

# Upholding Child Rights in the Response to Domestic Violence

A Policy Brief by Women's Aid Organisation (WAO) | January 2020

## OVERVIEW

Domestic violence (DV) causes detrimental effects on children who experience or are exposed to the violence. Current practices in the response to DV do not sufficiently protect child survivors.

**Issue 1:** Sexist attitudes and lack of awareness of child rights by first responders are harmful to child survivors.

**Issue 2:** Interviewing children in an intimidating environment hinders their right to participation.

**Issue 3:** Delays in investigating cases result in on-going risk and uncertainty for child survivors.

**Issue 4:** Refusal to include children in interim protection orders (IPOs) or issue independent IPOs for children results in danger to child survivors.

## INTRODUCTION

Malaysia has taken positive steps in recent years, both in child rights and in domestic violence. However, supporting children *facing* domestic violence needs more attention.

To explore how we can better support children facing domestic violence, we need to understand two key points:

1. Child survivors of DV include both children who are directly abused by a family member and also **children who witness abuse**, typically of their mother by their father. This is recognised by the World Health Organisation. DV against children is usually physical or sexual.
2. Children may experience trauma from DV not only while the abuse is occurring, but also **in its aftermath – including as a result of interactions with first responders (e.g. police officers, hospital staff)**. We need to ensure our response to DV cases supports – and not re-traumatizes – children.

Placing child survivors' interest at the forefront is in line with Malaysia's obligations under the UN Convention of the Rights of the Child (CRC).

## **Issue 1: Sexist attitudes and lack of awareness of child rights by first responders are harmful to child survivors.**

Sexist and patriarchal attitudes of first responders, including the police and JKM, are harmful to the mother-survivor and the child-survivor. These attitudes may discourage survivors from seeking help and

prevent them from escaping the abuse. These attitudes also affect the quality and efficacy of response by the police and other first responders, as such beliefs conflict with the duties of first responders articulated in law and policy. A child witnessing and experiencing these attitudes may absorb them.

**WAO Case Study - Shreya:** Shreya, her brother Vikram, and their mother Samira, were being abused by their father. On a few occasions, Shreya accompanied Samira to the police station to file a police report, but the police were not responsive. One time, the police officers at the station laughed at Samira and dismissed her husband's abusive behaviour, telling Samira that 'her husband must be tired because he's a lorry driver.'

**WAO Case Study - Sarah:** Sarah's husband subjected her to daily abuse for 12 years, including physical, psychological, sexual, financial, and social abuse. Sarah's husband also abused their children, and throughout their marriage, would prevent Sarah from seeing the children. He would move them without her consent, or take them away in attempts to lure Sarah back home when she would leave to escape the abuse.

Sarah filed twelve police reports over the years, but no investigation paper was opened; the police only called the husband to give him a warning. When Sarah would return to the police station to file another report, she was asked by the police officers, 'Why are you still getting pregnant?' but they would not directly acknowledge the domestic violence.

At WAO, a social worker assisted Sarah in following up on her thirteenth police report in order to obtain assistance from JKM to get an Interim Protection Order (IPO). As Sarah was worried about her children, who were still living with her husband, the JKM officer assigned to the case accompanied Sarah to her home to see the children. The officer noted the poor living conditions of the children, but informed Sarah and her social worker that JKM could not take any action to remove the children from the home, as there were no recent bruises or injuries evident. The officer then advised Sarah to get the children's names added to the IPO so that Sarah could later go back to the home with the police and get her children.

WAO subsequently accompanied Sarah to JKM to add the children's name to the IPO; however, they were informed that the children could not be added to the IPO as their names were not included in the referral letter given by the police. The JKM officer advised Sarah to hire a lawyer and apply for temporary child custody from the court.

**Recommendation:**

Front-line responders including the police and JKM, play a key role in ensuring the protection of child survivors of DV. Training that focuses on mindsets and attitudes related to DV and children's human rights should be conducted in order for all first responders to be sensitised and adopt best practices that minimise the risk of on-going harm and uphold the best interests of child survivors of DV.

## **Issue 2: Interviewing children in an intimidating environment hinders their right to participation.**

The establishment of the Child Interview Centre (CIC) was an important step taken by the police towards prioritising the best interests of child survivors. Interviewing children in an environment that is less intimidating and more comfortable than the police station facilitates a child's right to participate and share their experience of DV, which may help children recognise their experience and recover from their

trauma. It also presents an opportunity for the child to speak about additional details of the abuse that may not even be known to the mother-survivor, and which could assist in criminal case proceedings.

**WAO Case Study – Rachel, Robert, and Laurel:** Rachel, Robert and Laurel are the three children of Bella, who was abused by her husband. When Bella lodged a police report based on the abuse, the Investigating Officer (IO) requested Bella to bring Rachel (10 years old) to the police station to give a statement. The WAO social worker reminded the IO that Rachel's statement should be taken at the CIC, but the IO still insisted on taking the statement at the police station. After the IO asked some questions regarding the physical abuse Rachel had experienced, she said she would take Rachel's statement again at the CIC the following week.

**Recommendation:**

The police should conduct all interviews of children at the CIC and in a streamlined manner (e.g. conducting only one interview) unless impracticable, as part of prioritising the best interests of child survivors. Child interviews should be conducted at the CIC whether the child witnessed the abuse of their mother, or also experienced abuse themselves.

### **Issue 3: Delays in investigating cases result in risk and uncertainty for child survivors.**

In some cases, police investigation of DV and child sexual abuse cases has taken several months. Cases of DV that involve child survivors should be prioritised and immediately referred to JKM where the child's welfare is deemed to be at risk. Prolonged investigation might result in additional uncertainty in the child's life, such as with regard to where the child will live and who has custody. It is important to ensure minimal disruption to a child's life in the aftermath of DV in order to protect their best interests.

**WAO Case Study – Anya:** Anya is the two-year-old daughter of Shereen. Anya has been a witness to her father's abuse of her mother. In one incident, Anya and Shereen were in the car when Anya's father started shouting at Shereen and aggressively banging the car mirror, frightening Anya and making her cry uncontrollably. In another incident, Anya's father came home drunk and forced Shereen to have sex in Anya's presence. Anya's father then went to the bedroom and began masturbating with the door open while Anya was playing in the vicinity. When Shereen entered the room with Anya beside her, she screamed in shock upon finding her husband.

Shereen had already initiated divorce and custody proceedings, and had also lodged police reports on domestic violence and child sexual abuse. However, even five months after the reports were made, no action had been taken by the police. While the outcome of the investigations on the complaints of domestic violence and child sexual abuse were pending, custody of Anya was awarded to her father, while Shereen only got visitation rights.

**Recommendation:**

The 'best interests of the child' principle, in accordance with the CRC, mandates prioritising the child's safety where there are allegations of domestic violence and child sexual abuse. The police must promptly investigate cases related to DV and child sexual abuse, rather than prolonging such investigation over the course of several months, and should immediately refer the case to JKM where the child's welfare is at risk.

## Issue 4: Refusal to include children in protection orders results in danger to child survivors.

In some cases, police officers refuse to include children in the referral letter for an IPO, particularly where they have witnessed the abuse of their mother by their father but have not directly been abused themselves. In other cases, the JKM officer refuses to include the children in the IPO, not viewing the children as being in need of protection. Where an IPO is granted but does not include the children, or is not granted at all, the children are left exposed to further abuse, or even kidnapping by the perpetrator.

Currently, the DVA does not include unmarried intimate partners within its scope. As a result of this, children of mother-survivors who are not married to their abusive partners have been refused IPOs, despite the fact that they are independently eligible to obtain an IPO under the DVA.

**WAO Case Study - Rachel, Robert, and Laurel:** Rachel, Robert and Laurel are the three children of Bella, who was abused by her husband. The Investigating Officer (IO) was reluctant to include children's name in the IPO referral letter at first, but after the WAO social worker reminded the IO that Bella had mentioned her husband forced the children to throw away Bella's belongings, and her concern over their safety in her second police report, the IO agreed to include their names.

The WAO social worker then accompanied Bella to meet with a JKM officer, who refused to include the children's names in the IPO, stating that they were not the victims even though they had witnessed the abuse.

**WAO Case Study – Li Jun:** Li Jun is a three-year-old boy who is the son of Caroline. Although Li Jun did not experience abuse first-hand, he witnessed the abuse of his mother from the time he was born, since he was often in proximity to his mother when she was physically abused by Li Jun's father. Caroline was not married to Li Jun's father, but they had been living together for over ten years. On one occasion, Li Jun sustained injuries after going out with his father to a function. Li Jun later told Caroline that the injury was caused by his step-sister, who had made statements previously about her intention to hurt Li Jun.

Because Caroline was not married to Li Jun's father, she did not qualify to get an IPO for herself and Li Jun under the DVA and thus could not obtain protection from the constant harassment.

### **Recommendation:**

Police SOPs should be updated to automatically include child survivors who witness DV in the referral letter for an IPO. Furthermore, police SOPs should mandate that IPO referrals be issued for child survivors, even where the mother-survivor is deemed ineligible for IPO. Similar SOPs must be put in place for JKM officers.

## CONCLUSION

The duty of protecting a child-survivor's best interests in responding to DV falls on many different stakeholders. A collective effort from all stakeholders is needed in order to ensure that children's rights are properly upheld in the aftermath of DV.