

GUIDELINES
for
SERVICE PROVIDERS
on the
COMBATING OF
DOMESTIC VIOLENCE
ACT OF NAMIBIA

POLICE
PROSECUTORS
MAGISTRATES
MEDICAL PROFESSIONALS
SOCIAL WORKERS & COUNSELLORS



Legal Assistance Centre
2005

ACKNOWLEDGEMENTS

The guidelines contained in this booklet were prepared by members of the relevant professions. The process was facilitated by **Wendy Wilson**, a social worker who specialises in dealing with violence, and by **Dianne Hubbard** of the Gender Research & Advocacy Project of the Legal Assistance Centre. Various drafts were workshopped with members of the professions in question over a period of several years, and drafts were circulated to all regions for comment.

Initial funding for this project was provided by **USAID** through the Namibian Institute for Democracy. The publication of the guidelines was funded by the **Embassy of the Royal Netherlands**.

The final publication was edited by **Dianne Hubbard** and **Anne Rimmer** of the Legal Assistance Centre. Design and layout are by **Perri Caplan**.

The Legal Assistance Centre would like to thank the many people who contributed to the development of this publication, particularly the many professionals who provided suggestions based on the wisdom of their experience.



Ambassade van het
Koninkrijk der Nederlanden



Legal Assistance Centre
4 Körner Street, Windhoek
P.O. Box 604 Windhoek
Tel. (264) (061) 223356
Fax 234953
Email info@lac.org.na
Website www.lac.org.na

ISBN 99916-63-11-8

CONTENTS

INTRODUCTION	1
GUIDING PRINCIPLES	5
DEFINITIONS	7
Guidelines for POLICE	11
Guidelines for PROSECUTORS	19
Guidelines for MAGISTRATES	25
Guidelines for MEDICAL PROFESSIONALS	31
Guidelines for SOCIAL WORKERS and COUNSELLORS	39
Form J-88: affidavit and medical examination report	43-50
Full text of the Combating of Domestic Violence Act (Act No. 4 of 2003) – <i>Government Gazette</i> No. 3002	51-75
Text of the Regulations accompanying the Combating of Domestic Violence Act – <i>Government Gazette</i> No. 3094	77-85
Form for applying for a protection order (GG No. 3094)	86-101
Police record-keeping form (GG No. 3094)	103-106
VULNERABLE WITNESSES	107

INTRODUCTION

BACKGROUND TO THE GUIDELINES

Each set of guidelines was drafted by members of the profession in question. The draft guidelines were circulated to professionals from every region in the nation for comment. They were discussed in several workshops held in various locations, and revised in light of the comments received. They were also discussed widely with members of the public, and with other professionals who may be involved in domestic violence cases (such as social workers and counsellors). Thus, the final drafts are genuinely representative of the concerns and needs of those people who deal directly with domestic violence.

WHY ARE GUIDELINES HELPFUL?

The main idea behind the guidelines is that they should set the standard for a consistent and sensitive professional response. The following additional motivations for adopting guidelines have been identified in other countries:

- Guidelines make sure that all members of a profession follow the steps which have been identified as best practices.
- Guidelines ensure that all members of the profession show sensitivity to the complainant, and alert service providers to important gender issues.
- Guidelines help make service provision more cost effective.
- Guidelines make professionals more accountable by informing the public on what kind of service they should expect.
- Guidelines help to make sure that all complainants receive service on a basis of equality, regardless of sex, race or ethnicity.
- Guidelines facilitate co-operation between different agencies and help eliminate duplication of services.
- Guidelines help to provide consistency in service provision, rather than allowing it to depend on individual discretion and personalities.
- Guidelines help to provide continuity in service, by maintaining consistent procedures through staff changes.

Professional discretion is necessary and important to avoid rigid services. However, in recent years, many other countries have begun to develop policies and guidelines for police, prosecutors, courts, health care professionals and other service providers on various forms of violence against women – including rape, sexual harassment and domestic violence.

This can be particularly important in the criminal justice context. The criminal case is between the state on the one side and the accused on the other. The complainant has no direct voice. There is no one with an official duty to protect the complainant's interests. The complainant must rely on the police, the prosecutor, the presiding officer and various support persons to play this role.

In the civil context of an application for a protection order in a domestic violence situation, the procedure is meant to be so simple that neither party will need legal representation. This will mean that there is a bigger responsibility on all of the relevant service providers to understand the law clearly.

In the past, complainants in a domestic violence case have sometimes been blamed for the domestic violence, on the grounds of “provocation”. Victims of domestic violence have sometimes been criticised for not leaving the situation – even though there may have been serious obstacles to leaving such as emotional or financial dependency or frightening threats from the abuser. Another problem in the past has been the false idea that domestic violence is a private matter which does not concern the police or the courts.

Clear procedures can help to make sure that myths and stereotypes such as these do not creep into the response of individual service providers. Formal guidelines can also give additional guidance on how to respond to a domestic violence complainant in an appropriate manner.

A sensitive professional response is also crucial to the outcome of the case. A complainant who is met with rudeness or disbelief may not continue to co-operate with the criminal justice system, leaving a perpetrator to go free and to endanger the family member (or others) in the cycle of violence that is typical of domestic violence. Furthermore, regardless of case outcome, a person who alleges domestic violence needs as much support as possible.

Police

The primary role of the police is to collect information and evidence, but the complainant has other immediate needs such as the need for medical attention and counselling or psychological treatment. Sensitivity to the complainant’s position will lead to improved co-operation, which will discourage case withdrawals and increase the chances for convictions. Sensitive treatment will also improve relations between the police and the community at a broader level. Police officers should continue to treat the complainant with sensitivity and respect as the investigation proceeds, even if the case is withdrawn or there is not sufficient evidence to proceed to court.

Because police will often be the first point of contact for a domestic violence complainant, they have a special responsibility to make sure that complainants get clear and complete information about their rights, to prevent further incidents of violence. For example, complainants should know about the option of either laying a criminal charge, or seeking a protection order, or pursuing both at the same time. Complainants also need to be aware of their right to temporary police protection.

Police further need to be aware of their options in respect of action against the perpetrator – such as arresting the perpetrator without a warrant or giving a formal written warning.

Prosecutors

The traditional focus of the prosecutor is on presenting the evidence and securing a conviction. However, it is important to take note of the fact that the court process looms large for most people who have experienced domestic violence. This fear may be a factor when charges are withdrawn by complainants.

Testifying about the domestic violence may be like re-living the experience. Talking about family relationships in front of strangers may be very embarrassing. The experience of appearing in court itself is unfamiliar and traumatic for many people. The process is unnecessarily mysterious, which can add to the trauma. However, a complainant who feels more comfortable with the court setting will probably make a better witness. Therefore, it is in the interests of the prosecutor to take some time to put the domestic violence complainant at ease – as well as being a new legal responsibility in terms of the Combating of Domestic Violence Act.

Magistrates

The concept of protection orders is a new idea in Namibia. Previously, there were no specific legal provisions for domestic violence. This means that the courts must now implement an entirely new approach. The procedure is intended to be very simple, so that neither party will need legal representation. This places an extra burden on presiding officers, to make sure that the parties understand the proceedings and treat each other with respect in the courtroom.

In criminal cases, the presiding officer is also in a position to control the courtroom in a way that can minimise added trauma. For example, the presiding officer can take steps to minimise contact between the complainant and the accused, or call for a recess if the complainant is experiencing acute distress. The presiding officer also has the power to introduce court personnel to the complainant (such as the police officer who receives evidence, the clerk who records the proceedings and any interpreters who are present), so that the complainant knows why the presence of these persons is necessary. The presiding officer can explain what is happening so that the complainant will feel more comfortable in the unfamiliar environment of the courtroom.

It is of course necessary for the presiding officer to remain impartial in every respect, but this does not preclude taking steps to ensure that the complainant is treated with respect and dignity. The accused has the benefit of many legal safeguards at the time of the trial – but the complainant has few legal rights, since he/she is regarded only as a witness.

Medical professionals

It is vital for medical personnel to have formal guidelines on how to deal with domestic violence complainants, both for purposes of collecting evidence and for dealing appropriately with the medical needs of the complainant, including injury from the domestic violence as well as prevention of further injuries. Medical staff should be informed about the provisions of the Combating of Domestic Violence Act so that they can provide the complainant with the necessary advice and support.

Social workers and counsellors

A domestic violence complainant should see a social worker soon after the domestic violence incident has taken place, especially if the case is reported at a Woman and Child Protection Unit. This means that social workers have a special duty to make sure that the complainant is informed about the different options for the prevention of further incidents of violence – including both civil protection orders and criminal charges.

Domestic violence complainants need ongoing support, as the cycle of violence normally does not stop unless intensive therapy is provided. Should the complainant actually make a criminal charge, he or she will need intensive support during the long and traumatic process of taking the case to court. In a domestic violence case, the complainant may come under serious pressure from the accused or from family members to withdraw the case. Because the case may take a long time to reach the court, the complainant may have moved on and be more reluctant to pursue the prosecution. Regular contact and information about the progress of the case will aid a successful prosecution.

It is also important to remember that the after-effects of domestic violence may not be felt immediately. The complainant, the complainant's spouse and other family members may need support and counselling over a long period, and they may not be ready to begin a counselling process until some time has passed. The inevitable repeat of the cycle of violence and the complex family dynamics can make the complainant feel very vulnerable and lonely. Victims of domestic violence need sensitive support.

Alcohol or drug abuse in the family may be exacerbating the problem of domestic violence. This may produce a need for a specialised response to deal with the problem.

Children in the family may also be affected by the violence even if they are not direct victims. They may need a referral for specialised assistance by a psychologist or a social worker who has special experience in working with children.

USING GUIDELINES EFFECTIVELY

Here are some suggestions on how to use the guidelines effectively:

1. **Training:** The guidelines can be used as the basis for training new members of the professions on how to handle rape cases.
2. **Checklists:** The different points in the guideline are arranged in a list which service providers can use as a checklist in individual rape cases. Copies of the guidelines could be made for each case, with each item being ticked off as it is completed. If an item is not ticked off as being done, then an explanation could be noted on the checklist. The completed checklists could then be included in case files and social work reports for monitoring purposes.
3. **Basis for monitoring and reviewing procedures:** Each profession could monitor and review its guidelines from time to time, as a way of measuring the effective-ness of their response to rape. Over time, service providers may identify ways to work more effectively with rape cases, and amend their guidelines accordingly.
4. **Guiding public expectations:** The guidelines will also function as a means of letting the community know what to expect from service providers. The members of the public can also play a monitoring role which will help to improve service provision in Namibia. This is why the final guidelines are being published and distributed to interested members of the public as well as to professionals who work with rape victims.

The publication of the guidelines is only a starting point. It is up to the different professions to make them meaningful. Everyone in the profession must know about the guidelines and be committed to following them. They should be a tool to make people's jobs easier, not harder.

The Combating of Domestic Violence Act has sent out a strong message to society that Namibia is serious about this problem. The utilisation of professional guidelines is another important piece of the movement to combat this form of violence.

GUIDING PRINCIPLES

1. **Domestic violence is a serious crime** that requires a serious response from the criminal justice system and the community.
2. Although anyone can suffer from domestic violence, **women and children are usually the victims of domestic violence at the hands of men**. Everyone has a right to be free from the fear of domestic violence.
3. **No one deserves to be treated with violence**. There is no behaviour that justifies the use of violence against another person.
4. **Domestic violence is a very traumatic crime**. It usually occurs in the home, which is a place where people should feel the safest. It usually comes at the hands of a person who was loved and trusted.
5. **It can be difficult for a person to leave a violent situation because of financial or emotional dependency on the abuser, or because of fear stemming from threats made by the abuser**. A person who is suffering from domestic violence should be given all possible help, even if he or she does not want to lay a charge or leave the relationship.
6. **The primary concern of a service provider should be the health, safety and welfare of the person suffering from domestic violence**. It should not matter if he or she has previously refused to seek help. It should not matter if he or she has previously withdrawn charges. Service providers should offer help without being judgemental.
7. The **dignity** of the domestic violence complainant should be respected at all times.
8. **Domestic violence is not a private matter**. It has costs to everyone in society. It harms the **victim** physically, emotionally, financially and socially. It harms the **perpetrator**, who may lose the respect of his or her family and his or her own self-respect and then compensate for feelings of shame and inadequacy with more violence. It harms **the children in the family**, even if they do not experience the violence directly. They learn that violence is a way of solving problems, which increases the general level of violence in society. It harms the **community** by upsetting family members and neighbours, and by setting a bad example for the children in the community. It harms **society at large** with increased health care costs, losses in productivity, and extra burdens on police and courts. In these ways, domestic violence holds back the overall development of the nation.

DEFINITIONS

COMPLAINANT = the victim of the domestic violence (even if someone else applies for the protection order)

RESPONDENT = the person who committed the domestic violence

DOMESTIC VIOLENCE

Domestic violence includes the following acts. It can also include acts which are not listed.

PHYSICAL ABUSE

- physical assault or any use of physical force against the complainant
- forcibly confining or detaining the complainant
- physically depriving the complainant of access to food, water, clothing, shelter or rest.

SEXUAL ABUSE

- forcing the complainant to engage in any sexual contact
- engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant
- exposing the complainant to sexual material which humiliates, degrades or violates the complainant's sexual integrity
- engaging in such contact or conduct with another person with whom the complainant has emotional ties.

ECONOMIC ABUSE

- the unreasonable deprivation of any economic or financial resources to which the complainant (or a dependant of the complainant) is entitled under any law, requires out of necessity or has a reasonable expectation of use – including household necessities, and mortgage bond repayments or rent payments in respect of a shared household
- unreasonably disposing of moveable or immovable property in which the complainant (or a family member or dependant of the complainant) has an interest or a reasonable expectation of use
- destroying or damaging property in which the complainant (or a family member or a dependant of the complainant) has an interest or a reasonable expectation of use
- hiding or hindering the use of property in which the complainant (or a family member or dependant of the complainant) has an interest or a reasonable expectation of use.

INTIMIDATION, which means intentionally inducing fear in the complainant (or a family member or dependant of the complainant) by –

- committing physical abuse against a family member or dependant of the complainant
- threatening to physically abuse the complainant, or a family member or dependant of the complainant
- exhibiting a weapon
- any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour.

HARASSMENT, which means repeatedly following, pursuing or accosting the complainant (or a family member or dependant of the complainant), or making persistent unwelcome communications, such as –

- watching, or loitering outside or near the building or place where such person resides, works, carries on business, studies or happens to be;
- repeatedly making telephone calls or inducing a third person to make telephone calls to such person, whether or not conversation ensues; or repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to such person's residence, school or workplace.

TRESPASS, which means entering the residence or property of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence.

EMOTIONAL, VERBAL OR PSYCHOLOGICAL ABUSE, which means a pattern of degrading or humiliating conduct towards a complainant (or a family member or dependent of the complainant) including –

- repeated insults, ridicule or name calling
- causing emotional pain
- the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's, or the complainant's dependant or family member's privacy, liberty, integrity or security.

THREATS or ATTEMPTS to do any of these acts.

PSYCHOLOGICAL ABUSE OF A CHILD includes a situation where someone other than a victim of domestic violence –

- repeatedly causes or allows a child to see or hear the physical, sexual, or psychological abuse of a person with whom that child has a domestic relationship
- repeatedly puts a child at risk of seeing or hearing such abuse
- repeatedly allows a child to be put at risk of seeing or hearing such abuse.

In some cases, a SINGLE ACT can amount to domestic violence. A number of acts that form part of a PATTERN of behaviour may amount to domestic violence even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

DOMESTIC RELATIONSHIPS

Domestic relationships include only the following relationships.

MARRIAGE: a male and female who are or were married to each other in a marriage according to any law, custom or religion, or who are or were engaged to be so married.

LIVING TOGETHER AS HUSBAND AND WIFE: a male and female who are living or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other.

HAVING A CHILD TOGETHER: a male and female who have, have had or are expecting a child together – excluding situations where the child is conceived as a result of rape or where the parties contributed ova or sperm for an assisted reproductions technique but have no other relationship.

PARENT AND CHILD, whether biological or adoptive.

FAMILY MEMBERS

- people related by blood, marriage or adoption
- people who are standing in the place of family members because of foster arrangements
- people who would be family members related by marriage if a man and a woman who are living together as husband and wife had been formally married
BUT ONLY IF THEY HAVE SOME CONNECTION OF A DOMESTIC NATURE, such as the sharing of a residence or one of them being financially or otherwise dependent on the other.

BOYFRIEND/GIRLFRIEND: a male and female who are or were in an actual or a perceived intimate or romantic relationship.

A “domestic relationship” based on a past relationship (such as marriage or a romantic relationship which is now over) is considered to continue for at least one year after the relationship has come to an end. Where a child is born to any couple, their “domestic relationship” continues throughout the lifetime of that child and for one year after the death of the child. The court can extend these time periods if there are good reasons to do so.

OPTIONS FOR ACTION

In terms of the Combating of Domestic Violence Act, a person who is experiencing domestic violence has the following options.

- (1) Make an application for a PROTECTION ORDER.
- (2) If the abuse amounts to a crime (such as hitting, which is assault, or stabbing which may be attempted murder), LAY A CHARGE with the police, or ask the police to give the abuser A FORMAL WARNING.
- (3) Do BOTH of these things at the same time.



Guidelines for **POLICE**



If the applicant or complainant (or someone acting on behalf of the complainant) contacts the police by telephone –

1. Find out the address the complainant is calling from and whether the complainant is in any danger. Send a police vehicle to the complainant immediately.
2. Find out whether the complainant is injured and whether an ambulance or other medical help is needed. If so, send medical help immediately.
3. Remind the complainant on the telephone not to wash or change clothes.
4. Keep talking to the complainant as long as possible while help is on the way, to provide support and reassurance. This is not always possible, but where possible it should be done.

If the complainant comes to the police station –

5. Introduce yourself and explain your role in the investigation. Give the complainant your name, rank and contact telephone number.
6. Find out whether the complainant is injured and whether an ambulance or other medical help is needed. If so, arrange medical help immediately.
7. Find a quiet place outside the charge office where the complainant can be interviewed.
8. If the complainant is unable to proceed with a statement at the moment because of injury or emotional state, open a docket and take down basic details (name address, etc). Write down the case number for the complainant, to make follow-up easier.
9. Contact the investigating officer as soon as possible.

The first police priority should be the safety and well-being of the complainant. This means making sure that the complainant gets access to any medical attention required, including medication.

10. Tell the complainant about all of his or her options: seeking a protection order, laying a charge, requesting a formal warning or doing several of these at the same time. If the complaint wants to request a protection order, regardless of whether or not there is a criminal charge, (a) assist him or her to fill out the form or (b) refer him or her to a social worker or to the clerk of court for this assistance.
11. If the complainant was raped as part of the domestic violence incident: Inform him or her of the importance of prompt preventative medication and help her to obtain such medication as quickly as possible. Refer to the guidelines on rape.

12. Provide or arrange transport to the nearest doctor, hospital or clinic, and accompany the complainant to the medical examination for the purpose of collecting evidence.
13. Ask the complainant if he/she would like to see a social worker or a counsellor. Ask if he/she would like to have a social worker or counsellor present while making the statement. If the answer is yes, arrange this right away (if there a social worker or counsellor reasonably available).
14. In cases involving serious forms of violence, do not leave the complainant alone while waiting for the investigating officer to arrive.

The second police priority should be taking a statement and collecting evidence.

Interviewing procedures

15. Introduce yourself and explain your role in the investigation. Give the complainant your name, rank and contact telephone number.
16. If the complainant has suffered rape or injuries: Because medical evidence may disappear, arrange if possible for a forensic medical examination to take place before the statement is taken.
17. Serious domestic violence cases should take priority over other similar cases. If other people are waiting to give a statement, attend to the domestic violence complainant as soon as possible. However, it may be necessary to give the complainant some time to recuperate before he/she is capable of making a statement. Try to arrange that the complainant is seen in a more private place and not interviewed in a public area.
18. If the complainant is too upset or injured or intoxicated to make a statement at the time, arrange for a subsequent interview. Forcing a detailed statement from a person who is in no condition to give one will result in bad evidence. It may be better to write down brief initial information for a skeleton docket, and then arrange for a detailed statement at a later time. Only one statement should be taken for court purposes.
19. Where possible, arrange for a police officer of the same sex as the complainant to take the statement. The most senior investigating officer of the same sex should take the statement. Staff could possibly be placed on stand-by duty at times when these cases may occur.
20. Take the statement in private, but allow the complainant to have a social worker or counsellor present to act as a support person if he/she wishes. Friends or relatives should not be present if they are influencing the complainant.
21. Try to remove or minimise disruptions, such as telephone calls and other distractions.
22. Allow the complainant to give the statement in the language of his or her choice. Arrange a translator if necessary. Record the statement in English. Indicate on the statement what language the complainant used when giving the statement, and what language was used to verify the statement with the complainant. Use words that the complainant feels comfortable with. Avoid using difficult or advanced terms.

23. Do not leave the complainant alone during the interview process, or at any other time.
24. Do not interrupt the complainant, as this may prevent the complainant from conveying important information.
25. Encourage the complainant to give full information. For example, if the complainant has consumed alcohol or drugs, it is best to include details about this in the statement. Full disclosure of all facts will make the complainant more credible. *But questions about the complainant's behaviour should at all costs avoid creating the impression that the complainant was in any way to blame for what happened.*
26. Find out if there is a history of domestic violence in the relationship. If so, record the details of previous incidents. It will be important to ascertain from the frequency and intensity of incidents the danger posed by any cycle of violence which is developing. **If the violence is intensifying, encourage the complainant to seek a protection order in addition to laying a charge.**
27. Ask questions in a calm and matter-of-fact tone. Be calm and patient. Be sensitive to the horrible experience the complainant has been through. Let the complainant know that you believe him/her and want to help him/her. Use tone of voice, eye contact and the way that you phrase your questions to show support.
28. Do not rush the complainant. Give the complainant as much time as he/she needs.
29. If the complainant is a child, use the prescribed special procedures for interviewing children.
30. Avoid using terms like "alleged assault" or "alleged domestic violence". While this is legally correct, it may be misunderstood by the complainant as a signal that he/she is not being believed.
31. Ask the complainant if the accused has a firearm or used a firearm in the offence. If so, record this information so that the bail application can include an order prohibiting the possession of a firearm. See also point 56 covering seizure of firearms.
32. Ask the complainant if the accused threatened him/her in any way at the time of the incident, before or afterwards. Record this information in the statement for use in the bail application.
33. Tell the complainant that he/she has a right to present evidence directly or through the police on the question of bail, so that bail can be denied if the complainant has a good reason for being afraid of harm from the accused.
34. Record any information which is relevant to the bail application in the statement or in the investigation diary.
35. Tell the complainant that he/she has a right to be present at the bail proceedings to give information, but encourage the complainant to avoid the trauma of personal testimony at this hearing by conveying information through the investigating officer. **A standard procedure for bail hearings should be developed and followed.**

36. Tell the complainant that the new law protects his/her privacy. It is illegal for newspapers, radio or television to publish any information about the domestic violence that might reveal his/her identity.
37. Take photographs of the complainant's injuries if possible and use these in the bail application (as well as in the subsequent court case).
38. Explain what other investigative steps will be taken, including a medical examination (if this has not already taken place), fingerprinting, photographs and any other anticipated steps.
39. Obtain full contact information from the complainant (eg addresses and telephone numbers) to make follow-up easier.
40. Allow the complainant to read through his/her statement to make sure that it is correct.
41. Encourage the complainant to contact the investigating officer with any new information or evidence.
42. Check to see if there is a protection order in force.
43. Check to see if there are any previous domestic violence warnings against the accused on file.

Late reports

44. A person can lay a charge for domestic violence offence at any time. Proceed in the prescribed manner even if a significant time period has already passed since the incident took place. Long time lapses may make specific incidents difficult to prosecute, but information on previous incidents may be utilized to prove a cycle of violence and to motivate the importance of obtaining a protection order.

Further assistance to complainant

45. Assist the complainant to apply for a protection order if there is no such order in force, and if she or he wishes.
46. If the complainant applies for a protection order, arrange for temporary police protection until the order has been made and served.
47. No-contact provisions are an automatic condition of bail in all domestic violence cases. Make sure that the complainant knows that the accused has no right to contact him/her or threaten him/her if the accused is released on bail. Tell the complainant that he/she can contact you or any other police officer right away if this happens so that bail can be revoked.

See section 62 of the Criminal Procedure Act 51 of 1977 as amended by the Second Schedule of the Combating of Domestic Violence Act, or Section 65 of the Criminal Procedure Amendment Act 25 of 2004.

48. Make sure that the complainant has a way to contact you if there is a problem. If the complainant has no access to a telephone, arrange to check on him/her if possible during the next few days.

49. Tell the complainant about shelters or other services which are available in connection with domestic violence in the area.
50. Find out if the complainant has somewhere else to stay if necessary.
51. Arrange transport back home (or to another safe place) for the complainant after the interview.
52. If the complainant wishes to stay in a safe place other than his or her home, accompany him or her to the home to collect personal belongings if necessary.
53. Find out if there are any children who may be affected by the situation. If so, refer the case to a social worker for monitoring and appropriate interventions.

High-risk cases

54. Identify high-risk cases. The complainant may be in particular danger if the accused (a) made threats to the complainant or (b) used a weapon against the complainant or (c) if there is an intensifying cycle of violence. Provide extra police protection in high risk cases.

Police action against perpetrator

55. A police official who reasonably suspects that a domestic violence offence has been committed (including the violation of a protection order) may take one or more of the following actions with respect to the person suspected of committing the act of domestic violence:
 - (a) arrest the person without a warrant
 - (b) issue a formal warning, copies of which shall be placed on file with the police and the Office of the Prosecutor- General.
56. A police official who reasonably suspects that a domestic violence offence has been committed (including the violation of a protection order) may
 - (a) question persons present to determine whether there are any weapons on the premises; and
 - (b) upon observing or learning that a weapon is present on the premises, search the premises and seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury.

Collection of evidence

General

57. All domestic violence investigations should be handled by the most senior investigating officer available.
58. Investigations in domestic violence cases should commence as soon as possible, and always within 24 hours of receiving the report.
59. If the suspect is a police officer, refer the matter to the Complaints and Discipline Department for investigation by an impartial person.

Medical evidence

60. Use the official Forensic Laboratory Crime Kit. The investigating officer should preferably take this kit along when accompanying the complainant to the hospital or clinic. It is the responsibility of the station commander to ensure that the police station has sufficient kits in stock at all times. Always ensure that your office has a supply.
61. All samples should be air dried before being sealed. Failure to air dry samples properly can destroy them.
62. Always use brown paper bags for evidence, never plastic bags.
63. If the domestic violence incidence included rape or any other sexual act, refer to the guidelines on evidence collection in rape cases.
64. Take photographs of the complainant's injuries if possible. If possible, take further photographs a day or two later when bruising may become visible for the first time.
65. The accused should also be examined for injuries, which could relate to the offence. In cases of sexual abuse, samples should be taken from the accused as well as the complainant.
66. Make sure that the person conducting the medical examination follows proper guidelines on collecting evidence from the complainant and the accused.
67. Ensure that all medical evidence is properly labelled, stored and controlled. Samples sent to the forensic laboratory by registered post will not be accepted.

Crime scene

68. Record a detailed description of the crime scene.
69. Take photographs if possible.
70. Take fingerprints if possible.
71. Follow the usual forensic procedures to check for any other evidence, such as blood, semen, or signs of struggle.
72. Identify and interview any other potential witnesses.

Follow-up action by investigating officer

73. Contact the complainant within a week of the initial report to provide information on the progress of the case.
74. Inform the complainant right away if an arrest is made. If no arrest is made, explain the reason for this to the complainant.
75. Give the complainant any information about the status of the case requested by the complainant.

76. If the complainant has not yet requested a protection order, makes sure that he or she has all the necessary information and assistance to do so if he or she wishes.

Steps by investigating officer if complainant wants to withdraw the charge later

77. Question the complainant to see if intimidation has taken place. If there has been intimidation, contact the prosecutor to get bail revoked.
78. Question the complainant to make sure that fear of publicity is not influencing the decision. Explain the legal provisions prohibiting publication of identifying information about the complainant.
79. Refer the complainant to a social worker or a counsellor for support.
80. If bail has been granted, examine the bail conditions to make sure that they are sufficient to protect the complainant. Explain again to the complainant what to do if any of the bail conditions are violated.
81. Include relevant information about the complainant's desire to withdraw the case in the investigation diary for the information of the prosecutor who will decide whether to proceed.

Steps by the investigating officer relating to bail

82. Inform the complainant of the time and place of the bail hearing. Tell the complainant that he/she has a right to attend the bail hearing personally, or as an alternative, the right to ask the investigating officer to convey any concerns about bail on his/her behalf. *It is the duty of the investigating officer in charge of the police station where the accused is being held to ensure that the complainant is fully informed.* Make a note in the investigation diary, or in a separate statement, so that the prosecutor knows that the information has been conveyed.
83. Ask the complainant if the statement he/she has already made contains information about any reasons to fear the accused. Ask if the accused has contacted him/her or threatened him/her directly or indirectly since the initial statement was made. Ask the complainant if he/she has any other information that might be important for the bail hearing.
84. If the bail hearing is postponed, inform the complainant of the new time and place for the bail hearing. Make a note in the investigation diary, or in a separate statement, so that the prosecutor knows that the information has been conveyed.
85. Contact the complainant to inform him/her whether bail was granted or denied (if the complainant did not attend the hearing personally). If bail is granted, explain the bail conditions. Tell the complainant exactly who to contact if any of these conditions are violated. Make a note in the investigation diary, or in a separate statement, so that the prosecutor knows that the information has been conveyed.

The Combating of Domestic Violence Act places a legal duty on the prosecutor to inform the complainant of the bail conditions, but it will usually be easier for the investigating officer to contact the complainant and then report back to the prosecutor. (See section 60A(8) of the Criminal Procedure Act 51 of 1977, as amended by section 12 of the Combating of Rape Act and by the Second Schedule of the Combating of Domestic Violence Act or section 64 of the Criminal Procedure Act 25 of 2004.)

86. Contact the complainant at least once each month to make sure that the accused is complying with the bail conditions.
87. If information is received from the complainant or from any other source about a breach of bail conditions, the investigating officer should notify the prosecutor immediately.

Referrals

88. Consider referring the complainant to a specialised agency, a counselling organisation, a psychologist, a psychiatrist, or any other appropriate person or group for information or assistance. A referral involves more than just giving the complainant a name or a telephone number. Collect information about services that are available locally so that you can describe these services accurately to the complainant. Try to meet personally with the persons and groups who work with domestic violence in your area to form more effective links.

During the court case

89. The court case is often the most traumatic aspect of the entire investigation for the complainant. The investigating officer can help to ensure that the complainant is prepared for the court proceedings by referring him/her to the prosecutor or to a social worker or counsellor who can help the complainant understand the procedures which will take place.

Record-keeping

90. The law requires that police must keep detailed records of all domestic violence cases on prescribed forms, regardless of whether or not criminal charges are laid or pursued. *A copy of this form which can be photocopied is included in this booklet.* Make sure that this form is completed for each domestic violence incident reported to the police, regardless of whether or not a docket is opened.

Monitoring and feedback

91. Include a copy of this guideline in the case docket with completed steps ticked and brief notes on steps that have not been taken, for purposes of monitoring and feedback.
92. Make sure that channels for complaints about your profession's services are made known to domestic violence complainants.
93. Review your profession's guidelines periodically to see if they are still relevant and adequate.
94. Encourage appropriate personnel in your profession to consult periodically with the community and with relevant stakeholders about the appropriateness of your profession's guidelines and the effectiveness of their implementation.

Guidelines for PROSECUTORS

General

1. All domestic violence cases will, where possible and practical, be assigned to a specific prosecutor when they reach the trial stage, and that prosecutor will follow the case throughout the trial to completion.
2. Domestic violence cases will, where possible, be handled by an experienced prosecutor.
3. Domestic violence cases involving young children will be given priority in terms of scheduling trial dates, because of the special concerns about the memory of young children.

Bail

4. Communication between the police and the prosecutor takes place primarily through the investigation diary. If the information in the docket and the investigation diary is not complete, the prosecutor should contact the police to make sure that the complainant (a) has been questioned about any concerns with respect to the release of the accused on bail; (b) has been informed of his/her right to be present at the bail hearing; and (c) has been informed of the time and place of the bail hearing, and of any postponements.

See section 60A of the Criminal Procedure Act 51 of 1977, as amended by the Combating of Rape Act 8 of 2000 and by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 64 of the Criminal Procedure Act 25 of 2004.

In terms of the cited sections, it is the duty of the person in charge of the police station (or any other place where the accused is detained) to inform the complainant of the place, time and date of the accused's first appearance in court. The complainant has a right to request the prosecutor to present any relevant information to the court in a bail proceeding.

5. If the bail hearing is postponed and the complainant is not present, inform the complainant of the date and time when the bail hearing will proceed and of the complainant's right to attend or to request the presentation of information or evidence.

This is the responsibility of the prosecutor in terms of section 60A(8) of the Criminal Procedure Act 51 of 1977, as amended by the Combating of Rape Act 8 of 2000 and by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 64(9) of the Criminal Procedure Act 25 of 2004. The information could be conveyed by the investigating officer, and feedback given to the prosecutor to confirm the communication in the form of an entry in the investigation diary or in a separate statement.

6. Oppose bail vigorously in any case where the complainant has legitimate grounds for fear based on events or relationships before, during or after the violence.
7. Make sure that the court imposes automatic bail conditions prescribed by law, unless there are special circumstances which would make them inappropriate. (See section 62(3) of the Criminal Procedure Act 51 of 1977, added by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003 or section 65(3) of the Criminal Procedure Amendment Act 25 of 2004.)

- 7.1 Make sure that the court imposes the “no-contact” bail condition required by law. Consider whether to request that other specific witnesses be covered by a “no-contact” provision.
 - 7.2 Make sure that the court imposes the order prohibiting the possession of a firearm or other specified weapon required by law.
 - 7.3 If appropriate, make sure that the court imposes the order requiring the accused to continue to maintain any person he or she is legally liable to maintain at the same or greater level as prior to the arrest.
8. If the complainant is not present at the bail hearing, make sure that the complainant is informed of the granting of bail and the conditions of bail imposed.

This is the responsibility of the prosecutor in terms of section 60A(8) of the Criminal Procedure Act 51 of 1977, as amended by the Combating of Rape Act 8 of 2000, and by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 64(9) of the Criminal Procedure Act 25 of 2004. The information could be conveyed by the investigating officer, and feedback given to the prosecutor to confirm the communication in the form of an entry in the investigation diary or in a separate statement.

9. If bail conditions are not complied with, take immediate steps to have bail revoked.

Criminal trial

Note that section 24(b) of the Combating of Domestic Violence Act 4 of 2003 places a duty on the prosecutor “to provide such information to the complainant as will be necessary to lessen the impact of the trial on the complainant”.

10. Give the domestic violence complainant fair warning of the trial date.
11. Make sure that the complainant and all witnesses are subpoenaed in time.

The prosecutor can request that the investigating officer remind the complainant and witnesses of the trial date if the subpoenas have been served far in advance of this date.

12. Review the docket a few days prior to the trial and discuss any need for additional evidence with the investigating officer.
13. Interview the complainant in advance of the trial date in every instance. Persons who have experienced domestic violence have undergone a traumatic shock. Additional care in listening to their concerns and explaining the court process, though time consuming, is necessary to the successful conduct of the case. Social workers, community volunteer counsellors and some NGOs can be called upon to assist with the orientation process.
 - 13.1 Be calm and patient. Be sensitive to the horrible experience the complainant has been through. Let the complainant know that you believe him/her and want to help him/her. Use tone of voice, eye contact and the way that you phrase your questions to show support.
 - 13.2 Conduct this interview in the language of the complainant’s choice. Arrange for an interpreter to be present, if the complainant has no objections. If an interpreter is needed, arrange for an interpreter of the same sex as the complainant if possible.

- 13.3 Do not rush the complainant. Give the complainant as much time as he/she needs.
14. If the complainant wishes, take him/her to the courtroom and explain in detail where the different parties will be and what will happen at the trial.
 15. Find out if the complainant needs a letter to give to his/her employer to get time off for the trial. If the complainant has other practical difficulties, such as problems with transport or childcare, arrange a referral to a social worker.
 16. Refer the complainant to the Clerk of the Court for information about financial reimbursement that is available in respect of the complainant's appearance at trial (such as reimbursement for travel expenses).
 17. Tell the complainant how to contact a social worker or a counsellor (if the complainant is not already receiving counselling).
 18. Explain the privacy provisions of the law to the complainant. Find out if the complainant wishes the courtroom to be open to the public for any reason.

See section 153-154 of the Criminal Procedure Act 55 of 1977, as amended by the Combating of Rape Act 8 of 2000, and by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 175(5) of the Criminal Procedure Act 25 of 2004.

19. Make sure that the complainant knows that a friend, relative, counsellor or other support person who will not be a witness to the case can accompany him or her.
20. Make sure that the complainant has a chance to review the statement he or she made to the police prior to the trial.
21. If an interpreter is needed at trial, arrange for an interpreter of the same sex as the complainant if possible.
22. Consider introducing expert testimony on the psychological effects of the domestic violence, in light of the new legal provisions on this point.

See section 31 of the Combating of Domestic Violence Act 4 of 2003 on this point.

23. Protect the complainant from aggressive cross-examination if the accused has appointed a defence lawyer or if the accused cross-examines the complainant directly.
24. Make sure that the complainant is aware of the possibility of applying for a protection order at the same time that the criminal trial is pending.
25. Try to minimise contact between the accused and the complainant outside the courtroom if possible. For example, use different entrances and exits to the courtroom and provide a private room where the complainant can wait before the trial starts, if these measures are possible. Make sure that the complainant has a safe and comfortable place to wait if he/she must stay outside the courtroom during the evidence of other witnesses. Make sure that the complainant cannot be subjected to intimidation by the accused or the accused's friends or family members at this crucial time.

26. If there is a postponement, make sure that the complainant understands why this has happened.
27. If the complainant wishes to withdraw the case, meet with the complainant to discuss the reasons for this fully before the withdrawal takes place in court and record a withdrawal statement.
 - 27.1 Consider the possibility of proceeding with the case in spite of the complainant's objections, after discussing the pros and cons of this with the complainant and considering the complainant's point of view. Avoid requiring the testimony of the complainant in such a situation if at all possible.
28. After the verdict is given, if possible, make sure that the complainant understands what has happened.
 - 28.1 If the verdict is 'not guilty', explain that this is not the same as a finding that the domestic violence did not take place.
 - 28.2 If the verdict is 'guilty', explain how the sentencing works. Explain the effect of any suspended sentences, and explain when the convicted person will first be eligible for parole.

Sentencing

29. Make sure that the court has informed the complainant (or the complainant's next of kin) of the right to give input on sentencing. (*See section 25 of the Combating of Domestic Violence Act 4 of 2003.*)
 - 29.1 Make sure that the complainant (or next of kin) understands that he or she may either give input in person or by means of affidavit. This input may include information about the crime, the perpetrator, the impact of the crime on the complainant and the need for restitution and compensation.
 - 29.2 Consider requesting the court to impose sentences such as weekend imprisonment, community service and/or participation in a programme for batterers in appropriate cases.
 - 29.3 Tell the complainant how to contact you (or the investigating officer) to find out what sentence was imposed if the complainant is not going to be present at sentencing.
30. Once the accused is convicted, use section 300 of the Criminal Procedure Act to obtain an order for compensation for property damage or loss, if this is appropriate. Discuss this possibility with the complainant and obtain information about property-related expenses that may have resulted from the domestic violence.

Monitoring and feedback

31. Include a copy of this guideline in the case file with completed steps ticked and brief notes on steps which have not been taken, to ensure continuity if the case passes from one prosecutor to another and for purposes of feedback.

32. Make sure those channels for complaints about your profession's services are made known to domestic violence complainants.
33. Review your profession's guidelines periodically to see if they are still relevant and adequate.
34. Encourage appropriate personnel in your profession to consult periodically with the community and with relevant stakeholders about the appropriateness of your profession's guidelines and the effectiveness of their implementation.

Guidelines for MAGISTRATES

Protection orders

1. Note that an application for an interim protection order is a summary *ex parte* procedure similar to an urgent interdict. It will normally be decided on the papers alone, although the court has discretion to request oral evidence and to summon witnesses. The application can be dealt with outside of the courtroom. (See section 4(8) of the Combating of Domestic Violence Act 4 of 2003.)
2. Note that an application for a protection order must be dealt with as an urgent matter and may be decided after normal court hours and on weekends. (See Regulation 2(5), in terms of the Combating of Domestic Violence Act 4 of 2003.)
3. The confirmation of an interim protection order (or, if no interim order was granted, the initial decision on an application for a protection order) will be made at an enquiry. Note that this is an informal procedure and not actually a trial. The law anticipates that the parties in protection order proceedings will not normally have legal representation. The enquiry should be held in a relaxed manner, and the court is expected to play an active role in ensuring that substantial justice is achieved between the parties. (See Regulation 4(5) and (6).)
4. Note that the enquiry should be held in closed court, but both the complainant and the respondent are entitled to have a maximum of two friends, family members, counsellors or other support persons of their choice present. (See section 12(8).)
5. Make sure that the applicant and the respondent are both aware of the possibility of summoning a small number of key witnesses for the enquiry at the state's expense. (See Regulation 4(11).)
6. Summon witnesses on own motion if necessary to supplement the evidence offered by the parties. (See section 12(4) and Regulation 4(7).)
7. Keep in mind the fact that acts of violence which may seem trivial in themselves can be part of a pattern of more serious offences. (See section 7(3).)
8. Pay special attention to the following factors, in terms of section 7(4) of the Combating of Domestic Violence Act 4 of 2003:
 - the **history** of the domestic violence
 - the **nature** of the domestic violence
 - whether there is any **immediate danger to persons or property**
 - the **applicant's perception of the seriousness of the violence**
 - the need to preserve the **health, safety and well-being of the complainant and any children or other person in the care of the complainant.**

(See section 7(4).)

9. Note that the following are admissible at an enquiry:
 - evidence of previous convictions on any acts of violence, domestic or otherwise,
 - records of previous protection orders refused or granted against any of the parties
 - information about acts of domestic violence previously reported to the police
 - formal warnings issued by the police in respect of domestic violence*(See Regulation 4(9).)*
10. Note that orders for exclusive occupation of a shared household are limited to cases of physical violence, but may be given regardless of who owns or rents the accommodation.
(See section 14(2)(c).)
11. If the protection order includes an order in respect of a shared household, make sure that both the applicant and the respondent are aware of their right to ask the police to accompany them to collect *personal belongings* from the home. Personal belongings include crucial personal things such as clothes, bedding, identity documents, bank cards, and prescription medicines. *(See section 14(2)(c)(iii).)*
12. Note that the court has discretion to add terms to the protection order over and above what is requested by the applicant. *(See section 14(2).)*
13. If an interim protection order is granted, make sure that the applicant understands that he/she must come back to the court on the date of the enquiry to obtain a final protection order.
14. Inform the applicant that he/she is entitled to police protection until such time as the interim protection order is served on the respondent. *(See section 8(6).)*
15. Make sure that both the applicant and the respondent are aware of the time periods for which the different provisions of the protection order will remain in force. *(See section 15.)*
16. Make sure that the applicant understands that he/she should contact the police if the protection order is violated.
17. Make sure that both the applicant and the respondent understand that violating the protection order is a crime. *(See section 16.)*
18. If the domestic violence complained of constitutes an offence, make sure that the applicant is informed that he/she has the option of laying a criminal charge in addition to seeking a protection order.
19. Make sure that the respondent knows that he/she may appeal the granting of a protection order, and that he/she may also approach the court to seek modification or withdrawal of the order at a later stage. *(See sections 17-18.)*
20. Take note of the court's discretion to order costs in any manner that seems just, having regard to the conduct and the means of the parties involved in the enquiry. *(See section 20.)*
21. Confirm that the Clerk of Court alerts the Ministry of Woman and Child Welfare to any case which might place children at risk of harm, for investigation and monitoring by a social worker. *(See section 13(4).)*

Domestic violence offences

Bail

22. Confirm that the police and the prosecutor have fulfilled their duties to (a) inform the complainant of the place, time and date of the bail application and (b) invite the complainant to present relevant information to the court either directly or through the investigating officer.

See section 60A of the Criminal Procedure Act 51 of 1977, as amended by the Combating of Rape Act 8 of 2000, and by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 64 of the Criminal Procedure Act 25 of 2004.

In terms of the cited sections, it is the duty of the person in charge of the police station (or any other place where the accused is detained) to inform the complainant of the place, time and date of the accused's first appearance in court. The complainant has a right to request the prosecutor to present any relevant information to the court in a bail proceeding.

23. If the bail hearing is postponed when the complainant is not present, confirm before the application proceeds that the complainant has been informed of the new date and time, and of his or her right to attend or to request the presentation of information or evidence.

This is the responsibility of the prosecutor in terms of section 60A(8) of the Criminal Procedure Act 51 of 1977, as amended by the Combating of Rape Act, and by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 64(9)(b) of the Criminal Procedure Act 25 of 2004.

24. Impose the automatic bail conditions prescribed by law, unless there are special circumstances which would make them inappropriate. *(See section 62(3) of the Criminal Procedure Act 51 of 1977, as amended by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 63(4) of the Criminal Procedure Act 25 of 2004.)*

24.1 In the absence of special circumstances, impose a bail condition prohibiting all direct and indirect contact with the complainant while the proceedings are pending. *(Section 62(3)(a) of the Criminal Procedure Act 51 of 1977, or section 65(3)(i) of the Criminal Procedure Act 25 of 2004.)*

24.2 In the absence of special circumstances, impose an order prohibiting the possession of a firearm or other specified weapon. *(Section 62(3)(b) of the Criminal Procedure Act 51 of 1977, or section 65(3)(ii) of the Criminal Procedure Act 25 of 2004.)*

24.3 If appropriate, impose an order requiring the accused to continue to maintain any person he or she is legally liable to maintain at the same or greater level as prior to the arrest. *(Section 62(3)(c) of the Criminal Procedure Act 51 of 1977, or section 65(3)(iii) of the Criminal Procedure Act 25 of 2004.)*

Criminal trial

25. Give domestic violence cases involving young children priority over other cases in terms of scheduling trial dates if possible, because of the problems pertaining to children's memories.

26. Encourage all court personnel who deal with the domestic violence complainant to treat him/her with dignity, respect, and sensitivity.
27. Apply the provisions on vulnerable witnesses to the complainant and any other parties or witnesses as appropriate.
28. Enforce the legal rules on closed court strictly, but allow the complainant to be accompanied by a friend, relative, counsellor or other support person who will not be a witness to the case if he or she wishes. (*See section 153-154 of the Criminal Procedure Act 51 of 1977, as amended by the Combating of Rape Act 8 of 2000, sections 14-15 and by the Second Schedule of the Combating of Domestic Violence Act 4 of 2003, or section 189(3)(c) of the Criminal Procedure Act 25 of 2004.*)
29. Be alert to the need for a recess to allow the complainant to collect himself/herself if testimony is proving to be traumatic.
30. When the court goes into recess or is adjourned, apply safeguards to protect the complainant from unnecessary contact with the accused if possible. Such safeguards could include the use of different entrances and exits, allowing the complainant to leave first, providing an empty office or other room as a private waiting room for the complainant, or arranging for a court official or a police officer to escort the complainant to protect him/her from intimidation.
31. Speak loudly and clearly to make sure that the accused, the complainant and any other persons present can hear and understand what is happening. Explain procedures (such as postponements and adjournments) briefly and simply for the benefit of the accused, the complainant and other persons present.
32. If there is a postponement, an adjournment or a reservation of judgment, explain the reason for this and make sure that the complainant knows when the trial, verdict or sentencing will take place, even if the complainant's presence is not required. Warn witnesses of the next court date if they need to be present.
33. Make sure that the complainant in a criminal case is aware that he/she also has the option of requesting a protection order at any time.

Sentencing

34. Inform the complainant (or the complainant's next of kin) of the right to give input on sentencing. (*See section 25 of the Combating of Domestic Violence Act 4 of 2003.*)
 - 34.1 Make sure that the complainant (or next of kin) understands that he or she may either give input in person or by means of affidavit. This input may include information about the crime, the perpetrator, the impact of the crime on the complainant and the need for restitution and compensation.
 - 34.2 Consider alternative sentences such as weekend imprisonment, community service and/or participation in a programme for batterers in appropriate cases.

Monitoring and feedback

35. Make sure those channels for complaints about your profession's services are made known to domestic violence complainants.
36. Review your profession's guidelines periodically to see if they are still relevant and adequate.
37. Encourage appropriate personnel in your profession to consult periodically with the community and with relevant stakeholders about the appropriateness of your profession's guidelines and the effectiveness of their implementation.

Guidelines for **MEDICAL PROFESSIONALS** (DOCTORS/NURSES)

Intake and administration

1. Any male or female of any age (including children) who claims to be a victim of domestic violence should always be treated as a possible victim. He/she must be seen and treated.
2. Even if another person requests assistance for a complainant (victim), this victim must be seen and treated. Another person can especially request medical treatment on behalf of a domestic violence victim if the victim is:
 - under 18 years.
 - mentally retarded or disabled by psychiatric illness
 - incapacitated by substance abuse/use
 - unconscious.
3. A medical doctor should ideally see and treat the domestic violence victim. If no doctor is available at the clinic or hospital, a nurse can examine and treat the patient provided that the domestic violence did not include rape. **When domestic violence includes rape, refer the patient to a medical doctor.**
4. The medical professional who examines and treats the victim must make a detailed written record of all injuries. Even if the victim does not proceed with a criminal charge it is essential that the necessary records be recorded for future reference. Even relatively minor injuries may be important evidence of a pattern of violence. It is a known fact that domestic violence is normally a cycle of violence that never stops and this forensic evidence may be necessary for a future court case (a protection order or a criminal case).
5. If the domestic violence included rape, referrals must be made to a center where the domestic violence victim can be seen by a medical doctor who can complete the necessary medical form (J-88). A private doctor may also treat the domestic violence victim. If the J-88 form is completed thoroughly, it is possible that the doctor may not be called to give evidence in person. If there is a rape, the guidelines on examination and treatment of rape victims should be followed.
6. A domestic violence victim should never arrive at another hospital or clinic without the clinic knowing of his/her referral. The victim should be given a proper referral letter stating that this is a domestic violence case. This communication is essential to ensure that the victim is handled as a priority case, with proper attention to forensic evidence.
7. Victims of domestic violence should at all times be treated with dignity and respect by the medical staff (including doctors, nurses, intake workers and others).
8. Victims should be seen within all public health facilities, such as clinics, doctor's surgeries and hospitals.

9. The domestic violence victim must be treated as an urgent case by all staff, from the intake staff to the nurses and doctors (although life-threatening cases may be given priority over a domestic violence victim who is not in immediate danger). Protect the privacy of the domestic violence victim if possible, for example by allowing him/her to be brought into the examining room through a separate entrance.
10. The normal administrative procedures, such as opening of a file must be completed. The attending medical staff must however not become caught up in administrative procedures at the expense of the patient.
11. If a victim comes to a health care centre without reporting the case to the police, the police should be called to the health centre to take a statement if the victim wishes.
12. Even if the domestic violence occurred outside the jurisdiction of the hospital, the victim must first be treated before referring him/her to the clinic/hospital in the appropriate area. The Combating of Domestic Violence Act makes it possible for a victim to apply for a protection order outside the direct jurisdiction of his/her residential area. *(See section 5, Combating of Domestic Violence Act 4 of 2003.)*

General medical examination

The physical assessment should always begin with a systemic general examination, once any emergency needs have been addressed.

13. The domestic violence victim must be examined and treated by a medical doctor if possible. This is advisable to ensure that the doctor is seen as a reliable expert witness should the case be heard in court at any stage.
14. When a person presents for medical examination, forensic evidence should be collected as soon as possible. However, the immediate dangerous and serious injuries of the victim must be treated and are more important than forensic needs.

Introduction

15. Introduce yourself – give name, qualifications and position in the health care facility.
16. Explain the purpose of the examination:
 - *Why:* Collection of evidence for court purposes.
 - *How:* Full body medical examination including genitals and anus if rape has possibly occurred.
 - *Photos:* If necessary, photos will be taken to illustrate the degree of injuries. These will be kept by doctor/police on file, to be used as court evidence if needed.
17. It is important to explain to the victim and parents/guardians that the testimony by the doctor will be given in a closed court if a criminal charge is laid. Not even the mother will be admitted without the victim's/doctor's consent. This reassurance will allow the victim to possibly admit confidential information.
18. Take full particulars of complainant or victim's name, address and telephone number, and the contact address of a next of kin (family/friend) as the victim's address may change.

Consent to the examination

19. Obtain written consent for examination if possible. If possible obtain consent from guardians when examining a child.
20. If a child's legal guardian is not available, the superintendent of the hospital or medical facility can give the necessary permission if serious injuries were inflicted. Otherwise, a police officer can apply for legal consent from a magistrate or the police official in charge of the police station for the child to be examined. These procedures can be followed in cases where the parent or legal guardian is unable to give consent, such as in the following circumstances:
 - cannot be traced or grant consent within a reasonable time
 - is a suspect in the possible domestic violence case
 - unreasonably refuses to consent to the examination
 - is incompetent due to mental disorder to consent to the examination
 - is deceased.
21. Keep a copy of the consent form in the patient's file, for the future court appearance (court cases can take years to run to completion).

Conducting the medical examination

22. The medical doctor and nurse should explain all steps to the victim.
23. A good light source is essential.
24. Obtain full medical history and record information carefully. The following information is relevant for background medical history:
 - Previous incidents of domestic violence and a comprehensive description of the injuries inflicted.
 - Any known medical conditions that may be relevant to understand the body's physical response to injuries, such as diabetes.
 - State any drugs the patient is presently using.
25. Every effort should be made to minimize any traumatic consequences of the examination. Children and vulnerable victims should be asked, if possible, whom they would prefer to be present. Minimal touching by the examiner is desirable. Repeated physical examinations should be avoided unless there are overwhelming medical reasons for such examinations.
26. Examinations under anesthesia should be avoided except under the following circumstances:
 - Bleeding or trauma, indicating a need for surgery or removal of a foreign body.
 - Minor wounds but patient too traumatized to cooperate
27. Use new gloves for the examination to avoid contamination of the forensic evidence. Remember the specific gloving procedures such as using sterile gloves, washing hands. All the things used during the examination, such as the gloves, must be put in a brown paper bag and sent with the samples for forensic testing.

Treatment of the victim

The victim should receive the necessary treatment for injuries.

28. Treat injuries according to the needs of the injury. If the domestic violence included rape, refer to the specific guidelines on rape.

Recording information on the examination and treatment

If the domestic violence allegedly included rape, refer to the guidelines on rape cases. The following points are important in all domestic violence cases.

It is very important that information from the examination be recorded as fully as possible, for the following reasons:

- (1) An incomplete form may prevent a conviction, thus leaving a criminal free to continue the violence and endanger others.*
- (2) A medical professional who fails to record information from an examination where a court case is contemplated could be found guilty of the crime of perjury. This crime applies not just to evidence given at a court proceeding but also to any statement which can be used as evidence in court, where such a use is contemplated by the person making the statement.*
- (3) Medical records prepared by a medical practitioner who treated a victim may be used in a criminal case as prima facie proof that the victim suffered the injuries recorded in the documents, even if the medical practitioner in question does not testify personally. The records are not admissible as evidence of any opinions stated unless the medical practitioner is available to testify. This provision is designed to take care of situations where doctors have left the country or are otherwise unavailable. (See the Criminal Procedure Act, section 212(7A), as amended by Act 24 of 2003.)*

29. Record findings of medical examination in detail. Even if no rape has occurred, the diagrams on the J-88 form (*reproduced in this booklet*) can be used to indicate injuries.
30. All injuries (eg redness, bruises, tears, laceration, swelling, tenderness) should be recorded. Accurate description of injuries is crucial:
- The age of injuries must be described.
 - Comment on the severity of the injuries.
 - Draw and label the injuries on the sketches on the J-88 form (preferably with a red pen). The diagrams on the J-88 form can be used even if there was no rape. If there are multiple injuries, it is advisable to number them and to describe each by its number.
 - Never say “N/A” or “NAD” (not applicable), rather state “NORMAL”.
31. Include a brief description of the injuries on the J-88 form (eg “2 cm laceration sutured with 4 stitches on left forearm. Circumorbital swelling and bruising left eye, with sub-conjunctival bleeding.”).

32. Any distinguishing features related to violence or health of the complainant must be recorded.
33. Forensic evidence: Examine clothing for relevant evidence (blood, hairs, etc.). Take fingernail scrapings if appropriate. Take blood samples for alcohol content, if necessary.
34. Use the official Forensic Laboratory Crime Kits that are available at the various Woman and Child Protection Units for any samples of forensic evidence. Should a crime kit not be available do all the necessary tests. Send evidence in a sealed envelope with a letter on an official letterhead explaining that a crime kit is not available.
35. If necessary, make arrangements with the police officer to re-examine the victim after approximately 72 hours in order to look for the development of bruising.
36. Be sure that the record of the examination includes the following:
 - Record full name of patient as it appears on the person's identity document).
 - Include name by which person is usually called in brackets ("Suzie").
 - Record contact details (address, telephone number) of patient and next of kin.
 - Record sex of patient.
 - Record age of patient. Add date of birth if available especially in children. State the victim's estimated age if no date of birth is known.
 - Record place of examination.
 - Record name of person requesting the examination if appropriate (such as parent, guardian, social worker, etc.).
 - Include a detailed written description and a diagrammatic illustration of injuries.
 - Include description of treatment.
 - Record a list of any forensic samples taken.
 - Indicate in record if J-88 form was used for rape, or to make use of diagrams for recording injuries in the absence of rape.
 - Describe condition of clothing. (Do not describe colour or style of clothing. Describe tears, missing buttons, pockets, and stains such as blood, dirt, vomit, etc.)
 - Record past relevant medical history. In the case of abused children, it is especially important to ask about previous fractures, injuries, burns etc. If necessary, find old patient records. State conditions like diabetes; asthma; epilepsy; mental retardation; behavioural problems. State how this information was obtained (eg mother, own observations, patient information, medical records).
 - Describe the patient's general physical condition, general state of health and mental state.
 - Document any medical condition diagnosed during examination (common cold, heart murmur, etc).
 - Document any obvious diagnosis relevant to mental health - mental retardation, hyperactive behaviour, hysteria, etc. This information may be especially important for certain cases.
 - Add your signature and official stamp if possible, *on each page of the record*.
37. Genital examination of the victim is required only if sexual abuse or rape also occurred as part of this domestic violence incidence. The procedures described in the guidelines for rape case should be followed in these cases.
38. Information regarding incident: In order to be able to come to a conclusion as to whether the clinical findings fit in with the time and circumstances of the alleged incident, a

short explanation of the allegation is necessary. This explanation should be very brief and give only the essential facts necessary for medical conclusions. Do not give any more detailed information, as it might not be exactly the same as in the statement given to the police and thus could lead to problems in court. This statement should always start with: “It is alleged by ... that ...”,

eg “It is alleged by Child Y that before Christmas during the holidays when visiting family, an adult male known to her sexually assaulted her. According to the child, this man inflicted the injuries which were found in the examination: bruised left cheek...”

39. Describe physical examination results. Include information such as “easy” or “painful”, and give extra detail like “uncomfortable”, “difficult because of lack of co-operation” etc.
40. Samples:
 - State that the Forensic Laboratory Crime Kit was used if appropriate, and note the official number of the kit.
 - The seal number of the crime kit should be written on the examination record. All Forensic Laboratory Crime Kits should have additional labels inside which can be stuck on the examination record.
 - Add explanatory notes on other items (eg “torn and stained panties given to police in sealed brown paper envelope”)
41. List other people present during the examination. (State name of nurse, mother, relative, etc.)
42. Conclusion: Indicate whether the injuries provide evidence of violence. Use a brief conclusion. Inferences must be reconciled with the findings. Very vague findings cannot have a very specific grand inference. Never give negative conclusion like “no sign of injuries caused by alleged domestic violence” etc. Always say eg “Absence of injuries does not exclude domestic violence”, or eg “Injuries fit with ... explanation of the incidence as described by the victim or police officer”.
43. State whether findings fit in with time of alleged incident.
44. It is necessary to come to a conclusion immediately after the examination. It is impossible to remember details months or even years later in court.

Counselling and support services

45. Inform the victim and parents/guardians (if necessary) about referral counselling centres and support organizations that are available. (Refer to the Guidelines for Counsellors and Social Workers).
46. Be sure that the victim knows of the possibility of applying for a protection order, whether or not he/she wishes to lay a criminal charge. All medical facilities should have protection order application forms on hand, and medical professionals should be trained to assist with the preparation of these forms if necessary.
47. Refer the case to a social worker yourself if there is any reason to believe that children are at risk of domestic violence.

Medical examination of alleged perpetrator

Examination of alleged perpetrator (suspect) may provide crucial information necessary for the criminal case. A thorough examination should be done if possible. Ask the perpetrator to sign a letter in the official file, consenting to this examination.

48. Do a complete physical examination. Remember to do a careful examination of fingers and nails, as well as knees and elbows for any abrasions.
49. Genital examination of the suspect is only indicated when rape has also occurred. In this case, refer to the guidelines on rape. However, the following may be relevant in any domestic violence case:
 - Blood sample: Take blood samples. DNA samples may also be necessary. Take samples for DNA tests if specifically requested.
 - Blood for determining alcohol content: Take a blood sample if the alleged perpetrator seems under the influence of alcohol.

Handling of samples

In most cases the evidence of the Forensic Science Laboratory is very important to prove or disprove the case. The samples should be handled with utmost care.

50. Great care must be taken to ensure that accidental contamination of samples does not occur. *Remember*: If samples from both the victim and the suspect are packed on the same contamination table or surface, contamination of the samples can occur.
51. The samples must be clearly marked and sealed properly.
52. Hand the samples *only* to the investigating officer. If the police officer is not present, *keep* the samples. *Do not give them to anyone else*. This is essential to maintain the chain of evidence for the court case.
53. Record the name of the person to whom the samples were handed. From the moment the investigating police officer takes the samples into possession, the police are responsible for maintaining the chain of evidence.

Court appearance

54. All medical doctors and nurses must be prepared to give evidence in court. This is often a traumatic experience.
55. If the doctor is no longer available to give evidence, due to leaving the medical facility (hospital or clinic) or a relapsed working contract, the head of the medical facility should take responsibility to arrange that another doctor be appointed to testify. The other doctor will testify on the information available in the patient's file.
56. Arrangements should be made with the prosecutor to avoid unnecessary delays with the doctor's testimony. The doctor is an expert witness and should be accommodated to give evidence and not be confronted with unnecessary delays.

57. The doctor's testimony should be heard in closed court, to protect confidentiality.
58. The doctor's testimony should be on what was seen and found and the conclusion derived.
59. The doctor should not let himself or herself be harassed by the defence counsel on petty non-medical issues. It should be remembered that prosecutors, attorneys, advocates, magistrates and judges are not medical doctors and often have very little medical knowledge. The doctor is the expert and should be able to defend his/her opinion.

Training, monitoring and feedback

60. All health care professionals at various health care institutions throughout Namibia should be provided with training on the crucial aspects of the forensic investigation. Staff at the Forensic Laboratory have offered to provide this training.
61. Make sure those channels for complaints about your profession's services are made known to domestic violence complainants.
62. Review your profession's guidelines periodically to see if they are still relevant and adequate.

Guidelines for **SOCAL WORKERS and COUNSELLORS**

General

1. Provide unconditional acceptance and support to the complainant and his/her family.
2. Respond to a request for counselling or support as promptly as possible, to ensure that the assistance is provided at the time it is most needed, when the complainant is feeling most vulnerable.
3. Your role is to assist and support the complainant until the circumstances have been resolved. The victim of domestic violence is often caught up in various aspects of family dynamics and manipulation and the social worker may be the only objective support system available to him/her.
4. Make sure that the complainant receives all necessary medical attention for injury or health problems, which arise in the aftermath of the domestic violence. It may be necessary to accompany the complainant to the hospital or health facility to ensure that she/he actually receives the necessary treatment. Provide or arrange transport to the nearest doctor, hospital or clinic if needed.
5. Inform every domestic violence complainant of the importance of counselling to assist him or her to address and possibly resolve this family violence. It is crucial that the complainant be informed about the cycle of violence, and especially that family violence only resolves itself when all parties make a concerted effort to change with the help and guidance of a counsellor.
6. Explain the procedure to apply for a protection order and explain the advantages of protection orders to the complainant. Note that it is possible to obtain a protection order very quickly, even after hours or on weekends.
7. Provide or arrange emergency accommodation in a shelter or other safe place if the complainant feels that he or she is at risk at his or her usual residence.
8. If the complainant prefers to live away from the perpetrator, explain his/her options, including the provisions in the Act that make it possible for him/her to have exclusive occupation of a shared household and to insist that the perpetrator continue to maintain any dependents financially. If necessary assist the complainant to apply for a protection order for this interim arrangement.
9. If the domestic violence constitutes a crime, assist the complainant to lay a charge with the police if he or she wishes. Explain that the police can arrest the perpetrator, issue a warning, and seize firearms. Explain that the law ensures that the complainant

will have an opportunity to alert the court to threats made by the perpetrator before a decision is made on an application for bail after an arrest.

10. Counsel the complainant and provide her/him with all necessary support. Arrange for follow up counselling for the complainant to determine whether the domestic violence is being resolved and to encourage him/her to apply for a protection order and/or lay a criminal charge at a later stage if necessary. Offer to arrange additional counselling for the complainant at any appropriate stage, and also for the perpetrator and any other affected family members. Explain the importance of counselling to resolve long-term feelings.
11. If a criminal charge has been laid, prepare the complainant for the court case by explaining the procedure and by physically accompanying the complainant to the courtroom in advance of the trial if he/she wishes.
12. Compile a report which could be used in the protection order application or criminal trial, even if this is not specifically requested. If the prosecutor or the court wants to make use of a social worker report in court, they should request this in writing long enough in advance to allow enough time for proper investigation of all relevant circumstances.
13. Keeping in mind that some reactions to domestic violence may surface only after time has elapsed, make regular follow-up contact with the complainant for at least one year following the incident of domestic violence. Make sure that the de-briefing process continues until after any criminal case concerning the domestic violence has come to an end.
14. Maintain continuity by keeping the case with the same social worker if possible.
15. Identify local organisations through which the domestic violence complainant might receive support. She/he might want to become a volunteer on issues of combating violence at an appropriate stage, which could be helpful to his/her healing process.
16. If possible, set up support groups of persons from the same community who have experienced domestic violence and offer the complainant the choice of participating in such support groups.
17. Keep detailed records of domestic violence cases. This information may be important if a report is requested for use in a protection order application or a criminal case at a later stage. It will also help the social worker or counsellor to assess the complainant's responses and to measure her/his recovery.
18. Consider referring the domestic violence complainant to a specialised agency, a counselling organisation, a psychologist, a psychiatrist or any other appropriate person or group for information or assistance. A referral involves more than just giving the complainant a name or a telephone number. Collect information about services that are available locally so that you can describe these services accurately to the complainant. Try to meet personally with persons and groups who work with domestic violence in your area to form more effective links.
19. If the complainant seems to be in need of specialised services but declines a referral, try to find out the reasons for the refusal to see if there is some problem that can be overcome.

Monitoring and feedback

20. Make sure those channels for complaints about your profession's services are made known to domestic violence complainants.
21. Review your profession's guidelines periodically to see if they are still relevant and adequate.
22. Encourage appropriate personnel in your profession to consult periodically with the community and with relevant stakeholders about the appropriateness of your profession's guidelines and the effectiveness of their implementation.

**AFFIDAVIT IN TERMS OF SECTION 212 (4) (a) OF THE CRIMINAL
PROCEDURE ACT NO. 51 OF 1977**

I
(full names and surname in capital letters)

.....
(qualifications)

state under oath / affirm*

I am in the service of the State as a district surgeon / medical legal officer / medical practitioner* at

On I conducted a medical examination on the person of
..... and recorded my findings on the
attached form (J 88), which facts I ascertained by means of an examination requiring skill in biology
/ anatomy / pathology*.

I know and understand the contents of this declaration.

I have objection / no objection* to taking the prescribed oath.

I consider the prescribed oath to be binding / not binding* on my conscience.

Place Date

.....
District surgeon, Medical officer, Medical practitioner

I 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-print
/ mark* was placed thereon in my presence.

Place Date

.....
Commissioner of oaths

Full names: (capital letters)

Business address: (capital letters)

Designation / Rank: Ex officio Republic of Namibia

* Delete words not applicable

NB: Deletions to be done accurately and alterations to be initialed.

MEDICAL EXAMINATION REPORT IN A CASE OF ALLEGED ASSAULT OR OTHER CRIME (J 88)

(TO BE COMPLETED BY DISTRICT SURGEON, MEDICAL OFFICER OR MEDICAL PRACTITIONER)

Form 'A' should be completed in all cases and form 'B' should be completed in cases where a patient has been examined in connection with a sexual offence. PLEASE COMPLETE IN CAPITAL LETTERS.

THIS IS TO CERTIFY that at the request of:

I (full name and surname in capital letters)

Address: Tel. no.

have on this day of 20 at h

examined at: (place where examination was carried out)

the under mentioned patient and have to report as follows:

Information regarding incident:

DETAILS OF PATIENT:

Full name:

Address:

Sex: Apparent age:

Name of guardian or person *in loco parentis* present:

INITIAL OBSERVATIONS (EXTERNAL OBSERVATIONS)

General state of health:

Mental state: (calm / aggressive / hysterical / confused / shocked / crying etc)

Condition of clothing: (changed since incident / describe tears, missing buttons, stains i.e. blood, dirt, vomit, ejaculation, etc)

DESCRIPTION OF BRUISES AND ABRASIONS, IF ANY: (note the exact nature, extent and position)

DESCRIPTION OF OPEN WOUNDS, IF ANY: (note the exact nature, extent and position)

FRACTURES OR DISLOCATIONS IF ANY: (note the exact nature, extent and position)

OTHER NOTICEABLE INJURIES: (note the exact nature, extent and position)

OBSERVATIONS IN RESPECT OF STATE OF INTOXICATION: (if applicable)

ANY OTHER OBSERVATIONS:

REPORT ON EXAMINATION IN A CASE OF ALLEGED RAPE OR OTHER SEXUAL OFFENCE (PLEASE COMPLETE IN BLOCK LETTERS)

Full name of patient:

GIVE DETAILED DESCRIPTION OF BRUISING, WOUNDS ETC TO THE FOLLOWING:

Breasts:

.....

.....

.....

Labia majora:

.....

.....

.....

Labia minora:

.....

.....

.....

Fourchette:

.....

.....

.....

Vestibule:

.....

.....

.....

Hymen:

.....

.....

.....

Vagina (1, 2, 3 fingers):

Discharge:

.....

Examination: (easy / painful)

Haemorrhage:

Date of last menstruation:

Anus:

Perineum:

Penis:

Scrotum:

Inner thighs and/or buttocks: (give detailed description of bruising, redness and/or tenderness)

Other observations:

Conclusion: (Please state whether or not in your opinion, the injuries fit / do not fit with the time and circumstances of the alleged incident.) ...

SPECIAL INVESTIGATIONS

Microscopical or other special examinations of stains, etc.

Specimens taken for special examination: (i.e. clothes / shoes / other objects and give a description thereof)

RAPE KIT:

(a) Taken: Seal number:

(b) Not taken: (reasons)

BLOOD SAMPLE FOR HIV / BLOOD-ALCOHOL ETC:

(a) Taken: Seal number:

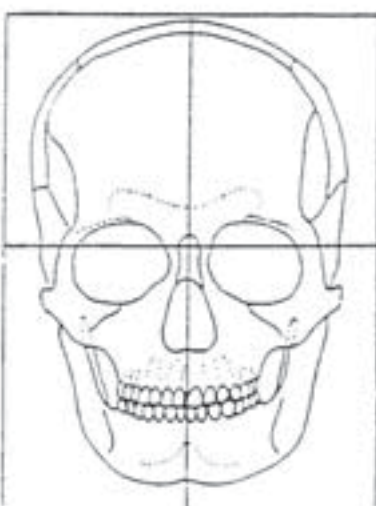
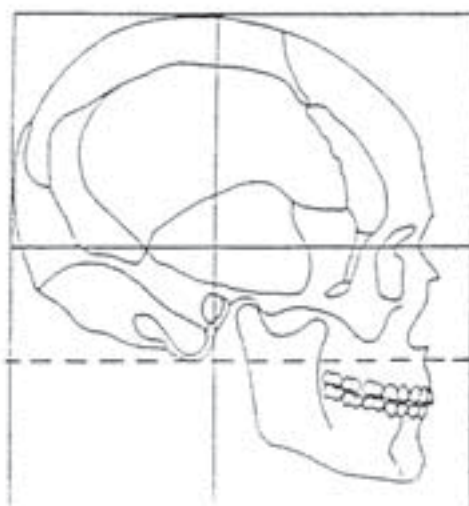
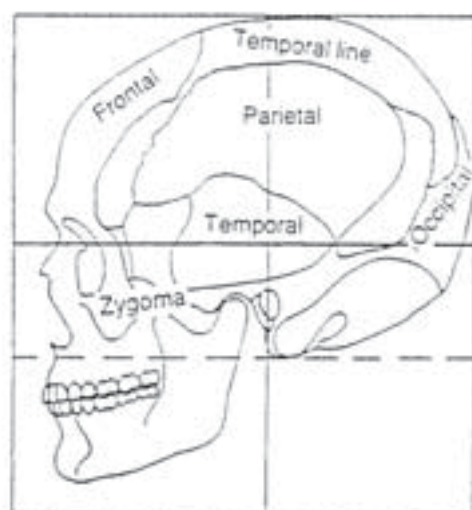
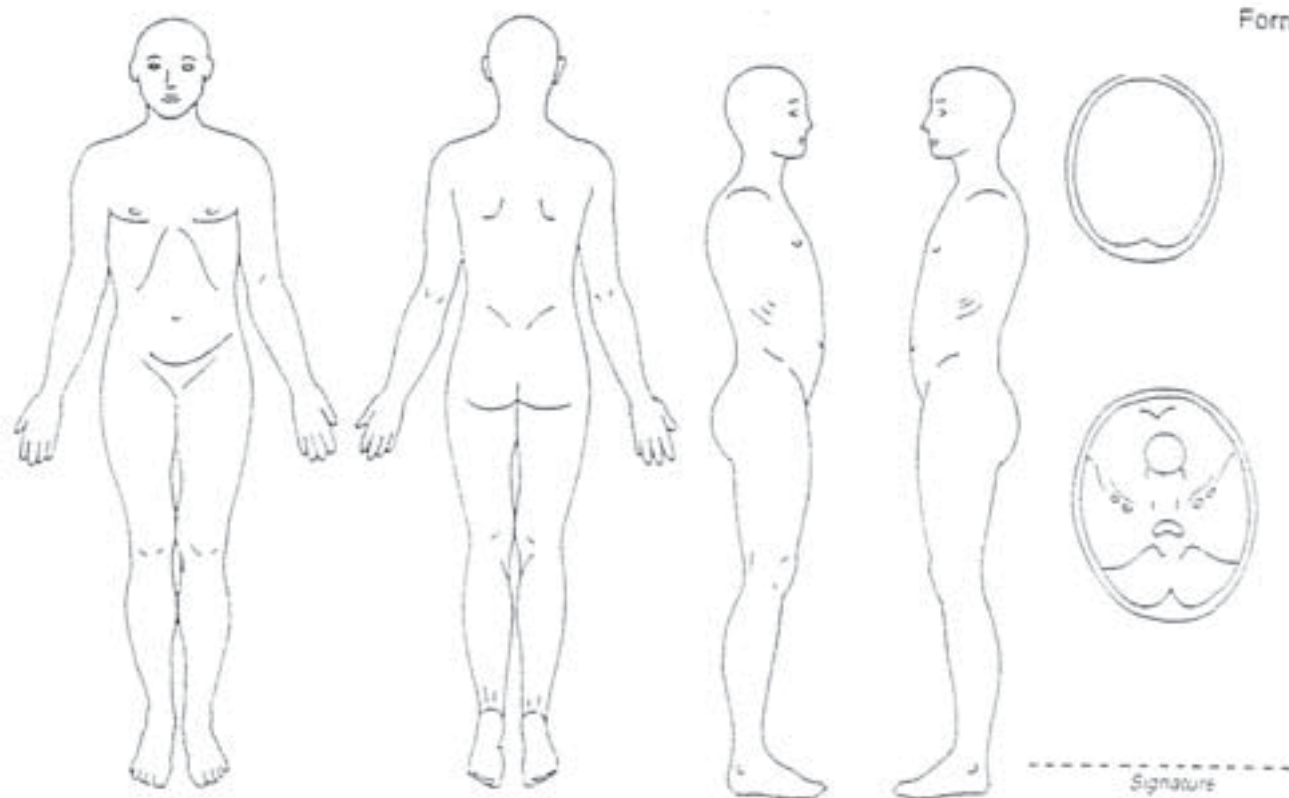
(b) Not taken: (reasons)

Specimens handed to: (full name and surname in capital letters)

Address:

Signature: Date:

EXPLANATORY NOTES:



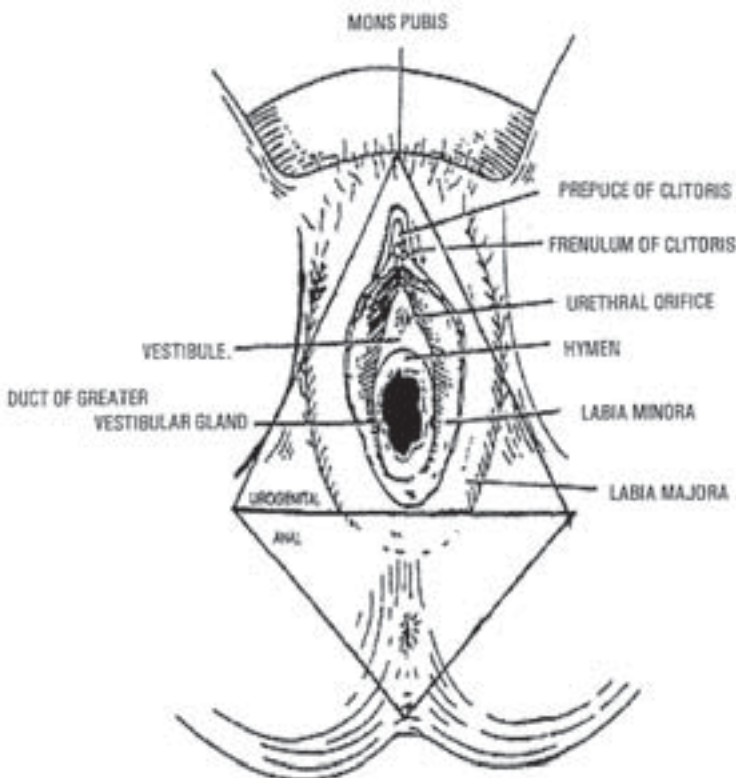


Fig. A

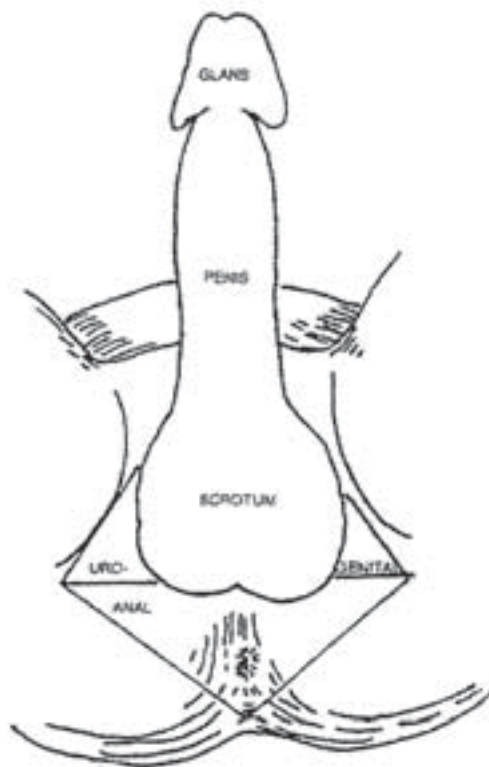


Fig. B

EXPLANATORY NOTES:

Page 7

District surgeon, Medical officer, Medical practitioner



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$5.00

WINDHOEK - 24 June 2003

No.3002

CONTENTS

Page

GOVERNMENT NOTICE

No. 126	Promulgation of Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003), of the Parliament	1
---------	--	---

Government Notice

OFFICE OF THE PRIME MINISTER

No. 126

2003

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 4 of 2003: Combating of Domestic Violence Act, 2003.

ACT

To provide for the issuing of protection orders in domestic violence matters; to provide for matters relating to domestic violence offences; to provide for police duties in respect of domestic violence incidents; to amend the Criminal Procedure Act, 1977; and to provide for incidental matters.

(Signed by the President on 6 June 2003)

ARRANGEMENT OF SECTIONS

PART I DEFINITIONS

1. General definitions
2. Definition of domestic violence
3. Definition of domestic relationship

PART II PROTECTION ORDERS

4. Who may apply for protection order
5. Jurisdiction
6. Manner of application for a protection order
7. Criteria for granting of and contents of protection order
8. Granting of interim protection orders
9. Service of interim protection order
10. Confirmation where respondent fails to oppose
11. Effect of notice to oppose
12. Procedure for enquiry
13. Final protection orders
14. Terms of protection order
15. Duration of final protection orders
16. Offences
17. Modification or cancellation of protection orders
18. Appeals
19. Pending proceedings
20. Costs

PART III CRIMINAL PROVISIONS

21. Domestic violence offences
22. Complaints
23. Arrest and seizure of weapons
24. Rights of complainant where person is charged with domestic violence offence
25. Complainant's submission in respect of sentence

PART IV POLICE DUTIES

26. Inspector-General to issue directives
27. Records of domestic violence incidents
28. Annual reports to be tabled in National Assembly

PART IV GENERAL

- 29. Record of proceedings to be kept
- 30. Privacy
- 31. Evidence of psychological effect of domestic violence
- 32. Regulations
- 33. Amendments and savings
- 34. Short title and commencement

SCHEDULES

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PART I DEFINITIONS

General definitions

1. In this Act, unless the context otherwise indicates -

“applicant,” depending on the context, means -

- (a) a person contemplated in section 4 who makes an application for a protection order;
- (b) any person who, after an application for a protection order has been made under this Act, takes over or continues with any subsequent legal proceedings in connection with or relating to the protection order, as long as that person is the complainant or a person contemplated in section 4; or
- (c) the complainant if he or she makes the application for a protection order;

“child” means a person who is under the age of 18 years;

“complainant,” depending on the context, means a person towards or in connection with whom -

- (a) domestic violence as contemplated in this Act is committed, being committed or alleged to have been committed; or
- (b) a domestic violence offence is committed or is alleged to have been committed, irrespective of whether or not that person has actually laid a complaint or gives evidence in any relevant criminal proceedings;

“court” means a court established under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), but, for the purposes of Part II, excludes a regional court;

“dependant” means a person who is legally entitled to be maintained by another person;

“domestic relationship” has the meaning assigned to it in section 3;

“domestic violence” has the meaning assigned to it in section 2;

“domestic violence offence” means any of the offences referred to in section 21;

“enquiry” means the enquiry held under section 12;

“family member” for the purposes of section 2, means any person other than the perpetrator, with whom a complainant is in a domestic relationship as contemplated in section 3(1)(e);

“Inspector-General” means the Inspector-General of Police appointed in terms of Article 116 of the Namibian Constitution;

“Minister” means the Minister responsible for justice;

“police officer” means a member of the Namibian Police Force as defined in section 1 of the Police Act, 1990 (Act No. 19 of 1990);

“prescribe” means prescribe by regulation made under this Act;

“protection order” means an interim or final protection order granted under this Act;

“residence” in respect of a complainant means a place where the complainant normally resides and includes a residence which the complainant has vacated due to domestic violence;

“respondent” means a person against whom a protection order is sought or has been made;

“social worker” means a social worker as defined in the Social and Social Auxiliary Workers’ Professions Act, 1993 (Act No. 22 of 1993); and

“weapon” includes an arm as defined in section 1 of the Arms and Ammunition Act, 1996 (Act No. 7 of 1996) or any other object designed or used to inflict or cause physical bodily harm.

Definition of domestic violence

2. (1) For the purposes of this Act, “domestic violence”, within the context of a domestic relationship, means engaging in any of the following acts or courses of conduct -

- (a) physical abuse, which includes -
 - (i) physical assault or any use of physical force against the complainant;
 - (ii) forcibly confining or detaining the complainant; or
 - (iii) physically depriving the complainant of access to food, water, clothing, shelter or rest;
- (b) sexual abuse, which includes -
 - (i) forcing the complainant to engage in any sexual contact;
 - (ii) engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;
 - (iii) exposing the complainant to sexual material which humiliates, degrades or violates the complainant’s sexual integrity; or

- (iv) engaging in such contact or conduct with another person with whom the complainant has emotional ties;
- (c) economic abuse, which includes -
 - (i) the unreasonable deprivation of any economic or financial resources to which the complainant or dependant of the complainant is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities, and mortgage bond repayments or rent payments in respect of a shared household;
 - (ii) unreasonably disposing of moveable or immovable property in which the complainant or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;
 - (iii) destroying or damaging, property in which the complainant, or a family member or a dependant of the complainant, has an interest or a reasonable expectation of use; or
 - (iv) hiding or hindering the use of property in which the complainant, or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;
- (d) intimidation, which means intentionally inducing fear in the complainant, or a family member or dependant of the complainant by -
 - (i) committing physical abuse against a family member or dependant of the complainant;
 - (ii) threatening to physically abuse the complainant, or a family member or dependant of the complainant;
 - (iii) exhibiting a weapon; or
 - (iv) any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour;
- (e) harassment, which means repeatedly following, pursuing or accosting the complainant, or a family member or dependant of the complainant, or making persistent unwelcome communications, and includes but is not limited to -
 - (i) watching, or loitering outside or near the building or place where such person resides, works, carries on business, studies or happens to be;
 - (ii) repeatedly making telephone calls or inducing a third person to make telephone calls to such person, whether or not conversation ensues; or
 - (iii) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to such person's residence, school or workplace;
- (f) entering the residence or property of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence;
- (g) emotional, verbal or psychological abuse which means a pattern of degrading or humiliating conduct towards a complainant, or a family member or dependant of the complainant, including -

- (i) repeated insults, ridicule or name calling;
- (ii) causing emotional pain; or
- (iii) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's, or the complainant's dependant or family member's privacy, liberty, integrity or security; or

(h) where applicable, threats or attempts to do any of the acts referred to in this subsection.

(2) For the purposes of subsection (1)(g), a person psychologically abuses a child if that person repeatedly -

- (a) causes or allows that child to see or hear the physical, sexual, or psychological abuse of a person with whom that child has a domestic relationship; or
- (b) puts that child, or allows that child to be put, at risk of seeing or hearing the abuse referred to in paragraph (a);

but the person who suffers such abuse is not culpable in terms of this subsection.

(3) With the exception of harassment as described in subsection (1)(e) and emotional, verbal or psychological abuse as described in subsection (1)(g), any single act described in this section may amount to domestic violence.

(4) A number of acts that form part of a pattern of behaviour may amount to domestic violence, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

Definition of domestic relationship

3. (1) For the purposes of this Act a person is in a "domestic relationship" with another person if, subject to subsection (2) -

- (a) they are or were married to each other, including a marriage according to any law, custom or religion, or are or were engaged to be so married;
- (b) they, being of different sexes, live or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;
- (c) they have, have had or are expecting a child together, excluding situations -
 - (i) where the child is conceived as a result of rape; or
 - (ii) where the parties contributed gametes for artificial insemination, *in vitro* fertilisation or similar fertilisation techniques, but have no other relationship;
- (d) they are parent and biological or adoptive child;
- (e) they -
 - (i) are or were otherwise family members related by consanguinity, affinity or adoption, or stand in the place of such family members by virtue of foster arrangements; or

- (ii) would be family members related by affinity if the persons referred to in paragraph (b) were married to each other,

and they have some connection of a domestic nature, including, but not limited to -

- (aa) the sharing of a residence; or
 - (bb) one of them being financially or otherwise dependant on the other; or
- (f) they, being of different sexes, are or were in an actual or a perceived intimate or romantic relationship.

(2) Subject to subsection (3), where a “domestic relationship” is based directly or indirectly on past marriage or engagement, past cohabitation or any other past intimate relationship, the “domestic relationship” continues for one year after the dissolution of the marriage or engagement, the cessation of cohabitation or the end of any other intimate relationship, but, where a child is born to any couple, their “domestic relationship” continues throughout the lifetime of that child or for one year after the death of the child.

(3) If, in an application for a protection order, a court is satisfied that good reasons exist not to restrict the continuation of a relationship to one year as provided for in subsection (2), the court may extend that period to exceed one year.

(4) For the purposes of subsection (1)(e), a customary union must be taken to give rise to a relationship of affinity as if it were a civil marriage.

PART II PROTECTION ORDERS

Who may apply for protection order

4. (1) Any person who is in a domestic relationship may, in the manner provided for in section 6, apply for a protection order against another person in that domestic relationship.

(2) Notwithstanding any other law, an application may be brought on behalf of a complainant by any other person who has an interest in the well-being of the complainant, including but not limited to a family member, a police officer, a social worker, a health care provider, a teacher, traditional leader, religious leader or an employer.

(3) An application made under subsection (2), must be taken to have been made by the complainant

(4) An application made under subsection (2) must be made with the written consent of the complainant, except in circumstances where the complainant is -

- (a) a minor;
- (b) mentally incapacitated;
- (c) unconscious;
- (d) regularly under the influence of alcohol or drugs; or
- (e) at risk of serious physical harm,

but, in the case of paragraph (d) or (e), the court must approve the making of the application.

(5) Notwithstanding any other law, a minor may apply for a protection order without the assistance of an adult person if the court is satisfied that the minor has sufficient understanding to make the proposed application, but the court must not proceed with the application unless the court is satisfied that the alleged domestic violence consists of the conduct contemplated in section 2(1)(a), (b) or (d).

(6) A person on whose behalf an application for a protection order is made under this section must not be compelled to give testimony in any subsequent proceedings relating to the same matter.

Jurisdiction

5. (1) A court of a district where the -

- (a) complainant permanently or temporarily resides, is employed or carries on business;
- (b) respondent resides, is employed or carries on business; or
- (c) cause of action arose,

has jurisdiction to grant a protection order under this Act.

(2) For the purposes of subsection (1)(a) or (b), no minimum period of residence is required.

Manner of application for a protection order

6. (1) A person who requires a protection order may, in the prescribed form and manner, make an application to the court.

(2) An application referred to in subsection (1) must be accompanied by an affidavit deposed to by the applicant and which affidavit must state -

- (a) the facts on which the application is based;
- (b) the nature of the order applied for; and
- (c) the police station where any breach of the protection order is most likely to be reported.

(3) An application made under subsection (1) may be accompanied by supporting affidavits deposed to by persons who have knowledge of the matter.

(4) The clerk of the court, or a prosecutor assigned to the court concerned, must inform an applicant who approaches him or her for the purpose of making an application of the relief available under this Part and must assist the applicant to prepare the application.

(5) If it is the wish of the complainant, his or her physical address may be omitted from the application, in which case the court may not make an order forbidding the respondent to enter the complainant's residence.

(6) The application prepared under subsection (1), and supporting affidavits, if any, must, in the prescribed form and manner and during the prescribed times, be lodged with the clerk of the court who must, as soon as is reasonably possible, submit the documents to the court.

(7) Any person who intentionally gives false information in respect of an application for a protection order commits an offence and is liable on conviction to a fine which does not exceed N\$4000 or imprisonment for a period which does not exceed one year, or to both the fine and imprisonment.

Criteria for granting of and contents of protection order

7. (1) Subject to subsection (2), a court must grant a protection order if it is satisfied that there is evidence that the respondent is committing, or has committed domestic violence towards or in connection with the complainant.

(2) A court must not grant a protection order -

- (a) solely in respect of behaviour which took place before the commencement of this Act; or
- (b) subject to subsection (3), in respect of minor or trivial acts or incidents of domestic violence.

(3) Where an application for a protection order is based on behaviour which appears minor or trivial or unlikely to recur, the court must nevertheless consider whether the behaviour forms part of a pattern of behaviour which establishes a need for protection.

(4) In determining what to include in a protection order, a court must have regard to -

- (a) the history of domestic violence by the respondent towards the complainant;
- (b) the nature of the domestic violence;
- (c) the existence of immediate danger to persons or property;
- (d) the complainant's perception of the seriousness of the respondent's behaviour; and
- (e) the need to preserve the health, safety and wellbeing of the complainant, any child or other person who is in the care of the complainant.

(5) For the purposes of subsection (1), a respondent who encourages another person to commit an act which would amount to domestic violence if engaged in by the respondent must be taken to have committed such an act personally.

Granting of interim protection orders

8. (1) The court must, as soon as is reasonably possible after receiving an application submitted to it under section 6(6), consider that application.

(2) In considering any application for a protection order and before making a decision on the application, the court may, subject to section 12(8) -

- (a) require oral evidence or further evidence of any nature and that evidence forms part of the record of the proceedings; and
 - (b) for the purposes of paragraph (a), summon any person to appear before the court.
- (3) After considering an application as contemplated in subsection (1) the court -

- (a) must, if it is satisfied that there is sufficient evidence as contemplated in section 7(1), grant, in the prescribed form and manner, an interim protection order notwithstanding the fact that the respondent has not been given notice of the proceedings and an opportunity to be heard;
- (b) may, if the circumstances so require, refer the matter for an enquiry, in which case, the court must give such directives as may be prescribed for the conducting of any subsequent proceedings;
- (c) may, grant part of the relief applied for and refer any outstanding issues to an enquiry, in which case, paragraph (b) will apply; or
- (d) may, if it considers that the application has no merit, dismiss the application.

(4) An interim protection order must -

- (a) call upon the respondent to, on or before the return date, show cause why the interim protection order should not be confirmed; and
- (b) contain any other prescribed information.

(5) The return date is 30 days from the date of the interim protection order but the court may extend this period if it is necessary to ensure that it is not less than 10 days after the service of an interim order as contemplated in section 9(1), and the interim protection order remains in force up to the end of the extended return date.

(6) The clerk of the court must send a copy of the interim protection order to the station commander of the police station named in the application and that station commander 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.

(7) If the interim protection order involves children, the clerk of the court must send a copy to the Permanent Secretary of the Ministry responsible for child welfare and such copies as may be prescribed to any other prescribed persons, to consider such action as may be provided for in legislation relating to the care and protection of children.

Service of interim protection order

9. (1) An interim protection order together with any other prescribed information must, within the prescribed period and in the prescribed form and manner, be served on the respondent.

(2) On receipt of a return of service of the protection order, the clerk of the court must, within the prescribed period and in the prescribed form and manner, serve a certified copy of the interim protection order on the applicant.

(3) An interim protection order has the same legal effect as a final protection order and, once it has been served on the respondent, it is enforceable under section 17.

Confirmation where respondent fails to oppose

10. If the respondent does not give notice of an intention to oppose the confirmation of the protection order on or before the return date contemplated in section 8, and the court is satisfied that proper service has been effected on the respondent, the court must confirm the interim protection order without holding the enquiry contemplated in section 12.

Effect of notice to oppose

11. (1) If the respondent gives notice of an intention to oppose the confirmation of the protection order on or before the return date, the clerk of court must set a date for an enquiry which date must not be more than 30 days from the date of receipt of the respondent's notice and he or she must, in the prescribed form and manner, notify the applicant and the respondent of the date for such enquiry.

(2) Notwithstanding subsection (1), the respondent may request the clerk of court to set an earlier date for the enquiry and the clerk of court may, where possible, allow the request as long as the clerk of court gives, in the prescribed manner, at least 24 hours notice of the date of the enquiry to the applicant.

(3) A notice of intent to oppose the confirmation of an interim protection is not a ground for a stay of such order, which remains in force until the court makes a decision on whether or not to confirm it.

Procedure for enquiry

12. (1) On the date set under section 11, the court must enquire into the matter of confirmation of the interim protection order.

(2) An enquiry referred to in subsection (1) must be conducted in the manner prescribed under this Act.

(3) Any party to an enquiry may call any witness to support his or her case.

(4) The court may, at its own motion, cause to be summoned as a witness any person, including the applicant or respondent, whose evidence may, in its opinion, be relevant in the matter.

(5) Any witness at an enquiry may be examined or cross-examined by the applicant, the respondent, or a representative of either the applicant or the respondent appointed in terms of subsection (7).

(6) The Civil Proceedings Evidence Act, 1965 (Act No. 25 of 1965) in so far as it relates to the admissibility and sufficiency of evidence, the competency, compellability and privileges of witnesses applies to an enquiry conducted under this Act.

(7) An applicant or a respondent may be represented at an enquiry by a legal practitioner or by any person duly authorised by such applicant or respondent, as the case may be.

(8) Except with the permission of the court, a person whose presence is not necessary must not be present at an enquiry, but both the applicant and the respondent are entitled to be accompanied by two persons of their choice to provide support.

(9) To the extent that subsection (8) provides for a limitation of the fundamental right to a public hearing, contemplated in Article 12(1)(a) of the Namibian Constitution, in that it authorizes the exclusion of the public from such a hearing, such limitation is enacted on the authority of the proviso to sub-article (1)(a) of that Article.

(10) The court must not grant a request for a postponement unless it is satisfied that the party making the request would be severely prejudiced if the postponement is not granted.

(11) If a court postpones an enquiry it must extend any interim protection order which is in force accordingly.

(12) If a court postpones an enquiry in the absence of one of the parties, it must direct that notice of the new date for the enquiry be served in the prescribed manner on the party who is not present.

(13) If, on the date and at the time fixed for the enquiry, the respondent fails to appear in person at the court and the court is satisfied that notice of the enquiry was correctly served on the respondent as contemplated in section 9(1), the court may -

- (a) proceed to hear and determine the matter in the absence of the respondent; or
- (b) where the court is satisfied having regard to the material before it, that it is appropriate to do so, postpone the matter and, if necessary, order that the respondent be summoned to appear in court on the date on which the matter has been postponed to.

(14) If at the time fixed for the enquiry, the respondent appears in court, but neither the applicant nor the complainant, as the case maybe, appears either in person or through the representative contemplated in subsection (7), the court may -

- (a) if it is satisfied that the applicant or complainant no longer wishes to pursue the matter, dismiss the application; or
- (b) after having received a reasonable excuse for such non-appearance, postpone the enquiry on reasonable terms; or
- (c) if it is satisfied, having regard to the material before it, that it is appropriate for evidence to be given by affidavit, the court may, on the application of any other party, order the attendance for cross-examination of the person who made such affidavit.

(15) Unless an application has been dismissed as contemplated in subsection (14)(a), if the applicant fails to appear, either in person or, if applicable, through the representative contemplated in subsection (7), the court must direct the station commander of the police station named in the application to enquire into the reasons for such non-appearance, to ensure that no intimidation of the applicant has taken place, to provide appropriate police protection in the event of any intimidation, and to ascertain whether the applicant still wishes to proceed with the application.

(16) After holding the enquiry, the court may -

- (a) confirm or discharge the interim order in its entirety;
- (b) confirm specified provisions of the interim order;
- (c) cancel or vary specified provisions of the interim order;
- (d) discharge the interim order and substitute another order for the interim order;
- (e) if the respondent is present at the enquiry, at the request of the applicant or at its own initiative, add provisions which were not contained in the interim order.

(17) A protection order granted at the conclusion of an enquiry is a final protection order.

Final protection orders

13. (1) A final protection order granted under section 10 or section 12 must be in the prescribed form and must be served on the respondent either in person at the conclusion of the enquiry or in the prescribed manner and within the prescribed period.

(2) Where an interim protection order is confirmed with or without modifications after an enquiry which the respondent fails to attend, the court must extend the interim protection order until such date as the final protection order is served on the respondent and the interim protection order has full force and effect until this date regardless of whether or not the respondent has been notified of the extension.

(3) The clerk of the court must send a copy of the final protection order to the station commander of the police station named in the application and that station commander has the duty to put all police personnel at that station on notice that the complainant and any other person protected by the order in question are at particular risk.

(4) If the final protection order involves children, the clerk of court must send a copy to the Permanent Secretary of the Ministry responsible for child welfare and such copies as may be prescribed to any prescribed persons, to consider such action as may be provided for in legislation relating to the care and protection of children.

Terms of protection order

14. (1) A protection order must include a provision restraining the respondent from subjecting the complainant to domestic violence.

(2) A protection order may, at the request of the applicant or on the court's own motion, include any of the following provisions -

- (a) a provision directing the respondent to surrender any firearm or other specified weapon in the possession of the respondent, which may also include if appropriate -
 - (i) a provision suspending any firearm licence in the name of the respondent for the duration of the protection order;
 - (ii) a provision authorising the police to search for and seize any weapon at any specified place where there is probable cause to believe that the weapon may be located;
- (b) "no-contact" provisions which -
 - (i) forbids the respondent to be, except under conditions specified in the order, at or near specified places frequented by the complainant or by any child or other person in the care of the complainant, including but not limited to -
 - (aa) the residence, workplace or educational institution of the complainant, or any child or other person in the care of the complainant;
 - (bb) a shelter or other residence where the complainant is temporarily living; or
 - (cc) the residences of specified family members;

- (ii) forbids the respondent from making, except under conditions specified in the order, any communication to the complainant, any child or other person in the care of the complainant or specified members of the complainant's family, including direct or indirect personal, written, telephonic or electronic contact,

but a "no-contact" provision may be extended to a person other than the complainant or any child or other person in the care of the complainant, only where consent has been given by that person, and in the case of any other child, only where consent has been given by a parent of that child or by a person under whose care that child is;

- (c) if an act of physical violence has been committed, a provision granting the complainant and dependants of the complainant exclusive occupation of a joint residence, regardless of whether the residence is owned or leased jointly by the parties or solely by either one of them, which may also include if appropriate -

- (i) a provision directing that the contents of the joint residence (or certain specified contents) remain in the residence for the use of the person given possession;
- (ii) a provision directing a police officer to remove the respondent from the residence;
- (iii) a provision authorising the respondent to collect personal belongings from the residence under police supervision,

but, the court must take the following factors into consideration in respect of any order under this paragraph -

- (aa) the length of time that the residence has been shared by the complainant and the respondent, but without prejudicing the complainant on the grounds that he or she has at any stage fled the common residence to assure his or her safety or the safety of any child or other person in the care of the complainant;
 - (bb) the accommodation needs of the complainant and any other occupants of the residence, considered in light of the need to secure the health, safety and wellbeing of the complainant or any child or other person in the care of the complainant;
 - (cc) any undue hardship that may be caused to the respondent or to any other person as a result of such order; and
 - (dd) in the case of communal land, the respective customary law or practice which governs the rights of ownership to or occupation of that communal land;
- (d) a provision directing the respondent to -
 - (i) pay rent for the complainant by a specified date of each month in respect of a residence; or
 - (ii) otherwise make arrangements for any other accommodation or shelter;

sufficient for the reasonable needs of the complainant and any dependant of the complainant if the respondent is legally liable to support the complainant and the dependant and the complainant does not wish to have exclusive occupation of the joint residence or the court determines that it is more just in the circumstances for the respondent to remain in the joint residence;

- (e) a provision directing a police officer to accompany, within a specified time, the complainant or another person designated by the complainant, to the joint residence to supervise the removal of personal belongings of the complainant or any child or other person in the care of the complainant;
- (f) a provision granting either party possession of specified personal property, including but not limited to means of transport, agricultural implements, livestock, furniture, chequebooks, credit cards, children's clothing and toys, identification documents, keys, personal documents or other necessary personal effects, but, the order must not be made in respect of property which is not owned by either party or which is jointly owned by either party and another person;
- (g) a provision restraining the complainant or the respondent or both from taking, converting, damaging or otherwise dealing in property in which the other party may have an interest or a reasonable expectation of use;
- (h) a provision temporarily directing the respondent to make periodic payments in respect of the maintenance of the complainant, and of any child of the complainant, if the respondent is legally liable to support the complainant or the child, as an emergency measure where no such maintenance order is already in force;
- (i) a provision granting temporary sole custody -
 - (i) of a child of the complainant to any appropriate custodian other than the respondent; or
 - (ii) of any child of the complainant or any child in the care of a complainant to the complainant or to another appropriate custodian;

if the court is satisfied that this is reasonably necessary for the safety of the child in question;

- (j) a provision temporarily -
 - (i) forbidding all contact between the respondent and any child of the complainant;
 - (ii) specifying that contact between the respondent and a child of the complainant, must take place only in the presence and under the supervision of a social worker or a family member designated by the court for this purpose; or
 - (iii) allowing such contact only under specified conditions designed to ensure the safety of the complainant, any child who may be affected, and any other family members,

if the court is satisfied that this is reasonably necessary for the safety of the child in question;

- (k) any other provisions that the court deems reasonably necessary to ensure the safety of the complainant or any child or other person who is affected.

Duration of final protection orders

15. Unless the court decides otherwise, a final protection order has the following durations -

- (a) a provision granting the complainant exclusive occupation of a residence owned -
 - (i) by the complainant, remains in force for any period set by the court;
 - (ii) by the respondent, remains in force for any period set by the court up to a maximum of six months;
 - (iii) jointly by the complainant and the respondent, remains in force for any period set by the court up to a maximum of one year;
- (b) a provision granting the complainant exclusive occupation of a leased residence remains in force for any period set by the court, but must not extend beyond the duration of the current lease period;
- (c) a provision directing that the complainant enjoys possession of household effects must, if made in conjunction with an order granting the complainant exclusive occupation of a joint residence, remain in force for the same period as the provision in that order;
- (d) a provision concerning temporary custody of a child and access to a child remains in force until it is superseded by another order of a relevant court;
- (e) a provision concerning maintenance remains in force for any period set by the court up to a maximum of six months; and
- (f) any other provision of a final protection order remains in force for three years.

Offences

16. (1) A person who, without lawful justification, breaches a protection order commits an offence and is liable on conviction to a fine which does not exceed N\$8000 or to imprisonment for a period which does not exceed two years or to both the fine and imprisonment.

(2) In criminal proceedings relating to a protection order, a completed return of service constitutes sufficient evidence that the protection order was served on the respondent.

(3) A respondent who intentionally causes another person to engage in behaviour that would amount to a violation of a protection order if engaged in by the respondent is deemed to have breached such order.

(4) Except in the case of physical abuse as contemplated in section 2(1)(a), it is a defence to a charge for an offence referred to in subsection (1) or (3) to prove that the complainant voluntarily consented to the alleged breach of a protection order.

(5) A complainant who, with the intent to induce a police officer to perform any act or to exercise any power provided for in this Act in relation to the breach of a protection order, intentionally provides false information, or intentionally fails to provide information about consent given by him or her as contemplated in subsection (4), commits an offence and is liable, on conviction, to a fine which does not exceed N\$4000 or to imprisonment for a period which does not exceed one year, or to both the fine and such imprisonment.

(6) Any person who, after having been summoned under section 8(2) or 12(4) or (13) fails, without a reasonable or lawful excuse, to so appear commits an offence and is liable on conviction to a fine which does not exceed N\$4 000 or to imprisonment for a period which does not exceed one year or to both the fine and imprisonment.

(7) Subject to necessary changes, Part III of this Act, except for section 22(1), applies in respect of a criminal offence referred to in subsection (1).

Modification or cancellation of protection orders

17. (1) The following persons may, in writing, apply to the court which granted a protection order requesting the modification or cancellation of such protection order -

- (a) the complainant;
- (b) an applicant; or
- (c) the respondent.

(2) Where a person referred to in subsection (1)(a) or (b) wants to cancel or modify a protection order he or she must, in the prescribed manner submit an application to that effect to the clerk of court and that application must be accompanied by an affidavit and any other prescribed information.

(3) If the application referred to in subsection (2), is for cancellation of a protection order, the court must, on receipt of that application, grant the application if it is satisfied on the evidence that the application is in accordance with the wishes of the complainant, made freely and voluntarily, and that cancellation will not endanger the complainant or any child or other person concerned in the matter.

(4) If the application referred to in subsection (2), is for modification of a protection order, the court must proceed as if the application for modification were an original application for a protection order and, subject to necessary changes, the procedure set out in sections 9, 10, 11 and 12 apply in respect of the application.

(5) Where the application referred to in subsection (2) is made by the respondent, the court may grant the application only after an enquiry held in accordance with the procedure set out in section 12 with at least 10 days prior notice to the applicant and, if the complainant was not the applicant, to the complainant.

(6) In an application made as contemplated in subsection (5) the court may, whether or not it appears that it is the wish of the complainant to oppose the modification or cancellation, grant the respondent's request only if it is satisfied on the basis of all the information before it, including the record pertaining to the original protection order, that such modification or cancellation will not endanger the complainant or any child or other person concerned in the matter.

(7) In any proceedings concerning a request for modification or cancellation of protection order under this section, the court on its own motion or at the request of either of the parties, may request an evaluation of the relevant circumstances by a social worker.

(8) Where only some of the terms of a protection order are modified or cancelled as contemplated in this section, the rest of the protection order remains in force.

Appeals

18. (1) Where a court has made or refused to make a protection order, or included or refused to include a particular provision in a protection order, the applicant or the respondent may appeal to the High Court, but, the appeal must be lodged within one month of the decision in question.

(2) An appeal lodged under this section must, subject to necessary changes, be conducted in accordance with and be governed by Chapter XI of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(3) Where an appeal is lodged in terms of this section against a final protection order, the interim order remains in force until the conclusion of the appeal.

Pending proceedings

19. The fact that other civil or criminal proceedings are pending in relation to the actions which are the basis for an application for a protection order or for an allegation that a protection order has been breached, is not a bar to the grant of a protection order or to a criminal charge for breach of such an order.

Costs

20. (1) There is no charge to an applicant for the service of any notice or order effected under this Act.

(2) Notwithstanding subsection (1), the court holding an enquiry may, having regard to the conduct of the parties involved in the enquiry so far as it may be relevant, make such order as the court may consider just relating to costs which have been incurred as a result of the enquiry.

(3) In making the order contemplated in subsection (2), the court must have regard to the conduct and means of the person against whom the order for costs is to be made.

**PART III
CRIMINAL PROVISIONS**

Domestic violence offences

21. (1) The offences listed in the First Schedule are domestic violence offences when they are committed or alleged to have been committed against a person, or in relation to a person, with whom the person charged with those offences has a domestic relationship.

(2) Any person found guilty of a domestic violence offence is liable on conviction to the penalties ordinarily applicable to the offence in question.

Complaints

22. (1) Without derogating from any other law, a charge in respect of a domestic violence offence may be laid by the complainant or by any person who has an interest in the well-being of the complainant, including but not limited to a family member, a police officer, a social worker, a health care provider, a teacher or an employer.

(2) Subject to subsection (4) a person who, in good faith, gives any information regarding a domestic violence offence, or lays a charge in respect of such offence, does not incur any liability for defamation or otherwise in respect of the giving of such information or laying of such charge.

(3) A person who intentionally gives false information regarding a domestic violence offence, or lays a false charge in respect of such an offence, commits an offence and is liable on conviction to a fine which does not exceed N\$4000 or to imprisonment for a period which does not exceed one year, or to both the fine and imprisonment.

(4) Subsection (2) does not prevent any person from instituting civil proceedings against a person who gives information or lays a charge in the circumstances contemplated in subsection (3).

Arrest and seizure of weapons

23. (1) If a police officer reasonably suspects that a domestic violence offence has been committed, the police officer may take one or more of the following actions with respect to the person suspected of committing that offence, having due regard to the wishes of the complainant -

- (a) arrest the person without a warrant; or
- (b) issue a formal warning, copies of which must, in the prescribed form and manner, be filed with the police and the Office of the Prosecutor-General.

(2) Any police officer who reasonably suspects that a domestic violence offence has been committed may -

- (a) question any person present at the scene of the offence to determine whether there are weapons at the scene; and
- (b) on observing or learning that a weapon is present at the scene, search any person, premises, vehicle or other place and seize any weapon that the officer reasonably believes would expose the complainant to a risk of serious bodily injury.

Rights of complainant where person is charged with domestic violence offence

24. It is the duty of the prosecutor in criminal proceedings where a person is charged with a domestic violence offence to consult with the complainant in order -

- (a) to ensure that all relevant information has been obtained from the complainant which includes all information relevant to the question whether the accused should be released on bail and whether any conditions should be imposed if the accused is released on bail; and
- (b) to provide such information to the complainant as will be necessary to lessen the impact of the trial on the complainant.

Complainant's submission in respect of sentence

25. (1) The court must, if reasonably possible and within reasonable time, notify the complainant or the complainant's next of kin, if the complainant is deceased, of the time and place of sentencing in a case of a domestic violence offence against the complainant.

(2) At the time of sentencing, the complainant, the complainant's next of kin, if the complainant is deceased, or a person designated by the complainant or the complainant's next of kin has the right to appear personally and has the right to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the complainant, and the need for restitution and compensation.

(3) A complainant, or the complainant's next of kin, if the complainant is deceased, who is unwilling or unable to appear personally at sentencing has the right to inform the court of his or her views on an appropriate sentence by means of an affidavit.

PART IV POLICE DUTIES

Inspector-General to issue directives

26. (1) The Inspector-General must issue directives on the duties of police officers in respect of matters pertaining to domestic violence.

(2) Without derogating from the generality of subsection (1), directives issued under subsection (1) may include directives -

- (a) on police protection to complainants of domestic violence and their children or other persons in their care regardless of the source of the request and including such protection to such persons where an applicant intends to make an application for a protection order until such time as the relevant court is open;
- (b) to ensure that the necessary priority and prompt action are given to calls and cases alleging violence in domestic relationships or where a protection order has been or is being breached;
- (c) to ensure that complainants of domestic violence and witnesses are interviewed in such a way that they are able to speak freely;
- (d) on information to be given by police officers to complainants, alleged perpetrators and family members who are present at the scene of an alleged domestic violence offence with regard to assistance for medical treatment, the availability of shelters or other appropriate services, the availability of transport for such treatment or to such shelters, procedures to obtain protection orders and the contents of such orders, the laying of criminal charges or any other matter relevant to domestic violence, and the way and the form in which such information is to be given.

(3) The Inspector-General must, at least once every year, submit a report to the Minister responsible for police on the directives issued in terms of subsection (1) and on the training provided to police officers to carry out the duties imposed on such police officers in terms of this Act, the regulations made under section 31 and the directives issued under subsection (1).

Records of domestic violence incidents

27. (1) Whenever a police officer intervenes, in any manner, in a case involving domestic violence or receives a report of an incident involving domestic violence he or she must, regardless of whether criminal charges are laid or pursued, complete the prescribed form, which form must include any prescribed information.

(2) A copy of any form completed in terms of this section must be retained at the police station in question, and the original forwarded to the Inspector-General.

(3) The Inspector-General must compile annual statistics from the information collected under this section and forward the statistics to the Minister responsible for police.

Annual reports to be tabled in National Assembly

28. On receipt of the report referred to in section 26(3) and the statistics compiled under 27(3), the Minister responsible for police must prepare a consolidated report which he or she must, at least once in every year, table in the National Assembly, but any information which might reveal the identity of the parties must not be disclosed in the consolidated report.

**PART V
GENERAL****Record of proceedings to be kept**

29. (1) The court must keep a record of the proceedings at enquiries and those records must be accessible to any person on conditions and payment of fees as may be prescribed.

(2) Any fees payable under this section must be prescribed by the Minister in consultation with the Minister responsible for finance.

Privacy

30. (1) Unless otherwise authorised by the court in the public interest and on such conditions as the court considers appropriate, a person must not publish any information concerning legal proceedings held under Part II which reveals or might reveal the identity of an applicant, a complainant or any child or other person involved in such proceedings.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine which does not exceed N\$10 000 or to imprisonment for a period which does not exceed one year, or to both the fine and imprisonment.

(3) To the extent that this section provides for a limitation of the fundamental rights contemplated in Article 21(1)(a) of the Namibian Constitution, in that it authorizes the interference with a person's freedom of speech and expression, such limitation is enacted on authority of subarticle (2) of that Article.

Evidence of psychological effect of domestic violence

31. (1) Evidence of the psychological effects of domestic violence is admissible in any proceedings held under this Act or under any other law, in order to prove -

- (a) that the act which forms the subject matter of a charge of a domestic violence offence or an application for a protection order has been committed;
- (b) the extent of the harm suffered by the complainant, to enable the court to impose an appropriate sentence upon conviction of the perpetrator; or
- (c) defences or grounds for mitigation of sentence in respect of the commission of a criminal act by a person who has suffered past domestic violence against the perpetrator of that violence.

(2) The court must determine the weight to be attached to the evidence referred to in subsection (1) after such evidence has been heard, with due consideration to -

- (a) the qualifications and experience of the person who gives such evidence; and

- (b) all the other evidence given in the case.

Regulations

- 32.** (1) The Minister may make any regulations relating to -
- (a) any prescribed forms referred to in this Act;
 - (b) prescribed methods of service referred to in Part II of this Act;
 - (c) the procedure for enquiries in terms of section 12;
 - (d) procedures for ensuring the speedy hearing, verdict and sentencing in respect of domestic violence offences;
 - (e) procedures for notification to the complainant of the time and place of sentencing, and for the submission of affidavits, as contemplated in section 25;
 - (f) any other matter which is permitted or required to be prescribed for under this Act; and
 - (g) any other matter aimed at furthering the objectives of this Act.

(2) A regulation made under this section may provide for a penalty for a contravention or failure to comply with it and in the case of a fine it must not exceed N\$2000 or in the case of imprisonment the period must not exceed six months.

Amendments and savings

33. (1) The laws specified in the Second Schedule are amended to the extent indicated in that Schedule.

(2) Notwithstanding subsection (1), this Act applies only to acts committed or courses of conduct occurring after the commencement of this Act, and any proceedings commenced before the commencement of this Act must be dealt with according to the existing law.

Short title and commencement

34. (1) This Act is called the Combating of Domestic Violence Act, 2003 and it will come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) for the commencement of different provisions of the Act.

FIRST SCHEDULE**OFFENCES**

1. Common assault.
2. Assault with intent to do grievous bodily harm.
3. Any offence under section 1 of the Trespass Ordinance, 1962 (Ordinance No. 3 of 1962) where the necessary permission contemplated would be permission from the complainant.
4. Contravention of section 14 of the Combating of Immoral Practices Act, 1980 (Act No. 21 of 1980).
5. The offence under section 38(1)(i) of the Arms and Ammunition Act, 1996 (Act No. 7 of 1996) where the fire-arm is pointed at the victim or someone else in the presence of the complainant.
6. *Crimen injuria*.
7. Kidnapping.
8. Malicious injury to property -
 - (a) owned by the complainant; or
 - (b) jointly owned by the complainant and the alleged offender; or
 - (c) in which the complainant has a substantial interest.
9. Murder.
10. Rape, including rape as defined in the Combating of Rape Act, 2000 (Act No. 8 of 2000).
11. Indecent assault.
12. Robbery where violence or threats of violence are used against the complainant or in the presence of the complainant.
13. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

SECOND SCHEDULE

AMENDMENT OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT NO. 51 OF 1977)

1. The Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended -
 - (a) in section 60A by the substitution for the word “rape” of the expression “rape or a domestic violence offence”;
 - (b) in section 62 by the addition of the following subsection:-

“(3) If an accused who is in custody on a charge of a domestic violence offence is released on bail, the court shall, notwithstanding the provisions of subsection (1), impose the following further conditions of bail, unless it finds special circumstances which would make any or all of these conditions inappropriate, which reasons must be entered in the record of the proceedings -

- (a) an order prohibiting any direct or indirect contact with the victim during the pendency of the proceedings;
 - (b) an order prohibiting the possession of any firearm or other specified weapon; and
 - (c) where the accused is legally liable to maintain the complainant or any child or other dependant of the complainant, an order requiring that the accused support the complainant and child or other dependant at the same or greater level as prior to the arrest.”.
 - (c) in section 153 by the substitution for subsections (3A) and (3B) of the following subsections:-

“(3A) Notwithstanding the provisions of subsections (1), (2), (5) and (6) but subject to the provisions of subsection (3B), in criminal proceedings relating to a charge that the accused committed or attempted to commit -

- (a) any sexual or indecent act towards or in connection with any complainant;
 - (b) any act for the purposes of procuring or furthering the commission of a sexual or indecent act towards or in connection with any complainant; or
 - (c) any domestic violence offence as defined in the Domestic Violence Act, 2003;

the court before which such proceedings are pending shall, to the extent authorised thereto by the provisos to Article 12(1)(a) and (c) of the Namibian Constitution, direct that any person whose presence is not necessary at such proceedings, shall not be present at those proceedings, unless the complainant in such proceedings, or, if he or she is a minor, his or her parent or guardian or a person in *loco parentis*, otherwise requests.

(3B) Any person whose presence is not necessary at criminal proceedings referred to in paragraphs (a), (b) and (c) of subsection (3A),

shall not be present at such proceedings while the complainant in such proceedings is giving evidence, unless such complainant, or, if he or she is a minor, his or her parent or guardian or a person in *loco parentis*, otherwise requests.”.

AMENDMENT OF THE ARMS AND AMMUNITION ACT, 1996 (ACT NO. 7 OF 1996)

The Arms and Ammunition Act, 1996 (Act No. 7 of 1996) is amended in Schedule I by the addition of the following:

“A domestic violence offence involving physical abuse as defined in the Combating of Domestic Violence Act, 2003”.



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$11.80

WINDHOEK - 17 November 2003

No.3094

CONTENTS

Page

GOVERNMENT NOTICES

No. 234	Commencement of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) ...	1
No. 235	Combating of Domestic Violence Act, 2003: Regulations relating to the Combating of Domestic Violence	1

Government Notices

MINISTRY OF JUSTICE

No. 234 2003

COMMENCEMENT OF THE COMBATING OF DOMESTIC VIOLENCE ACT, 2003 (ACT NO. 4 OF 2003)

In terms of section 34 of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003), I hereby determine that the said Act will come into operation on the 17th November 2003.

A. KAWANA
MINISTER OF JUSTICE

Windhoek, 7 November 2003

MINISTRY OF JUSTICE

No. 235 2003

COMBATING OF DOMESTIC VIOLENCE ACT, 2003: REGULATIONS RELATING TO THE COMBATING OF DOMESTIC VIOLENCE

The Minister has, in terms of section 32 of the Combating of Domestic Violence Act, 2003 made the regulations set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations a word or expression to which a meaning has been given in the Act bears that meaning and, unless the context indicates otherwise -

“the Act” means the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003); and

“signature” includes writing a person’s name on a document or placing a person’s mark or thumb print on a document.

Manner of application for a protection order

2. (1) A person who makes an application for a protection order as contemplated in section 6(1) of the Act must make the application on a form corresponding substantially to Form I of the Annexure.

(2) Where an application is brought on behalf of a complainant by another person as contemplated in section 4 of the Act, the application must set out or contain -

- (a) the basis for the applicant’s interest in the well being of the complainant; and
- (b) the written consent of the complainant, or the grounds for dispensing with such consent as contemplated in section 4(4) of the Act.

(3) The written consent to be given by the complainant as contemplated in section 4 of the Act must be in the form substantially corresponding to Form 2.

(4) Where an applicant for a protection order requests a no-contact provision in respect of a person other than the complainant, a child or other person in the care of the complainant as provided as contemplated in section 14(2)(b) of the Act, consent of that person, or where that person is a child, the consent of a parent or person in whose care that child is to the proposed no-contact provision must be attached to the application in the form substantially corresponding to Form 3.

(5) An application for a protection order must be dealt with as a matter of urgency and the court may sit after ordinary court hours and on days which are normally not considered as court days to hear such applications if the need arises.

Notice to attend enquiry

3. The notice to attend an enquiry as contemplated in section 11(1) must be in a form substantially corresponding to Form 4.

Procedure for enquiry

4. (1) Where it considers it appropriate in the interests of the moral welfare or safety of the applicant, the court may order that the public or press be excluded from a domestic violence enquiry.

(2) A court holding an enquiry must administer an oath to, or accept an affirmation from any witness appearing before it and record the evidence of that witness.

(3) The enquiry referred to in subregulation (1) must be held in the presence of the respondent or in his or her absence, on production of proof that the respondent was served with the notice referred to in regulation 3.

(4) Unless otherwise provided for in the Act or in these regulations, proceedings at an enquiry must be conducted in accordance with practice and procedure followed in civil proceedings in the magistrates courts in Namibia.

(5) The court may, when conducting an enquiry, depart from any strict rule of practice or procedure as contemplated in subregulation (4), if the court considers that departure from that practice or procedure would ensure that substantial justice is achieved between the parties to the enquiry.

(6) The court must, where both or one of the parties are not represented, assist such parties in the quest to ensure that substantial justice is achieved and may use its discretion to ensure that the inquiry is held in a relaxed atmosphere where the parties can express themselves freely.

(7) The court holding an inquiry must play an active role in the proceedings and may at any time during the inquiry cause any person to be summoned as a witness or examine any person who is present at the inquiry, although that person was not summoned as a witness, and may recall and re-examine any person already examined, in an objective attempt to determine the facts in a manner that is aimed at ensuring that substantial justice is achieved between the parties.

(8) The court holding an inquiry must keep record of the proceedings or cause the proceedings to be recorded in full be it in shorthand or by mechanical means by a person directed by the presiding officer to do so.

(9) Notwithstanding anything contained in any other law, the following evidence is admissible at an enquiry -

- (a) previous convictions as far as it pertains to acts of violence be it domestic or otherwise;
- (b) records of previous protection orders refused or granted against any of the parties;
- (c) reports of acts of domestic violence reported to the police;
- (d) formal warnings issued by the police; or
- (e) variations or cancellation of protection orders.

(10) At the inquiry, a statement in writing by any person, other than one of the parties, is admissible as evidence to the same extent as oral evidence to the same effect by the person concerned, but, a copy of the statement must, at least 14 days before the date on which the statement is to be submitted as evidence, be served on the other party and he or she may at least seven days before the commencement of the inquiry, object to the statement.

(11) Where a party wishes to arrange to summon witnesses through the court, the clerk of the court must assist such person to identify and summon such witnesses where the court considers it necessary, it may however limit the number of persons to be called as witnesses.

(12) If a person -

- (a) objects to the production of a statement as contemplated in subregulation (10), the court must inquire into the reasons for such objection and after doing so give a ruling as to whether such statement is admissible as evidence or not; or
- (b) does not object, the statement contemplated in subregulation (10) may on its production at the inquiry be admitted as evidence in the inquiry.

Service of documents

5. (1) Service of any documents which are required to be served under the Act or these regulations must, subject to subregulation (2), be served by a member of the Namibian Police as part of that member's duties under section 26 of the Act.

(2) Subject to any guidelines made under section 26(1), the Station Commander of the relevant police station must ensure that reasonable efforts are made by a member of the police to serve the documents as provided in subregulation (1) within 5 days of receiving them from the clerk of the court.

(3) Where documents cannot be served by the police as contemplated in subregulation (1), service must be effected without delay by the clerk of the court by -

- (a) handing or presenting a certified copy of the document to the person on whom the document is to be served;
- (b) sending a certified copy of the document to that person by registered mail and endorsing the original document to this effect; or
- (c) directing the messenger of the court to forthwith serve the document on the person to be served by delivering a certified copy of the document in any one of the following manners -
 - (i) handing or presenting it to that person personally;
 - (ii) handing or presenting it at that person's residence or place of business to a person apparently not less than 16 years of age residing or employed there; or
 - (iii) handing or presenting it at that person's place of employment to a person apparently not less than 16 years of age and apparently in authority over that person or in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at that person's place of employment.

(3) Where the person on whom a document is to be served keeps his or her residence, place of business or place of employment closed and thereby prevents the messenger of the court from serving the document in the manner described in subregulation (2), the messenger of court must effect service of the document by affixing it to the outer or principal door or security gate of such residence, place of business or place of employment.

(4) Subject to section 20 of the Act, any costs which are incurred when service of documents is effected by the messenger of court must be borne by the State.

(5) Any matter relating to the service of documents not provided for in the Act or in these regulations must be carried out in the same manner in which service of court process is carried out in the magistrates court.

(6) For the purposes of this regulation "residence" means, where the building is occupied by more than one person or family, that portion of the building occupied by the person on whom service is to be effected.

Interim protection order

6. An interim protection order made in terms of section 8 of the Act must be in a form substantially corresponding to Form 5.

Notice to oppose

7. A notice of an intention to oppose on the part of the respondent as contemplated in section 11 of the Act must be in a form substantially corresponding to Form 6.

Postponement of enquiry

8. If an enquiry held in terms of section 12 of the Act is postponed in the absence of one of the parties, notice of the new court date must be prepared in a form substantially corresponding to Form 7 and served on the absent party in the manner prescribed in Regulation 5.

Notice upon non-attendance by complainant at enquiry

9. (1) If an applicant fails to appear at an enquiry under the circumstances set out in section 12(15) of the Act, notice to the station commander of the police station named in the application to enquire into the reasons for such non-appearance must be made in a form substantially corresponding to Form 8A.

(2) The report of the station commander to the notice referred to in subregulation (1) must be in a form substantially corresponding to Form 8B and that notice forms part of the official record of the proceedings.

(3) If the court, on consideration of the response of the station commander, is satisfied that the non-appearance of the applicant was due to intimidation of the applicant or to a fear of harm on the part of the applicant, the court must set a new date for the enquiry and make an order for such police protection as will be sufficient to enable the safe attendance of the complainant on court date.

Final protection order

10. A final protection order contemplated in section 13(1) of the Act, whether or not it is preceded by an interim protection order, or an order for the modification or cancellation of a protection order as contemplated in section 17 of the Act, must be in a form substantially corresponding to Form 9A, accompanied by Form 9B where appropriate.

Application for modification or cancellation of protection orders

11. (1) An application for the modification or cancellation of a protection order in terms of section 17 of the Act must be in a form substantially corresponding to Form 10A.

(2) Where the court has granted the application contemplated in subregulation (1) notice must be given to the other party and that notice must be in a form substantially corresponding to form 10B of the annexure.

Formal warning

12. (1) A formal warning as contemplated in section 23(1)(b) of the Act must be in a form substantially corresponding to Form 11.

(2) Whenever a formal warning is issued in terms of section 23(1)(b) of the Act, the station commander of the police station in question must place a copy of the warning on file at that police station and must forthwith transmit a copy of the formal warning to the Office of the Prosecutor-General either by hand or by post.

(3) The Prosecutor-General must cause all formal warnings received in terms of these Regulations to be filed in a register kept for such purposes.

(4) Any person who fails to comply with a warning issued in accordance with subregulation (1) commits an offence and is liable on conviction to a fine not exceeding N\$ 2000 or to imprisonment for a period not exceeding six months.

Notice of court proceedings on bail or sentencing

13. (1) Notice to the complainant of proceedings for sentencing as contemplated in section 25(1) of the Act, or for bail as contemplated in section 60A of the Criminal Procedure Act, 1977(Act No. 51 of 1977) must be in a form substantially corresponding to Form 12.

(2) If the bail proceedings contemplated in subregulation (1) are postponed in the absence of the complainant, the complainant must be notified of the new date in a form substantially corresponding to Form 12.

(3) If bail is granted to the accused in the absence of the complainant, the complainant must be notified of the fact that bail was granted, and of any bail conditions, in a form substantially corresponding to Form 13.

(4) All notices in terms of this regulation must be served on the complainant in the manner prescribed in Regulation 5.

Record of domestic violence incidents

14. Records of domestic violence incidents as contemplated in section 27 of the Act must be kept in a form substantially corresponding to Form 14.

Fees

15. Fees in terms of section 29(1) of the Act must be the same as those prescribed in Rule 34 of the Magistrates Court Rules of Court promulgated by Government Notice No. R1108 of 21 June 1968.

Procedure for speedy hearing of domestic violence offences

16. (1) In pursuance of the speedy hearing, verdict and sentencing of domestic violence offences as contemplated in section 32(1)(d), the prosecutor must, as a matter of priority, place a criminal case involving any domestic violence offence on the court roll as soon as it is received.

(2) Where a postponement in a criminal case concerning a domestic violence offence is granted at the request of the accused, the court may remand the defendant in custody until the new court date regardless of whether or not the accused was previously in custody or out on bail as long as -

- (a) there is a *prima facie* evidence that a domestic violence offence has been committed; and
- (b) the court is satisfied that the victim of the alleged offence may be at risk if defendant is not confined until the conclusion of the case.

(3) If a postponement is granted for any reason in a case involving a domestic violence offence, the prosecutor must re-schedule the case on the court roll in order to ensure that the case is heard as a matter of priority.

Short title

17. These regulations shall be called the Domestic Violence Regulations.

**FORM 1 –
(Regulation 2)
APPLICATION FOR PROTECTION ORDER
Section 6(1) of the Combating of Domestic Violence Act, 2003**

DEFINITIONS

COMPLAINANT = the victim of the domestic violence (even if someone else applies for the protection order)

RESPONDENT = the person who committed the domestic violence

If the directions say to mark a question with a **TICK**, you can use a mark that looks like **§** or **X**.

DOMESTIC VIOLENCE

Domestic violence includes the following acts. It can also include acts which are not listed.

PHYSICAL ABUSE

- physical assault or any use of physical force against the complainant;
- forcibly confining or detaining the complainant;
- physically depriving the complainant of access to food, water, clothing, shelter or rest.

SEXUAL ABUSE

- forcing the complainant to engage in any sexual contact;
- engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;
- exposing the complainant to sexual material which humiliates, degrades or violates the complainant's sexual integrity;
- engaging in such contact or conduct with another person with whom the complainant has emotional ties.

ECONOMIC ABUSE

- the unreasonable deprivation of any economic or financial resources to which the complainant, (or a dependant of the complainant) is entitled under any law, requires out of necessity or has a reasonable expectation of use - including household necessities, and mortgage bond repayments or rent payments in respect of a shared household;
- unreasonably disposing of moveable or immovable property in which the complainant (or a dependant of the complainant) has an interest or a reasonable expectation of use;
- destroying or damaging property in which the complainant (or a dependant of the complainant) has an interest, a reasonable expectation of use;
- hiding or hindering the use of property in which the complainant (or a dependant of the complainant) has an interest or a reasonable expectation of use.

INTIMIDATION, which means intentionally inducing fear in the complainant (or a family member or dependant of the complainant) by -

- committing physical abuse against a family member or dependant of the complainant;
- threatening to physically abuse the complainant, or a family member or dependant of the complainant;
- exhibiting a weapon;
- any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour.

HARASSMENT, which means repeatedly following, pursuing or accosting the complainant (or a family member or dependant of the complainant), or making persistent unwelcome communications – such as -

- watching, or loitering outside or near the building or place where such person resides, works, carries on business studies or happens to be;
- repeatedly making telephone calls or inducing a third person to make telephone calls to such person, whether or not conversation ensues; or repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to such person's residence, school or workplace.

TRESPASS, which means entering the residence or property of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence.

EMOTIONAL, VERBAL OR PSYCHOLOGICAL ABUSE, which means a pattern of degrading or humiliating conduct towards a complainant (or a family member or dependant of the complainant) including-

- repeated insults, ridicule or name calling;
- causing emotional pain;
- the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's, or the complainant's dependant or family member's privacy, liberty, integrity or security.

THREATS or ATTEMPTS to do any of these acts.

PSYCHOLOGICAL ABUSE OF A CHILD includes a situation where someone other than a victim of domestic violence -

- repeatedly causes or allows a child to see or hear the physical, sexual, or psychological abuse of a person with whom that child has a domestic relationship;
- repeatedly puts a child at risk of seeing or hearing such abuse ;
- repeatedly allows a child to be put at risk of seeing or hearing such abuse.

In some cases, a SINGLE ACT can amount to domestic violence. A number of acts that form part of a PATTERN of behaviour may amount to domestic violence even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

DOMESTIC RELATIONSHIPS

Domestic relationships include only the following relationships.

MARRIAGE: a male and female who are or were married to each other in a marriage according to any law, custom or religion, or who are or were engaged to be so married.

LIVING TOGETHER AS HUSBAND AND WIFE: a male and female who are living or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other.

HAVING A CHILD TOGETHER: a male and female who have, have had or are expecting a child together - excluding situations where the child is conceived as a result of rape or where the parties contributed ova or sperm for an assisted reproductions technique but have no other relationship.

PARENT AND CHILD, whether biological or adoptive.

FAMILY MEMBERS

- people related by blood, marriage or adoption;
- people who are standing in the place of family members because of foster arrangements;
- people who would be family members related by marriage if a man and a woman who are living together as husband and wife had been formally married .

BUT ONLY IF THEY HAVE SOME CONNECTION OF A DOMESTIC NATURE, such as the sharing of a residence or one of them being financially or otherwise dependant on the other.

BOYFRIEND/GIRLFRIEND: a male and female who are or were in an actual or a perceived intimate or romantic relationship.

A “domestic relationship” based on a past relationship (such as marriage or a romantic relationship which is now over) is considered to continue for at least one year after the relationship has come to an end. Where a child is born to any couple, their “domestic relationship” continues throughout the lifetime of that child and for one year after the death of the child. The court can extend these time periods if there are good reasons to do so.

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	
2. Full first names	
3. Sex male female
4. Date of birth	
5. ID number (if available)	
6. Normal home address	
7. Home telephone number	
8. What is the telephone number of the place you (the victim) are staying now?	
9. Occupation	
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.	

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 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:

If yes, explain who else lives in the residence:

.....

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:

.....

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	
2. Full first names	
3. Sex male female
4. Date of birth (if known)	
5. ID number (if known)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	
12. Other contact details for respondent	

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

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: date month year
2. Details of the most recent incident of abuse:			
3. Was a weapon used?			
..... no			
..... yes			
describe weapon:			
4. Were you (the victim) physically injured?			
..... no			
..... yes			
give details:			
5. Did you (the victim) see a doctor or a nurse or other health practitioner			
..... no			
..... yes			
give details:			
date:			
name of doctor or nurse or health practitioner (if known):			
name of hospital or clinic or health facility:			
what treatment did you (the victim) get?			

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

..... no

..... yes

name:

contact details of this person:

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

..... no

..... yes

names:

ages:

give details:

b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**1. How long has the abuse been happening?:****2. When was the first incident of abuse?**
(if you can remember).....
date.....
month.....
year**3. What kind of abuse has happened in the past?****4. Has the abuse been happening more often lately?**

..... no

..... yes
explain:**5. Has the abuse become more severe lately?**

..... no

..... yes
explain:**6. Does the respondent (the person who commits the abuse) own a weapon?**

..... no

..... yes
what kind of weapon?.....

7. Has the respondent used or threatened to use a weapon against you (the victim) in the past?..... **no**..... **yes**

explain:

8. Have you (the victim) ever been physically injured by past abuse?..... **no**..... **yes**

give details:.....

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):

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

name of hospital or clinic or other health facility:

what treatment did you get?

10. Has anyone else seen or heard any past incidents of abuse?..... **no**..... **yes**

name:

contact details of this person:

11. Did any children see or hear past incidents of abuse?..... **no**..... **yes**

names:

ages:

give details:

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

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

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:

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:

16. List other people who are being affected by the violence:**Name:**

Age:

Relationship to you (the victim):

How this person is being affected?

Does this person live with you (the victim)? yes

..... no

Name:

Age:

Relationship to you (the victim):

How this person is being affected?

Does this person live with you (the victim)? yes

..... no

Name:

Age:

Relationship to you (the victim):

How this person is being affected?

Does this person live with you (the victim)? yes

..... no

Name:

Age:

Relationship to you (the victim):

How this person is being affected?

Does this person live with you (the victim)? yes

..... no

Name:

Age:

Relationship to you (the victim):

How this person is being affected?

Does this person live with you (the victim)? yes

..... no

Name:

Age:

Relationship to you (the victim):

How this person is being affected?

Does this person live with you (the victim)? yes

..... no

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:**

.....

..... **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:

.....

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

.....

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

.....

..... **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:

age:

conditions (if any):

consent in respect of this person is attached: yes

name:

age:

conditions (if any):

consent in respect of this person is attached: yes

name:

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:.....

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:

Give reasons:

..... **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:

.....

Give reasons:

.....

..... **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:

age:

monthly amount:

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:

..... **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:

visiting arrangement:

other conditions:

name:

visiting arrangement:

other conditions:

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:

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

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.

.....
SIGNATURE

.....
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 14
(Regulation 14)
RECORD OF DOMESTIC VIOLENCE INCIDENT
Section 27(1) of the Combating of Domestic Violence Act

POLICE STATION	O. B. NUMBER	NAME OF POLICE OFFICER
-----------------------	---------------------	-------------------------------

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

1. Surname	
2. Full first names	
3. Sex male female
4. Date of birth	
5. ID number (if available)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	
12. The complainant is theof the person who has committed the violence. (girlfriend/boyfriend, wife/husband, ex-wife/ex-husband, sister/brother, mother/father, etc)	
13. Does the complainant share a residence with the respondent (the person who committed the domestic violence)?no yes unknown	

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

1. Surname	
2. Full first names	
3. Sexmale female
4. Date of birth (if known)	
5. ID number (if known)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	

SECTION C. THE DOMESTIC VIOLENCE INCIDENT

Date of incident:

Date incident reported to police: **Time reported:**

The domestic violence took the form of (tick all that apply):

- 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; and
- exposing a child to acts of domestic violence against another person.

Give a brief description of the incident:

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

..... **A weapon was used in the domestic violence. (describe:)**

..... **The complainant had visible injuries (describe:)**

..... **The complainant sought medical assistance.**

..... **Previous incidents of domestic violence involving the same parties have been reported.**

Provide details and dates if possible:.....

.....

..... **Children or dependants of the victim are possibly at risk.**

Give names, ages and details if possible:.....

.....

SECTION D. POLICE ACTION TAKEN

- A charge was laid
- by the victim of the violence.
- by someone acting on behalf of the victim of the violence.

Give case number:

- A charge was initially laid but later withdrawn by the complainant.
- A formal warning was given.
- The complainant was assisted to apply for a protection order.
- Additional police protection was supplied to the complainant (explain:.....)
- The complainant was taken to a shelter or other safe place.
- The complainant was referred to a social worker or counselling group.
- The complainant was transported to a clinic or hospital for medical attention.
- The complainant was assisted to collect personal belongings in safety.

Other:

.....

.....
Signature of police officer completing incident record

.....
Date

VULNERABLE WITNESSES

Trials in rape cases are covered by the Criminal Procedure Act 51 of 1977, as amended by the Criminal Procedure Amendment Act 24 of 2003 (which came into force in December 2003) and the Criminal Procedure Act 25 of 2004 (not in force at the time of publication). This is a summary of the key legal provisions on vulnerable witnesses.

WHO IS A VULNERABLE WITNESS?

- 1) anyone **under age 18**
- 2) any **victim of a sexual offence**
rape, attempted rape, indecent assault, sexual offences under the Combating of Immoral Practices Act, etc.
- 3) a **victim of any offence involving domestic violence**
- 4) a witness who has some **mental or physical disability**
if the disability creates special needs or may lead to undue stress
- 5) a witness who may be **intimidated** by the accused or any other person
such as a case involving family members, or members of a criminal gang
- 6) **any person who may suffer undue stress while testifying**
- 7) **any person who needs special arrangements to give full and proper evidence.**

*Section 158A(3), Criminal Procedure Act 51 of 1977
Section 189(1), Criminal Procedure Act 25 of 2004*

WHAT SPECIAL ARRANGEMENTS CAN BE USED FOR VULNERABLE WITNESSES?

The following special arrangements for giving evidence can be made (a) at the request of the prosecutor or the accused, (b) at the request of the witness in question or (c) on the court's own motion.

The factors to be considered in respect of any special arrangement are:

- the interest of the state in getting complete and accurate evidence
- the interests and well-being of the witness concerned
- the availability of the necessary equipment and venues
- the interests of justice in general.

*Section 158A(1) and (7), Criminal Procedure Act 51 of 1977
Sections 189(1) and (6), Criminal Procedure Act 25 of 2004*

- 1) The trial can be held in an **alternative venue**, which will be less formal and less intimidating than a courtroom.

*Section 158A(2)(a), Criminal Procedure Act 51 of 1977
Section 189(3)(a), Criminal Procedure Act 25 of 2004*

For example, a small child might feel more comfortable testifying in the magistrate's office. This provision also makes it possible to utilise a venue where any person who might upset the witness can be placed out of the witness's sight.

- 2) The court can **adjourn the trial and re-convene it in an alternative venue** which is more suitable for the vulnerable witness during that witness's testimony.

Sections 189(3)(d) and 191, Criminal Procedure Act 25 of 2004

- 3) The **furniture in the courtroom can be re-arranged or changed**, or people can be directed to sit or stand in places different from what is usual.

Section 158A(2)(b), Criminal Procedure Act 51 of 1977

Section 189(3)(b), Criminal Procedure Act 25 of 2004

For example, a young child may be too short to see and be seen properly while sitting in the usual witness box.

- 4) The witness may be allowed to **testify behind a one-way screen** or by means of closed-circuit television.

Section 158A(2)(d) and (6), Criminal Procedure Act 51 of 1977

Section 189(3)(ii), Criminal Procedure Act 25 of 2004

The Katutura Regional Magistrates' Court has already been equipped with a Victim Friendly Court Room that has these facilities. The accused must be able to see the witness, but the witness does not have to see the accused. For example, a victim of rape or domestic violence might feel less intimidated if she does not have to look at the accused. The accused's legal representative, the prosecutor and the presiding officer must be able to see the witness.

- 5) A **support person** can accompany witnesses while they are testifying.

Section 158A(2)(c) and (4)-(5), Criminal Procedure Act 51 of 1977

Section 189(3)(c) and (4)-(5), Criminal Procedure Act 25 of 2004

For example, a young child could speak to the court while sitting on the lap of a support person who is family member or a teacher (as long as that support person is not going to be giving further testimony in the same case).

The support person can stand or sit near the witness and give physical comfort to the witness as necessary. The support person can also interrupt the proceedings to alert the presiding officer to the fact that the witness is becoming upset. The presiding officer can then take appropriate steps, such as calling a short recess.

The support person may not help the witness answer questions or instruct the witness on what to say.

The presiding officer can instruct the support person not to communicate with the witness during testimony, or to refrain from doing anything which might interfere with the evidence.

- 6) The presiding officer may authorise **any other steps** that he or she thinks "expedient and desirable" to facilitate the giving of evidence by a vulnerable witness.

Section 158A(2)(e), Criminal Procedure Act 51 of 1977

Section 189(3)(e), Criminal Procedure Act 25 of 2004

For example, the presiding officer might take some time to explain to a vulnerable witness how the procedure is going to work before the testimony begins.

WHAT OTHER SPECIAL MEASURES APPLY?

The following provisions apply to all witnesses, or to specific categories of witnesses, rather than to “vulnerable witnesses”.

- 1) **Any witness under age 14 is NOT required to give an oath or an affirmation before giving evidence.** The presiding officer must simply warn the witness to tell the truth, the whole truth and nothing but the truth.

*Section 164(1), Criminal Procedure Act 51 of 1977
Section 185(1)(a), Criminal Procedure Act 25 of 2004*

- 2) **Evidence will be received from any witness who appears to be able to give intelligible testimony.** There is no longer any reason for witnesses to be subjected to confusing questions about their ability to tell the difference between right and wrong, or between truth and lies. Anyone, including a child, who appears able to give intelligible testimony will be allowed to testify. The weight which should be given to the evidence will be determined by the presiding officer in light of the usual criteria for judging credibility.

*Section 164(3), Criminal Procedure Act 51 of 1977
Section 185(2), Criminal Procedure Act 25 of 2004*

- 3) **The evidence of a child shall not be regarded as being unreliable just because the witness is a child. The court is no longer required to treat the evidence of a child with special caution just because the witness is a child.** The reliability of a child’s evidence and the weight that should be given to it must be assessed in the same way as the evidence of any other witness.

*Section 164(3), Criminal Procedure Act 51 of 1977
No corresponding provision in the Criminal Procedure Act 25 of 2005*

- 4) **The presiding officer now has strengthened powers to place strict limitations on the use of irrelevant cross-examination to badger or to intimidate any witness.** If cross-examination is taking an unreasonably long time, the presiding officer can ask the cross-examiner to show the relevance of the line of questioning before he or she is allowed to proceed. (This discussion can take place in the absence of the witness if necessary.) The presiding officer can also set reasonable limits on the length of cross-examination, or place reasonable restrictions on certain lines of questioning.

*Section 166(1), Criminal Procedure Act 51 of 1977
Section 187(3), Criminal Procedure Act 25 of 2004*

- 5) **Child witnesses may be cross-examined through the presiding officer or through an intermediary.** An intermediary is a person who has the qualifications gazetted by the Minister of Justice for this purpose. (For example, the Minister might approve social workers or psychologists as intermediaries.) The presiding officer or the intermediary may re-state the questions, simplifying them or re-phrasing them if necessary. The essential meaning of the question must not be changed. The purpose of this provision is to make sure that lawyers do not try to intimidate or confuse a witness with a hostile tone of voice or complicated questions.

*Section 166(4)-(5), Criminal Procedure Act 51 of 1977
Section 187(4) and 193, Criminal Procedure Act 25 of 2004*

In terms of Act 51 of 1977, children under age 13 MUST be questioned through the presiding officer or an intermediary. The presiding officer’s power to re-state questions applies to children under age 14. An intermediary may be used for any child under age 18.

- 6) **Medical records prepared by a medical practitioner who treated a victim may be used in a criminal case as *prima facie* proof that the victim suffered the injuries recorded in the documents, even if the medical practitioner in question is not available to testify personally.** The records are not admissible as evidence of any *opinions* stated unless the medical practitioner is available to testify. This provision is designed to take care of situations where doctors had left the country or were otherwise unavailable. Similar arrangements were already in place in the Criminal Procedure Act for documents prepared by other professionals.

Section 212(7A), Criminal Procedure Act 51 of 1977
Section 238(9), Criminal Procedure Act 25 of 2004

- 7) **There are now added possibilities for admitting information given by children under age 14 prior to the trial**, such as statements to social workers or police officers, to avoid the necessity of asking the child to repeatedly recount the details of a traumatic experience. The previous statement can be used as evidence to prove a fact contained in the statement if (a) the child is unavailable and (b) the statement “considered in the light of all the surrounding circumstances contains indications of reliability,” OR (c) if the child is present to confirm that he or she made the previous statement. This applies to (a) a statement made on an audiotape or a videotape, if the person who took the statement is in court to give evidence about the procedure (b) a written statement, if the person who took the statement is in court to give evidence about the procedure; or (c) oral evidence about the previous statement by the person to whom it was made (if no audiotape, videotape or written statement is available).

Section 216A, Criminal Procedure Act 51 of 1977
Section 245(3), Criminal Procedure Act 25 of 2004

In terms of Act 25 of 2004, such previous statements are admissible if (a) the child who made the statement is considered capable of giving evidence on any matter contained in the statement; (b) the statement, considered in light of the surrounding circumstances, contains “indications of reliability”; and (c) having regard to any potential prejudice to any party, it is in the interests of justice that the statement be admitted, OR (d) if the child is present to confirm that he or she made the previous statement.



Legal Assistance Centre
2005