

Seeking Safety

Increasing awareness of the **IMPACT OF DOMESTIC VIOLENCE** in Namibia



Legal Assistance Centre

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Protecting Children Affected by Domestic Violence



THE IMPACT OF EXPOSING CHILDREN TO VIOLENCE

More than 1 out of 5 victims of domestic violence say that their children have been harmed or threatened by the abuser.¹

Data also shows that in approximately half of the applications for a protection order, the victim said that one or more children had witnessed the most recent incidence of violence, with a similar percentage having witnessed past incidents of abuse. **In terms of the Combating of Domestic Violence Act, it is a form of psychological abuse to expose a child to domestic violence, or to put a child at risk of seeing or hearing such abuse.**

Child witnesses are most commonly aged between 5 and 14.² Exposure of these children to violence is not only detrimental to their development but is also likely to negatively impact their performance in school.

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Photos are by **Syliva Kincses** and **Rachel Coomer**.

Disclaimer: The persons depicted in the photos are not actual victims.

Legal Assistance Centre:

4 Marien Ngouabi Street (former name Körner Street), Windhoek
PO Box 604, Windhoek, Namibia

Tel. 061-223356 • Fax 061-234953 • Email info@lac.org.na • Website – www.lac.org.na

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Windhoek

Data from Namibia shows that the most significant impacts of domestic violence on others are emotional and psychological effects, changes in relationships with the respondent, exposure to threats and assault and fear, anxiety and other negative psychological reactions.³ Complainants frequently report an intensifying effect of the domestic violence on children and other family members over time.

The exposure of children to domestic violence can produce a troubling legacy. Some impressionable

youths may model their own behaviour on the example which they observe. Other young people may be traumatised by witnessing violence between parents or other family members.

Exposing children to violence against others in the home is so emotionally harmful that it is a form of domestic violence in itself.

REMOVING A CHILD FROM THE HOUSEHOLD

If a child affected by domestic violence is in danger, a social worker should be contacted to assess the situation. It is possible to remove the child from the household in terms of the Children's Act. Police or a social worker can put the child in a place of safety until the danger can be addressed. (When the Child Care and Protection Bill replaces

the Children's Act, it will be possible to remove either the child or the offender on an emergency basis.) This is significant because, for example, police or a social worker or a magistrate could act to protect the child upon hearing of the danger before a protection order is issued, or even if the protection order application is withdrawn.

PROVISIONS TO PROTECT CHILDREN IN PROTECTION ORDERS

The Combating of Domestic Violence Act allows complainants to request that provisions are included in a protection order to protect children in their care or children affected by the violence.

Clerks of court, social workers and others who may assist complainants with protection order applications should encourage them to think about how best to protect the affected children.

Still, complainants sometimes mention instances of children in the family being physically abused along with themselves, but do not ask for the protection order to prohibit violence against the children. This may be because the complainants are not aware that they can make this request.

Magistrates should include provisions in protection orders to protect children who are being affected by the domestic violence even when this is not requested, if there is evidence that children are being affected or are at risk of violence.

Possible provisions could be:

- explicit prohibitions on violence against the affected children;
- no-contact provisions;
- a change of parental custody or restricted parental access;
- temporary maintenance; or
- some tailor-made provision to protect the children affected.



**Child abuse
casts a shadow
the length of
a lifetime.
It shouldn't
hurt to be a child!**



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No-contact provisions

Including children in no-contact provisions is one way of protecting them from the effects of domestic violence. The Combating of Domestic Violence Act allows complainants to request restrictions on contact or communication by the respondent with persons other than themselves. These “third parties” do not necessarily have to be in a domestic relationship with the complainant or the respondent.⁴ The complainant can authorise such orders for children or other persons in their care, whilst other third parties must give their consent to be covered. If children other than children in the complainant’s care are to be covered by no-contact orders, consent is required from the parent or guardian of the children.

Temporary orders for custody and access

A complainant may apply for a temporary custody order or a temporary order to restrict access. However, these provisions seem to be causing some confusion. The intention of the law was to refer to the parental powers of custody and access. Therefore, such orders would make sense only where the complainant or the respondent, or both, have parental rights and responsibilities in respect of the child in question. However, the law seems to be interpreted by some applicants and courts as referring to more general physical contact. This is evident from the fact that some applicants make inappropriate requests for custody or access – of adults, of children over whom they already have custody or access, or of children they are not even related to by blood or through a relationship.

Another problem is that some people approach the court under the Combating of Domestic Violence

Act when they should be using the Children’s Status Act (unmarried or divorced parents) or approaching the High Court (married parents). The provisions on custody and access in the Combating of Domestic Violence Act should be used only for temporary orders in emergency situations to protect children who may be at risk of harm. They were not intended to replace the normal legal procedures on the parental powers of custody and access.

Furthermore, the domestic violence context should not be the forum for giving a complainant or a respondent custody or access rights over a child of some other parentage. For example, a complainant might be caring for a niece, nephew or grandchild in the role of a primary caretaker, at the request of the child’s parent. In such a situation, it is possible that neither the complainant nor the respondent would have any formal custody or access rights over that child – so custody and access in such instances should not be addressed in an abbreviated domestic violence proceeding.

Temporary maintenance

The Combating of Domestic Violence Act allows complainants to request an order for temporary maintenance for children of the respondent, for a maximum period of 6 months. The theory is that someone who is experiencing domestic violence is unlikely to be able to cope with a variety of simultaneous court procedures, but should not feel compelled to stay in a violent situation because of economic necessity.

A request for temporary maintenance is possible only where the respondent has a legal liability to maintain the person in question. For example, all parents have an obligation to maintain their

minor children, regardless of whether the children were born inside or outside marriage. But there is no legal obligation to maintain a step-child.

Best interests of the child

As a party to the UN Convention on the Rights of the Child, Namibia is committed to basing all decisions concerning a child on the principle that the best interests of the child are paramount. A recent High Court case ruled that the best interests of the child are the paramount consideration in all matters concerning the child, on the basis of the Convention as applied to Namibia by the Namibian Constitution.

ONGOING MONITORING OF CHILDREN AT RISK

If an interim protection order involves children in any way, the clerk of the court has a duty to notify the Ministry of Gender Equality and Child Welfare (MGECW).⁵ This is because children in

a violent situation might require monitoring by a social worker to see if other protective action is needed – such as removing the children from the home and putting them in a place of safety, or instituting social worker supervision of the family situation.

Once the MGECW has received notice of a protection order that includes a child, the Ministry should assign a social worker to investigate and monitor the case as appropriate. The social worker should regularly review the family's situation to ensure that the children are not subjected or exposed to domestic violence.

Currently there is no specific form or procedure for this notification of the MGECW. The Legal Assistance Centre recommends that a specific form be included in the regulations under the Combating of Domestic Violence Act for this purpose.

Break the cycle of violence by protecting the children.

NOTES

¹ *Seeking Safety: Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003*, Windhoek: Legal Assistance Centre, 2012 at 316.

² *Ibid* at 311.

³ *Ibid* at 282.

⁴ For example, the abusive spouse of a domestic worker might be harassing the domestic worker's employer in an attempt to get access to the domestic worker, or an abusive spouse might be intimidating the family's domestic worker in order to get information about the movements of the other spouse. A parent who is abusing a child might turn his or her wrath on the school teacher who assisted the child to seek a protection order. These are some examples of the kinds of situations the law was designed to cover.

⁵ Combating of Domestic Violence Act 4 of 2003, section 8(7).

