

GUIDE TO THE COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003



Legal Assistance Centre
2007

This guide contains a detailed explanation of the Combating of Domestic Violence Act 2003. It explains this new law in simple language and gives examples to help you understand it.

Each part of the booklet lists the sections of the law which you can look at to get more information.

There is also a shorter booklet on the new law which highlights the most important points. You can get this booklet from the Legal Assistance Centre.

Text: Dianne Hubbard & Anne Rimmer

Illustrations: Nicky Marais

Cover: The cover illustration by Nicky Marais was inspired by a painting by a Namibian survivor of domestic violence who wishes to remain anonymous.

Layout: Perri Caplan

Printing: John Meinert Printing (Pty) Ltd, Windhoek

Funding: This publication was made possible through support provided by the Civil Society Development Program (CSDP) of the Namibia Institute for Democracy (NID), funded by the U.S. Agency for International Development (USAID). The opinions expressed herein are those of the authors and do not necessarily reflect the views of the NID or USAID. The reprint in 2007 was funded by the Ministry of Health & Social Services, Government of Namibia.



Publisher: Legal Assistance Centre

© Legal Assistance Centre

PO Box 604
Windhoek
Namibia

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

Portions of this booklet text may be freely copied for educational purposes, as long as the source is acknowledged.

An Acrobat (pdf) version of this booklet is posted on the LAC website.

TABLE OF CONTENTS

THE PROBLEM OF DOMESTIC VIOLENCE IN NAMIBIA	3
Myths about domestic violence.....	4
Facts about domestic violence.....	6
Violence Wheel.....	8
Non-Violence Wheel.....	9
DEFINITION OF LEGAL TERMS	10
WHAT IS DOMESTIC VIOLENCE?	11
WHAT IS A DOMESTIC RELATIONSHIP?	14
AN OVERVIEW OF THE LAW	16
PROTECTION ORDERS	17
DOMESTIC VIOLENCE OFFENCES	33
POLICE POWERS AND DUTIES	39
APPLYING FOR A PROTECTION ORDER – THE FORMS	41
Form 1: Application for protection order	43
Form 5: Interim protection order.....	60
Form 6: Notice of intention to oppose confirmation of protection order	67
Form 9: Final protection order	70
THE CYCLE OF VIOLENCE	Inside back cover

Like most Namibians, I am concerned about the current spate of violent crimes in our country, especially the brutal acts of violence directed at the vulnerable members of our society, such as elderly persons, women and children... These crimes represent flagrant violations of the rights of our people. All those involved must be brought to book and account for their actions. When found guilty, they must be punished without mercy. We are also disheartened by the loss of many young lives that were cut short by the callous behaviour of these criminals. Now that the Combating of Domestic Violence Bill has been passed by Parliament, I expect that the hands of our Police Officers and Courts of Law will be further strengthened in dealing effectively with law enforcement and the administration of justice.

President Sam Nujoma, State of the Nation Address, 31 March 2003

Laws are instruments that will help us to achieve our objective, but unless we change people's attitudes we will not succeed.

Hon Nandi-Ndaitwah, Minister of Women Affairs and Child Welfare
Parliamentary debate on Combating of Domestic Violence Act

THE PROBLEM OF DOMESTIC VIOLENCE IN NAMIBIA

DOMESTIC VIOLENCE
is violence that takes place within
a family or another close relationship.

Domestic violence is sometimes called “battering”. When it takes place between husband and wife, it is sometimes called “wife abuse” or “spouse abuse”. When children are the victims, it is often referred to as “child abuse”.

Domestic violence is particularly disturbing because the home and the family should be places where people can feel the most safe and secure.

Although women can be violent, it is women and children who are most often the victims of domestic violence at the hands of men.

Domestic violence figures ‘shocking’

THEY are figures that were yesterday described as “frightening”: one in five women is in an abusive relationship, and more than a third of women report having suffered physical or sexual abuse at the hands of an intimate partner. They are also among figures which depict Namibia as a country with a shameful record of domestic violence. It also emerged yesterday that despite the pervasiveness of this abuse, more than six out of every 10 women who find themselves in such violent relationships do not seek help. Further, more than one in every five women in an abusive relationship does not speak to anyone about her situation. The shocking statistics were released in Windhoek yesterday, when the results of an extensive study on domestic violence in Namibia – conducted since 1999 – were made public to coincide with the International Day for the Elimination of Violence against Women and Children.

The Namibian, 26 November 2003

I would particularly like to express my concern about the recent spate of violent crimes directed against women and children. These crimes represent a gross violation of the fundamental rights of our citizens, while causing unwarranted damage to the good name of our country. These despicable acts of barbarism must therefore be roundly condemned and completely uprooted.

President Sam Nujoma, opening of Parliament, 11 February 2003

MYTHS ABOUT DOMESTIC VIOLENCE

- **“WOMEN ASK FOR IT”:** Sometimes people say that women “ask” to be beaten because they nag their husbands, or because they fail to do some household task – such as not having meals ready on time. If a woman is bossy, lazy, untidy or headstrong, some people will say that she needs to be put in her place.

This is not true. Many ideas about how a wife should behave are based on stereotypes which are unfair to women. No matter what a woman does or says, no one has the right to beat her. Everyone has a legal duty not to use violence against others. Using violence is not an acceptable way to solve a problem in the home.

- **“IF IT IS SO BAD, WHY DOESN’T SHE LEAVE?”:** Some people say that women really like to be beaten by their husbands or their boyfriends because they like to be overpowered by men. They think that women like to be beaten so they know that the men in their lives really pay attention to them and care about them. Some people say that women would lose respect for the authority of men if they were not beaten. Some people think that a woman who leaves one violent relationship will always look for another violent man. Some people say that if the woman does not really want to be beaten, she will leave the relationship.

None of these things are true. No one really wants to be beaten. Violence can injure a woman’s spirit as well as her body. Women who are beaten may develop a bad opinion of themselves. They may start believing that they are “bad” and that they deserve to be beaten. These things can make it hard for a woman who is being beaten to leave the relationship or even to seek help.

A woman who is beaten may also feel trapped in the relationship because she is emotionally and financially dependent on the man who is beating her. She may think that it will be best for the children if the family stays together. The woman may believe that the man who beats her will change his ways. (Men who beat women often say that they are sorry afterwards, and promise that it will never happen again – but it usually does.) The woman may be afraid that her husband will kill her or her children if she tries to get help. She may believe that she has a duty to keep trying to make the relationship work. She may be afraid that her friends and her family will think that she is the one to blame if the relationship breaks up.

There are many reasons why it is not easy for a woman to leave a violent situation – but this does not mean that she wants to be beaten.

- **“WHAT HAPPENS INSIDE THE FAMILY IS PRIVATE”:** Some people believe that a marriage is very private. They think that what happens inside a family is no one else’s business.

This is not true. What happens inside a marriage can affect the community in many ways. The community has an interest in making sure that all the people in the community are safe, both inside and outside their homes. People who grow up in violent homes are more likely to use violence themselves – because they have learned to believe that this is a way of solving problems. Society has a duty to try to prevent problems that increase the level of violence in the community.

Domestic violence also has costs for society. It results in lost working hours and increased demand for health services. It contributes to overall levels of crime and violence, and so places extra strain on the police and the courts. It sometimes contributes to increased alcohol and drug abuse. Domestic violence also interferes with overall national development, by preventing the victims, the perpetrators and the community from realising their full potential.

- **“ALCOHOL CAUSES BATTERING”**: Sometimes men use drinking as an excuse for violence. Women who are being beaten may think that the abuse will stop if the drinking stops. They may think that it is the drunkenness which causes the violence.

This is not true. Many people drink without becoming violent, and many men who do not drink beat their wives or their girlfriends. It is true that alcohol is often a part of a violent relationship. The reasons why a man drinks and why that same man uses violence may be related. The alcohol may make the violence come out, but the reasons why the violence is there are usually very complicated.

- **“VIOLENCE HAPPENS MORE OFTEN IN POOR FAMILIES, OR TO LESS EDUCATED WOMEN”**: Some people think that violence happens more often in homes where families are struggling to live on a small amount of money. They may also think that only women who are uneducated get beaten by their husbands.

This is not true. Violence takes place in all kinds of homes – rich and poor. It is a problem in all ethnic groups in Namibia. All sorts of women suffer from violence – including well-educated women with good jobs. Domestic violence is a widespread problem.

A study by the Law Reform & Development Commission and the Legal Assistance Centre found that domestic violence accounts for more than one-fifth of all violent crimes committed in Namibia.

*Domestic Violence Cases Reported to the Namibian Police:
Case Characteristics and Police Response, 1999*



FACTS ABOUT DOMESTIC VIOLENCE

- **Domestic violence is widespread.** The World Health Organisation estimates that up to one-half of all women worldwide suffer physical abuse at the hands of intimate partners. The proportion is even higher in some countries.
- **Domestic violence is against the law.** Domestic violence is contrary to the Namibian Constitution. It also violates existing criminal laws such as those on assault, indecent assault and child abuse, as well as being covered by the Combating of Domestic Violence Act. Domestic violence has been condemned by international agreements which Namibia has signed – such as the Convention on the Elimination of All Forms of Discrimination Against Women.
- **Domestic violence is harmful to the victim.** Domestic violence can harm its victims physically, emotionally, financially and socially. The victim may suffer serious injury or even death, as well as a range of psychological problems. The injuries caused by domestic violence are at least as serious as those caused from assaults by strangers, and sometimes more serious. Emotional and psychological abuse can be as damaging as physical abuse.
- **Domestic violence is harmful to the children in the family.** Children growing up in a violent family can experience emotional and behavioural problems, even if they do not experience the violence directly. They also learn that violence is a way of solving problems, which increases the level of violence in society.
- **Domestic violence is harmful to the perpetrator.** The perpetrator may lose the respect of his family and his own self-respect. He may then try to compensate for his feelings of shame and inadequacy with more violence, or with a retreat into alcoholism.
- **Domestic violence is harmful to the family.** Violence within relationships tends to increase over time. It often leads to a complete breakdown of the marriage.
- **Domestic violence is harmful to the community.** It can upset other family members and neighbours. It also sets a bad example for the children in the community. It may cause other women in the community to feel intimidated.
- **Domestic violence is harmful to society at large.** It creates a general atmosphere of disrespect for women. It maintains a high level of violence in society, by teaching children that force is acceptable. Its costs include the costs of state medical care, increased overall levels of crime and violence, social problems such as alcohol and drug abuse and lost productivity. In this way, violence holds back the overall development of the nation.
- **Domestic violence is a gender-based problem.** Although men can be the victims of domestic violence, most violence is perpetrated by men against women. Women are most at risk of violence from men that they know.



Violence law desperately needed, say social workers

OSHAKATI – ...Social workers believe the effects of domestic abuse on the family structure destroy not only the family unit, but also social cohesion. Domestic violence and abuse, they said, result in alcohol and drug abuse, suicide, neglect of children, long-term psychological and psychiatric problems and early school dropouts. “We also feel that it is important to state that the term domestic violence is poorly understood by many, since the tendency is to believe that it is physical violence towards women only. However, abusive behaviour covers sexual, financial and emotional abuse,” social workers resolved. They stressed that sexual, financial and emotional abuse are also destroying and undermining the family structure.

The Namibian, 26 November 2002
(reporting on the Social Workers and Social Assistant Workers
2002 annual general meeting which took place in Ondangwa)

CHILD ABUSE

- Child abuse takes the form of sexual abuse, physical abuse, emotional abuse and neglect.
- Most sexual abuse of children comes from the child’s family members.
- Both men and women commit sexual abuse of children, but the majority of abusers are men.
- Both boys and girls experience sexual abuse in the family, but most victims are girls.
- Men who abuse women in the home are likely to abuse their children as well.
- Children who grow up in a violent environment are more likely to engage in crime or to form violent families when they grow up.

Violence against intimate partners occurs in all countries, all cultures and at every level of society without exception, although some populations are at greater risk of violence by an intimate partner than others...

Although women can be violent towards their male partners and violence occurs also between partners of the same sex, the overwhelming burden of partner violence is borne by women at the hands of men. Ten to seventy per of women reported being physically assaulted by an intimate male partner at some point in their lives.

Around the world the events that trigger violence in abusive relationships are remarkably consistent. They include disobeying or arguing with the man, questioning him about money, not having food ready in time, not caring adequately for the children or the home, refusing to have sex and the man suspecting the woman of infidelity.

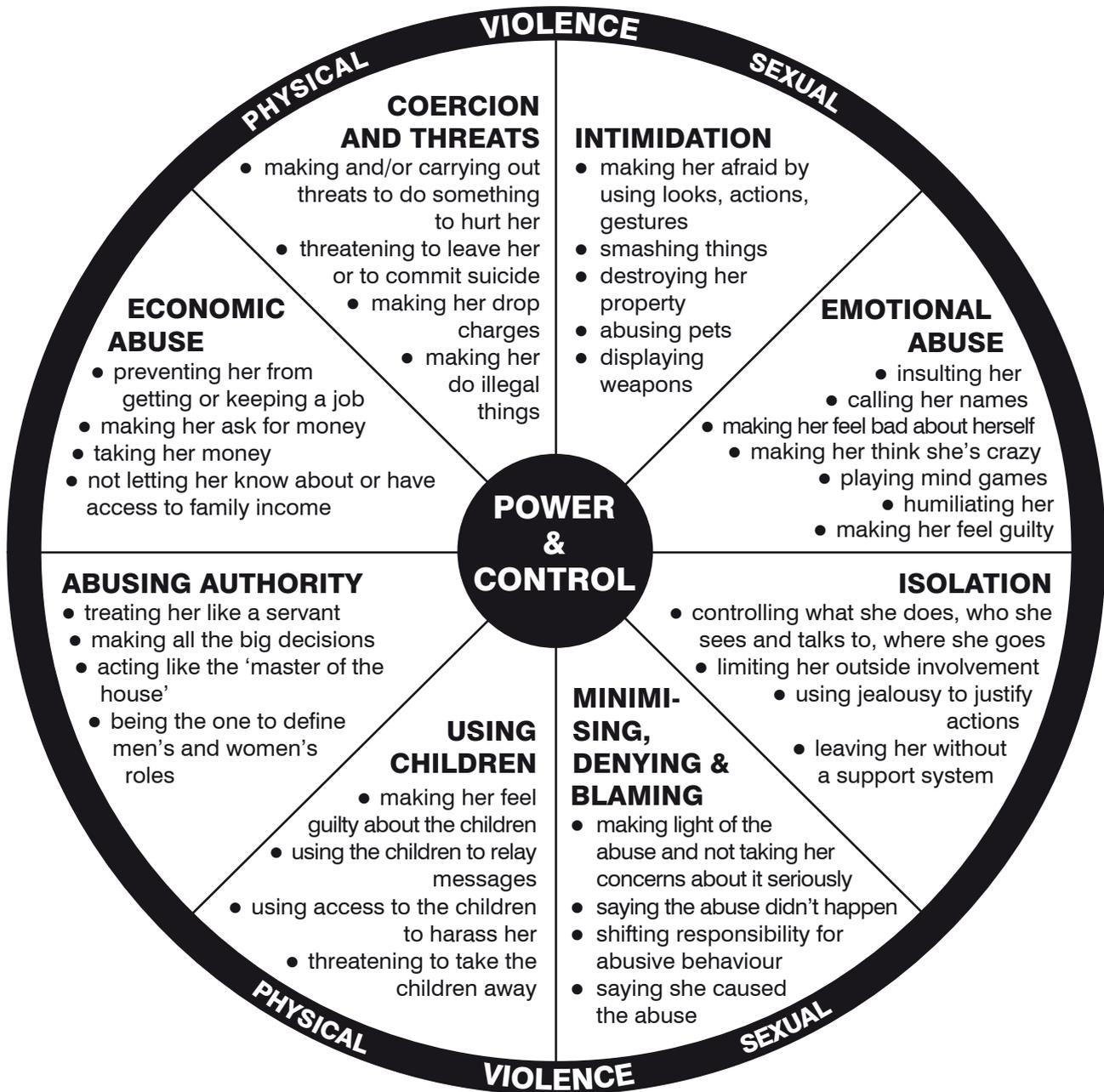
Women are often stuck in these bad relationships due to low income and poverty.

Women are particularly vulnerable to abuse by their partners in societies where there are marked inequalities between men and women, rigid gender roles, cultural norms that support a man’s right to sex regardless of a woman’s feelings and weak sanctions against such behaviour.

These factors may make it difficult for the woman to leave an abusive relationship. Leaving an abusive relationship does not guarantee safety. Violence can sometimes continue and may end up in the murder of a woman.

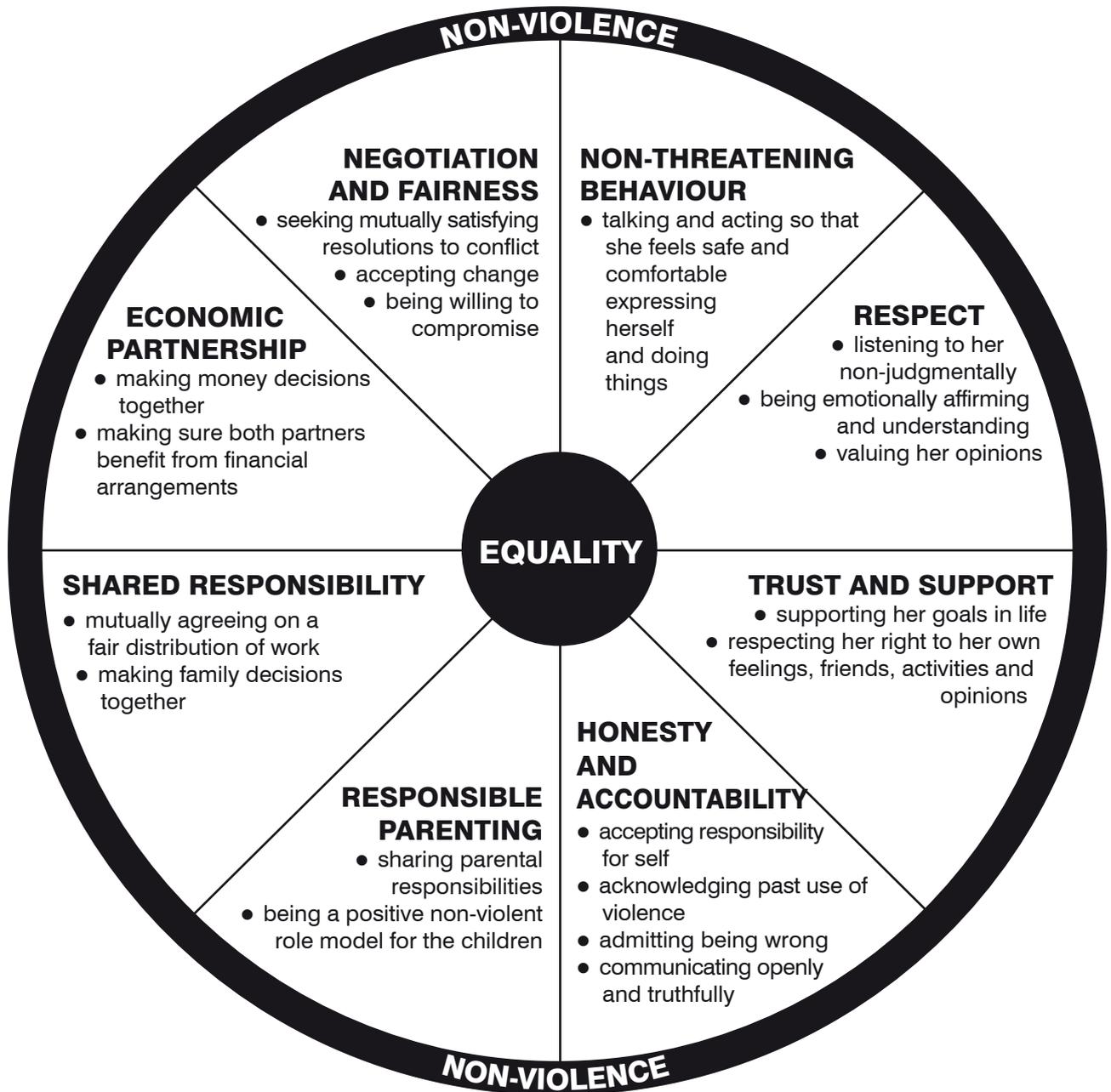
Hon Amathila, Minister of Health and Social Services
Parliamentary debate on Combating of Domestic Violence Act

VIOLENCE WHEEL



The Violence Wheel shows how physical and sexual abuse are related to other forms of power and control in personal relationships. The more subtle forms of control may lead to physical violence, or alternate with outbreaks of physical violence.

NON-VIOLENCE WHEEL



The Non-Violence Wheel shows behaviours based on equality rather than power. It provides ideas for setting goals and boundaries in personal relationships.

DEFINITION OF LEGAL TERMS

COMPLAINANT – the person experiencing the domestic violence

APPLICANT – the person who applies for a protection order

This will usually be the complainant, but it may be someone acting on the complainant's behalf, such as a family member, a friend or a social worker.

RESPONDENT – the person against whom the protection order is requested

This is the person who is believed to have committed the domestic violence.

DEPENDANTS – children or other family members who are unable to support themselves and are being financially supported by the complainant and/or the respondent

AFFIDAVIT – a written statement which a person swears is true, prepared for use as evidence in court

SUMMONS – an order to appear in court



PROTECTION ORDER – an order by the court requiring the respondent to stop committing domestic violence

The protection order may include other provisions to protect the complainant, such as ordering the respondent not to go near the complainant, ordering the respondent to leave the joint residence or ordering the respondent to make maintenance payments.

Section 1

In this booklet, we will refer to the complainant as “she” and the respondent as “he”. We know that women can commit violence and that men can be victims, but we will use the language that fits the most common situations. **The Combating of Domestic Violence Act is completely gender-neutral and can be used for protection by men or women, and by children of both sexes.**

We have a cancer in our society, a cancer of domestic violence...

Hon Schimming-Chase
Parliamentary debate on Combating of Domestic Violence Act

WHAT IS DOMESTIC VIOLENCE?

The following conduct is domestic violence in terms of the Act if it occurs in a domestic relationship. The definition of a domestic relationship is explained in the next section.

(1) Physical abuse, including

- assault or any use of physical force against the complainant, **such as beating or kicking**
- confining or detaining by force, **such as locking the complainant in a room, or refusing to let the complainant go to work**
- depriving the complainant of access to food, water, clothing, shelter or rest, **such as locking the complainant out of the home.**

(2) Sexual abuse, including

- forcing someone to engage in any sexual contact
- engaging in sexual conduct that abuses, humiliates or degrades the complainant. **An example of such conduct is a man who touches his wife's breasts openly at family gatherings whilst making insulting comments about her breast size.**
- making someone look at sexual material, **such as pornographic magazines or websites**, that abuses, humiliates, or degrades them
- engaging in abusive, humiliating or degrading sexual contact or conduct with another person with whom the complainant has emotional ties, such as a family member or close friend. **For example, a man is committing domestic violence against his girlfriend if he forces her daughter by another man to look at a pornographic movie.**

(3) Economic abuse, including

- **unreasonably** depriving the complainant of goods or money which she needs to live, reasonably expects to use or has a legal right to use. **Examples include depriving a person of food, of the use of the family car to get to work or of access to her own income.**
- **unreasonably** selling, destroying or damaging property in which the complainant has an interest or a reasonable expectation of use. **An example is destroying the family radio with a hammer to stop the complainant from listening to the news.**
- hiding property in which the complainant has an interest or a reasonable expectation of use, or otherwise preventing the complainant from using the property. **An example is locking up the complainant's work uniform as a way of preventing her from working.**

(4) Intimidation. This is **intentionally** making the complainant afraid for herself, or afraid for another family member or dependant, by

- threatening to physically abuse the complainant
- physically abusing, or threatening to abuse, a family member or dependant of the complainant
- exhibiting a weapon, or any other behaviour that seems threatening. **An example is regularly placing a knife on the table whilst staring at the complainant in a hostile way.**

(5) **Harassment.** This is repeatedly following or communicating with the complainant, a family member or dependant of the complainant in an unwelcome way. It includes

- watching the person, or loitering nearby
- telephoning the person, including ‘silent’ phone calls
- sending letters, email, or other messages or objects.

It is also harassment if the defendant gets someone else to take any of these actions.

(6) **Trespass**, which is

- entering the home or property of the complainant, without the complainant’s consent, where the complainant and defendant do not share the same home.

(7) **Emotional, verbal or psychological abuse.** This requires a pattern of seriously “degrading” or “humiliating” behaviour towards the complainant, a family member or a dependant of the complainant, such as

- repeated insults or causing emotional pain. **An example is a husband requiring his wife to accept his girlfriend sleeping in the married couple’s bed.**
- repeated and serious exhibition of obsessively jealous or possessive behaviour towards the complainant, the complainant’s dependants or family. **An example is a man who insists that the teenage sister-in-law who lives with him and his wife may not visit any friends, or be visited by them.**

(8) **Threats or attempts** to carry out any of these acts are also domestic violence. **This is an important point. You do not have to wait until you have already been beaten to seek help from the court. A threat of harm is enough.**

Trivial arguments and insults which happen from time to time in all family relationships are NOT domestic violence. Scolding and disciplining children in a reasonable way is NOT domestic violence. Domestic violence is behaviour which causes real physical, financial, psychological or emotional harm. People who take petty family quarrels to court will be turned away.



For most of the forms of domestic violence, one incident is enough to justify a protection order.

Only harassment and psychological abuse require a pattern of events. Trivial incidents that would not be considered violence on their own might amount to domestic violence if they are part of a pattern of behaviour.

For example, suppose that a man gets out his gun and places it on the page of the family Bible where the deaths of family members are recorded, while looking at his wife in a threatening way. He does not say anything, but he makes sure that his wife is watching. He does this every evening. Placing a gun on top of a Bible does not sound very serious by itself, but seen in the context of his pattern of behaviour, it is clearly meant to be intimidating.

Section 2



EXPOSING CHILDREN TO ABUSE

It is a form of domestic violence to allow a child to see physical, sexual or psychological abuse against a family member, or to place the child at risk of seeing or hearing such abuse. But the victim of the abuse cannot be held responsible for this, only the perpetrator.



For example, suppose that a child comes to school crying every day because he hears the sounds of his father beating his mother when he is in his bed at night. His teacher could help him get a protection order to stop the violence. The mother is a victim of domestic violence in the form of physical abuse, but the child is also a victim of domestic violence because the father is knowingly placing the child in a situation where he can hear what is going on.

Section 2(2)

WHAT IS A DOMESTIC RELATIONSHIP?

The following relationships are “domestic relationships” in terms of the Combating of Domestic Violence Act:

(1) marriage

- a civil or customary marriage
- a marriage that ended recently
- an engagement to be married.

(2) cohabitation (where a man and a woman live together as husband and wife without being married)

- current cohabitation
- cohabitation that ended recently.

(3) two people who are parents of a child

- a man and a woman who have a child together, regardless of whether they have ever been married or lived together
- a man and a woman who are expecting a child together, regardless of whether they have ever been married or lived together.

Where two people are parents of a child together, they may always be drawn together by matters concerning the child – such as one parent requesting maintenance payments from the other.

The law does not apply to situations where the child was conceived as a result of a rape, if there is no other domestic relationship between the man and the woman.

(4) parent and child

This includes parents and adopted children (where the child has been formally adopted).

Parents and their children continue to have a domestic relationship throughout their lifetimes, even after the children become adults.

(5) family members with some domestic connection

- any family members related by blood, marriage or adoption, *as long as there is some actual domestic connection between them*, such as financial dependency or sharing a household.

This includes people who *would* be family members if a cohabiting couple were married. For example, if a man and a woman are living together in the household of the man’s parents, or if the man’s parents are supporting them financially, they are all connected by domestic relationships.

Extended families in Namibia can be so large that it is possible for people to be related by blood or marriage without knowing each other very well. The Combating of Domestic Violence Act is designed for situations where the parties have some real connection in their daily lives, because violence in these situations has special complications. This is why not all relatives are included in the category of “family members”, but only those relatives who have some domestic connection with each other.

(6) boyfriend-girlfriend

- any two people of different sexes who are or were in an intimate or romantic relationship.

It is not necessary to show a sexual relationship. A domestic relationship can exist even if a boyfriend and a girlfriend have just begun “dating”.

It is not necessary for both parties to agree about the nature of the relationship. For example, the girl might make a reasonable conclusion from the boy’s behaviour that they had a romantic relationship, even if the boy insists that she was not really his girlfriend.

Because times of change can be the most dangerous in terms of domestic violence, a “domestic relationship” for the purpose of the Act lasts for one year after the connection between the two people has come to an end (such as by a divorce or a break-up). If two people have a child together, their “domestic relationship” continues for the lifetime of the child, or for one year after the child’s death. The court has the power to treat the “domestic relationship” as continuing longer than this if there are good reasons to do so.

For example, suppose that a boyfriend and girlfriend break up, but continue to see each other regularly because they go to the same school. The boyfriend keeps asking the girlfriend to come back to him, and she keeps refusing. He might become increasingly angry over time about her repeated rejection of him. A court might find that the “domestic relationship” in this situation continues for longer than one year if the boyfriend’s conduct continues. The idea is to extend the law to apply to situations where people are at risk of violence because of a past domestic relationship.

The law does NOT cover same-sex relationships of a romantic nature.

This means that people who are in gay or lesbian relationships which involve violence cannot use the Combating of Domestic Violence Act.



AN OVERVIEW OF THE LAW

What can you do if you are experiencing domestic violence?

Anyone who has experienced violence or threats of violence in a domestic relationship can do the following:

- (1) You can make an application for a **protection order**.

A protection order is a court order saying that the abuser must stop the violent behaviour, stay away from the people who are being abused, or even leave the family home altogether. Disobeying a protection order is a crime. The application procedure is a simple one. You do not need a lawyer. A social worker or a clerk of court or someone from your community can help you fill in the application form.

- (2) If the abuse amounts to a crime (such as hitting which is assault, or stabbing which may be attempted murder), you can **lay a charge** with the police OR ask the police to give the abuser **a formal warning**.

There are special procedures to make laying a charge easier for victims of domestic violence. For example, the victim is allowed to give input on whether the accused abuser should be released on bail. If there is a conviction, the victim has a right to give input on what sentence should be imposed. There are special rules forbidding publication of names in domestic violence cases, to protect the family's privacy. If you do not want to lay a charge, you can ask the police to issue a formal warning to the abuser instead.

- (3) You can do **both** of these things at the same time.

You may be at risk if you lay a charge with the police and the abuser is given bail. You could ask for a protection order at the same time, as an additional safeguard to the bail condi-



Civil action

Criminal action

OR BOTH

PROTECTION ORDERS

Who can get a protection order?

- Anyone who has been abused or threatened with abuse in a domestic relationship.
A minor (someone under the age of 21) may bring an application without the assistance of an adult in cases where the violence is serious in nature.
- A family member, police officer, social worker, health care provider, teacher, traditional leader, religious leader, employer, counsellor, or any other person who has an interest in the well-being of the person who has suffered the violence.
The person who has actually suffered the violence must give written consent for the application to be made by someone else, unless this person is:
 - a minor (under the age of 21)
 - a mentally incapacitated person
 - an unconscious person
 - a person who is regularly under the influence of alcohol or drugs, or
 - a person who is at risk of such serious physical harm that the court may approve an application without that person's consent.

The person who applies for a protection order is called the **applicant**. The person who is experiencing the domestic violence is called the **complainant**.

The applicant and the complainant can be the same person (where a person applies for a protection order for himself or herself), or different people (in cases where the application is made by one person on someone else's behalf).

Section 4

Against whom may a protection order be made?

A protection order may be made against any person who is in a domestic relationship with the complainant. The person against whom the protection order is requested is called the **respondent**.

Section 4

Where can you make an application for a protection order?

You can make the application at the magistrate's court nearest to:

- the place where the complainant lives or works
- the place where the respondent lives or works
- the place where the abuse took place.

The applicant may choose. The court can hear the case even if the complainant or the respondent has just started living or working in the area of the court – no minimum period of residence is required. Once granted, a protection order is enforceable throughout the country.

For example, if the protection order is granted at the court in Rundu and the respondent moves to Windhoek, the protection order is still in force against him in Windhoek.

Section 5

When can you make an application for a protection order?

At any time. Applications for protection orders are supposed to be treated as urgent matters by the court. The magistrate can make decisions on applications for protection orders even after ordinary court hours and on weekends if necessary.

Section 8(1), Regulation 2(5)

Who will help you make the application?

The clerk of the court or a prosecutor connected to the court concerned **must** help you prepare the application if you ask. The law says that this is their duty.

Many other people can also help you fill in the application forms. You could ask for help from a police officer, a social worker, a relative or anyone that you trust.

Section 6(4)

Who should you give the application to?

You should give the application for the protection order to the clerk of the magistrate's court.

Section 6(6)

What other documents should you include?

You should give the following items to the clerk of the court when making your application for a protection order:

- A completed application form

This application form includes a statement setting out the facts relating to the abuse. This statement is called an affidavit, which means that you must take an oath (swear that the statement is true) in front of a Commissioner of Oaths. The clerk of the court is a Commissioner of Oaths. Every police station has a Commissioner of Oaths. You can also find a Commissioner of Oaths at banks and law offices.

If you do not want the respondent to know your home address, you can leave the address off the application form.

- Other documents to support your case, if possible.

For example, you could include supporting affidavits from other people who know about the abuse, such as neighbours or family members who have seen or heard the abuse happening. You could include a copy of a medical report from your doctor, or a photocopy of your hospital card showing the dates when you went to get treatment. You can make the application even without other documents to support your application form. But the magistrate will be more likely to believe your side of the story if you have extra evidence.

- If you are making an application on behalf of someone else, you should either include a consent form from that person OR fill in the section on the application form which explains why a consent form is not needed.

The situations where consent is not needed were explained above.

- If you are asking for an order that forbids the respondent from having contact with someone other than you or a child or some other person who is your care, then you must include written consent from that other person to be included in the no-contact order.

It is not necessary to have a lawyer to make an application for a protection order. The forms and the procedure are simple and straightforward. Anyone who can read and write in English should be able to help you with the application form.

There is no fee for making an application for a protection order.

Section 6, Regulation 2



What happens after you give the application to the clerk of court?

The clerk of the court will give the application to the magistrate. The magistrate will consider the application as soon as possible.

The magistrate may make a decision after looking at the information in the application form and the accompanying documents.

OR

The magistrate may ask for more information before making a decision, perhaps by asking the applicant or someone else to come to the court to answer some questions in person.

The magistrate has the power to do any of the following things:

- make an interim protection order as requested
- make a interim protection order that includes only part of what was requested
- dismiss the application for a protection order because it appears false or frivolous

OR

- make no decision until after there has been an enquiry where the magistrate can hear from both the complainant and the respondent.

Section 8

Interim protection orders are like urgent applications in the High Court. They are temporary orders which must be given quickly to prevent possible harm. The magistrate will usually make a decision on the temporary protection order on the basis of the information in the application form, without seeing the applicant or the respondent or any other witnesses in person. But the respondent will have a chance to tell his side of the story before the protection order is made final.

Interim protection order

The magistrate will grant an **interim** (temporary) **protection order** if there is reasonable evidence that an act (or a threat) of domestic violence has been committed, based on the applicant's side of the story.

No protection order will be issued on the basis of minor or trivial acts, unless these acts form part of a pattern of behaviour which is more serious.

In deciding what provisions to include in the protection order, the magistrate will also consider the following factors:

- how long the domestic violence has been going on
- the type of domestic violence (physical, sexual, economic, etc) and how severe it has been
- whether there is any immediate danger to people or property
- the complainant's view of the seriousness of the violence
- the need to safeguard the health, safety and well-being of the complainant and any children or other dependants who may be affected.

An interim protection order has no effect until it is served on (officially given to) the respondent.

The court will arrange for a copy of the order to be served on the respondent by the police, the clerk of court or the messenger of the court. It can be given to the respondent in person, left at his home or his place of work, or sent by registered post. The government will pay all the costs involved.

Sections 7-9, Regulation 6



The police have a duty to arrange for temporary police protection for the applicant until the order has been made final and served on the respondent.

Section 8(6)

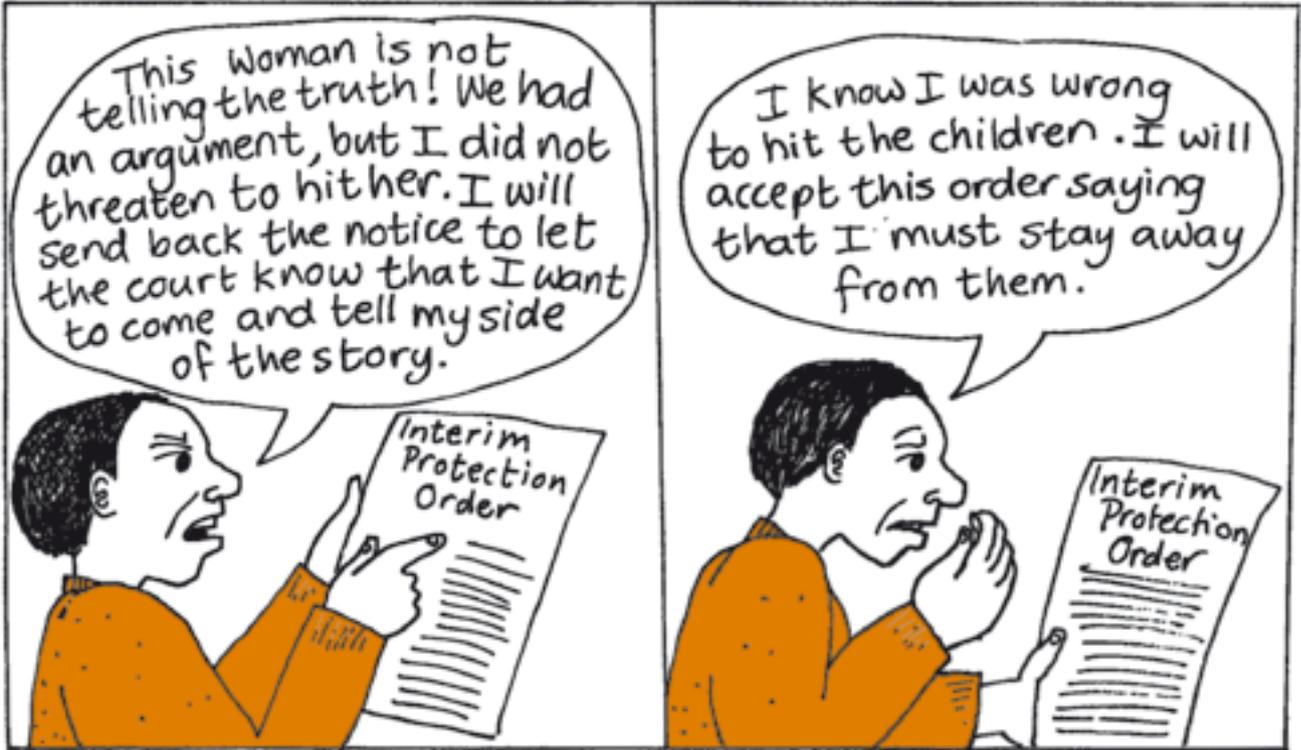
Through education and public awareness campaigns we may be able to ensure that at least the next generation enjoys a less violent society.

Hon Kawana, Deputy Minister of Justice
Parliamentary debate on Combating of Domestic Violence Act

What happens after the interim protection order is granted?

The next step depends on what the respondent does. The respondent must decide if he is going to oppose the order. He must make this decision before the date which is stated in the interim order. This date is called the **return date**. The return date will normally be 30 days from the date the interim protection order was issued. But in order to be fair to the respondent, the return date must be at least 10 days after the respondent received the interim protection order.

THE RESPONDENT HAS TWO OPTIONS:



Opposing the order

OR

Accepting the order

(1) **If the respondent opposes the order:** The respondent must send the clerk of the court a simple **notice** saying that he wants to oppose the order, before the return date. Then there will be a court proceeding called an **enquiry**, where both parties will have a chance to tell their sides of the story.

A date will be set for the enquiry. This date must be within 30 days of the date when the clerk of the court receives the respondent's reply. The applicant will be notified of the court date at least 24 hours in advance. The enquiry must take place as soon as possible, to make sure that the respondent is not unfairly disadvantaged by the interim protection order.

The respondent can request that the enquiry be held very quickly. Since the interim protection order was usually made without giving the respondent a say, it is only fair to let the respondent come to court right away to tell his side of the story. But the applicant must have at least 24 hours notice of the date of the enquiry.

At the enquiry, the respondent will come to court to say why he thinks that the interim protection order should not be made into a final order. The applicant is also expected to come to court on this date, so the court can consider both sides of the story. The procedure for an enquiry is explained below.

The interim protection order remains in force until the court has finished with the enquiry and made a final decision.

(2) **If the respondent does not oppose the order:** If the respondent does NOT give the clerk of the court a notice saying that he opposes the interim protection order, then the order will automatically become final. The magistrate must make sure that the respondent really received notice of the interim protection order and chose not to oppose it. Once this is proved, the magistrate *must* make the interim protection order into a final protection order.

Sections 10-11, Regulation 7

What if the magistrate does NOT grant an interim order?

If the magistrate is not sure whether an interim protection order is justified, the magistrate will direct the clerk of the court to tell the respondent and the applicant to come to court on a specified date for an enquiry. The magistrate will then listen to both sides of the story before making any decision at all.

If the magistrate thinks that the application has no merit at all, the magistrate will dismiss the application. The applicant can appeal against this decision to the High Court.

Sections 8(3), 18

What happens at the enquiry?

The enquiry is the process of hearing both sides on the question of the protection order. It is closed to the public. Only the following persons may be present:

- court officials, the applicant, the complainant (if this is someone other than the applicant) and the respondent
- the parties' lawyers (if they have them) and their witnesses

- a maximum of two people to support the applicant and two people to support the respondent (friends, family members, etc)
- any other person authorised by the court.

There are four possible ways that the enquiry can go forward, depending on which parties to the dispute show up.

(1) If the **respondent** does not appear

If the respondent does not appear, the magistrate can

- issue a final protection order, as long as the respondent was properly informed about the enquiry
- OR
- postpone the case and issue a summons to the respondent to make sure that he comes to court on the new date. (A summons is a legal document requiring someone to appear at court.)



(2) If the **applicant** does not appear

If the applicant does not appear, the magistrate can

- dismiss the case, if the magistrate has reason to believe that the applicant or complainant no longer wishes to pursue the matter
- OR
- postpone the case, if there is a good reason why the applicant has not shown up (for example because she was in hospital)
- OR
- proceed with the enquiry by considering the applicant's affidavit evidence, or (if the respondent wishes) order the applicant and any other person who made an affidavit to come to court so that the respondent can challenge their evidence.



The court will also ask the station commander of the relevant police station to find out if there has been any intimidation of the applicant. If this is the problem, then the police must provide appropriate protection.



(3) If neither the applicant nor the respondent appears

If the respondent had proper notice of the enquiry, then the magistrate can proceed as in (2) above.

(4) If the respondent and the applicant are both present

If the respondent is at court to oppose the protection order and the applicant is also present, then the magistrate will proceed to consider the matter. The magistrate will listen to what both the applicant and the respondent have to say. The magistrate may also consider additional evidence, such as testimony from other witnesses or medical reports. The applicant and the respondent (or their legal representatives) can question any of the witnesses.



Section 12, Regulations 4 & 9

POSTPONEMENTS

If the magistrate postpones the enquiry to a later date for any reason, the interim protection order must remain in force until the enquiry takes place.

If one of the parties is not in court when the magistrate makes the postponement, notice of the new date for the enquiry must be officially delivered to that party.

Section 12(11), Regulation 8

Is legal representation allowed at the enquiry?

The applicant and the respondent are both free to use lawyers, but the procedure is supposed to be so simple that lawyers will not be necessary. The domestic violence enquiry is similar to a maintenance court enquiry in this respect.

Section 12(7), Regulation 4(5)-4(7)

If one or both of the parties do not have lawyers, the magistrate must make sure that the proceedings are relaxed and informal so that the parties will both feel comfortable to speak for themselves. The magistrate is supposed to play an active role to make sure all relevant information is discussed.



EVIDENCE AT ENQUIRIES

The magistrate will listen to any witnesses who are likely to have useful information. The parties can bring witnesses to court to support their stories. They can also ask the clerk of court to arrange a summons for an important witness who may not come to court voluntarily (such as a doctor who treated an injury resulting from domestic violence). The magistrate may also summon witnesses to give information about the case. Witnesses who cannot come to court can give written statements instead, if both parties agree to this.

A summons is an official notice ordering a person to come to court on a particular date. Ignoring it is a crime.

The magistrate will also consider any other evidence that might be helpful. This evidence could include:

- previous convictions for domestic violence offences or other crimes of violence
- records of previous proceedings on protection orders that involved either party
- complaints to the police about domestic violence involving either party
- formal warnings issued by the police involving domestic violence
- previous variations or cancellations of protection orders.

Sections 12(4) & 16(6), Regulations 4(7), 4(9)-4(11)

What happens at the end of the enquiry?

The magistrate can –

- make the interim protection order (or some portions of it) into a final protection order
 - cancel the interim protection order (or some portions of it)
 - change some of the provisions of the interim protection order and make them into a final protection order
- OR
- add new provisions to the final protection order which were not contained in the interim protection order, but only if both the applicant and the respondent were present at the enquiry.

If no interim protection order was in place before the enquiry, the court can grant a protection order at the end of the enquiry which will be a final protection order.

Section 12(16)-12(17)



Final protection order

A **final protection order** will be issued if the magistrate is satisfied that domestic violence has taken place, after considering all of the evidence that is placed before the court. The factors which must be considered are the same as for an interim protection order.

The final protection order will be served on the respondent. A copy of the order will be sent to the police station named by the applicant as the one where she is most likely to report any breach of the protection order.

The purpose of sending a copy of the protection order to the police station is to alert the police to the problem. The station commander of the police station has a legal duty to tell all personnel at the station that the persons named in the order are at particular risk.

If children are involved, a copy of the order will be sent to the Ministry of Women Affairs and Child Welfare, so that they can consider whether any further action is required for the protection of the children.

Section 13, Regulation 10

Terms of protection orders

An interim or a final protection order can be adapted to fit the problem.

All protection orders will order the respondent not to commit domestic violence.

Protection orders may also include the following provisions:

(1) weapons

an order to give a firearm or other weapon to the police

(2) no-contact provisions

(a) an order not to come near the complainant or the complainant's residence, workplace, school, etc.

AND/OR

(b) an order not to communicate with the complainant

AND/OR

(c) similar orders covering other persons who are at risk (such as the complainant's children or family members)

All of the people covered by the protection order must be named. If this part of the order applies to a third party other than the complainant's children or dependants, that person must give written consent to be included.

(3) joint household

an order to move out of the joint household, regardless of which one of the parties owns or rents it

This provision is available only in cases where there has been physical violence. The magistrate will make this order only after considering the following factors:

- how long the residence has been shared
- the accommodation needs of the complainant as well as any children or other persons in the care of the complainant
- any special hardship that might result for the respondent or any other person, such as family members of the respondent who are also sharing the residence.

This part of the protection order can include an order about the use of the contents of the household, such as furniture. If necessary, it can include a provision saying that the police must remove the respondent from the home, or that the police must go with the respondent to collect clothes and other personal belongings from the home under police supervision.

(4) alternative accommodation

an order to pay rent for alternative accommodation for the complainant, or to otherwise arrange for another place for the complainant to stay

This is another option in cases where the parties shared a joint residence, if the respondent is not ordered to leave the joint household. In rural areas, the order might say that the respondent must construct appropriate traditional housing for the complainant.

(5) possession of property

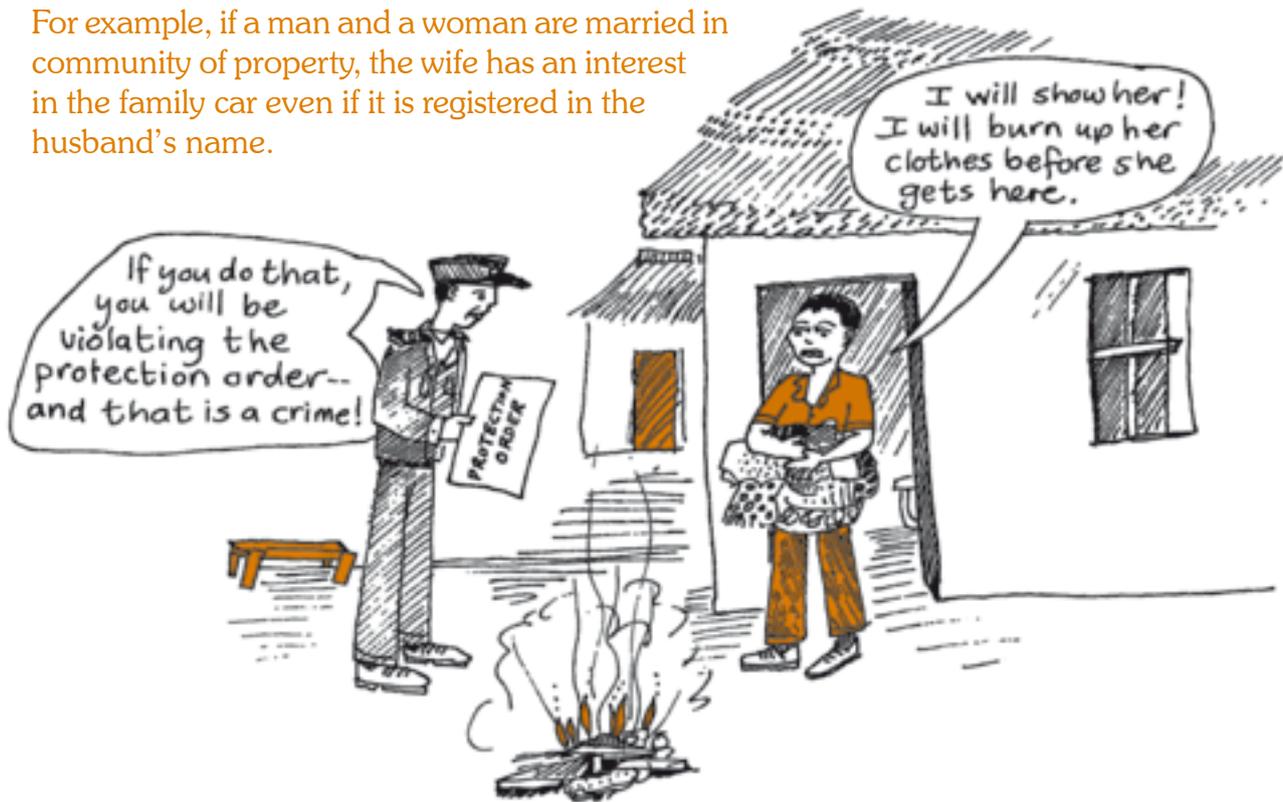
an order to give the complainant possession of certain personal property (such as vehicles, agricultural tools, livestock, furniture, chequebooks, credit cards, children's clothing and toys, identification documents, keys, personal documents or other personal items)

The court order can also direct the complainant to give certain personal property to the respondent, especially if the complainant is the one who remains in the joint household.

(6) protection of property

an order to either the complainant or the respondent not to sell, damage or dispose of property in which the other party has an interest or a reasonable expectation of use

For example, if a man and a woman are married in community of property, the wife has an interest in the family car even if it is registered in the husband's name.



(7) protection of children

The protection order can also include provisions to protect children who are affected by the situation:

- a temporary order for maintenance
- a temporary order concerning custody of the children (day-to-day responsibility for their care) or access to the children (the ability to visit them)

For example, the order might give sole custody of the children to the complainant and authorise access by the respondent only under the supervision of a social worker or a particular family member. Orders concerning maintenance, custody and access are emergency measures only. The parties should sort out these issues using the normal legal procedures as soon as possible.

(8) other orders

The magistrate can include any other order which is necessary to protect the safety of the complainant and any children or other persons in the complainant's care.



(9) police assistance

The magistrate may include an order to the police saying that they must –

- search for and take any firearm or other weapon from the respondent
- go with the complainant to a specified place to help her to collect her personal belongings in safety.

Section 14

How long does the final protection order remain in force?

Different provisions of a protection order can remain in force for different time periods.

Orders about the joint residence and its contents

- An order for the respondent to move out of a joint residence can stay in force for a maximum of –
 - 6 months (if the house is owned by the respondent)
 - one year (if the house is jointly owned)
 - any period of time set by the court (if the house is owned by the complainant).
- If the joint resident is rented, an order for the respondent to move out of the home cannot remain in force beyond the end of the current lease period.
- An order about the possession of household effects such as furniture will have the same period as the order for occupation of the joint residence.

The law does not give a time period for orders about joint residences on communal land.

Orders about child custody and access

- An order about child custody or access to children will remain in force until it is changed by another court order. *This is because it would not be safe to allow an order which might affect the safety of children to end automatically.*

Temporary maintenance orders

- A temporary maintenance order can remain in force for a maximum of six months. *A temporary maintenance order is only an emergency measure. It is not intended to replace the role of the ordinary maintenance court.*

Other provisions

Any other provision of a protection order can remain in force for a maximum of three years.

Section 15

CHANGING OR CANCELLING THE ORDER

The complainant, the applicant or the respondent can also apply to the magistrate to change or cancel a protection order at any time.

If the complainant applies to have the protection order cancelled, the magistrate can do this without holding an enquiry. But the magistrate must be sure (a) that the request is made freely, and not as a result of intimidation and (b) that cancelling the order will not endanger the complainant or any child or other affected persons.

If the applicant or the complainant applies for a change in the protection order, the magistrate will proceed in the same way as with the original application.

If the respondent applies for a change or a cancellation, then the magistrate must hold another enquiry and the complainant must be given 10 days notice. Even if the complainant does not oppose the respondent's request, the magistrate must make sure that the change or cancellation will not endanger the complainant or any child or other affected persons.

It is possible to change or cancel some of the contents of the protection order while leaving other parts of it the same.

The magistrate or either of the parties can ask for a **social worker report** on the family circumstances to help guide the magistrate's decision.

Section 17, Regulation 11

Appeals

The complainant and the respondent both have the right to appeal any decision of a magistrate on a protection order to the High Court. This must be done within one month of the date of the decision. If the respondent is appealing against a final protection order, the interim protection order will continue to operate while the appeal is being decided.

Section 18

Who will deliver the protection order to the respondent?

If the respondent is present in court when the order is made, the order can be handed to the respondent in person. Otherwise, a copy of the order will be officially delivered to the respondent by the clerk of the court, the messenger of the court, or the police. There is normally no charge to the complainant or the applicant for the costs of delivering the order.

Section 20, Regulation 5

Costs: The magistrate has the power to order the complainant or the respondent to pay some or all of the costs relating to the enquiry, after considering their conduct and financial position. **For example, a person who purposely wasted the magistrate's time might be ordered to pay part of the costs.**

Section 20

What happens if the respondent violates the protection order?

It is a crime to violate any court order, including a protection order.

For example, suppose that the protection order says that the respondent must not make contact with the complainant, but he does so. The complainant must notify the police. She will be required to make a statement giving details about how the respondent violated the protection order. She can at the same time lay a separate criminal charge against the respondent if his actions amount to another crime, such as trespass or assault.

The police have the power to arrest the respondent **without a warrant** if there are reasonable grounds to suspect that the protection order has been violated. The suspicion that the protection order has been violated can be based on the complainant's statement, on a statement from another person, or on the observations of the police officer.

A respondent who asks a third party to do something that violates the protection order will be treated as if he has personally violated the protection order. For example, if a respondent asks a friend to intimidate the complainant, that would violate the protection order against the respondent.

Sections 16(1)-(3), 23

What is the penalty for violating a protection order?

The penalty for violating a protection order is a fine of up to N\$8000 or imprisonment for up to two years, or both.

Section 16(1)



Some men in our society like to patronise bars, get drunk, sleep around with other women without protection and in the process contract HIV/AIDS, go home drunk and start beating their partners and infect them with HIV/AIDS. This is the sad reality of some of our men today. It is even more shameful when these poor women are not only beaten, but murdered and even cooked.

Hon Kawana, Deputy Minister of Justice
Parliamentary debate on Combating of Domestic Violence Act

When one seeks advice from elders, all they tell you is, "It is a private matter, don't go and report it." That is the advice we are getting. It discourages women to go to the police and report... What private matters are they talking about if people are dying, old aged women are being raped, children are being raped? What private matter is this?

Hon Sioka
Parliamentary debate on Combating of Domestic Violence Act

Are there safeguards against abuse of protection orders by complainants?

Yes. If the complainant gives consent for the actions of the respondent that violate the protection order, then no crime has been committed. For example, suppose that the protection order contains a no-contact provision, but the complainant invites the respondent into her home. In such



a case, the respondent cannot be convicted for violating the order. But it is not legally possible for the complainant to give consent to any form of physical abuse.

If the complainant gives false or misleading information to the police about the breach of a protection order, then the complainant has committed an offence. The penalty is a fine of up to N\$4000 or imprisonment for up to one year, or both.

Section 16(4)-(5)

Criminal prosecutions for violation of protection order

The special procedures in the part of the Act on domestic violence offences apply to criminal prosecutions for the violation of protection orders. These procedures are explained in the next section.

Section 16(7)

Privacy

No one may publish information about protection orders which might reveal the identity of the applicant, the complainant or any children involved – unless the court gives permission on the grounds that publication of this information would be in the public interest. Publishing this information without the court's permission is a crime. The penalty is a fine of up to N\$10 000 or imprisonment for up to one year, or both.



Section 30

DOMESTIC VIOLENCE OFFENCES

Does the law create any new crimes?

No. But certain crimes which take place in domestic relationships will be referred to as “domestic violence offences” and dealt with in special ways.

The crimes that qualify for this treatment if they take place in domestic relationships are crimes of violence (such as murder, rape, indecent assault and assault) and certain other crimes (such as kidnapping, robbery, trespass, malicious damage to property and *crimen injuria*, which means criminal insult).

Violating a protection order is also a domestic violence offence.

Section 21, First Schedule



Who can lay a charge of a domestic violence offence?

The complainant or any person who has an interest in the well-being of the complainant – such as a counsellor, health care provider, police official, social worker, teacher or employer.

But only a person who is covered by a protection order can make a report to the police complaining that the protection order has been violated.

It is a crime to give false information to the police about a domestic violence offence. The penalty is a fine of up to N\$4000 or imprisonment for up to one year, or both.

Section 22 and 16(7)



What can the police do in cases of domestic violence?

A police officer who has a reasonable suspicion that a domestic violence offence has taken place can do any the following things:

- **arrest** the suspected offender **without a warrant**
- issue a **formal written warning** to the suspected offender which will be taken into account if there are any further problems.

But the police officer must take into account the wishes of the complainant.

The police may also **search for weapons without a warrant** IF they see a weapon or are told that there is a weapon at the scene of the domestic violence.

The police have a right to question anyone who is present about weapons.

Section 23

FORMAL WARNINGS

Formal warnings are designed for situations where the complainant requests help from the police but does not want an arrest. A formal warning from the police lets the abuser know that the police are aware of the problem and that the victim of the violence has sought help.

If a police officer issues a formal warning, the station commander must put a copy of it on file at the police station. The station commander will also send a copy to the Office of the Prosecutor-General, who will keep it on file in a special register. If there is a court case later on, previous formal warnings are likely to make things more serious for the abuser. There is no limit on the number of formal warnings which can be issued.

The penalty for failing to comply with a formal warning is a fine of up to N\$2000 or imprisonment for a period of up to 6 months.

Section 23(1), Regulation 12 and 4(9)(b)



Some abusers will ignore formal warnings, but the warnings may be helpful in some cases. The complainant is probably in the best position to judge how the abuser will react.

Will the suspected offender be released on bail?

The question of bail will be treated in the same way as for other crimes, with a few important differences. As in rape cases, the complainant must be informed about the bail hearing and given a chance to put relevant information before the court. For example, if the person who was arrested has threatened the complainant, this might be grounds for refusing bail.

If a person accused of a domestic violence offence is released on bail, there will normally be a bail condition saying that he must have no contact with the complainant, and a bail condition prohibiting possession of a firearm or any other specified weapon.

If appropriate, the court can order that the accused must continue to financially support the complainant and any dependants whilst out on bail, at the same level as before the arrest. This will ensure that the complainant is not financially punished for asserting her rights.

The court might add other bail conditions necessary.

If the complainant is not present at the bail hearing, she must be notified that the accused person is out on bail and told about any bail conditions that apply.

Section 24, Second Schedule, Regulation 13

WHAT SHOULD YOU DO IF THE PERSON WHO IS OUT ON BAIL THREATENS YOU?

You should report this to the police right away. The police should then contact the prosecutor so that the prosecutor can apply to the court to have the bail cancelled.

A child is innocent - it did not ask to be born and it should be protected in all circumstances.

Hon Nandi-Ndaitwah, Minister of Women Affairs and Child Welfare
Parliamentary debate on Combating of Domestic Violence Act

Will the trial be closed to the public?

Trials for domestic violence offences, like rape trials, will be heard in closed court. And, as in the case of rape, it will be an offence to publish any details that might reveal the identity of the complainant.

Second Schedule

SPEEDY TRIALS

There are several regulations designed to make sure that trials in domestic violence cases are heard as quickly as possible.

A prosecutor who receives a criminal case involving domestic violence must put it on the court roll right away. This case must take priority over other cases.

If there is a postponement in a criminal case involving domestic violence, the judge or magistrate can order that the accused person must remain in jail until the new court date – *even if the accused was previously out on bail*. The court can make such an order **ONLY IF** there is evidence that a domestic violence offence really took place **AND** evidence that the victim may be at risk if the accused is not placed in custody.

Section 32, Regulation 16

REDUCING THE TRAUMA OF A TRIAL

The prosecutor has a legal duty to provide you with information that will reduce the trauma of the trial. The prosecutor should meet with you ahead of time to explain exactly what happens in court. The prosecutor might ask a social worker to take you to the courtroom ahead of time to show you where you will sit and to give you more details about what will happen on the day of the trial. You can go through the statement you gave to the police before the trial starts, to refresh your memory about the details. You must say the same things in court that you said to the police.

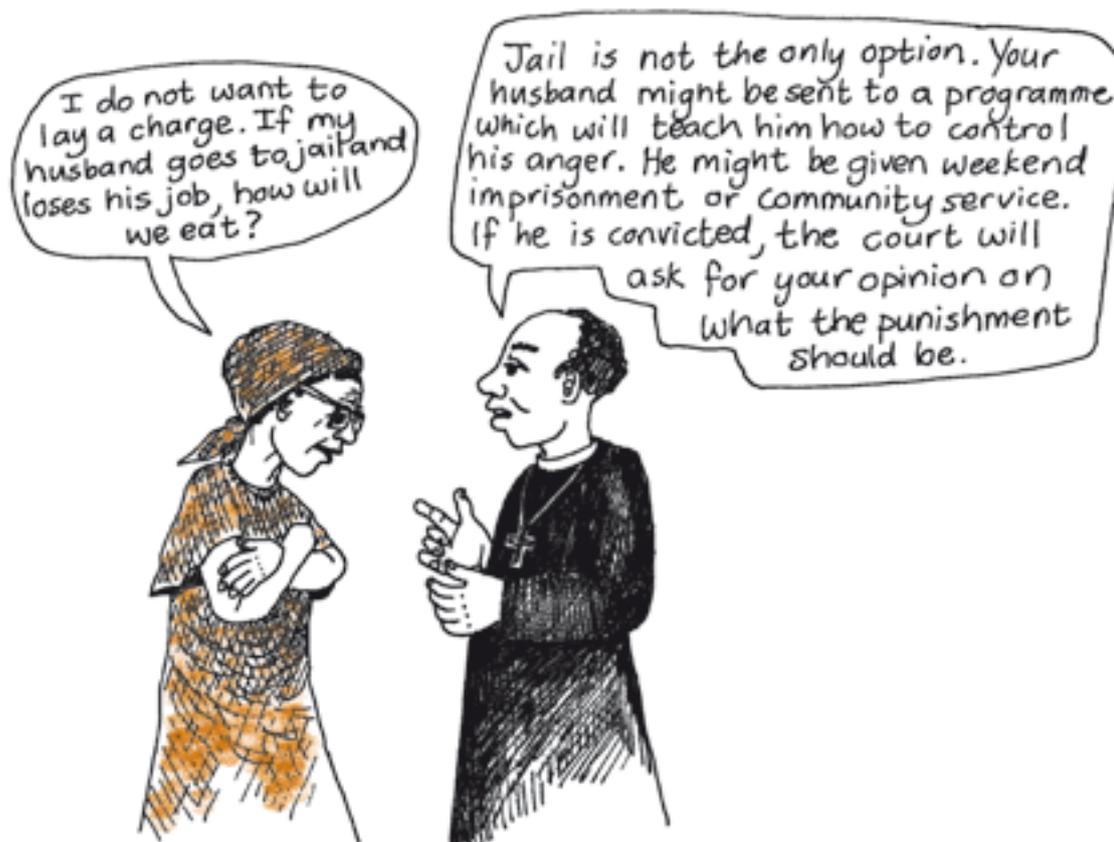
Section 24

What is the penalty for a domestic violence offence?

The punishment will depend on the circumstances of the crime. It might be a fine, a period of time in jail, or a suspended sentence (jail time which is postponed as long as there is no repeat offence). It might be weekend imprisonment or community service. These options can be good ones in cases where the offence was not too serious, or where the offender is employed and does not want to lose the job.

The complainant will be given a chance to give input to the court on what she thinks would be an appropriate sentence. If the complainant is deceased, this input will come from the next of kin.

Section 25, Regulation 13



FIREARM LICENCES

Conviction of a domestic violence offence involving physical abuse may disqualify a person from having a licence for a firearm for at least two years, or possibly for an even longer period. If the firearm was used in the offence, or if the abuser handled the firearm while under the influence of alcohol or drugs, then it is even more likely that he will be declared unfit to possess a firearm for some period of time.

Second Schedule

This bill also seeks to introduce peace of mind among our society and in particular peace of mind in our homes. Domestic violence is an evil, a cancer which, as a matter of fact, is slowly killing the values and ethics of our young nation and should be condemned in the strongest terms.

Hon Tsheehama, Director-General of Namibia Central Intelligence Service
Parliamentary debate on Combating of Domestic Violence Act

DIVERSION PROGRAMMES FOR DOMESTIC VIOLENCE OFFENDERS

In some countries, abusers are referred to counselling programmes as an alternative to proceeding with a criminal trial. An accused abuser may be given the alternative of having the criminal trial postponed if he agrees to enter an approved counselling programme. If the accused violates this diversion agreement, then the criminal case will go forward. But if the diversion programme is successfully completed, then the criminal charges will be dismissed.

Another option is to use diversion programmes as an alternative to punishment. After an abuser is convicted of a domestic violence offence, the court can suspend all or part of the sentence on condition of successful completion of an appropriate counselling programme. If the offender fails to complete the counselling programme successfully, then the suspended sentence will be imposed.

These options can be particularly helpful for first offences which did not involve serious violence. They can also be useful in cases where the victim does not want to see the offender go to prison, but simply wants the violence to end.

As of 2004, Namibia did not yet have any diversion programmes for abusers, but training programmes for social workers on how to work with male abusers were underway.



... It becomes necessary that in our schools the values of gender equality, fairness and justice are taught to the young. Our young need to be socialized to accept domestic relations as voluntary, emotional and familial relations, and not necessarily power relations or relations for the negotiation of one's economic interests. Schools should also start to correct the problematic gender insensitive attitudes deriving from traditional male chauvinism.

Hon Ulenga

Parliamentary debate on Combating of Domestic Violence Act

POLICE POWERS AND DUTIES

What powers do the police have in domestic violence offences?

The police have the power to:

- arrest the suspected offender at the scene without a warrant
- give a formal warning
- search for and seize weapons without a warrant.

The police officer may question anyone who is present at the scene about weapons. Before searching for and seizing weapons, the police officer must (a) observe a weapon or be given information that a weapon is present and (b) have a reasonable belief that this weapon would expose the complainant to a risk of serious bodily injury.

Section 23

What duties do the police have to assist victims?

The Inspector General of Police must issue directives on the duties of police in matters relating to domestic violence. These directives must cover the following topics (with examples drawn from police directives which were still in draft form at the time of writing):

- procedures for providing police protection to complainants and children or other persons in their care
For example, when a protection order is issued, the station commander will inform all police at that station that the complainant is at risk, and make sure that the necessary protection is given to the complainant and any other person protected by the order. Extra levels of protection may be provided in high-risk cases, such as cases where a firearm was involved. The police will also go with the complainant to make sure that she can collect personal belongings from the residence if necessary.
- procedures to make sure that the police respond promptly and give appropriate priority to every report of domestic violence, including reports that a protection order has been violated
For example, the police will be expected to respond immediately if someone comes to the charge office to complain about domestic violence or telephones to report a domestic violence offence.
- procedures for interviewing victims of domestic violence and any witnesses so that they are able to speak freely
For example, the police must arrange for the statement to be taken by a person of the same sex as the complainant where possible. The statement must be taken in private, but the complainant may have a friend or support person present if she wishes.

- information which the police must give to complainants, alleged perpetrators and family members about:
 - assistance in obtaining medical treatment
 - the availability of shelters or other appropriate services
 - the availability of transport for medical treatment or to a shelter
 - the rights and remedies available in terms of the law and how they work.

Section 26

IMPROVING POLICE RESPONSE

The Inspector-General of Police must submit annual reports to the Minister of Home Affairs on the police directives which have been issued, and on the training which has been given to the police to assist them in carrying out their duties effectively in respect of domestic violence.

The police are also required to keep detailed records of all domestic violence incidents which come to their attention, regardless of whether or not criminal charges are laid or pursued. The Inspector-General will compile annual statistics from these records and forward them to the Minister of Home Affairs.

The Minister of Home Affairs must give a report to the National Assembly every year, based on the domestic violence information provided by the Inspector-General. This report will not reveal the identity of any individuals involved in domestic violence cases.

Sections 26-28



APPLYING FOR A PROTECTION ORDER – THE FORMS

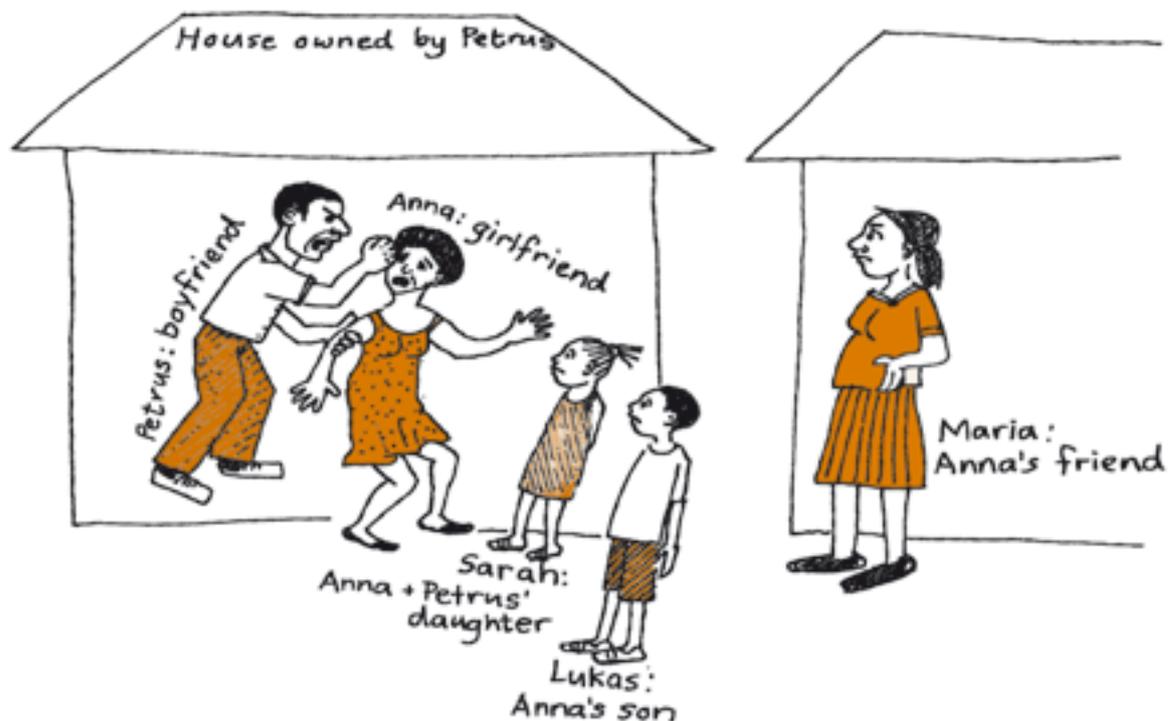
There are several forms you must complete when applying for a protection order. To make it clearer, the relevant forms are listed below and key sections of the most important forms have been completed as an example.

Please note that you may photocopy these forms to use – the example is written in special ink so that these details will not appear on the photocopies.

THE EXAMPLE

Anna Plaatjies, a 28-year-old housewife has been cohabitating (living together) with Petrus Nicholas for 8 years. Petrus is a 32-year-old taxi driver. Anna and Petrus have one child, Sarah. Also living with them is Lukas, Anna's son from a previous relationship. The house is owned by Petrus.

Petrus has been beating Anna for 4 years. This usually happens at the weekends when he has been drinking. The children hear and see the violence. A neighbour, Maria Shilongo, has also heard the sounds of Anna being beaten and seen her injuries. Several times Anna has escaped from a beating with the children to stay with Maria for the night. Six months ago, Petrus hit Anna and broke her arm. Last night, Petrus said he was going to kill Anna and tried to strangle her but she got away from him. Petrus then went to put bullets in his gun. Anna ran to Maria's house with her children. Maria persuaded Anna to go to the police and ask for a protection order.



The forms

Anna will need to complete an application form to make the application for the protection order.

Form 1: Application for protection order.

Suppose Anna is too afraid to make the application herself and wants Maria to do it for her. In that case, Maria would need to include a consent form from Anna, showing that Anna wants Maria to act on her behalf, or that there is a valid reason why Maria can act without Anna's consent.

Form 2: Consent by the complainant for application for a protection order by someone else acting on his or her behalf.

Suppose that Petrus has also been threatening Maria, Anna's friend and neighbour. If Anna wants the protection order to keep Petrus away from Maria as well, Maria will have to sign a form agreeing to be covered by the protection order.

Form 3: Consent to be covered by a no-contact provision.

Additional forms later in the process will be completed by the clerk of court.

Form 4: Notice to attend enquiry.

Form 5: Interim protection order.

If Petrus (the respondent) wants to oppose the protection order, then he must fill in a form and give it to the clerk of the court.

Form 6: Notice of intention to oppose confirmation of protection order.

If the case is postponed for some reason, then the clerk of court will send a notice of the postponement to Anna or Petrus (if either of them was not present at court when the magistrate made the decision to postpone the case).

Form 7: Notice of postponement of enquiry.

If Anna (the complainant) was not in court for the enquiry, the clerk of court will also send a notice to the station commander of the local police station, asking the police to make sure that Anna was not intimidated into staying away.

Form 8: Notice to station commander to enquire into reasons for complainant's non-attendance.

If the interim protection order is made final, then the magistrate or the clerk of court will fill in a form for a final protection order.

Form 9: Final protection order.

If either Anna or Petrus want to apply to the court to have the protection order changed or withdrawn at a later stage, this must be done by filling in another form.

Form 10: Application for modification or cancellation of protection order.

Now we will look in detail at some of the key forms.

Form 1: Application for protection order

Section A: Particulars of the complainant (Anna, the person who is experiencing the domestic violence).

The information required includes date of birth, ID number, address and type of relationship the complainant has with the person who committed the domestic violence – in this case, she is the cohabiting girlfriend.

Section B: Particulars of the applicant.

In this case, Anna is the applicant (she is the one applying for the protection order) so this part of the form does not need to be filled in. But if Maria, the neighbour, were applying for the protection order on Anna's behalf, Maria's details would be needed here.

Section C: Particulars of the respondent (Petrus, the person who has committed the domestic violence and against whom the protection order is requested).

The details required include name, date of birth (if known), employer and contact details.

Section D: Information about the acts of domestic violence

This section of the form must contain details about the most recent violent incident as well as the history of violence.

Section E: Terms of the protection order

This lists what the complainant (Anna) is asking the court to order against the respondent (Petrus). In all cases the protection order will tell the respondent not to commit any further acts of domestic violence. In this example, Anna is asking that Petrus be ordered to hand over his gun to the police and move out of the house. There is a list of furniture and other items that she wants him to leave in the house for her and the children to use. She also wants an order saying that he must stay away from the house. The exception is that he can visit the children once a week, at the house, but this must be when her father is present. She wants him to pay maintenance for his daughter, Sarah. (Petrus has no responsibility to maintain Anna, because they are not married. And he has no responsibility to maintain Lukas, Anna's son by another man, who should be maintained by his own father.) Anna also wants an order saying that Petrus must stay away from the house of the neighbour, Maria (who has given her consent to be included).

FORM 1

The first few pages of Form 1 are for information only. The applicant must begin with Section A.

SECTION A. PARTICULARS OF COMPLAINANT (the victim of the domestic violence)

IF THE APPLICATION IS BEING MADE BY SOMEONE OTHER THAN THE VICTIM OF THE DOMESTIC VIOLENCE, THIS SECTION MUST STILL GIVE DETAILS ABOUT THE VICTIM.

1. Surname	Unemployed
2. Full first names	Anna
3. Sex male <input checked="" type="checkbox"/> female
4. Date of birth	21 November 1976
5. ID number (if available)	
6. Normal home address	24 Abraham Mashego St. Katutura
7. Home telephone number	061-223716
8. What is the telephone number of the place you (the victim) are staying now?	061-223717
9. Occupation	Unemployed
10. Employer	
11. Work address	
12. Work telephone number	
13. What is the best address and telephone number to use to get in touch with you (the victim)? Give the number of a friend or relative or some other contact if this will be helpful.	061-223717 the house of my friend Maria Shilongo

14. What is your relationship (the victim's relationship) to the person who has committed the domestic violence?

I (the victim) has (or am expecting) a child by the respondent.

..... yes

..... no

I (the victim) am the **girlfriend** of the person who has committed the violence. (girlfriend/boyfriend, wife/husband, ex-wife/ex-husband, sister/brother, mother/father, etc)

If the relationship is based on a marriage, engagement or romantic relationship which no longer exists, give the date (or approximate date) on which the relationship came to an end:

If you (the victim) are a family member of the person who has committed the violence (such as aunt/uncle, niece/nephew, grandparent/grandchild, or cousin), explain what other connections exist between you and the abuser (sharing the same residence, financial support, etc):

.....
.....
.....

15. Do you (the victim) currently share a residence with the respondent (the person who committed the domestic violence)? If you (the victim) have temporarily moved somewhere else for safety, this does not change your normal place of residence.

..... no

..... yes

If yes, state how long the residence has been shared: **8 years**

If yes, explain who else lives in the residence: **My boyfriend Petrus,**

our child Sarah and my son Lukas

16. Did you (the victim) previously share a residence with the respondent (the person who committed the domestic violence)?

..... no

..... yes

If yes, provide the approximate dates that you (the victim) shared a residence with the person who committed the domestic violence:

.....

Since Anna (the victim of the violence) is making the application herself, she can leave Section B blank. Even if someone else is helping Anna to fill in the forms, Anna is still the applicant.

SECTION B. PARTICULARS OF PERSON MAKING THE APPLICATION ON BEHALF OF THE COMPLAINANT (if applicable)

COMPLETE THIS SECTION ONLY IF THE VICTIM OF DOMESTIC VIOLENCE IS NOT THE SAME PERSON WHO IS MAKING THE APPLICATION. FILL IN THE DETAILS OF THE PERSON MAKING THE APPLICATION IN THIS SECTION.

IF THE VICTIM OF THE DOMESTIC VIOLENCE IS THE SAME PERSON WHO IS MAKING THE APPLICATION, THEN SKIP SECTION B AND GO ON TO SECTION C.

1. Surname	
2. Full first names	
3. Date of birth	
4. Sex male female
5. ID number (if available)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	
12. Capacity in which application is made	
..... family member (your relationship to complainant): police officer social worker health care provider teacher traditional leader religious leader other (specify:	
13. Why are you bringing the application on behalf of the complainant?	

14. Do you have written consent from the complainant to bring the application?

..... **Written consent is attached.**

..... **Written consent is not necessary because the complaint is:**
(Tick appropriate reason and explain as indicated)

..... **a minor**
The complainant is aged.....

..... **mentally incapacitated**
Explain nature of mental condition:

..... **unconscious**
Explain briefly:

..... **regularly under the influence of alcohol or drugs**
Describe the complainant's condition:

..... **at risk of serious physical harm**
Explain briefly:

SECTION C. PARTICULARS OF RESPONDENT (the person who committed the act of domestic violence)

1. Surname	Nicholas
2. Full first names	Petrus
3. Sex	<input checked="" type="checkbox"/> male <input type="checkbox"/> female
4. Date of birth (if known)	18 June 1972
5. ID number (if known)	
6. Home address	24 Abraham Mashego St. Katutura
7. Home telephone number	061-223716
8. Occupation	taxi driver
9. Employer	Harold de Villiers
10. Work address	15 Mahatma Gandhi St. Katutura
11. Work telephone number	061-223716
12. Other contact details for respondent	081-1293986

SECTION D. INFORMATION ABOUT THE ACTS OF DOMESTIC VIOLENCE

IT IS EXTREMELY IMPORTANT THAT YOU GIVE AS MUCH DETAILS AS POSSIBLE IN THIS SECTION.

I, Anna Plaatjies OF 24 Abraham Mashego St., Katutura
NAME ADDRESS

DECLARE UNDER OATH THAT THE FOLLOWING IS TRUE AND CORRECT:

a) THE MOST RECENT INCIDENT OF ABUSE

1. Date of the most recent incident of abuse:	<u>30</u> date	<u>6</u> month	<u>2004</u> year
2. Details of the most recent incident of abuse:			
<p>Petrus came home drunk and started beating me. Then he said he was going to kill me and tried to strangle me. When I got away he started putting bullets in his gun. I took the children and ran to my neighbour.</p>			
3. Was a weapon used?			
<p>..... no</p> <p><input checked="" type="checkbox"/> yes describe weapon: <u>gun – do not know type</u></p>			
4. Were you (the victim) physically injured?			
<p>..... no</p> <p><input checked="" type="checkbox"/> yes give details: <u>bruising on legs and throat, cut lip</u></p>			
5. Did you (the victim) see a doctor or a nurse or other health practitioner			
<p><input checked="" type="checkbox"/> no</p> <p>..... yes give details:</p> <p>date:</p> <p>name of doctor or nurse or health practitioner (if known):</p> <p>name of hospital or clinic or health facility:</p> <p>what treatment did you (the victim) get?</p>			

6. Did anyone else see or hear this incident of abuse?

..... no

yes

name: **Maria Shilongo**

contact details of this person: **26 Abraham Mashego St., Katutura**

7. Did any children see or hear this incident of abuse?

..... no

yes

names: **Lukas Plaatjies and Sarah Nicholas**

ages: **10 years and 7 years**

give details: **They were in the kitchen when Petrus was beating me there.**

b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)

1. How long has the abuse been happening?:		4 years	
2. When was the first incident of abuse? (if you can remember)	Not sure date	April month	2000 year
3. What kind of abuse has happened in the past?			
He has insulted me, beaten me and broken my arm.			
4. Has the abuse been happening more often lately?	He used to beat me about one a month but now it is nearly every week. no	<input checked="" type="checkbox"/> yes explain:
5. Has the abuse become more severe lately?	He has now threatened to kill me. no	<input checked="" type="checkbox"/> yes explain:
6. Does the respondent (the person who commits the abuse) own a weapon?	a gun – type not known no	<input checked="" type="checkbox"/> yes what kind of weapon?.....

7. Has the respondent used or threatened to use a weapon against you (the victim) in the past?

no

..... no

..... yes

explain:

8. Have you (the victim) ever been physically injured by past abuse?

..... no

yes

give details:.....

Yes, bad bruising. In December 2003 he broke my arm.

9. Did you (the victim) see a doctor or a nurse or other health practitioner because of the abuse in the past?

..... no

yes

give details:

date(s): **28 December 2003**

name of doctor or nurse or health practitioner (if known):

name of hospital or clinic or other health facility: **Katutura State Hospital**

what treatment did you get? **X-ray and plaster for broken arm**

10. Has anyone else seen or heard any past incidents of abuse?

..... no

yes

name: **Maria Shilongo**

tel: **061-223717**

contact details of this person: **26 Abraham Mashego St., Katutura**

11. Did any children see or hear past incidents of abuse?

..... no

yes

names: **Lukas Plaatjies and Sarah Nicholas**

ages: **10 years and 7 years**

give details: **They are always in the house when Petrus beats me.**

12. How has the abuse affected you (the victim)?

(examples: stress, missing work or school or losing a job, health problems, depression, etc)

I feel depressed all the time and I don't sleep well any more. I am scared he is going to kill me.

13. Has the respondent (the person who is committing the abuse) ever been convicted of any crime?

not to the best of my knowledge

no

yes

give details (crime and date of conviction if known):

14. Does the respondent (the person who is committing the abuse) use or abuse alcohol or drugs?

not to the best of my knowledge

yes

no

alcohol

drugs

alcohol and drugs

give details: **He gets drunk 2 or 3 times a week**

15. Has the respondent (the person who is committing the abuse) made threats against you (the victim) or anyone else?

not to the best of my knowledge

yes

no

give details: **He has threatened to kill me. He has also threatened to kill my friend Maria if she interferes.**

16. List other people who are being affected by the violence:
<p>Name: <u>Lukas Plaatjies</u></p> <p>Age: <u>10</u></p> <p>Relationship to you (the victim): <u>son</u></p> <p>How this person is being affected? <u>He sees the violence and has started to beat his sister.</u></p> <p>Does this person live with you (the victim)? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p>
<p>Name: <u>Sarah Nicholas</u></p> <p>Age: <u>7</u></p> <p>Relationship to you (the victim): <u>daughter</u></p> <p>How this person is being affected? <u>She is scared and cries a lot</u></p> <p>Does this person live with you (the victim)? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>

SECTION E. TERMS OF THE PROTECTION ORDER

THESE ARE THE CONDITIONS THAT YOU ARE ASKING THE COURT TO ORDER AGAINST THE RESPONDENT (THE ABUSER). TICK THE CORRECT BOXES, AND FILL IN ALL INFORMATION THAT IS REQUIRED.

All protection orders direct the respondent not to commit any further acts of domestic violence against you (the victim) or your (the victim's) dependants, either directly or by getting the help of another person to carry out the violence. In the list below please tick the types of domestic violence which the respondent has already committed for special emphasis in the order:

- physical abuse;
- sexual abuse;
- economic abuse (including destruction or damage to property);
- intimidation;
- harassment (including stalking);
- trespass;
- emotional, verbal or psychological abuse;
- threats or attempts to carry out any of these acts;
- exposing a child to acts of domestic violence against another person.

Please indicate what other conditions the court should include in the protection order:

a) WEAPONS

The respondent must hand over to the police

..... all firearms in his/her possession

..... other specific weapon(s) (describe:.....).

The respondent's firearm licences must be suspended.

b) NO-CONTACT PROVISIONS

..... The respondent must not come near me (the victim) wherever I may be.

..... The respondent must not enter or come near my (the victim's) residence which is at the following address:
24 Abraham Mashogo St. Katutura

..... The respondent must not enter or come near my (the victim's) workplace, which is at the following address:
.....

..... The respondent must not enter or come near my (the victim's) educational institution, which is at the following address:
.....

..... The respondent must not enter or come near the following place or address. (This can include the residence, workplace or educational institution of a child or dependant, a family member's residence, a temporary shelter or residence, or a place which is often visited.) Consent from the relevant persons must be attached if the respondent is going to be restricted from someone else's private residence.

place or address:

**Maria Shilongo's house at 26 Abraham Mashego St.,
Katutura**

reason why respondent should be restricted from this place or address:

**He blames Maria for talking me into getting help. He has
threatened her and could become violent towards her.**

The respondent must not communicate with me (the victim) in any way, except under the following conditions (if any):

to make arrangements to visit the children

The respondent must not communicate with the following person(s) in any way, except under the following conditions (if any). Consent from the person named (or from the parent or guardian in the case of a child) must be attached.

name: **Lukas Plaatjies**

age: **10**

conditions (if any): **He can visit Lukas at home once a week**

consent in respect of this person is attached: yes **child** **when my father is present.**

name: **Sarah Nicholas**

age: **7**

conditions (if any): **He can visit her at home once a week**

consent in respect of this person is attached: yes **child** **when my father is present.**

name: **Maria Shilongo (neighbour)**

age:

conditions (if any):

consent in respect of this person is attached: yes

c) EXCLUSIVE OCCUPATION OF A JOINT RESIDENCE

(available only if there has been an act of physical violence)

I (the victim) must have the exclusive right to occupy the joint residence at the following address.

address: **24 Abraham Mashego St., Katutura**

Tick the appropriate answers:

The residence is *owned* by

..... me (the victim)

the respondent

..... the respondent and myself jointly.

The residence is *leased* by

..... me (the victim)

..... the respondent

..... the respondent and myself jointly.

The residence is on *communal land* which is allocated to

..... me (the victim)

..... the respondent

..... the respondent and myself jointly.

..... All of the contents of the joint residence must be left there for my use.

Give reasons:

..... ✓ The following items must be left at the joint residence for my use.

List: **2 beds, stove, fridge, couch with one chair, table with 3 chairs, wardrobe, all my and the children's clothes and personal belongings**

Give reasons: **I have no job and no way to get things for the house on my own.**

..... ✓ A police officer must remove the respondent from the joint residence.

..... A police officer must accompany the respondent to collect personal belongings from the joint residence.

d) ALTERNATIVE ACCOMMODATION

(available if the respondent is legally liable to support you and you do not wish to stay in the joint residence, or it is more appropriate for the respondent to stay in the joint residence)

..... The respondent must pay rent for suitable alternative accommodation for me (the victim) and dependants whom the respondent is legally liable to support.

address of alternative accommodation:

monthly rental:

..... The respondent must make the following arrangements for suitable alternative accommodation for me (the victim) and dependants whom the respondent is legally liable to support:

.....

....

.....

....

e) PROPERTY

..... A police officer must accompany me (the victim) to collect personal belongings from the joint residence.

..... ✓ The following items must be left in my (the victim's) possession:

List: **ID documents and house keys (plus contents of house listed above)**

Give reasons:

I am scared Petrus will come back to the house with the keys.

..... **The respondent must not take, sell, damage, give away or otherwise deal in any property in which I (the victim) have an interest or a reasonable expectation of use.**

List any property which is of special concern:

.....

.....

.....

f) MAINTENANCE

..... **The respondent must pay temporary monthly maintenance in respect of the following children or dependants:**

name: **Sarah Nicholas**

age: **7**.....

monthly amount: **N\$100**.....

name:

age:

monthly amount:

name:

age:.....

monthly amount:

name:

age:

monthly amount:

name:

age:

monthly amount:

g) CUSTODY AND ACCESS OF CHILDREN

..... **Temporary custody of the following children must be granted to me (the victim).**

List names: **Sarah Nicholas**

..... **Temporary custody of the following children must be granted to (list other person)**

List names:

..... **The respondent is refused all contact with the following children.**

List names:

✓
..... The respondent is granted contact with the following children only under the specified conditions:

name: **Lukas Plaatjies**
visiting arrangement: **Visit at home once a week when my**
other conditions: **father is present**

name: **Sarah Nicholas**
visiting arrangement: **Visit at home once a week when my**
other conditions: **father is present**

name:
visiting arrangement:
other conditions:

h) OTHER ORDERS REQUESTED:

..... **MY (THE VICTIM'S) PHYSICAL ADDRESS MUST NOT BE REVEALED TO THE RESPONDENT.**

NAME THE POLICE STATION WHERE YOU (THE VICTIM) WOULD MOST LIKELY MAKE A REPORT IF THE RESPONDENT VIOLATES THE PROTECTION ORDER:

Katutura Police Station

WITNESSES

I would like these people to come to court to give evidence about the information stated in this application:

NAME	BEST CONTACT ADDRESS	WHAT INFORMATION THIS WITNESS CAN GIVE THE COURT
Maria Shilongo	26 Abraham Mashego St., Katutura tel: 061-223717	She has heard my boyfriend beating me and seen my injuries afterwards.

NOTE: You should now look back through this form and make sure that you have included all the relevant information. Then you must sign or make your mark in the space below, in front of a Commissioner of Oaths.

You must also put your initials or your mark in the corner of every page of this statement, in front of a Commissioner of Oaths.

Anna Plaatjes
.....
SIGNATURE

1 July 2004
.....
DATE

**CERTIFICATION
for use by Commissioner of Oaths**

I hereby certify that before administering the oath / taking the affirmation I asked the Deponent the following questions and noted his/her answers in his/her presence as indicated below:

Do you know and understand the contents of the above declaration?

Do you have any objection to taking the prescribed oath?

Do you consider the above oath to be binding on your conscience?

Dated atthisday of

I hereby certify that the Deponent has acknowledged that he/she knows and understands the contents of this declaration which was sworn to / affirmed before me, and the Deponent's signature / thumb mark/ mark was placed in my presence.

.....
Signature of Commissioner of Oaths

FULL NAMES:

DESIGNATION:
(police officers must state rank)

ADDRESS:

NOTE: THE COMMISSIONER OF OATHS MUST ALSO INITIAL EVERY PAGE OF THE AFFIDAVIT.

Form 5: Interim protection order

This form will be completed by the magistrate or the clerk of court. Anna (the complainant) will get a copy. A copy will also be given to Petrus (the respondent). The interim protection order tells Petrus what he must do and must not do.

In all cases the order will tell the respondent not to commit any further acts of domestic violence.

In this example, Petrus is also ordered to hand over his gun to the police and move out of the shared household. There is a list of furniture and other items he must leave in the house (even if he has paid for some of these). He is also ordered to stay away from the house. The exception is that he can visit the children once a week, at the house, but this must be when Anna's father is present. He must also stay away from the house of the neighbour, Maria. He must pay maintenance for his daughter, Sarah. (Petrus has no responsibility to maintain Anna, because they are not married, or Lukas, Anna's son by another man, who should be maintained by his own father.)

A copy of the interim protection order will be given to the station commander of the police station nearest to Anna. The interim protection order also says what the police must do. In the example, they must seize Petrus's gun, and remove him from the house.

FORM 5
(Regulation 6)
INTERIM PROTECTION ORDER
Section 8 of the Combating of Domestic Violence Act, 2003

APPLICATION NUMBER **X123-04**.....

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF **Windhoek**.....
 HELD AT **Katutura**.....

In the matter between

COMPLAINANT **Anna Plaatjies** **21-11-76**
 (name) (id number, if any) (date of birth)

AND

RESPONDENT **Petrus Nicholas** **18-6-72**
 (name) (id number, if any) (date of birth)

NOTICE TO THE RESPONDENT:

An application has been made for a protection order against you in terms of the Combating of Domestic Violence Act, 2003. A copy of the sworn statement made in support of the application is attached, along with any other evidence which was put before the court. On the basis of this information, the court has issued an interim protection order against you.

You are hereby informed of your right to appear in the Magistrate's Court at **Katutura** on the **2nd** day of **August 04** at 08h30. At that time, you may present evidence to the court to show why the interim protection order should not be confirmed and made final. You may bring other persons to give evidence on your behalf if you wish. If you want to oppose the protection order, you must send the enclosed form called "NOTICE OF INTENTION TO OPPOSE CONFIRMATION OF PROTECTION ORDER" back to the Clerk of the Court right away.

You also have a right to ask the clerk of the court to ask that the date of the court enquiry be moved forward. The clerk of court has a duty to make sure that there is 24 hours' written notice of the earlier date to the complainant. If you want to ask for an earlier enquiry date, use the enclosed form called "NOTICE OF INTENTION TO OPPOSE CONFIRMATION OF PROTECTION ORDER".

If you do NOT appear in court to oppose the order on the listed date and time, or on an earlier date arranged with the clerk of court, the court will make this interim protection order into a final protection order.

In the meantime, this interim order has full force and effect. It is a criminal offence to violate an interim protection order. If you violate any of the provisions of the order indicated below, you are liable on conviction to a fine of up to N\$8000, or to imprisonment for up to two years, or to both a fine and imprisonment.

a) PARTICULARS OF RESPONDENT

Surname	Nicholas
Full first names	Petrus
Sex <input checked="" type="checkbox"/> male female
Date of birth	18 June 1972
ID number	
Home address	24 Abraham Mashego St. Katutura
Home telephone number	061-223716
Occupation	taxi driver
Employer	Harold de Villiers
Work address	15 Mahatma Gandhi St. Katutura
Work telephone number	061-223356
Other contact details for respondent	081-1293986

b) ORDER OF COURT

1. The court orders that

1.1 the application for the protection order is dismissed.

1.2 the application for the protection order is granted as set out on the following pages.

ORDER TO RESPONDENT

2. You are hereby ordered not to commit any further acts of domestic violence against the complainant or the complainant's dependants, either directly or by getting the help of another person to carry out the violence. You are ordered to refrain from all acts of domestic violence, and in particular from the types of violence indicated in the list below:

- physical abuse;
- sexual abuse;
- economic abuse (including destruction or damage to property);
- intimidation;
- harassment (including stalking);
- trespass;
- emotional, verbal or psychological abuse ;

**threats or attempts to carry out any of these acts;
exposing a child to acts of domestic violence against another person.**

3. You are further ordered to comply with the provisions below which are indicated by a tick (✓):

WEAPONS

- ✓ 3.1 You are ordered to hand over to the police all firearms in your possession their specific weapon(s) (list:..... **handgun**.....).
- ✓ 3.2 Your firearm licence is hereby suspended.

NO-CONTACT PROVISIONS

- 3.3 You must not come near the complainant wherever he or she may be.
- ✓ 3.4 You must not enter or come near the complainant’s residence, which is at the following address: **24 Abraham Mashego St., Katutura**.....
- 3.5 You must not enter or come near the complainant’s workplace, which is at the following address:
- 3.6 You must not enter or come near the complainant’s educational institution, which is at the following address:
- ✓ 3.7 You must not enter or come near the following place or address. **Maria Shilongo’s house at 26 Abraham Mashego St., Katutura**.....
- 3.8 You must not communicate in any way with the complainant, except under the following conditions (if any):
- ✓ 3.9 You must not communicate in any way with the following person(s), except under the following conditions (if any).
name: **Lukas Plaatjies**.....
conditions (if any): **supervised visits allowed**.....

name: **Sarah Nicholas**.....
conditions (if any): **supervised visits allowed**.....

name:
conditions (if any):

EXCLUSIVE OCCUPATION OF A JOINT RESIDENCE
(available only if there has been an act of physical violence)

- ✓ 3.10 You must not enter the joint residence which you share with the complainant at the following address, and you are ordered not to prevent the complainant, or any child or dependant of the complainant, who ordinarily lives at the joint residence from entering or remaining on the premises or any part of the premises. This provision shall remain in force until **2 Jan. 05** (date).

3.11 You are ordered to leave all of the contents of the joint residence in place for the use of the complainant until (date).

✓3.12 You must leave the following items at the joint residence for the use of the complainant until 2 Jan. 05 (date).

2 beds, 1 stove, 1 fridge, 1 couch with 1 chair, 1 table with

3 chairs, 1 wardrobe, clothes and personal belongings of complainant and her children

ALTERNATIVE ACCOMMODATION

(available if you are legally liable to support the complainant and the complainant does not wish to stay in the joint residence, or it is more appropriate for you to stay in the joint residence)

3.13 You must pay rent in the amount below for suitable alternative accommodation for the complainant and any dependants of the complainant whom you are legally liable to support.

monthly rental: until date:

3.14 You must make the following arrangements for suitable alternative accommodation for the complainant and any dependants of the complainant whom you are legally liable to support:

PROPERTY

✓3.15 You are ordered to leave the following items in the possession of the complainant:

ID cards of complainant and her two children, keys to the residence at 24 Abraham Mashego St. (in addition to house contents listed above)

3.16 You are ordered not to take, sell, damage, give away or otherwise deal in any property in which the complainant has an interest or a reasonable expectation of use, including the following property.

.....
.....

ORDERS PERTAINING TO CHILDREN AND DEPENDANTS

4. It is further ordered as follows:

MAINTENANCE

✓ 4.1 The respondent is ordered to pay temporary monthly maintenance in respect of the following children or dependants:

name: **Sarah Nicholas**
monthly amount: **NS\$100** until date: **2 January 2005 (6 months)**

name:
monthly amount: until date:

name:
monthly amount: until date:

name:
monthly amount: until date:

name:
monthly amount:

CUSTODY AND ACCESS OF CHILDREN

✓ 4.2 Temporary custody of the following children is granted to the complainant.

names: **Sarah Nicholas**

4.3 Temporary custody of the following children is granted to

names:

4.4 The respondent is ordered to have no contact whatsoever with the following children.

names:

✓ 4.5 The respondent may have contact with the following children only under the specified conditions:

name: **Lukas Plaatjies**
visiting arrangement: **visits allowed once a week on weekends**
other conditions: **when complainant's father, Sam Plaatjies, is present**

name: **Sarah Nicholas**
visiting arrangement: **visits allowed once a week on weekends**
other conditions: **when complainant's father, Sam Plaatjies, is present**

name:
visiting arrangement:
other conditions:

ADDITIONAL ORDERS

5. It is further ordered as follows:

- ✓ 5.1 The clerk of court must forward a copy of this protection order to the Station Commander of the**Katutura**..... police station, who must cause police protection, to the extent reasonably necessary and possible, to be provided to the complainant or any person in the care of the complainant who is at risk until such time as the interim protection order is made final and served on the respondent or discharged.
- ✓ 5.2 A police officer from the**Katutura**..... police station must seize the following weapons from the respondent:**handgun**.....
- ✓ 5.3 A police officer from the**Katutura**..... police station must remove the respondent from the joint residence.
- 5.4 A police officer from the police station must accompany the respondent to collect personal belongings from the joint residence.
- 5.5 A police officer from the police station must accompany the complainant to collect personal belongings from the joint residence.
- 5.6 The complainant’s physical address must not be revealed to the respondent.
- 5.7 The clerk of the court must send a copy of this order to the Permanent Secretary of the Ministry responsible for child welfare, for consideration of appropriate action as provided for in legislation relating to the care and protection of children.

6. It is further ordered as follows:

.....
.....
.....
.....

Signature
.....
MAGISTRATE

2 July 2004
.....
DATE

Form 6: Notice of intention to oppose protection order

This is a form which will be included with the interim protection order when it is sent to Petrus (the respondent). If Petrus does not want the interim protection order to become final, he must return the form in person or by post to the clerk of the court.

In this example, Petrus does not want the interim protection order to become final. He does not want to wait for almost a month before he gets the chance to tell his side of the story (especially since the order says that he must leave the joint household), so he has asked for the date of the enquiry to be brought forward.

**FORM 6
(Regulation 7)**

NOTICE OF INTENTION TO OPPOSE CONFIRMATION OF PROTECTION ORDER

Section 11 of the Combating of Domestic Violence Act, 2003

(Note: this form must be included with the interim protection order sent to the respondent, with the boxed portions of the form already completed by the clerk of court).

APPLICATION NUMBER X123-04

IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF Windhoek
HELD AT Katutura

In the matter between

COMPLAINANT Plaatjies 21.11.76
(name) (id number, if any) (date of birth)

AND

RESPONDENT Nicholas 18.6.72
(name) (id number, if any) (date of birth)

NOTICE TO RESPONDENT: The enclosed interim protection order has been made against you in terms of the Combating of Domestic Violence Act, 2003 (Act 4 of 2003). The interim protection order is already in force. This means that you must obey it.

The interim protection order is only a temporary order. If you do not want the interim protection order to become a final order against you, you must return this notice in person or by post, to the Clerk of the Court at the following address:

Katutura Magistrate’s Court
Munjunde Street / PO Box 1111
Katutura

The notice must reach the Clerk of the Court by the following date: 26 July 04
(date one week before the date of the enquiry listed on the front page of the interim protection order).

If you do NOT return this form to the Clerk of Court by this date, then the interim protection order against you will be made final.

The enquiry to consider the protection order is scheduled for the following date:
2 August 04
(date indicated on the front page of the interim protection order).

You must appear in the Magistrate’s Court at Katutura **at 08h30 to say why the court should not make the interim order into a final one. If you would like the enquiry to take place SOONER, you can make a request for an earlier date in the space below.**

- ✓ 1. I ask the court NOT to confirm the interim protection order which has been made against me.

2. Choose one:

..... I will come to court on the date for the enquiry listed above.

..... ✓ I ask that the Clerk of the Court to hold the enquiry sooner, at 08h30 on the following date: **15 July 04** I will come to court on this date. (This date must be a weekday which is less than 30 days from the date you received the interim protection order.)

3. I would like these people to come to court to give evidence about the information stated in this application:

NAME	BEST CONTACT ADDRESS	WHAT INFORMATION THIS WITNESS CAN GIVE THE COURT
Harold de Villiers (employer)	15 Mahatma Gandhi St., Katutura tel: 061-223356	that I am a reliable employee with a good character

Petrus Nicholas
.....
SIGNATURE

7 July 2004
.....
DATE

Form 9: Final protection order

There are two versions of Form 9.

Form 9A is used when the final protection order is the same or nearly the same as the interim protection order.

There is a space on Form 9A to record small amendments to the interim protection order.

In our example, Anna and Petrus agreed at the end of the enquiry that Anna and the children would keep the couch but not the matching chair. The magistrate agreed to make this small change to the interim protection order.

Form 9B is used when –

- (a) no interim protection order was made in advance of the enquiry (for example, because the magistrate did not feel that there was enough evidence to give an interim order before hearing both sides of the story)
- (b) the final protection order is so different from the interim order that it is best to cancel the interim order and write a new order (for example, if there are changes to many of the provisions of the order).

**FORM 9A
(Regulation 10)
FINAL PROTECTION ORDER
Section 13(1) of the Combating of Domestic Violence Act, 2003**

APPLICATION NUMBER **X123-04**

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF **Windhoek**
HELD AT **Katutura**.....

In the matter between

COMPLAINANT **Anna Plaatjies** **21-11-76**
(name) (id number, if any) (date of birth)

AND

COMPLAINANT **Petrus Nicholas** **18-6-72**
(name) (id number, if any) (date of birth)

An application for a protection order against the respondent has been made in terms of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003).

An interim protection order was issued on (date) **2 July 2004**.....

No interim protection order was issued.

Court order

1. The Court orders that the attached interim protection order be confirmed and made final.
- 2. The Court orders that the attached interim protection order be made final, with the following amendments: Delete the phrase "with 1 chair" from point 3.12.**
3. The Court orders that the attached interim protection order be set aside.
4. The Court orders that the attached interim protection order be discharged and replaced by the attached protection order which is hereby declared final.
5. The Court makes the attached protection order for the first time on this date, and this protection order is hereby declared final.
6. Because the respondent failed to attend the enquiry at which the interim protection order was confirmed, the court orders that this interim protection order is hereby extended until such date as the final protection order is served on the respondent. The interim protection order shall have full force and effect until this date regardless of whether or not the respondent has been notified of the extension.
7. The clerk of court must forward a copy of this protection order to the Station Commander of the police station, who must put all police personnel at that station on notice that the complainant and any other person protected by the order are at particular risk.

8. The clerk of the court must send a copy of this order to the Permanent Secretary of the Ministry responsible for child welfare, for consideration of appropriate action as provided for in legislation relating to the care and protection of children.

It is a criminal offence to violate a protection order. If you violate any of the provisions of the protection order, you are liable on conviction to a fine of up to N\$8000, or to imprisonment for up to two years, or to both a fine and imprisonment.

Signature

.....
MAGISTRATE

15 July 2004

.....
DATE

THE CYCLE OF VIOLENCE

The cycle of violence is a recurring pattern where the offender swings between affectionate, remorseful and calm behaviour to periods of tension that grow into physical, sexual or emotional violence.

The more times the cycle is completed the less time it takes to complete.

As the cycle is repeated, the violence usually increases in frequency and severity.

THE "HONEYMOON"

Abusers act differently after violent episodes. Some ignore or deny the violence. Some blame their "anger" on something you said or did. Some fear losing you and act genuinely sorry. This phase is often called the "honeymoon". The abuser will try to make up for his violence. He may act sorry, send cards and flowers, buy presents, help around the house, spend time with his children, go to church, get counselling, or make promises. The abuser may seek pity. It is important to realise that this phase is an attempt to draw you back into the relationship. This phase is never a real "honeymoon".

TENSION

This feels like walking on eggshells. Nothing is right. There is no way to predict what the abuser wants. While there may not be physical violence (or at least physical violence is minimal), there is emotional abuse, intimidation and threats. Fear of violence is often as coercive as violence itself.

VIOLENCE

This is the actual violent episode. It includes physical, emotional and sexual abuse.



No man who truly cares about the future of our nation can fail to be concerned with the status of children and women.

President Sam Nujoma, 23 September 1993

