

BELIZE:

CONSULTATION PAPER ON CRIMINAL JUSTICE REFORM

1. BACKGROUND

1.1 INTRODUCTION

At the ceremonial opening of the Supreme Court this year, the Attorney General, the Hon. Francis Fonseca, promised that his Ministry would, during the course of the year, produce a Discussion Paper on Criminal Justice Reform, in the form of a White Paper. This White Paper fulfils that promise.

1.2 OBJECTIVES

1.2.1 This White Paper is intended to stimulate debate among the various stakeholders involved in the administration of criminal justice, so that there is consensus on the areas requiring legislative reform.

1.2.2 It is therefore expected that responses, comments and criticisms to the law reform initiatives in this Paper will be received from the Bar Association of Belize, the Belize Chamber of Commerce and Industry, the Belize Business Bureau, the Belize Police Department, the Judiciary, including the Magistracy Department, the Director of

Public Prosecutions, the National Committee for Families and Children, the Women's Department in the Ministry of Human Development, the National Women's Commission, the Youth Enhancement Services, and from any organization or person interested in making an input on the possible reforms which may be made to Belize's criminal justice system to strengthen the delivery of criminal justice.

2. SPECIFIC LAW REFORM INITIATIVES

Remove the system of Preliminary Inquiries, so that criminal cases can move expeditiously through the system to trial

- 2.1 One of the major complaints against the criminal justice system is that indictable offences generally take too long to come for trial. This is compounded by the requirements of sections 32 to 44 of the Indictable Procedure Act, Chapter 96 of the Substantive Laws of Belize, Revised Edition 2000 – 2003, requiring Preliminary Inquiries to be conducted by magistrates in respect of certain offences, with a view to either committing the accused for trial where there is sufficiency of evidence for so doing, or discharging him. In 1998, a dual system of conducting Preliminary Inquiries was instituted. Under this dual system, a Preliminary Inquiry can be based purely on the documents produced by the prosecution to the magistrate and the defence prior to the Preliminary Inquiry, if the defence did not object to this method of conducting a Preliminary Inquiry. This is called “the Paper Committal System”. Under this system, the Magistrate is not

required to consider the evidence in the documents put before him unless requested to do so by the accused, but is simply required to certify that the accused was committed for trial without consideration of evidence. This has, logically, led to criticisms that the system of Preliminary Inquiries is archaic, detrimentally automatic, uses up scarce judicial resources with no corresponding legal benefits to the criminal justice system as a whole, and in fact delays the conduct of trials. In this way, the system is seen as a double-edged sword, which can prejudice the interests of both the prosecution and the defence to an early trial. Some opponents of the Preliminary Inquiry system point to the fact that very few cases are dismissed by Magistrates at Preliminary Inquiries, yet the bulk of the unfiltered cases go for trial at the Supreme Court, only to be dismissed after a full trial. In such cases, Preliminary Inquiries are viewed as serving no useful purpose.

2.2 It is recommended that the system of Preliminary Inquiries should be abolished in order to utilize scarce judicial time and resources at the Magistrates Courts for the hearing and conclusion of trials, and to enable cases to be brought for trial at the Supreme Court expeditiously.

2.3 Legal Aid: Criminal Cases

Section 194 of the Indictable Procedure Act provides that an indigent person charged with a capital offence may be assigned counsel by the court under the legal aid scheme. In practice, this means that a huge number of persons are being processed and tried with non-capital but

serious offences in Belize's criminal justice system (at the Magistrates Court, the Supreme Court and the Court of Appeal) without adequate legal representation, due to a lack of resources. In those situations, the playing field between the prosecution and the defence is not level, and the constitutional guarantee of equality before the law loses most of its substantive meaning. It was in this context that a Legal Aid and Advice Centre Bill was drafted way back in 2000 by the Attorney General's Ministry, to ensure adequate representation of all persons charged with serious offences, based on a "means" test conducted by the Legal Aid and Advice Centre. Recently, the Court of Appeal expressed concern that accused persons charged with serious crimes usually appear before that court without counsel, and recommended that measures, both administrative and legislative, should be taken to address this situation.

- 2.4 It is recommended that the Legal Aid and Advice Centre Bill should be revisited by the Attorney General's Ministry and the Bar Association of Belize, for redrafting, if necessary, so as to ensure that (a) expenses for the provision of legal aid are borne equally by the Attorney General's Ministry and the Bar Association of Belize, (b) "serious offences" are defined and specified, and judicial officers are required, where a defendant charged with a serious offence is unrepresented by Counsel, to direct the Registrar General to designate Counsel for the defendant. The fees of such Counsel will be paid from an account jointly funded by the Bar Association of Belize and the Attorney General's Ministry.**

2.5 Abolition of Unsworn Statements from the Dock

At present, the playing field between the prosecution and the defence is not level, insofar as the defendant is allowed to make an unsworn statement from the dock, the veracity of which is never tested by the prosecution in cross-examination. This position, by its very nature, is an anachronism: the purpose of a criminal trial is to determine the guilt or innocence of an accused person. On the obverse side, all prosecution witnesses are subjected to cross-examination, usually by seasoned Counsel, regardless of whether they are minors or vulnerable witnesses. As a consequence, there have been calls to abolish dock statements to level the playing field in criminal trials.

2.6 It is recommended that dock statements by defendants should be abolished thereby bringing Belizean law on par with similar developments in other Commonwealth Caribbean countries like Trinidad and Tobago, and with the United Kingdom and the United States of America.

2.7 Minors Should Give Unsworn and Uncorroborated Evidence

Under the Evidence Act, any unsworn statement by a minor who is a prosecution witness should be corroborated in order for the prosecution to obtain to a conviction. (Section 103). It is axiomatic to those who deal with minors that the court milieu frightens minors: at the Supreme Court level, for example, judges wear wigs and gowns,

and Counsel are not dressed in everyday attire. Requiring minors to enter this environment and to swear to an oath is onerous to the minors, and may ultimately be counter-productive to the due administration of justice, because the reality is that most minors are reluctant to attend court and swear to oaths.

2.8 It is recommended that the requirement of corroboration should be removed in the case of unsworn statements by minors, and, in a trial by jury, the court should simply give the jury a warning to attach whatever weight they feel is appropriate to the unsworn evidence of minors.

2.9 Evidence of Vulnerable Witnesses

In present day Belize, there is some truth in that most people who see crimes being committed are afraid of giving evidence at trial because of the real likelihood of victimization by defendants, or by persons instructed by, or acting at the behest of, defendants. To protect themselves from victimization, some witnesses change the testimony they give at trial from the evidence they give the police in their statements. In this Paper, witnesses who are afraid of giving evidence for fear of reprisals by defendants are called “vulnerable witnesses”.

2.10 It is recommended that the law should be amended to allow the Director of Public Prosecutions, in cases where a vulnerable witness has a real apprehension of suffering bodily injury at the hands of a defendant, or where a vulnerable witness has been

threatened by a defendant or on behalf of a defendant, to make application, *ex parte*, and *in camera*, to a Supreme Court Judge, for an order allowing the statement of the vulnerable witness to be used at trial, *in lieu* of the vulnerable witness appearing and testifying at the trial. The weight to be given by the jury (or, in a summary trial by the Magistrate) to the statement of the vulnerable witness will be determined by the jury, or the Magistrate, since it will not have been tested in cross-examination, and judicial officers will have to give appropriate directions to juries in this respect, or, in summary trials, appropriately warn themselves.

2.11 Spouses Should, In Appropriate Cases, Be Competent to Give Evidence Against their Partners

At present, under the Evidence Act, Chapter 95, a spouse is not compellable or competent to give evidence against the other spouse. (S. 57). However, there is strong justification that these rules should be relaxed, to allow a spouse in serious cases, for example, to be competent to give evidence, *if the spouse so wishes*, against the other spouse.

2.12 It is recommended that a spouse should, in the case of serious offences, be competent, if the spouse so wishes, to give evidence against the other spouse.

2.13 Disclosure of Defence Evidence

At present, only the prosecution is under an obligation to disclose evidence to the defence. In respect of indictable offences, such disclosure is statutorily required at least fourteen days prior to a Preliminary Inquiry. No similar obligation is placed on the defence.

2.14 It is recommended that a statutory obligation should be placed on the defence to disclose (a) the defence, and (b) the defence witness statements and evidence, in circumstances similar to the obligation currently placed only on the prosecution.

2.15 Carnal Knowledge: Raising Age of Consent to Eighteen Years

As defined in the Convention on the Rights of a Child, a child is a person under the age of eighteen years. Belize ratified the Convention, and is required, as a matter of international obligation, to observe the provisions of the Convention in its domestic laws and practices. One area which has generated widespread debate is the area of increasing the age for sexual consent from sixteen years to eighteen years. Guyana recently began initiatives towards this end. It is proposed that Belize should follow the lead taken by Guyana.

2.16 It is recommended that the age of sexual consent should be raised from sixteen years to eighteen years, and the penalties for carnal knowledge should be substantially increased to reflect the gravity of the offence.

2.17 Right of Prosecution to Sum up Evidence

At present, under the Indictable Procedure Act, only the defence is given the right to sum up evidence at the close of trial. No similar right is extended to the prosecution.

2.18 It is recommended that the prosecution should be given the right to sum up evidence at the close of trial, even in cases where the defendant is unrepresented.

2.19 Reform of the Domestic Violence Act

In 1992 the Government of Belize adapted major legislation to address domestic violence. This came in the form of the Domestic Violence Act (Act 28 of 1992) which was implemented in 1993. The primary objective of the Domestic Violence Act is to “provide better protection, especially to women and children, in cases involving domestic violence”. The Act provides for protection and occupation orders, including interim orders. In 1999 the Government established Domestic Violence Units in each district of the Police Department to enable action on domestic violence. The Women’s Department and the National Women’s Commission working in partnership with the Family Court, Police and other government departments, NGO’s and international agencies have over the years played a leading role in promoting public awareness on domestic violence and advocating for legislative reform.

A report carried out by the Women's Department affirmed that the Domestic Violence Act is well established and used throughout Belize but that there is an urgent need to improve the efficiency and effectiveness of the system and services offered in relation to domestic violence. It offered recommendations for amendments and additions to the Act and advocated for:

- (a) expansion of protected persons and persons able to apply for orders;
- (b) amendments to the powers of the courts and the police and changes to the method of service;
- (c) the creation of a standardized counseling programme for victims, abusers and other members of the household; and
- (d) increase in the courts powers in relation to occupation orders, namely the addition of tenancy orders.

The report concluded that since the introduction of the Domestic Violence Act in 1992, there is an urgent need some thirteen years later to make amendments and additions to the Act. It recognized that these changes alone will not combat domestic violence and that there is a far greater need for collaboration between government, NGOs, international agencies and the community to ensure that matters relating to domestic violence are treated as a priority. It strongly

advocated for both a pro-active and re-active national approach to domestic violence and called for a renewed National Plan of Action to address domestic violence. It also called for an integrated response which addresses law enforcement, health, judicial, housing and community advocacy. It further called for a move towards reframing the issue as gender-based violence for the development of a broader array of interventions. A focus on gender-based violence will call attention most directly to the need for cultural change and the pivotal nature of the education sector.

PRIMARY GOALS

The primary goals of the report were:

- (a) to identify areas for amendments or additions in relation to the current Domestic Violence Act;
- (b) to analyse and make recommendations for the strengthening of legal and social services; and
- (c) to advocate for rehabilitation and counseling programs.

METHODOLOGY OF THE REPORT

Interviews were held with key stakeholders in the implementation and enforcement of the Domestic Violence Act. The interviews sought to include people at all levels of service including government officials, public

officers, counselors, representatives from non-governmental organizations, clerks of court, intake officers, magistrates, police officers, the Assistant Commissioner of the Police and the head of the Domestic Violence Unit, members of the Domestic Violence Committee and Haven House Board. Victims of domestic violence as well as perpetrators were interviewed. Statistical information from the Ministry of Health and Ministry of Human Development was also integrated into the review.

THE CONTEXT OF THE DOMESTIC VIOLENCE

LEGISLATION

In order to work towards the eradication of domestic violence, a socio-legal gender sensitive integrated approach needs to be adopted. To achieve this, power relationships between men and women must be equalized, removing the existing control men have over women within the economic, legal and social spheres.

Domestic Violence is a Crime: Police understanding towards domestic violence has been a foremost issue amongst advocates against domestic violence. Immense efforts have been made within Belize in order to improve police attitudes towards victims of domestic violence and to educate them on how to handle cases of domestic violence. Domestic violence is no part of the police curriculum; this ensures that all officers have a basic understanding of the issues involved¹. Each district has an officer assigned specifically to deal with cases of domestic violence. In

¹ The police are currently awaiting publication of a new domestic violence protocol; this is due to be published during 2005.

Belize City due to the concentration of people the office is staffed by seventeen officers and one counselor. Officers working in the Domestic Violence Unit are assigned there rather than having chosen that role. Officers do receive on the job training but the department still experiences difficulties with officers' attitudes.

No studies (other than the report) have been conducted as to the effectiveness of the Domestic Violence Act and its functioning within Belize. From the interviews undertaken in producing the report it is clear that the operation of the Act is often hindered by those who implement it. A study in St. Lucia by Victoria Charles on "*The Legal Systems Response to Domestic Violence*"² concluded that effective assistance was mired by the agents entrusted with implementing and enforcing it. This opinion has been reinforced through the interviews undertaken. In the districts this is especially prevalent as legal agents are more likely to know the respondent and this provides barriers to the treatment and level of service they provide. It has been noted that on occasions this hampers the treatment given and victims may be advised to return to the home; it also means that people are less likely to report abuse.

Despite the prevalence of domestic violence, arrests and prosecutions in this area are not as high as would be expected. The police would argue that this is due to the number of cases that are withdrawn and the lack of willingness on the victim's part to take action against the perpetrator. A lack of

² Charles, Victoria (1996) "*The Legal System's Response to Domestic Violence: Can Laws Alone Solve the Problem*" (unpublished) cited in ECLAC, (2001) *An Evaluative Study of the Implementation of Domestic Violence Legislation: Antigua and Barbuda, St, Kitts/Nevis, Saint Lucia and Saint Vincent and The Grenadines.*

intervention in domestic violence cases has been expressed as a concern, yet the police are restrained by the law and cannot take action without the approval of the victim.

The reluctance of victims to utilize criminal sanctions causes frustration for the police whose role has become increasingly one of semi-counsellors and advisers. Dealing with domestic violence complaints is time consuming and due to a lack of victim cooperation in initiating criminal proceedings does not result in criminal prosecution. Whilst more victims are comfortable using civil remedies the number of cases that are withdrawn proves exasperating. The rate of withdrawals is a huge problem within Belize as it has created apathetic feelings amongst the police.

The relationship between the victim and offender in cases of domestic violence set it apart from a majority of other crimes. The emotional relationship between both parties makes it difficult for the victim to seek relief against his or her abuser. This is exacerbated when children are factored in and the victim is able to excuse the behaviour for “the sake of their children”. Often victims of abuse do not want their abuser to be punished; they just want for the violence to stop and are unable to connect the two. One of the cases examined for this report is still to be heard in the Supreme Court. In this case due to the high level of violence the victim eventually chose to press charges. Despite the level of violence involved the victim stated she was no longer interested in punishment and in the time she has been waiting for her case to proceed to court (currently a year) she has resolved that she only wished for him to provide maintenance for their

children and to receive counselling. If the case had been heard earlier it is likely that her opinion on the level of punishment would have been different.

Attitudes are emerging that point to the fact that domestic violence needs to be dealt with through mandatory arrests and prosecutions. Police discretion will be reduced and a presumption of prosecution will arise in all cases reported. One magistrate interviewed was keen to advocate this idea and believes that the criminal and civil sanctions for domestic violence should be combined in order to create a system that provides a better level of service for victims of domestic violence. In combining the two this magistrate would like to see the issue still dealt with under the administration of the Family Court and for protection orders to be issued in addition to a penalty of either a fine or imprisonment. This would reassert the view that domestic violence is a crime and will be dealt with seriously. It would also reaffirm the power of the court, particularly the Family Court. This would also prevent cases from being withdrawn as once reported the case would be outside the victim's control.

This approach is also advocated by the police, who are most affected by the withdrawal of cases. It could be argued that such a system would inhibit reporting and would reduce the number of reported cases rather than strengthening the system. Opponents of mandatory arrests argue that there is an absence of rehabilitative and counselling programmes for the abuser and victim, which should be used in conjunction with this system. With this in mind, if Belize considers adopting such a system the effect of this on levels of reporting would need to be investigated as would the requirement of support services such as counselling.

Frequency of Domestic Violence: Despite increased awareness of domestic violence and the enactment of the Domestic Violence Act, domestic violence is increasing. It must be noted, however, that this may be directly due to an increase in data collection and a rise in reporting rather than an actual rise in the amount of domestic violence. Attempts to monitor domestic violence have been continuously advocated within Belize. Officers in the Women's Department, the police and other relevant services use a standardized National Gender Based Violence Registration Form prepared by the Ministry of Health and Environment. This form has recently been reviewed and is being updated, the form currently includes details about the victim, the respondent, the attack and the services provided. In addition to this form, in cases where medical attention has been sought, a medical-legal form is used.

Unfortunately the collation of data does not appear to be in depth or up to date. The courts are lacking in their data collection and did not, until recently, record information on cases and do not currently produce any statistical reports. One of the main problems with data is not just that it is not routinely collected but that there is no follow up from any of the services. This lack of follow up means that the effectiveness of orders cannot be monitored and the services provided by different departments cannot be measured.

Data collected by the Ministry of Health and Environment is produced in a yearly report on domestic violence³. This provides statistics on the number

³ Government of Belize, Ministry of Health and Environment, *Gender Based Violence Report*, January to December 2003 – 2004, February 2005.

of cases reported; information regarding the victims and perpetrators in these cases including sex and age, their level of education; the type of attack; it gives a brief identification of problems and makes some recommendations for change. Whilst the Ministry of Health's report is certainly helpful in some ways, there is a large amount of data that is not included. For example, the report is based on the number of cases reported; it does not show how many cases are withdrawn and does not show how many protection orders and occupation orders were applied for and the percentage given. It is also lacking in cases that are pursued through criminal channels, the number of orders breached and sentencing practices for breached orders. The absence of such information makes a full analysis of the situation of domestic violence within Belize difficult; it also means that suggestions for reform cannot be supported by statistical evidence.

Another problem with the availability of housing, is that there is currently no home for abused men. Men in their teens are placed in the youth hostel, which is less than ideal, but there is currently nowhere for older men. The provisions for cases where children are living in an abusive home are unclear. Haven House does allow for families and occupation orders are more easily obtainable where children are involved.

USE OF THE DOMESTIC VIOLENCE ACT

The usage of the Domestic Violence Act in Belize is far greater than that of other Caribbean countries. The use of the Act does not fully represent the incidence of domestic violence; factors such as a lack of reporting, the withdrawal of cases and alternative service to court action means that use of

the Act is a last resort. Within the districts the Act is more likely to be used as the services such as intake officers and counseling that are provided in Belize City are not available and the court is the first port of call rather than the last. One magistrate commented that the Family Court system in Belize does not exist outside of Belize City and thought should be given to the extension of services throughout Belize.

Awareness of legislation has also been a problem within Belize. This is improving. The Women's Department has recently embarked on legal training for its officers to increase their awareness of issues and the Department of Human Services has provided legal training for its social workers.

Profile of Applicants and Respondents: Applicants for orders are typically women with very few men making applications. It can be contended that this is due to the stigma attached to males reporting and the social perception of loss of masculinity in admitting such matters. Figures for 2003 – 2004 show that a large proportion of those who reported incidences of domestic violence were employed; housewives were the second largest category⁴. The fact that such a large proportion of victims were employed is contradictory to other information that supports that most women stay due to financial dependency. This is also contradictory of the view of one of the intake officers spoken to at the Family Court who purports that the people who attend Family Court are amongst the poorest in society and that a lot of the cases they see are a by product of poverty.

⁴ Government of Belize, Ministry of Health and Environment, *Gender Based Violence Report*, January to December 2003 – 2004, February 2005, p.21.

Eligible Abused Persons: The classes of persons eligible to be protected are spouses, parents, children and dependents. Spouse includes a *de facto* spouse, defined as a person of the opposite sex who resides with the aforementioned person as their husband or wife although not legally married, or if not living with that person, is a parent of a child of that person. It is clear from this that persons in same sex relationships are not recognised or protected under the law. As same sex relationships are not, at present, a legal concept within Belize the inclusion of these into the Act is not something that will be recommended.

Visiting relationships constitute a large part of Belizean society and are a dominant form of relationships throughout the Caribbean. Such relationships are relationships where the parties do not reside together and do not have children together. Under the current Act, such relationships are not protected, giving them no option but to pursue this matter through criminal channels.

RECOMMENDATIONS

Research by the Ministry of Health and Environment found that in 2003 one hundred and thirteen people who reported domestic violence were single. In 2004 eighty-three single people reported domestic violence⁵. It also found that pregnant women were being targeted. Currently the legislation does not state whether such persons are covered. In Trinidad and Tobago, legislation includes those in visiting relationships; this states that the relationship must

⁵ Ibid, p.20.

have subsisted for a period of at least twelve months. In Bermuda people in “close personal relationships” are eligible to apply for protection orders. In determining what constitutes a close personal relationship the court must consider the following factors:

- (a) The amount of time the persons spend together;
- (b) The place or places where that time is ordinarily spent;
- (c) The manner in which that time is ordinarily spent; and
- (d) The duration of the relationship⁶.

The inclusion of such a category would increase the availability of the Act. In addition to this the definition of a *de facto* spouse should be reworded to state:

Means a person of the opposite sex to the first mentioned person who is living with the first mentioned person as the person’s husband or wife, although not legally married to the first-mentioned person, or if not living with that person is a parent, but not a grandparent, of a child of that person or is pregnant by that person

ELIGIBILITY TO APPLY FOR AN ORDER

Currently applications for protection orders can be made by the spouse, a police officer, a parent of a spouse, where the alleged conduct involves a child or dependent – the person they normally reside with; a parent or guardian of the child; where not mentally ill, the dependent; a social

⁶ ECLAC/CDCC (2001) *An Evaluative Study of the Implementation of Domestic Violence Legislation: Antigua and Barbuda, St. Kitts/Nevis, Saint Lucia and Saint Vincent and the Grenadines*, p.19.

worker; a suitably qualified person in social welfare with approval by the minister; and a police officer.

Other members of a household are unable to apply and children cannot make an application themselves. Officers of the Women's Department are also unable to make applications on a victim's behalf.

RECOMMENDATIONS

It is recommended that:-

(a) members of the household of a spouse or respondent, whether on their own behalf or on behalf of another member of the household; and

(b) any sibling by consanguinity or affinity of either spouse or respondent not being a member of the household,

should be eligible to apply and to be protected by the Act.

PROHIBITED BEHAVIOUR

Domestic violence sufferers experience a variety of types of abuse from physical beatings to psychological abuse and economic abuse. Psychological abuse has been shown to be the most common form of abuse in Belize as reported by the Ministry of Health and Environment.

The Domestic Violence Act of Belize does not give one definition of domestic violence but includes a variety of types of behaviour including conduct of an offensive or harassing nature, harassment and a prescribed offence. A broad range of behaviour is covered under these headings and a protection order restricts a considerable amount of conduct.

Despite the range of actions covered by this Act a Protection Order does not clearly prohibit the behaviour upon which it is based. Protection Orders do not explicitly prohibit personal injury, threats or other forms of behaviour; instead they aim to restrict the respondent from the vicinity of the prescribed person in order to curb this conduct.

Whilst the Act encompasses such a large range of behaviour, the format of the Act makes this difficult to understand and in reading each section the reader must backtrack in order to see what the definition of that type of behaviour encompasses.

RECOMMENDATIONS

Simplifying the definitions of what type of behaviour is prohibited and combining these behaviours together so that, rather than having separate definitions for a domestic violence offence, a prescribed offence, harassment, intimidation, persecution, psychological abuse and conduct of an offensive and harassing nature, they are placed

together at the beginning to give a clear definition of all the types of behaviour prohibited.

Domestic violence should be clearly defined to include “physical, sexual, emotional, psychological and financial abuse”. The Trinidad and Tobago legislation defines domestic violence as “physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, and any other person who is a member of the household or dependant”. Emotional or psychological abuse is then defined as “a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:

- (a) persistent intimidation by the use of abusive or threatening behaviour;
- (b) persistent following of the person from place to place;
- (c) depriving that person of the use of his property;
- (d) watching or besetting of the place where the person resides, works, carries on business or happens to be;
- (e) interfering with or damaging the property of the person;
- (f) forced confinement of the person;

- (g) persistent telephoning of the person at the person's place of work;
- (h) making unwelcome or repeated or intimidating contact with a child or elderly relative or of the person."

Financial abuse is defined as "a pattern of behaviour of a kind the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependency."

Physical abuse is defined as "any act or omission which causes physical injury and includes the commission of or an attempt to commit any of the offences listed in the First Schedule."

Sexual abuse is defined as including "sexual conduct of any kind that is coerced by force or threat of force and the commission of or an attempt to commit any of the other offences listed under the Sexual Offences Act in the First Schedule."⁷

APPLICATIONS

The courts throughout Belize provide simplified access to all and are available to help with the completion of application forms. In Antigua and Barbuda the Directorate of Women's Affairs helps with the

⁷ The Domestic Violence Act (1999) Trinidad and Tobago, <http://www.ttparliament.org/bills/acts/1999/a1999-27.pdf>

completion of applications for protection orders. They also draft a statement which is annexed to the application. The procedure there is to use these statements to go beyond the most recent incident and to use this to set out essential data on the parties, the history of abuse, the nature of the relationship, the length of the union and other information.⁸ This allows the court to receive affidavit evidence prior to the case and creates more flexibility and a speedier process. The Act currently has a provision for affidavit evidence though this is not routinely used.

The Role of Attorneys: Those attending Family Court in Belize are largely underrepresented by lawyers. This to some degree implies accessibility on behalf of the Family Court. The lack of legal help means that both parties may be disadvantaged in the advice they receive. The lack of attorneys places a greater degree of emphasis on the magistrate to provide a dual role as arbiter especially in cases where one party is represented. The lack of attorneys in this area can be attributed to several reasons, firstly such cases are time consuming; secondly many of those needing lawyers are unable to afford one and there is only one Legal Aid Officer in Belize; finally in the districts there is a shortage of attorneys, and attorneys cost money.

RECOMMENDATIONS

⁸ ECLAC/ CDCC (2001) An Evaluative Study of the Implementation of Domestic Violence Legislation: Antigua and Barbuda, St Kitts/Nevis, Saint Lucia and Saint Vincent and the Grenadines, p. 31.

Affidavit evidence where appropriate should be used. This can be done by the intake officers or at the Women's Department. The use of affidavit evidence clearly sets out the case; it will therefore be very beneficial in cases where the applicant is illiterate and in cases where translation is a problem as these can be dealt with before the case reaches the magistrate.

Service of Applications: The Act currently states that applications are to be personally served on respondents but it does not state who this has to be done by and whether this is the responsibility of the clerk of courts or the police. Applications are served by the clerks attached to the court. No specialist training is given to the clerks on situations that may arise from the service of such orders. Clerks of Court do not have any powers of arrest, therefore should a respondent become aggressive they have no power to do anything other than wait for the police to arrive.

It has been well documented that the time after which the prescribed person makes an application for an order is the most dangerous. Upon receiving notice that an application has been filed respondents are likely to become aggressive when they learn of this betrayal and this move of independence on the victim's part. Due to this it is preferable that service be executed by police officers, who have the power of arrest. Officers performing this duty need to be trained how to conduct this duty in the correct manner so as not to bring more harm to the victim or to bring disrepute to the legal service by showing sympathy or identifying with the respondent. Familiarity in the districts is also a

problem and it has been reported that orders are often not served normally due to the police claiming to be unable to find the respondent.

Whilst it is recognised that the police should have extensive training in order to provide the best service possible, expecting them to provide counselling services converts their role to that of social workers, a position they are ill equipped to perform.

The Act should make a provision for orders to be serviced by persons other than the clerk of court and police. Service of documents should also be able to be done by alternative services, such as registered mail to the last known address. After two attempts to contact the respondent cases should be able to proceed *ex-parte*.

Other Procedural Matters: The hearing of cases *in camera* should ensure confidentiality, reduce anxiety and increase courtroom participation. In Antigua and Barbuda a victim's advocate/ supporter accompanies the applicant to court. This person is not able to address the court or intervene in any way; he or she is purely there in a support capacity. In view of fairness this option should be open to both the respondent and the applicant. The English Court of Appeal held this position in the case of *Mckenzie v. Mckenzie*⁹ where it was held that in civil proceedings the person was entitled to have all reasonable facilities for exercising their right to be heard including

⁹ [1970] 3 WLR 472

advice from another member of the public accompanying them to court as an advisor.

There are currently discussions to have a “friend of the court”, whose role is to accompany people to court. The difficulty in providing such a role is that the courts cannot appear to show bias and in the fairness of justice both parties would need to be provided with this service. The role of this person has not yet been clearly defined; it has been suggested that they provide legal advice. In order to provide the services required such a person would need to be qualified in both law and social work. In order to fully support victims of domestic violence it is suggested that a more beneficial approach would be to provide a similar service to that offered to children. With each case that is reported, whether to the court, police, hospital or other service a social worker is called and assigned to the case. It would be their job to accompany the person through the entire process from the police to the courts and to ensure that the person receives the best from all the services available.

RECOMMENDATIONS

It is recommended that both parties are able to be accompanied to court by an outside party of their choosing. Permission from the court should not be necessary unless there are proper grounds for denying accompaniment. Social workers should be assigned to each case; this would encourage people to pursue their case and would also provide a

follow up service so that the outcomes of cases can be recorded. This service could be the role of the Women's Department. The demand for this would need to be investigated in order to establish whether the department has the capacity to provide this service. This would increase collaboration between services so that they are working as a single service provider rather than separately.

ORDERS AVAILABLE UNDER THE ACT

Currently the Act provides for protection orders, occupation orders and interim orders.

Protection Orders: Section 4 of the Act provides that:-

- (1) Where, on an application made in accordance with this Act, the court is satisfied on the balance of probabilities, that:
 - (a) the respondent has engaged in conduct that constitutes a domestic violence offence and unless the respondent is restrained, the respondent is likely to engage in further conduct that would constitute that or another domestic violence offence, the court shall, subject to this section, make a protection order restraining the respondent from engaging in such conduct or in any other conduct referred to in this section.

This section is troublesome because reports have been received that it is being misinterpreted to mean that a continuous pattern of violence must be shown. This is not what is stated here as no pattern of violence needs to be shown; the first incidence is as important as all future incidents. This is not a fault on the part of the Act but a misinterpretation that needs to be addressed.

Occupation Orders: Currently there is no time limit on occupation orders; this is left solely to the discretion of the magistrate. Other countries that do place a time limit on occupation orders do so for one to three years. Due to the financial situation of people within Belize, the lack of council housing and lack of shelters, placing a time limit on these orders is not deemed to be beneficial. A minimum period of three months is recommended as this is sufficient time for a cooling off period and allows the remaining occupant time to make alternative payment arrangements.

Tenancy Orders: Tenancy orders are used throughout the Caribbean in St. Lucia, the Grenadines, St. Vincent and Antigua and Barbuda. Tenancy orders allow for the legal transfer of a tenancy from one party to another. In relationships where domestic violence has been a problem it is common for the parties to share accommodation in the form of a tenancy. A joint tenancy cannot be transferred to one name and a tenancy in one person's name cannot be transferred to the other. Tenancy orders allow the courts the discretionary remedy of transferring tenancies between spouses, either married or common law. Unlike an occupation order a tenancy order is intended to bring about a clean break in the relationship. The court would still have the power to order the removed party to continue the payment of the rent.¹⁰ Like with an occupation order, in order to grant a tenancy order the court must be satisfied that it is either necessary for the

¹⁰ ECLAC/ CDCC (2001) An Evaluative Study of the Implementation of Domestic Violence Legislation: Antigua and Barbuda, St Kitts/Nevis, Saint Lucia and Saint Vincent and the Grenadines, p. 44.

protection of the applicant or in the best interests of a child/dependant.

Other Orders: No financial orders are available under the Act. The Act does not provide for financial compensation, medical compensation, moving costs and legal costs. The inclusion of these would be beneficial but would require monitoring by the court, something that is not yet reliable. An application for maintenance cannot be made under this Act; a separate application has to be filed under the Families and Children's Act. The requirement of maintenance is directly related to cases in which domestic violence has occurred.

As previously mentioned, the risk of domestic violence increases in the period after separation. This should be taken into account when deciding on custody and access to children.

RECOMMENDATIONS

In determining whether to grant tenancy orders the court should consider the following factors:

- (a) the nature, history or pattern of the violence that has occurred and whether a previous order had been issued;
- (b) the need to protect the applicant and any other person for whose benefit the order has been granted;

- (c) the welfare of any child;
- (d) the hardship that may be caused as a result of making the order;
- (e) the income, assets and financial obligations of the parties; and
- (f) the need to preserve and protect the institution of marriage and other relationships while affording protection and assistance to the family.

The inclusion of financial compensation should also be included in the Act's provision dealing with protection orders. The inclusion should provide that a respondent should

- (a) pay compensation for monetary loss incurred by an applicant as a direct result of conduct that amounted to domestic violence;
- (b) pay interim monetary relief to the applicant for the benefit of the applicant and any child, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other law.

In order to outline under what circumstances monetary relief can be awarded, the Act should specify that where the court makes an order which, *inter alia*, directs the payment of financial compensation, such compensation should include:

- (a) a loss of earnings;
- (b) medical and dental expenses;
- (c) moving and accommodation expenses; and
- (d) reasonable legal costs, including the cost of making an application pursuant to the Act.

A limit can be placed on the amount of compensation to be paid and it should be stated that payment is to be made via the court on behalf of the applicant for monitoring purposes.

ENFORCEMENT OF ORDERS

Powers of Arrest: A warrantless arrest is allowed under Section 33 of the Act provided that a breach of the protection order has been committed. Warrants can also be obtained where the Magistrate is satisfied that the person has suffered or is in imminent danger of suffering physical injury or where a police officer has been refused permission to enter the premises in order to give assistance.

The provision for a warrantless arrest appears to only apply to the breach of a protection order and not an occupation order. In the breach of an occupation order there seems to be no recourse as the penalties only apply to a breach of a protection order. The lack of such penalties

and powers of arrest make the enforcement of occupation orders difficult.

Penalties for Violation: The penalties for breach of a protection order are a fine not exceeding \$5,000 or imprisonment for a period not exceeding six months or both. As mentioned above, there is a provision for rehabilitation as an alternative but this is not used. The penalties for breach are not effective. Fines do not benefit victims. Maintenance is more essential for the family. Sentences are small and they only serve to increase the perpetrators anger. Occupation orders currently have no penalties for a breach.

Bail: Bail is set low for domestic violence offenders so it is routinely received. The risks associated with giving bail not only places the victim at risk but also means the perpetrator is a flight risk, which could jeopardise any chance of a case. In one of the cases studied this was the situation, where bail was set low and the perpetrator was released the day after his arrest; he then disappeared for five months. The psychological effect this can have on the victim, who is in constant fear of the abuser's return, punishes those who do report their case in the first place.

RECOMMENDATIONS

The power of warrantless arrest should be attached to all orders given by the court where an officer may detain and arrest a person they believe to have breached an order. Trinidad and Tobago allows

admissible complainant statements to be used in cases where the complainant refuses to be sworn in as a witness.

The penalties for a breach need to be changed. There needs to be penalties for both protection orders and occupation orders. It is recommended that penalties no longer be only related to the breach of an order, but that rehabilitation be prescribed with all orders and if the rehabilitation order is broken then prison would be the next step. This would ensure that prison is used sparingly and is a last resort but also that a message is sent that domestic violence is taken seriously; if perpetrators do not make an effort to change their behaviour then they will be punished.

The length of prison sentences also needs to be reviewed. As prison would be a second strike, with rehabilitation given as the first stage, prison sentences should be substantially increased to provide a sufficient deterrent. As domestic violence generally consists of some form of assault it is recommended that the minimum sentence be set at one year. Since there are different types of domestic violence including psychological and emotional, a sentencing guideline scheme is recommended that looks at the type of abuse and additional factors.

A similar system is used for crimes in Minnesota, U.S. Their guidelines apply to all crimes and were established in order to provide consistency in sentencing. The system works on a grid in which the crime is entered on one side and the criminal history score on the

other. This aims to punish the perpetrator not just for their current crime but to ensure that repeat offenders receive harsher penalties.

Similar systems have been implemented in Scotland and New Zealand. These are called Sentencing Information Systems and work by the information on the crime being entered into a computer system where previous sentences given in past cases are then shown. The idea here is to give Magistrates an idea of previous sentences without removing their discretion.

Whilst these systems are used in other countries for all crimes and to provide consistency in sentencing they could be adapted to provide levels of sentencing for the variety of offences found within the definition of domestic abuse. Another recommendation would be the inclusion of different sentences depending on whether it is the first offence or not. For example in Trinidad and Tobago the legislation states a penalty of three months maximum and \$900 for the first breach, 24 months maximum and \$1500 for the second offence and five years maximum for any subsequent offences.¹¹

In relation to bail it is recommended that more conditions are placed on the accused once bail has been granted. The restrictions placed on the accused should provide that:

¹¹ The Domestic Violence Act (1999) Trinidad and Tobago, <http://www.ttparliament.org/bills/acts/1999/a1999-27.pdf>

- (a) the defendant must not contact, either directly or indirectly, a named person or persons. This means no contact whatsoever, including by telephone, fax or letter or through another person, e.g. the defendant cannot get a relative to make contact on his behalf.
- (b) the defendant must not go to a named place. This is usually a specific address, but may also be a street, a town, an area or even a whole county. Sometimes the court will say that the defendant must not go within a specified distance of a place, e.g. within half a mile of Victoria Road.
- (c) the defendant must reside at a named address. This means live and sleep each night there.
- (d) the defendant must report to a named police station on a given day or days at a given time. For example, every weekday morning at 8.30 a.m.
- (e) the defendant must abide by a curfew between certain specified hours. This means remain indoors, for example, from 9 p.m. until 8 a.m.

(f) the defendant must provide a security to the court. If it is thought that the defendant might not attend the next court hearing, the court can order that a set sum of money be paid into the court. If the defendant does fail to attend the next hearing then the money can be forfeited.

(g) the defendant must provide a surety. A friend or relative must agree to ensure that the defendant attends court, or the friend or relative could lose a specified sum of money.

(h) sometimes, for practical reasons, there are exceptions attached to the condition. For example: The defendant must not go to a named place except:

- to attend court;
- to see their attorney by prior appointment;
- to collect their belongings at an appointed time and accompanied by a police officer or other specified person;
- to see the children, under supervision, at a specified time.

Breaching Bail Conditions: If the defendant breaches bail conditions, the police can arrest the defendant without warrant and the court can remand the defendant in custody. Sometimes, despite bail

conditions that say, for example, a defendant cannot contact the victim or return home, the victim contacts the defendant or invites or allows the defendant to return home. There are all kinds of reasons why victims sometimes do this, but if the defendant responds in such a way as to continue the contact, then the defendant is breaching bail conditions because the police or the court have not released the defendant from the conditions of bail they imposed.

It does not matter that the victim has agreed to the contact; the victim is not subject to the bail conditions, the defendant is.

The defendant is responsible for complying with any conditions imposed by the police or the court until released from those conditions by the police or court¹².

The monitoring of these conditions is difficult and would require the victim, neighbours and the police to be vigilant regarding the respondent's behaviour. Making the accused report to the police station on a daily basis serves as an effective reminder that the police are still interested and dealing with this case and ensures that the police are, to some extent, aware of the respondent's movements.

MANDATORY ARRESTS AND PRO-PROSECUTION POLICIES

Proponents and opponents of mandatory arrests and pro-prosecution policies argue the benefits and disadvantages of such policies. On one hand it can be argued that increasing the activism of police and

¹² The Crown Prosecution Service, CPS Policy on Prosecuting Cases of Domestic Violence. (www.cps.gov.uk/publications/prosecution/domviolencepol.html).

prosecutors sends a message that domestic violence will not be permitted and that it is not just a private issue but a state matter. Opponents argue that it disempowers victims and that it can increase the danger to the victim.

Victim Empowerment and Advocacy: Abusers wield power and control over their victims using violence as a way to reinforce this power. The use of mandatory arrests and pro-prosecution policies further removes power from the victim sending a message that they are not able to make decisions for themselves and confirming the messages given by the abuser. Rather than empowering the victim they serve to remove control once more, rendering them observers to the Government's decision regarding their life. Arguments have been made that victims of abuse are unable to formulate rational decisions and that due to this Government intervention is necessary. Despite this argument the complexity of reasons why victims choose to stay have been found to be due to a conscious choice and a decision that staying outweighs the benefits of leaving. The use of mandatory arrest also makes a presumption that leaving is the safest thing for the victim to do even though it is well reported that the point of leaving is the most dangerous. With this in mind and the fact that the law is not able to guarantee safety the victim should be empowered in order to make the decision as to whether they wish to place themselves at risk. The victim knows their abuser best and is in the best position to decide whether it is safe to leave.

Mandatory Arrests: Mandatory arrest requires a police officer to arrest a suspect whenever they suspect assault has occurred, regardless of a warrant or witnesses. The use of these remove police discretion, therefore decreasing police reluctance to intervene. Mandatory arrest policies are used in a variety of ways throughout the U.S. Often this can lead to the arrest of both parties as police are unable to determine who the primary aggressor is especially in cases where the victim has fought back and the abuser also has physical injuries. In favour of mandatory arrests it is often commented that the police do not take domestic violence seriously and that harsher treatment and penalties are necessary. Another argument has been the movement of domestic violence from a private matter to that of a state concern. This acknowledges that “private” crimes are still crimes against the state and that the police, once they have probable cause, have a public safety obligation to arrest the perpetrator in the same way as they would in a public crime. It sends a message to the abuser that regardless of what their victim is willing to tolerate, the Government will not tolerate that behaviour; this clearly highlights domestic violence as a crime and one that will be treated seriously.

Pro-Prosecution Policies: This is where the Department of Public Prosecutions decides whether to prosecute regardless of the victims wishes. Rigid no drop policies include issuing subpoenas for the victim to appear against their wishes. Prosecution does not guarantee

that the violence will end. There is no proof that prosecution that results in a prison sentence will reduce recidivism¹³.

RECOMMENDATIONS

Mandatory arrests can be beneficial but can also be detrimental to the victim. As an alternative to mandatory arrest an approach of presumptive arrest is recommended. This works in a similar way to mandatory arrest in that generally officers will be required to arrest the perpetrator where there is probable cause. In this case the officer maintains some discretion over whether to arrest if there are other circumstances that countervail an arrest. In order for such an approach to be successful police training would be required so that their discretion is not used too liberally. Officers need to be trained in when to use their discretion; this should be backed up with a written report that documents why an arrest was not made. The focus should be on the impact an arrest would have on the victim. A compromise for pro-prosecution policies is a pro-prosecution policy that does not force the victim to participate in any way against his or her will. This gives the victim authority as to his/her role in the prosecution but allows the prosecutor the autonomy to decide whether the case will proceed. In such cases prosecutors would need to rely on outside evidence such as reports from neighbours, police officers and doctors.

¹³ E. Han (2004) *Mandatory Arrests and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, http://www.bc.edu/schools/law/lawreviews/meta-lements/journals/bctwj/23_1/04TXT.htm, viewed 24/05/05, p.12.

Using pro-prosecution policies increases the police's likelihood to arrest as they know an arrest will be followed by a forceful prosecution. Presumptive arrests offer an immediate period of separation for the victim and abuser. Prosecution shows the perpetrator that the state takes the issue seriously and if coupled with rehabilitation, which will be discussed later, this may help to reduce the cycle of violence. In order to include these in the Act they can either be added as a practice guideline without being mentioned within the actual Act or referred to in the miscellaneous section under police powers.

COUNSELLING AND REHABILITATION

Section 5(2) of the Act allows for the court to order counselling from family services, the Family Court or another approved, appropriate service provider. Despite this provision counselling is rarely used and due to a lack of services offering counselling it is unavailable in the districts.

The lack of counselling services provided and used is of great concern. Counselling should be required in all cases for all members of a family. Specialised counselling programmes to deal with the issues surrounding domestic violence are most suitable. This would be particularly beneficial in the case of children. Providing counselling to children who have been victims of domestic violence and who have lived in an abusive home would not only provide them with some

much needed support but it would also help to reduce the next generation of abusers and victims.

Research has shown that boys who witness abuse are more likely to become abusers later in life and girls who witness abuse have a greater chance of becoming victims¹⁴. Intervention programmes have been shown to be beneficial in such cases and help to enable children to focus on positive areas in their lives in order to counter balance the negative feelings the abuse has placed upon them. Not all children who have witnessed or experienced abuse will go on to become victims or abusers, and often children who are apparently well-adjusted and are from loving homes will become abusers and victims. In order to minimise this it is recommended that children are targeted in order to have a proactive approach towards stopping violence before it starts. The Women's Department currently runs a Safe School Program which includes addressing domestic violence within primary and secondary schools.

Whilst this is beneficial it does not provide counselling to individual children who are in need. An alternative, but far more costly and extensive programme would be for schools to have counsellors of their own who see each child on a rotation basis but who are also able to see children who require additional counselling. For this to be implemented throughout Belize, in all schools, would be phenomenal and expensive. Whilst an initial outlay would be costly the benefits of

¹⁴ Hotaling and Sugerma (1986) cited in M. Arnett (1999) *Overview of Domestic Violence and Counseling Skills Resource Handbook*, Angelus Press Ltd., p. 29.

this service would be aimed at reducing crime, therefore saving money in the long term. In order to reduce the initial cost, schools could share counsellors.

To ensure that counselling services are used in cases of domestic violence these need to be mandated by the court. This will be a problem in the districts where counselling services are not readily available. The establishment of a counselling service in all districts is essential. Counselling in some cases may be necessary before an order is given or instead of an order. In such cases a follow up report to the court is of extreme importance. By instructing the parties to visit a counsellor without an order being given the attitude may be adopted that the court believes the situation to be a matter of marriage breakdown, involving two parties. By sending out such a message both parties may conclude domestic violence to be a problem contributed to by two parties as opposed to the blame resting solely with the perpetrator. In instructing both parties to visit counselling it needs to be made clear that a report will be received by the court and that this report will be used in addition to the other information given to determine the case.

Where counselling is ordered in addition to a Protection or Occupation Order it is recommended that the victim and other household members receive counselling and the perpetrator be instructed to join a rehabilitation programme.

The Act currently has a provision for rehabilitation as an alternative to the other penalties given for breach of an order. As no rehabilitation programmes aimed at abusers are offered in Belize this alternative is ineffective.

Rehabilitation programmes have been initiated in other Caribbean countries. Jamaica has a programme called “Brothers for Change”. This programme is a joint initiative between government and an NGO. It aims to get to the root of gender based violence by looking at attitudes towards power and control. This is a group based programme that combines men of all ages; they attend one, two hour meeting a week, for forty weeks. The sessions are run by a full time coordinator, Peace Corps volunteers and parole officers in collaboration with the probation department and FAMPLAN¹⁵.

The United States Virgin Islands also has a Batterer Intervention Program. From the observation of this programme it would seem that counselling in this manner is not appropriate for all abusers, namely those with substance abuse problems where a programme dealing specifically with the substance abuse would be required before a rehabilitation scheme for the violence can be attempted.

Dr. Sandra Dean-Patterson deals with Batterer Intervention Programs in the Bahamas and has found that a main component with abusers is denial and that self-recognition programmes are the most effective.

¹⁵ UN ECLAC/CDCC (2003) Report of the ECLAC-CDCC/CIDA *Gender Equality Programme Regional Conference on Gender-Based Violence and the Administration of Justice*, p.11.

She recommends for court mandated programmes to ensure attendance and to provide better monitoring. She also advocates for mandatory police arrests in domestic violence cases.

Programmes used in the U.S. focus on reviewing the abuse the participants have committed, focusing on non-violent alternatives, studying gender roles and social norms and how they influence behaviour and examining the ways in which stress, substance abuse and negative attribution can contribute towards violence. Many programmes encourage supervised contact with the victim in order to increase the perpetrators awareness of their actions and to hold them accountable for their actions.

The National Electronic Network on Violence Against Women found in an investigation of Batterer Intervention Programmes (BIPS) that studies suggest the following:

- BIPS have a small but significant effect
- BIPS are more effective for some men than others
- Most re-offences occur early in the programme
- No approaches have shown themselves superior to others

There are criticisms of BIPS. One criticism is that batterers may become better at concealing the violence and may only agree to

participation in order to avoid a harsher punishment. Programme drop-out rates have also been a considerable reason for complaint.¹⁶

RECOMMENDATIONS

Counselling services should be implemented throughout Belize. The most important of these would be the initial provision of a counselling service in each district. Once established, programmes for victims of domestic violence would need to be put in place. The provision of counsellors would be best dealt with by the Community Rehabilitation Department, Ministry of Human Development. Follow-up reports from counsellors to the court should be mandatory.

The implementation of counselling services in schools would be a long term project that could be piloted in one district and then expanded depending on its success. Failing this the provision of mandatory counselling should include all household members to ensure that children and dependants receive support.

The implementation of Batterer Intervention Programmes would be best dealt with through a combined programme of the prison service, community rehab, NGO's and The Family Court. In order to maximise the effectiveness of these it is recommended that they would last for a minimum of 20 weeks. In order to ensure attendance their use should be mandated by the court with a penalty of prison should the terms of compliance not be met. This would work as a two

¹⁶ (www.endingviolence.com/download/whostudy.pdf).

strike system; it would strengthen the combative system for domestic violence as it shows seriousness towards domestic violence whilst offering the perpetrator the opportunity to change.

Similar programmes are recommended for the prison. These should focus on anger management in order to have a wider appeal within prison, but additional classes focused on domestic violence could be held. The ordering of rehabilitation should not be for the breach of an order as it is currently set out. Rehabilitation should be an accompaniment to an order, which once breached results in prison. The use of fines in cases of domestic violence serves no purpose. They send out a message that it is not a serious offence and provide no constructive punishment. In 90% of programmes in the U.S. the batterer is required to complete a written contract; this includes a commitment to attend; to be on time; to be non-violent; to sign a waiver of limited confidentiality; and not to abuse alcohol and other drugs¹⁷.

Follow-up reports from rehabilitation are also recommended. These reports should include the perceived outcome of the rehabilitation and a recommendation as to whether further sessions should be ordered.

In order to implement such a service, funding would be required. In a study conducted by The World Health Organization it was found that most programmes receive a majority of their funding from the

¹⁷ J. Austin and J. Dankwort (1997) *A Review of Batterer Intervention Programmes, Violence Against Women Online Resources*, <http://www.vaw.umn.edu/documents/vawnet/standard/standard.pdf>, p.6 (viewed 03/06/05).

government. Some programmes charge a small fee from participants; whilst it was recognised that a large number of people attending such classes are impoverished the argument for this is that it adds value to the service. In a review of batterer intervention programmes in the U.S., J. Austin and J. Dankwort found that batterers should pay for their services to hold them responsible for what they have done; that a sliding scale should be provided; and that there should be a provision made for indigent clients¹⁸.

MEDICAL SERVICES

Medical services provided to those who are victims of domestic violence are done so through the local hospital. They deal with cases of assault and rape. Protocol requires that the police are informed, although it has been reported that this is not done in all cases.

Where sexual assault has occurred an examination will occur at which the police must be present. The victim cannot make a request for the police to be excluded. The reason for their presence is apparently due to the need for collaboration of the services the doctor has provided; clearly this role would be better served by a nurse who has an understanding about the medical procedure. In most cases the police officer assigned will be female but this is not always the case. The same is true with doctors where in an emergency case, where the assault has been recent, the on call doctor is assigned to the case and the victim cannot request a female doctor.

¹⁸ Ibid, p. 6.

Medical legal forms are not used to provide statistical data; they are used as evidence in court cases and are for police purposes rather than for the purposes of the hospital or for the collation of data. Doctors are able to provide testimony in cases, yet often they choose not to do this due to fear of reprisals against themselves or due to the time it takes and the high number of cases that are withdrawn. Rather than providing testimony they are often requested to provide a brief statement regarding the case. In child abuse cases, where the child is female, this will only include whether or not there is the presence of the hymen.

RECOMMENDATIONS

The police should not be present at examinations. Collaboration can be given by a nurse and the completion of the medical legal forms done after the examination has taken place.

The compilation of statistical data could also be vastly improved by including the medical legal form within the data compiled by the Belize Health Information System.

The importance of mandatory reporting of cases needs to be reinforced, especially since cases that are not reported are then lost from data.

SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE

Belize has one shelter for battered women, Haven House. The capacity of Haven House is limited and the services provided here are limited as it only has one full time member of staff and is in the process of hiring a program coordinator. Currently women are able to stay at Haven House for twenty one days after which they must make alternative arrangement; sometimes a stay can be extended depending on the capacity at that time. Haven House does not provide a drop-in service and those placed there are done so on a referral basis mainly by the Women's Department. A hotline was established for Haven House but this is not yet operational. The major difficulty with sheltered accommodation within Belize is that there is no organised accommodation within the districts. This means that women living within the districts either have to travel to Belize City or stay with family and friends. In relationships where the victim is financially dependent on their partner, the cost of travelling to Belize City may provide obstacles and this would be especially difficult where there are children involved. No provisions to provide alternative low cost accommodation have been put in place in the districts and social assistance in these cases does not provide for emergency accommodation. Social assistance will help to pay rent for a maximum period of three months when accommodation has been found. After this period, alternative arrangements would need to be made. Occupation orders should, for cases like this, relieve some of the pressure. In severe cases where the victims does not wish the abusers to know where they are staying this would not be suitable.

CONCLUSION

This review of the Domestic Violence Act and the systems supporting it has identified a number of shortcomings. Firstly, it has identified that the Act needs to be more comprehensive and also that the implementation and enforcement severely hinders the usage of the Act. Primarily the following areas need to be examined: eligible abused persons; eligible persons to apply; mandatory arrests and prosecution policies; counselling and rehabilitation; and enforcement.

The Act does not accommodate the reality of Belizean relationships by excluding those in visiting relationships. Such relationships form a significant percentage of unions in Belize. Protection should be extended to include persons in such relationships regardless of whether there are children from the relationship or not. It should also be extended to include other household members and siblings. The eligibility of those able to make applications should also be extended in order to cover these people.

The definition of domestic violence as stated in the Act should be changed to increase simplicity. Whilst the definition is currently wide, it is confusing and unclear. It is recommended that the definition be changed so that it clearly states that physical, psychological, emotional, sexual and financial abuse is included in the Act.

The range of orders available should also be extended so that tenancy orders are available in order for people to make a clean break. Financial compensation should also be considered as the costs incurred should not rest on the victim, particularly where medical costs arise out of the situation. The provision of interim maintenance orders would also ensure that children from the relationship are provided for, removing some of the financial worry from the victim.

The enforcement of all orders is not currently available, partly due to the Act, and partly due to them not being enforced. Occupation orders need to have penalties for a breach. Powers of arrest need to be extended to all orders, where a breach occurs. The range of sentencing options available should also be increased with the provision for rehabilitation being usable and a scale for punishment aimed at targeting repeat offenders.

In order to ensure compliance and a respect for the rule of law and the Family Court, all reported cases of domestic violence should result in arrest, unless the police conclude that this is not in the victim's best interests. The use of presumptive arrests would be reinforced with pro-prosecution policies, turning domestic violence from a private matter to something that warrants a public response.

The inclusion of rehabilitation orders and counselling is an essential part of the Act. Both should be made compulsory in order to reduce the cycle of domestic violence and develop a more pro-active approach to the issue. These services must become available

throughout Belize, not just within Belize City, in order to effectively tackle domestic violence. The use of rehabilitation programmes should also be aimed at making the offender take responsibility for their actions.

Apart from reforms to the Act, this review has highlighted the need for continual training at all levels of service. It needs to be understood that protection orders are not to be substituted for the enforcement of criminal law. Domestic violence is a crime and needs to be treated that way. The use of Domestic Violence Units within the police means that there should be a uniform and consistent approach to domestic violence throughout Belize and that an effective response should be received.

2.20 **STRENGTHENING THE LAWS RELATING TO SEXUAL ABUSE**

Medical evidence is usually crucial in sexual abuse cases, because problems caused in gathering medical evidence usually causes sexual abuse cases to be dismissed by the courts. Sexual abuse cases therefore require specific information, to be completed by doctors specialised in collecting data on sexual abuse cases and presenting such data as evidence in court. To assist such a pool of specialised doctors in performing their duties, technology in the form of DNA testing should be made available locally, thereby making it easier to quickly identify offenders. The police should form specialised units in each district, staffed by officers trained in taking statements in

sexual abuse cases. In respect of prosecutions, the Director of Public Prosecutions should ensure that all sexual abuse cases are prosecuted by Crown Counsel, not civilian prosecutors.

It is recommended that the Medical Service and Institutions Act, Chapter 318, provide that there shall be a doctor at each district hospital in Belize, specialising in dealing with sexual abuse cases, including the collection of data, the completion of a new improved medico-legal form for child abuse and sexual abuse reports. Further, the acquisition of the necessary equipment enabling DNA testing to be done locally is recommended, to facilitate the quick identification of offenders in sexual abuse cases. The Belize Police Department should establish a Sexual Offences Unit in each district, staffed by officers trained in the techniques of recording statements of witnesses in sexual abuse cases. Further, the law should provide that sexual abuse cases shall only be prosecuted by Crown Counsel from the Office of Director of Public Prosecutions.

2.21 **PROPOSED MEDICO-LEGAL REPORT FORM FOR USE IN SEXUAL ABUSE CASES**

It is recommended that the attached form be incorporated into law for use in sexual and child abuse cases.

3. **CONCLUSION**

The above proposals are being made with a view to the drafting of a Law Reform (Criminal Justice) Bill. In a spirit of consultation, the views of interested stakeholders are being invited. Comments should be addressed to Ms. Sandra Ireland, Solicitor General's Office, Attorney General's Ministry, Belmopan City, Belize, e-mail agministrybze@yahoo.com, to reach no later than 1st October, 2005.

**ATTORNEY GENERAL'S MINISTRY
AUGUST 5TH, 2005**