



# Stalking



## Imagine ...

- (1) ... you are a 15-year-old girl in Windhoek. Whilst out with friends, you notice a strange man old enough to be your teacher or your parent. He makes you feel uncomfortable and nervous because of the way he is staring at you. Is he watching you or merely staring in your direction? Your group crosses the street and enters the first store you see. He follows close behind for the next half hour, shadowing your every movement and trying to make eye contact. Your heart is pounding with fear. A week later, the same man follows you as you are leaving the cinema. Once again, he says nothing but just follows you, even when you suddenly change direction. What does he want? Will he try to hurt you?
- (2) ... you are an independent 28-year-old working woman. After work, you always catch a taxi behind the shop where you buy groceries. The first time you notice a man watching you catch your taxi, you do not think much of it. When you see the same man watching you a second time, you still brush it off as coincidence. But by the third time, you start to feel suspicious that he is waiting for you. One evening after work you climb into a taxi. He runs over to it and tries to climb in beside you. You manage to jump out before the driver takes off. From that day on, you walk further up the street before looking for a taxi, to avoid the stranger but will he still follow you?
- (3) ... you are a middle-aged man. Several years ago, you had a “one-night stand” with a woman that you met in a bar. You did not even exchange names. You know that it was unwise, but it happened. You are now happily married. But the woman you once slept with has somehow found you and keeps following you and your wife around town, and asking other people to tell her your name. You do not know what she really wants, but the situation is making you and your wife feel very anxious and uncomfortable.

All of these are real situations reported to the Legal Assistance Centre.

## What is stalking?

Stalking is not a legal term in Namibia. It is a general term used to describe the behaviour of wilfully and repeatedly harassing another person in circumstances which would cause reasonable persons to be afraid for their safety.



## Stalking behaviour

Stalking generally involves a pattern of actions, some of which may be legal and socially acceptable in isolation. For example, a stalker may follow another person, telephone them, or send them text messages or gifts. Such actions are not illegal or offensive on their own, but they can be intimidating or scary if they occur repeatedly and against the will of the recipient.



**Communicating**, such as making constant phone calls, SMS messages, letters, emails or even graffiti. This can also include making rude gestures toward the victim, sending gifts that range from seemingly “romantic” (such as flowers or candy) to perverted (pornographic objects).

**Surveillance**, such as following the victim from place to place by car or foot; waiting at the victim’s house, school, workplace or some other place the victim goes.

**Manipulative behaviour**, such as threatening to commit suicide in an attempt to get the victim to notice or stay with the stalker.

**Defamation**, such as spreading lies about the victim.

**Indecent exposure**, such as repeatedly showing his or her private body parts to the victim.

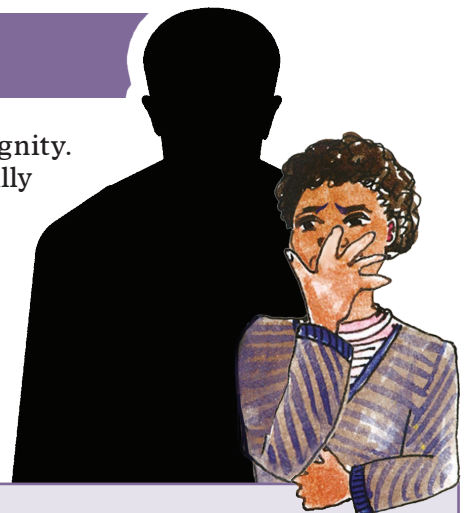
**Threats and violence**, such as making threats of physical harm or property damage, or actual physical attacks.

**Cyberstalking**, such as repeatedly sending unwelcome, abusive, threatening or obscene messages as texts, emails or WhatsApp messages or through social media platforms such as Facebook or Twitter.

**Indirect stalking**, such as using third parties to carry out stalking behaviours (such as asking another other person to deliver gift packages to the victim).

## The impact on the victim

Stalking can violate the Constitutional rights of privacy and dignity. The impact of stalking is often wide-ranging, severe and psychologically traumatic. Many victims feel constantly alert, vulnerable, out-of-control, stressed and anxious. Dealing with stalking can be extremely draining for the victim. A victim may experience a loss of trust, long-term emotional distress and significant disruption in his or her daily life. Many seek psychological counselling. The emotional resilience of a victim tends to weaken with each new incident, and may be compounded by concerns about the effects on others, such as members of the victim’s family.



*“I wake up every morning, wondering if this is the day I will die at the hands of my stalker. I spend the day looking over my shoulder for him. I jump every time the phone rings. I can’t sleep at night from worrying, and when I do sleep, I have nightmares of him. I can’t escape him, not even for a minute. I never have a moment’s peace, awake or asleep.”*

– a South African stalking victim



## What protections already exist?

There are a few laws which can be used to address stalking behaviour in Namibia, although there is no legislation aimed specifically at this behaviour.

### **Domestic relationships: *Combating of Domestic Violence Act 4 of 2003***

Where stalking occurs in a domestic relationship, it can be addressed by the Combating of Domestic Violence Act. This law applies to people in domestic relationships: spouses, parents and children, extended family members with a domestic connection, romantic partners of the opposite sex, and past partners (for a year after a break-up, or longer if there are children). The definition of domestic violence in the law includes both *intimidation* and *harassment*. A victim of stalking in a domestic relationship can seek a protection order from the magistrate's court, ordering the offender to stop his/her behaviour. Violation of a protection order can result in a fine up to N\$8000 or up to two years imprisonment, or both.

### **Workplace: *Labour Act 11 of 2007***

The definition of *sexual harassment* in the Labour Act protects employees against some forms of stalking in the workplace. Sexual harassment is defined as unwanted physical conduct of a sexual nature toward an employee where the victim has made it known to the offender that the conduct is offensive, or where the offender should have reasonably known that such conduct was unacceptable. For example, it can be sexual harassment if a boss slaps an employee on the bottom or touches an employee's genitals or breasts. An employee who has to quit his or her job to escape sexual harassment is entitled to the same remedies as an unfairly dismissed employee.

### **Criminal offences: *Crimen injuria, assault or trespass***

A stalker could also be charged with the offence of *crimen injuria*, which is the violation of the dignity or privacy of another person. The behaviour must be serious, unlawful and intentional. In one case, for example, a 47-year-old man was found guilty of *crimen injuria* when he followed a 24-year-old woman from place to place in a public library, stared into her face, stood closely behind her and followed her to her car. If there is physical force involved in the stalking, the offence could be prosecuted as an *assault*. Stalking behaviour can also be addressed by the crime of *trespass* if the behaviour extends beyond the public realm and onto private land or buildings.

## Civil remedies:

### ***Interdicts***

An interdict is a court order instructing someone to stop potentially-damaging behaviour. However, it is not possible to obtain an interdict unless the identity of the stalker is known. Furthermore, obtaining an interdict is expensive because it generally requires a lawyer. This is also not the best solution in emergency situations, even though it is possible for the court to consider an interdict on an urgent basis if persuasive reasons are presented.

### ***Civil claims for damages***

The drawbacks of an interdict also apply to this remedy, not to mention the fact that damages caused by stalking – such as the mental suffering – are difficult to quantify. Furthermore, forcing the stalker to pay damages would not necessarily discourage further stalking.

### ***Peace orders***

The Criminal Procedure Ordinance 34 of 1963 grants courts the power to bind persons to keep the peace. If a person complains, under oath, that someone else is behaving violently, threatening them or their property, or generally provoking a breach of the peace, a magistrate may order that person to appear before the court and deposit up to N\$2000 for a period not exceeding six months. If the offending behaviour continues, the money is forfeited to the court. The victim does not have to be in a domestic relationship with the accused to obtain a peace order.

## South African legislation: Protection from Harassment Act 17 of 2011

In April 2013, the Protection from Harassment Act came into force in South Africa. This Act defines harassment as directly or indirectly engaging in conduct that causes harm – or inspires a reasonable fear of harm – to the complainant or a related person. The harm can be mental, psychological, physical or economic. Harassing behaviour can include unreasonably following or watching another person, communicating verbally or electronically, sending messages or objects, or engaging in sexual harassment.

This law does not require the parties to be in any kind of present or past domestic relationship. Any person who has been harassed can apply for a protection order against the harasser. A temporary protection order can be issued even before the harasser is notified of the application. In cases where there is a fear of immediate harm, the court can even issue a protection order outside of normal working hours.

If the harasser is a stranger, the court can order the police to try to find and identify this person. Anyone being harassed by a stranger can also go directly to the police to request an investigation to discover the harasser's identity – and the police have a legal duty to investigate such cases. In a case where the harassment takes the form of electronic communications sent anonymously, the court can order the relevant communications service provider to assist in identifying their source.

The court can issue a protection order directing the respondent not to commit or attempt further acts of harassment, either directly or by enlisting the help of another person. The court may also impose other conditions on the respondent to protect the safety of the complainant or a related person. The court can order the police to seize any weapons in the possession or control of the harasser, to accompany the complainant to a specified place to collect personal belongings, or to investigate the matter with a view to instigating appropriate criminal charges against the harasser.

Violation of a protection order can be punished by a fine or by imprisonment for up to five years.

## Recommendations for Namibia

- (1) **There should be legal remedies which apply in any situation where one person stalks another person** – not just in domestic relationships or employment contexts. Namibia needs to fill in the gaps in the law.
- (2) **The definition of stalking should be broad enough to cover forms of harassment other than violence or threats.** This is another gap in the law which makes it hard to get help for behaviours such as watching another person, or following them, or repeatedly sending them unwelcome messages.
- (3) **Stalking should be a criminal offence.** Stalking behaviour should be punishable whenever the stalker knew – or reasonably should have known – that his or her actions would cause discomfort or distress. The focus should be on the acts of the stalker, rather than on the stalker's motivation. Some stalkers may misguidedly believe that their actions are welcome, but this should not be a defence if any reasonable person in the stalker's position would have realised that the actions in question would cause distress, alarm or annoyance to any reasonable person in the victim's position. There should be a range of penalties for stalking of varying degrees of seriousness.
- (4) **The law on stalking should provide for protection orders.** These could be similar to those available under Namibia's Combating of Domestic Violence Act, or under the new South African law on harassment. Protection orders could be granted on their own, or while a criminal case is in process.
- (5) **The law should make exceptions for acceptable behaviour which might otherwise fall under the definition of stalking.** For example, the police might need to follow a crime suspect as part of a legitimate investigation, and this should not be considered stalking.



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