriate counselling programme designated by the court.

ALTERNATIVELY, if domestic violence cannot be made a separate offence as proposed above, the WCC recommends that the following existing provisions be amended to provide for heavier sentencing in domestic violence cases :

- (i) Section 323 (punishment for voluntarily causing hurt);
- (ii) Section 325 (punishment for voluntarily causing grievous hurt);
- (iii) Section 341 (punishment for wrongful restraint);
- (iv) Section 342 (punishment for wrongful confinement);
- (v) Section 350 (criminal force);
- (vi) Section 351 (assault);
- (vii) Section 426 (punishment for committing mischief); and
- (viii) Section 506 (punishment for criminal intimidation).

IV. Stalking

A. Proposed new offence of stalking

Select Committee's recommendation

The Select Committee Report makes no mention of the creation of a new offence of stalking.

The WCC's comments

The WCC proposes that a new offence of "stalking" be incorporated in the Penal Code as follows :-

The crime of stalking⁶ is committed when a person, with intent to cause another person physical or mental harm or to be apprehensive or fearful, engages in :

- (a) following the other person or anyone known to them;*
- (b) keeping the other person or anyone known to them under surveillance;*
- (c) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;*
- (d) loitering outside the residence or workplace of the other person or anyone known to them;*
- (e) loitering outside a place that the other person or anyone known to them frequents;*
- (f) entering or interfering with the property of the other person or anyone known to them;*
- (g) sending offensive material to the other person or anyone known to them or leaving offensive material where it is likely to be found by, given to or brought to the attention of the other person or anyone known to them;*
- (h) publishing or transmitting offensive material in such a way that the offensive material is likely to be found by, or brought to the attention of, the other person or anyone known to them;*
- (i) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the other person to be apprehensive or fearful;*
- (j) acting in another way that could reasonably be expected to cause the other person to be apprehensive or fearful*

It should be added that for purposes of this section, an offender is taken to have the requisite intent if at the time, he or she knew or ought to have known that the conduct

⁶ Adapted from Section 562AB of the New South Wales Crimes Act 1900, Section 192 of Tasmania's Criminal Code 1924 and Section 264 of the Canadian Criminal Code.

would or would be likely to cause the victim physical or mental harm or to be apprehensive or fearful and that the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm.

V. Terrorism

**A. Section 130B of the Penal Code (Amendment) Act 2003
Definition of “terrorist act”**

Select Committee’s recommendation

The Select Committee proposes to retain the following elements in the definition of “terrorist act”:

- (a) **Section 130B(2)(i)** : “any act or threat of action within or beyond Malaysia that involves prejudice to national security or public safety”;
- (b) **Section 130B(2)(bb)** : “where the act or threat is intended or may reasonably be regarded as being intended to influence or compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organization to do or refrain from doing any act”

In addition, the Select Committee proposes that the following condition be included in the definition of “terrorist act”:-

Section 130B(2)(b) : “the act is done or the threat is made with the intention of advancing a political, religious or ideological cause.”

At the same time, the Select Committee proposes that advocacy, protest, dissent or industrial action which is not intended to cause serious bodily injury to a person, to endanger the life of a person, to cause a person’s death, or to create a serious health risk to the health or safety of the public or a section of the public be excluded from the definition of “terrorist act”.

The WCC’s comments:

In principle, the WCC does not support the creation of the offence of terrorism in the Penal Code.

Also, notwithstanding the Select Committee’s attempt to introduce safeguards to allow for “advocacy, protest, dissent or industrial action which is not intended to cause serious bodily injury to a person, to endanger the life of a person, to cause a person’s death, or to create a serious health risk to the health or safety of the public or a section of the public”, the WCC is concerned that Section 130B is ambiguously drafted and may result in misapplication. The WCC therefore calls for a review of the drafting of the section.

PROPOSED AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

I. Youthful offenders

A. Section 2, Criminal Procedure Code **Definition of “youthful offender”**

Select Committee’s recommendation

The Select Committee proposes the following definition of “youthful offender” :-

“Youthful offender” means a person convicted of an offence punishable by fine or imprisonment who is **of or above the age of eighteen and below the age of twenty-one.** [emphasis added]

The WCC’s comments

JAG had in the 2004 and 2005 Memoranda proposed that the definition of “youthful offender”, which originally applied only to children between the ages of 10 and 16 years, be extended to include any child under the age of 18 years, and that all references to the Juvenile Courts Act be substituted with the Child Act.

The WCC therefore *disagrees* with the Select Committee’s proposed definition of “youthful offender” as we are of the view that the privileges of a child offender should not be extended to offenders above 18 years of age.

The WCC reiterates :

- (a) that the sentences prescribed under Section 293 (i.e. the punishment section for youthful offenders) are appropriate only for offenders under 18 years of age;
- (b) that offenders between the ages of 18 to 21 may be instead be dealt with under Section 294 (i.e. the punishment section for first offenders) in appropriate cases, as the said section also provides for binding over of offenders under a bond; and
- (c) that the definition of “youthful offender” under the Criminal Procedure Code should be made consistent with the definition of “child” under the Child Act 2001.

Moreover, it is clear that by requiring that all references to the Juvenile Courts Act in Section 293 be substituted with the Child Act, the intention of the proposal is that the provision is only to apply to children under 18 years of age.

Incidentally, the WCC is of the view that the sentence of community service proposed by the Select Committee as part of the amendments to Section 293 should apply to all offenders regardless of age, and not only to youthful offenders. This section would operate to ensure that those who are convicted of petty non-violent crimes should not be placed in prison with hardened criminals.

II. Arrest without warrant

**A. Section 23, Criminal Procedure Code
When police or penghulu may arrest without warrant**

Select Committee's recommendation

There are no recommendations on this section in the Select Committee Report.

The WCC's comments

The WCC, as per JAG's 2004 and 2005 Memoranda, proposes that the powers of arrest of any police officer or penghulu without an order from the Magistrate and without a warrant include the arrest of any person against whom an Interim Protection Order (IPO) has been issued under the Domestic Violence Act and who has contravened that IPO or Protection Order (PO) as specified in Section 7(2). This would allow a police officer or penghulu to arrest any person who is to be charged under the proposed domestic violence provisions.

This is because at present, the inability of the police to act on violations of IPOs without a warrant impedes effective enforcement of the Domestic Violence Act.

III. Public Prosecutor's powers in respect of terrorism offences

**A. Proposed new Section 106C, Criminal Procedure Code (Amendment) Bill 2004
Power to intercept communications and admissibility of intercepted communications**

Select Committee's recommendation

The Select Committee recommends that this section be retained as it is notwithstanding input from various parties including SUARAM, ALIRAN and JAG as it is of the view that the existing provisions are necessary to protect the public against terrorism.

The Committee further states that the Public Prosecutor's powers as contained in the existing Section 106C are justified on the grounds that immediate action must be taken for the Prosecutor to authorize the interception of communications by the police. Moreover, similar provisions are to be found in the Kidnapping Act 1961, Anti-Corruption Act 1997 and Dangerous Drugs Act 1952.

The WCC's comments

The WCC wishes to reiterate our position that there must be sufficient safeguards incorporated to prevent any arbitrary exercise of these powers and the infringement upon the privacy of any individual in the guise of preventing a terrorist offence.

The WCC therefore recommends that this provision be amended so that the power to authorise interception of communications be given to the Court 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.

IV. Police powers in non-seizable offences

**A. Section 108, Criminal Procedure Code
Procedure in non-seizable cases**

Select Committee's recommendation

There are no recommendations by the Select Committee on this section.

The WCC's comments

The WCC is of the view that 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, or before the police can commence investigations on the case.

V. Charges and trials for multiple offences

**A. Section 164, Criminal Procedure Code
Three offences of same kind within twelve months may be charged together**

Select Committee's recommendation

There are no recommendations by the Select Committee on this section.

The WCC's comments

The WCC recommends that domestic violence be made a separate crime. However, in the event that the present provisions of the Penal Code are still used in cases of domestic violence, then the WCC recommends that an exception be incorporated into this section providing for multiple offences of domestic violence to be heard together notwithstanding that they may exceed 3 offences within the period of 12 months.

The exception proposed would facilitate a more effective and efficient handling of such cases and prevent the additional trauma a victim would face if forced to undergo a number of trials for different instances of domestic violence by the same offender.

VI. Evidence through live video or live television links

**A. Proposed new Section 272B, Criminal Procedure Code (Amendment) Bill 2004
Evidence through live video or live television links**

Select Committee's recommendation

The Select Committee recommends that the existing subsection (2) of this section, which specifies the types of offences to which this section applies, be removed altogether.

The WCC's comments

The WCC welcomes this proposed amendment by the Select Committee which is in line with JAG's proposals vide the 2004 and 2005 Memoranda.

The WCC looks forward to the judicious application of this section by our Courts, especially in cases involving child victims or similarly vulnerable witnesses.

VII. Police supervision for sexual offenders

**A. Section 295, Criminal Procedure Code
Sentence of police supervision**

Select Committee's recommendation

The Select Committee proposes that police supervision after the expiration of the offender's sentence be extended to cover certain sexual offences under the Penal Code, namely Sections 376 (punishment for rape), 377C (carnal intercourse against the order of

nature without consent etc), 377CA (sexual connection by object) or 377E (inciting a child to an act of gross indecency), whether or not the offender has previously been convicted of any offence.

The WCC's comments

The WCC recommends that the range of offences where the offender is required to undergo police supervision upon expiration of his sentence be extended to include other offences such as those involving 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.

VIII. Compensation / Assistance Board or mandatory compensation for victims

**A. Section 426, Criminal Procedure Code
Order for payment of costs of prosecution and compensation**

Select Committee's recommendation

There are no recommendations by the Select Committee on this section.

The WCC's comments

In JAG's 2004 Memorandum, it was proposed that a legislative framework be introduced for the operation of a Compensation / Assistance Board for rape survivors.

JAG's 2005 Memorandum proposed that, in the event that the said proposal for a Compensation / Assistance Board could not be implemented, compensation to victims under Section 426 be made mandatory.

The WCC therefore reiterates the recommendation that Section 426 be amended as follows:

- (a) for persons convicted of any offence under Chapter XVI of the Penal Code (i.e. offences affecting the human body) and other crimes involving injury or intent to injure, the Court shall make an order for compensation of a sum to be fixed by the Court;
- (b) for any other crimes, compensation may be ordered at the Court's discretion;
- (c) the Court has the discretion to order the offender to pay the costs of his prosecution or part thereof;
- (d) the offender may be liable for imprisonment in default of payment or of sufficient

distress to satisfy compensation sum (i.e. removal of the exception of Section 432(1)(d)'s application to this section);

- (e) an order for payment of compensation to the victim shall have priority over an order for payment of costs; and
- (f) every order made under this section shall be appealable.

Mandatory compensation for rape victims is justified on the basis of the grave physical and emotional trauma from the crime, potential medical expenses incurred from the rape, e.g. miscarriage of pregnancy and contraction of sexually transmitted disease from the offender, and grievance compensation to the victim's family where the rape results in death (which should cover funeral expenses). Although rape victims are legally entitled to commence a civil suit in tort against the offender, they should not be put to the additional burden of reliving the painful experience in a second court trial and bearing the substantial costs of civil litigation.
