

chapter 5

# Implementation of the Combating of Domestic Violence Act

*“Domestic violence has a devastating domino effect on families, their communities and society at large.”*

S v Gabriel [2011] NAHC 45 (23 February 2011)

# 5.1 PURPOSE AND SCOPE OF STUDY

This study was first conceptualised by the Legal Assistance Centre in 2006 as a way to collect comprehensive information on the implementation of the Combating of Domestic Violence Act through the examination of police records, court files and interviews with key service providers. The Legal Assistance Centre intended to make this study a companion piece to its study of the Operation of the Combating of Rape Act.<sup>1</sup>

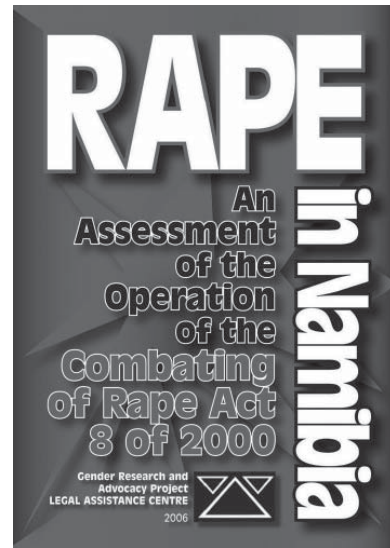
The Combating of Domestic Violence Act provides both civil and criminal remedies for domestic violence. Persons who have suffered domestic violence can apply to a magistrate's court for a protection order with restrictions appropriate to the situation, or they can approach the police to lay a charge or to request that a formal written warning be issued to the perpetrator. The law creates no new offences, but classifies certain existing offences as "domestic violence offences" where they take place in the context of domestic relationships, for the purpose of applying special procedural measures which take into account the nature of the relationship between perpetrator and victim.

The Legal Assistance Centre's original intention was to collect information on the implementation of both the civil and criminal aspects of the law. However the intention to investigate domestic violence incidents reported to police was abandoned, for the reasons explained below.

## 5.1.1 Problems with police records

It is very difficult to collect data on domestic violence from criminal dockets, because the dockets carry no labelling to separate crimes within domestic relationships from crimes outside domestic relationships. The only way to determine whether the crime occurred within a domestic relationship is to examine the statements and notes inside the dockets for indications of the relationship between the parties – a time-consuming task.<sup>2</sup>

The Combating of Domestic Violence Act, anticipating this problem, includes a provision requiring record-keeping by police on domestic violence incidents which involved any type of police intervention.<sup>3</sup> The Act also charges the Minister responsible for police to table an annual report in the National Assembly on the statistics collected.<sup>4</sup>



<sup>1</sup> Legal Assistance Centre (LAC), *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Windhoek: LAC, 2006. This extensive study was published in two parts – a full report and a summary of key findings.

<sup>2</sup> As explained in Chapter 4, this method was successfully used in a study of reported cases of domestic violence carried out jointly by the Law Reform and Development Commission and the Legal Assistance Centre, with the aid of the Namibian Police, but it took a long time and had to be limited to a small sample. Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999.

<sup>3</sup> Combating of Domestic Violence Act 4 of 2003, section 27.

<sup>4</sup> *Id.*, section 28.

excerpt from  
**COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003**

***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.*

The regulations issued under the Act include “*Form 14: Record of Domestic Violence Incident*” which police are supposed to complete in respect of every domestic violence incident which comes to their attention. Since police have limited time to devote to extra paperwork, the form is a simple four-page document designed to collect only basic information about the incident and the police action taken.<sup>5</sup>

During the pilot phase of the study, the Legal Assistance Centre attempted to access Form 14 records at Woman and Child Protection Units in Katutura and Oshakati and from the Ondangwa Police Station. At all of these locations, police were aware of the requirement to keep incident reports but cited various reasons for not doing so, including the lack of incident forms and photocopying machines within the stations. The Legal Assistance Centre was also unable to locate any statistics on domestic violence tabled in the National Assembly in accordance with the Act.

We wrote to the Inspector-General of Police in August 2006 to enquire about this issue. We received a response in October 2006 stating erroneously that there was no “*proforma*” for capturing the required information.<sup>6</sup> In March 2007 the Legal Assistance Centre replied to the Inspector-General, respectfully drawing his attention to Form 14 in the hope that it could be put into use as envisaged by the Act to facilitate information-gathering.

However, as a result of the fact that Form 14 was not in general use at the beginning of our study, we decided to focus our enquiry on protection orders, given that this was the aspect of the law which was new to Namibia.

<sup>5</sup> Government Notice 235 of 17 November 2003 (Government Gazette 3094), at 56-59. The form takes up 4 pages, but the current lay-out involves a lot of unused space. The form could easily fit into 3 pages.

<sup>6</sup> Letter to Wairimu Munyinyi from the Inspector-General of the Namibian Police, dated 3 October 2006, on file at the Legal Assistance Centre.

In 2011 we again contacted a sample of Woman and Child Protection Units by telephone to ask what records were being kept of domestic violence cases. We received a mixed response from staff at the seven units contacted. The Sergeant at the Keetmanshoop unit was the only person who confirmed, without prompting, that Form 14 is being used. The staff at the Mariental and Opuwo units also confirmed that they use Form 14, after being asked about this form by researchers. The Otjiwarongo unit confirmed that they record all gender-based violence cases in a register but stated that they were not aware of Form 14. The staff at the Windhoek, Eenhana and Oshakati units stated that they do not use Form 14. Chief Inspector Cronje, National Co-ordinator for the Woman and Child Protection Units, confirmed that Form 14 is not yet being routinely used by the Woman and Child Protection Units.

**We would strongly recommend that Form 14 (or some similar form) be put into systematic use by police to facilitate future research on domestic violence cases and police response to them.**

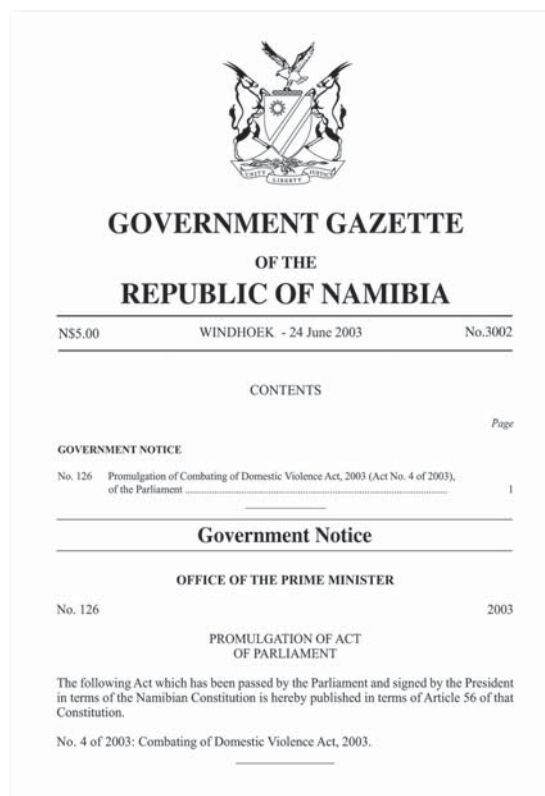
## 5.2 METHODOLOGY

The methodology chosen for the study was to examine protection order files at a national selection of magistrates' courts. We applied for and received permission from the Chief Magistrate for access to the court files for this purpose.<sup>7</sup>

In order to design our sample, we first collected information on the total number of protection order applications received at every court in Namibia from 2004-2006. The starting point of 2004 was chosen because this was the first full calendar year in which the law was in operation. The end-point of 2006 was chosen because we planned that our field research would take place mostly during 2007. Total numbers of protection order applications received by magistrates' courts were obtained by contacting all magistrates' courts by telephone to request this information. A list of courts was obtained from the Ministry of Justice.

Statistics cited in the text in this section have all been rounded to the nearest whole number, with decimal places of less than 0.5 rounded down and decimal places of 0.5 or greater rounded up. The figures in the tables are rounded to the nearest tenth of a percent.

Readers may notice that the percentages shown in the tables sometimes differ from those in the accompanying charts and graphs. The reason for this is that the tables generally include missing or unknown cases, while the charts generally exclude them. The use of two different methods of presentation is intended to give a fuller picture of the statistics presented.



<sup>7</sup> The "Chief Magistrate" was at that stage designated "Chief of Lower Courts".

## 5.2.1 Sample of protection order applications

The total number of protection orders applications received by magistrates' courts nationwide during 2004 – 2006 was 1500. Because this was not a very high number, we considered the possibility of collecting data on every application. After consultation with our statistical analyst, Christa Schier, we decided to exclude a few courts from our study where they had only small numbers of protection orders, in order to economise on our field research budget – while still ensuring that we covered courts serving both large and small populations.

**TABLE 1**

Protection order applications at all magistrates' courts, 2004-2006 (total universe of protection order applications)					
Magistrate's court	2004	2005	2006	Total	Percent of total
Aranos	0	0	0	0	0.0%
Bethanie	0	0	1	1	0.1%
Eenhana	0	0	1	1	0.1%
Gobabis	0	13	16	29	1.9%
Grootfontein	5	6	14	25	1.7%
Karasburg	0	3	8	11	0.7%
Karibib	1	1	10	12	0.8%
Katima Mulilo	0	3	7	10	0.7%
Katutura	47	187	319	553	36.9%
Keetmanshoop	15	36	66	117	7.8%
Khorixas	0	4	1	5	0.3%
Lüderitz	6	16	24	46	3.1%
Maltahöhe	0	2	1	3	0.2%
Mariental	17	12	15	44	2.9%
Okahandja	4	14	24	42	2.8%
Okakarara	0	0	1	1	0.1%
Omaruru	0	1	2	3	0.2%
Ondangwa	3	10	17	30	2.0%
Opuwo	1	3	10	14	0.9%
Oranjemund	0	0	1	1	0.1%
Oshakati	6	21	40	67	4.5%
Otavi	0	0	0	0	0.0%
Otjiwarongo	16	5	13	34	2.3%
Outapi	1	4	9	14	0.9%
Outjo	1	3	4	8	0.5%
Rehoboth	14	48	18	80	5.3%
Rundu	0	15	14	29	1.9%
Swakopmund	22	43	15	80	5.3%
Tsumeb	0	14	9	23	1.5%
Usakos	3	6	6	15	1.0%
Walvis Bay	49	72	81	202	13.5%
<b>Total</b>	<b>211</b>	<b>542</b>	<b>747</b>	<b>1500</b>	<b>100.0%</b>
<b>Percent (per year)</b>	<b>14.1%</b>	<b>36.1%</b>	<b>49.8%</b>	<b>100.0%</b>	

Information on the total number of protection order applications was collected telephonically from each court. The locations highlighted in orange in the table indicate the locations where data was collected. The locations coloured in grey had no protection order applications during the period studied.

After examining the numbers more closely, we decided to adjust the sample to select only every second application from the Katutura Magistrate's Court. Otherwise, the Katutura court would dominate the survey because it accounted for almost 37% of all protection order applications in Namibia for 2004-2006.

TABLE 2

Original sample and adjusted sample – showing the change made to the sample from the Katutura Magistrate’s Court												
Selected magistrates’ courts	Original sample						Adjusted sample					
	2004	2005	2006	Universe total	Percent of total in universe	Percent of total in original sample	2004	2005	2006	Adjusted total	Percent of total in adjusted sample	
Gobabis	0	13	16	29	1.9%	2.1%	0	13	16	29	2.6%	
Katima Mulilo	0	3	7	10	0.7%	0.7%	0	3	7	10	0.9%	
Katutura	47	187	319	553	36.9%	39.3%	24	94	160	278	24.6%	
Keetmanshoop	15	36	66	117	7.8%	8.3%	15	36	66	117	10.3%	
Lüderitz	6	16	24	46	3.1%	3.3%	6	16	24	46	4.1%	
Mariental	17	12	15	44	2.9%	3.1%	17	12	15	44	3.9%	
Okahandja	4	14	24	42	2.8%	3.0%	4	14	24	42	3.7%	
Omaruru	0	1	2	3	0.2%	0.2%	0	1	2	3	0.3%	
Ondangwa	3	10	17	30	2.0%	2.1%	3	10	17	30	2.7%	
Opuwo	1	3	10	14	0.9%	1.0%	1	3	10	14	1.2%	
Oshakati	6	21	40	67	4.5%	4.8%	6	21	40	67	5.9%	
Outapi	1	4	9	14	0.9%	1.0%	1	4	9	14	1.2%	
Outjo	1	3	4	8	0.5%	0.6%	1	3	4	8	0.7%	
Rehoboth	14	48	18	80	5.3%	5.7%	14	48	18	80	7.1%	
Rundu	0	15	14	29	1.9%	2.1%	0	15	14	29	2.6%	
Swakopmund	22	43	15	80	5.3%	5.7%	22	43	15	80	7.1%	
Tsumeb	0	14	9	23	1.5%	1.6%	0	14	9	23	2.0%	
Usakos	3	6	6	15	1.0%	1.1%	3	6	6	15	1.3%	
Walvis Bay	49	72	81	202	13.5%	14.4%	49	72	81	202	17.9%	
<b>Total sample</b>	<b>189</b>	<b>521</b>	<b>696</b>	<b>1406</b>		<b>100.0%</b>	<b>166</b>	<b>428</b>	<b>537</b>	<b>1131</b>	<b>100.0%</b>	
<b>Percent (per year)</b>	<b>13.4%</b>	<b>37.1%</b>	<b>49.5%</b>	<b>100.0%</b>			<b>14.7%</b>	<b>37.8%</b>	<b>47.5%</b>	<b>100.0%</b>		
<b>Total universe</b>	<b>211</b>	<b>542</b>	<b>747</b>	<b>1500</b>			<b>211</b>	<b>542</b>	<b>747</b>	<b>1500</b>		
<b>Percent (per year)</b>	<b>14.1%</b>	<b>36.1%</b>	<b>49.8%</b>	<b>100.0%</b>			<b>14.1%</b>	<b>36.1%</b>	<b>49.8%</b>	<b>100.0%</b>		

A questionnaire was drafted and piloted in consultation with our statistical analyst. Data collection began in late 2006 and was almost complete by the end of 2007. A few outstanding locations were visited in early 2008. Data collection from the courts took a long time, partly because the Legal Assistance Centre makes use of student volunteers and interns for this job to keep the field research budget manageable.

DOMESTIC VIOLENCE QUESTIONNAIRE 2006  
QUESTIONS FROM APPLICATION FORM

Identification Form											
1	Date of Application	Day / Month / Year									
2	Region	Caprivi	01	Karas	02	Erongo	03	Hardap	04	Karas	05
3	Application Number										
SECTION A: COMPLAINT											
4	Name										
5	Apparent ethnic group										
6	Sex	Male	1	Female	2						
7	Date of birth	Day / Month / Year									
8	Occupation										
9	Residential address	Suburb:				Town:					
10	Victim is the...	Spouse	01	Boyfriend	02	Wife	03	Ex-spouse	04	Other	05
11	Does the victim have (or is expecting) a child with the respondent?	Yes	1	No	2						
12	(a) The relationship between the victim and abuser is based on:	Marriage	1	Engagement	2	Romantic relationship	3				
13	(b) If the relationship has ended, on which date did it end?	Day / Month / Year									
14	If the victim is a family member of the person who has committed the violence, explain what other connections exist between the victim and the abuser.	Sharing the same residence	1	Financial support	2	Other (specify)	3				

14	(a) Do the victim and respondent share a residence together?	Yes	1	No	2						
	(b) If yes, how long has it been shared? Number of:	Days	1	Months	2	Years	3				
	(c) If yes, explain who else lives in the residence:										
15	(a) Did the victim and respondent previously share a residence?	Yes	1	No	2						
	(b) If yes, what were the approximate dates?	From / To									
SECTION B: APPLICANT											
16	Name										
17	Apparent ethnic group										
18	Sex	Male	1	Female	2						
19	Date of birth	Day / Month / Year									
20	Occupation										
21	Residential address	Suburb:				Town:					
22	Capacity in which application is made:	Family member	1	Specify relationship to complainant	2	Police officer	3	Social worker	4	Health care provider	5
		Teacher	6	Traditional leader	7	Religious leader	8				
23	Reason for bringing the application on behalf of the complainant										

24	(a) Is there written consent attached?	Yes	1	No	2	OF YES, REFER TO SECTION C					
	(b) If not, was the complainant:	a minor	1	mentally incapacitated	2	unconscious	3	regularly under the influence of alcohol or drugs	4	victim of serious physical harm	5
SECTION C: PARTICULARS OF RESPONDENT											
25	Name										
26	Apparent ethnic group										
27	Sex	Male	1	Female	2						
28	Date of birth	Day / Month / Year									
29	Occupation										
30	Residential address	Suburb:				Town:					
SECTION D: (a) MOST RECENT INCIDENT OF ABUSE											
31	Date of most recent incident of abuse	Day / Month / Year									
32	Details of most recent incident of abuse										
33	(a) Was a weapon used?	Yes	1	No	2	Use of other object* 3					
	(b) If yes, what kind? (Please indicate if any other object was used)	Gun	01	Knife	02	Blade	03	Other	04		
		Blow	05	Boots (beaten)	06	Roller	07	Hand	08		
		Slap	09	Stick	10	Knoblock	11	Stick	12		
		Bel	13	Other	14	(Please specify)					
34	(a) Was the victim physically injured?	Yes	1	No	2						
	(b) If yes, give details										
35	(a) Did the victim see a doctor, nurse or other health practitioner?	Yes	1	No	2						
	(b) If yes, please give details										

The first pages of the Legal Assistance Centre’s 14-page questionnaire administered to magistrates’ courts in 2006-07

The sample actually collected was similar to the adjusted sample which was intended. The small discrepancies probably relate to clerical errors in counting files in response to our telephonic enquiries to collect information about the entire universe, or because files may have been difficult to locate either at that stage or during the field research.

The final sample consisted of 1122 protection order applications against 1131 respondents from 19 of the 31 magistrates' courts in place at the time of the study. The courts which were sampled were located in 12 of Namibia's 13 regions.<sup>8</sup>

**TABLE 3**

Adjusted sample and collected sample										
Selected magistrates' courts	Adjusted sample					Collected sample				
	2004	2005	2006	Adjusted total	Percent of total in adjusted sample	2004	2005	2006	Collected total	Percent of total in collected sample
Gobabis	0	13	16	29	2.6%	0	16	18	34	3.0%
Katima Mulilo	0	3	7	10	0.9%	0	3	9	12	1.1%
Katutura	24	94	160	278	24.6%	26	90	184	300	26.7%
Keetmanshoop	15	36	66	117	10.3%	15	37	67	119	10.6%
Lüderitz	6	16	24	46	4.1%	4	17	22	43	3.8%
Mariental	17	12	15	44	3.9%	14	9	13	36	3.2%
Okahandja	4	14	24	42	3.7%	4	22	18	44	3.9%
Omaruru	0	1	2	3	0.3%	0	2	1	3	0.3%
Ondangwa	3	10	17	30	2.7%	3	10	22	35	3.1%
Opuwo	1	3	10	14	1.2%	1	3	10	14	1.2%
Oshakati	6	21	40	67	5.9%	6	23	37	66	5.9%
Outapi	1	4	9	14	1.2%	1	4	8	13	1.2%
Outjo	1	3	4	8	0.7%	1	3	4	8	0.7%
Rehoboth	14	48	18	80	7.1%	14	48	19	81	7.2%
Rundu	0	15	14	29	2.6%	0	18	14	32	2.9%
Swakopmund	22	43	15	80	7.1%	22	42	14	78	7.0%
Tsumeb	0	14	9	23	2.0%	0	13	9	22	2.0%
Usakos	3	6	6	15	1.3%	2	6	6	14	1.2%
Walvis Bay	49	72	81	202	17.9%	46	47	75	168	15.0%
<b>Total sample</b>	<b>166</b>	<b>428</b>	<b>537</b>	<b>1131</b>	<b>100.0%</b>	<b>159</b>	<b>413</b>	<b>550</b>	<b>1122</b>	<b>100.0%</b>
<b>Percent (per year)</b>	<b>14.7%</b>	<b>37.8%</b>	<b>47.5%</b>	<b>100.0%</b>		<b>14.2%</b>	<b>36.8%</b>	<b>49.0%</b>	<b>100.0%</b>	

## 5.2.2 Interviews and focus group discussions

The data from the court files was supplemented by individual interviews conducted in late 2006 and throughout 2007. We conducted a total of 46 personal interviews, mainly with magistrates and clerks of court, in 19 locations. All of these interviews were conducted in person, using a semi-structured questionnaire. These interviews were supplemented by a focus group discussion with traditional leaders in 2006, an informal discussion of some draft recommendations at a training session involving police from all 13 regions at the Patrick Iyambo Training College in Windhoek in 2011 and a similar informal discussion at a training session for magistrates held in Swakopmund in 2011. The interviews and group discussions involved persons from all 13 regions.<sup>9</sup>

<sup>8</sup> The only region where no data was sampled was Ohangwena.

<sup>9</sup> No individual interviews were conducted in Kunene or Ohangwena Regions, but the informal group discussions with police and magistrates included persons from these regions.

TABLE 4

Initial interviews and group discussions			
Category of informants	Number	Locations	Regions
<b>Personal interviews</b>			
Magistrates	17	<i>14 locations:</i> Gobabis, Katima Mulilo, Katutura, Keetmanshoop, Mariental, Okahandja, Oshakati, Otjiwarango, Outapi, Rundu, Swakopmund, Tsumeb, Usakos, Walvis Bay	<i>11 regions:</i> Caprivi Erongo Hardap Karas Kavango Khomas Omaheke Omusati Oshana Oshikoto Otjozondjupa
Clerks of court	23	<i>16 locations:</i> Gobabis, Katima Mulilo, Lüderitz, Mariental, Ondangwa, Okahandja, Omaruru, Oshakati, Otjiwarango, Outapi, Rehoboth, Rundu, Swakopmund, Tsumeb, Walvis Bay, Windhoek	<i>11 regions:</i> Caprivi Erongo Hardap Karas Kavango Khomas Omaheke Omusati Oshana Oshikoto Otjozondjupa
Prosecutors	2	<i>2 locations:</i> Gobabis, Tsumeb	<i>2 regions:</i> Omaheke Oshikoto
Police / WCPU	3	<i>2 locations:</i> Gobabis, Oshakati	<i>2 regions:</i> Omaheke Oshana
Social workers	1	<i>1 location:</i> Oshakati	<i>1 region:</i> Oshana
<b>Total</b>	<b>46</b>	<b>19 locations</b>	<b>11 regions</b>
<b>Group discussions</b>			
Traditional leaders	1	<i>1 location:</i> Oshakati	<i>1 region:</i> Oshana
Police	1	<i>1 location:</i> Windhoek	participants from all 13 regions
Magistrates	1	<i>1 location:</i> Swakopmund	participants from all 13 regions
<b>Total</b>	<b>3</b>	<b>3 locations</b>	<b>participants from 13 regions</b>



## 5.2.3 Follow-up research

The preliminary analysis raised some questions which the court file data alone could not answer, so we attempted to collect information in the form of follow-up interviews on the question of why so many interim protection orders are not followed by final protection orders.

Under the Combating of Domestic Violence Act, a court is obligated to confirm an interim protection order that the respondent does not oppose. Yet, as will be discussed in more detail below, our data indicated that almost 15% of the files sampled contained an unopposed interim protection order but no final protection order, and no indication that the case was withdrawn or the interim protection order discharged. We hypothesised several possible explanations for this phenomenon.

To explore this issue, we conducted 14 follow-up interviews by telephone and in person during 2011, using a semi-structured questionnaire, with eight court clerks in seven regions, five Windhoek-based social workers and one Windhoek-based magistrate. These interviews were designed to clarify the procedure used in practice to finalise unopposed interim protection orders, to assess perceptions of complainants' understanding of the process, to identify reasons complainants may not return to court to finalise protection orders, and to discuss possible improvements to the procedure. Some of the people in the follow-up interviews were also asked questions about service of process and the procedure for dealing with breaches of protection orders, to clarify questions which had arisen during the analysis of the original data.

We attempted to locate complainants who had obtained interim protection orders, in order to discuss their understanding of the procedures to obtain final protection orders, to assess the utility and effectiveness of the interim protection orders, and to learn about their experiences with the court. In order to locate complainants, we placed an advertisement in *The Namibian*. However, the advertisement received only a small number of responses, most of which were not from complainants in domestic violence cases. The responses did not provide sufficient information to include in the study. Attempts to locate complainants who might be willing and able to shed light on these issues through other channels, such as through local women's organisations, also proved fruitless.

I WENT TO COURT AND APPLIED FOR A PROTECTION ORDER. THEY GAVE ME AN INTERIM PROTECTION ORDER. BUT I AM NOT GOING BACK TO COURT TO GET THE FINAL ORDER.

BUT AN INTERIM PROTECTION ORDER ONLY GIVES YOU TEMPORARY PROTECTION. YOU STILL NEED TO GET A FINAL ORDER. MANY PEOPLE IN NAMIBIA WHO GET AN INTERIM PROTECTION ORDER DO NOT GO BACK TO COURT TO GET A FINAL ORDER. WE WOULD LIKE TO FIND OUT WHY THIS IS.

**Have you obtained an interim protection order from the Court?**

**Would you be interested in taking part in LAC research about domestic violence?**

**Contact the Gender Research and Advocacy Project at the Legal Assistance Centre.**

Tel: 061 223356    SMS: 081 600 0098    Email: info@lac.org.na  
Fax: 088 613 693    Post: PO Box 604 Windhoek

Newspaper advertisement aimed at soliciting public input

TABLE 5

Follow-up interviews			
Category of informants	Number	Locations	Regions
Clerks of court	8	8 locations: Aranos, Karasburg, Karibib, Lüderitz, Outjo, Rundu, Tsumeb, Windhoek	7 regions: Erongo Hardap Karas Kavango Khomas Kunene Oshikoto
Social workers	5	1 location: Windhoek	1 region: Khomas
Magistrates	1	1 location: Windhoek	1 region: Khomas
<b>Total</b>	<b>14</b>	<b>8 locations</b>	<b>7 regions</b>

## 5.2.4 Terminology

### Complainant, applicant and respondent

Under the Combating of Domestic Violence Act, an application for a protection order may be made by the person who has experienced threats or acts of domestic violence, or by another interested party – a family member, police officer, social worker, health care provider, teacher, traditional leader, religious leader, employer, counsellor, or any other person who has an interest in the well-being of the person who has suffered the violence. The *complainant* is the person who actually experienced the acts of domestic violence whereas the *applicant* is any person who applies for a protection order. The applicant and the complainant are usually the same person, as victims of domestic violence most often apply for protection orders for themselves. However, it is possible for the complainant and the applicant to be different people, where the application is made by an interested party.<sup>10</sup>

In this study, to avoid confusion, we will use the term *applicant* only to refer to a person who makes a protection order application on behalf of another person. The person who was the victim of the violence will be referred to as the *complainant* in every context. Note that this differs from the use of these terms in the law.<sup>11</sup> The *respondent* is the person against whom the protection order is sought or made.<sup>12</sup>

<sup>10</sup> If a protection order is brought by an applicant who is not the complainant, the applicant must obtain written consent from the complainant unless the complainant is a minor (under the age of 21), mentally incapacitated, unconscious, under the influence of alcohol or drugs or a person at risk of serious physical harm. See Combating of Domestic Violence Act 4 of 2003, sections 1 and 4.

<sup>11</sup> The Combating of Domestic Violence Act uses the term *applicant* to refer to both a person who experienced domestic violence and applies for a protection order personally, and a person who applies for a protection order on behalf of someone else.

<sup>12</sup> Combating of Domestic Violence Act 4 of 2003, section 1.

## Mean, median and mode

The *mean* is what is commonly referred to as the average. It is calculated by taking all the values, adding them together, and dividing by the total number of cases. The weakness of this measure is that one very high or low number can skew the mean in one direction or another. The *median* is the middle value. It is calculated by listing all the values in order from lowest to highest value, and picking out the value in the middle of the list. The median is a particularly useful measure when there are some very high or low values which may have distorted the average. The *mode* is the value on the list which is repeated most frequently. This can be a particularly useful measure for showing the most typical statistic. Looking at all these measures together helps give a clear profile of case characteristics.

MEAN	MEDIAN	MODE
The average value	The value in the middle of the list	The value which occurs most frequently

### 5.2.5 Confidentiality

All researchers who extracted information from court files were careful to protect the confidentiality of the parties. During data analysis, case files were identified only with numbers. Names of the parties were not recorded, and no names of any parties are used in this report. Names appear only in connection with press reports or court cases where these names have already been published. We have taken care throughout our research not to compromise the confidentiality of any party to a protection order application, or any client of the Legal Assistance Centre.

## 5.3 PROTECTION ORDER APPLICATIONS

Most of the information presented here was drawn from the official forms contained in the court files, supplemented by notations on or in the files. We have also included information from interviews and discussions which provided insights into how to interpret the statistics or how to address the issues they raise.

Comparisons have been made with data from other Namibian studies where possible, to look for changes over time or to look for points of commonality, to test the confidence with which we can say that we are developing an accurate picture of domestic violence in Namibia.

### 5.3.1 Total protection order applications in Namibia

Early in the study, we contacted all magistrates' courts by telephone to request information on the number of protection order applications which had been made to each court. We contacted the courts again shortly prior to publication of this report to update this

information for a few more years, in order to assess continuing trends. The two information-collecting exercises produced different results for the years of overlap, 2004-2006. In most cases, the discrepancies were not serious. A small number of files may have been moved, perhaps transferred to another court or given to a prosecutor for action regarding a breach of a protection order.<sup>13</sup> However, in some locations, files for entire years seem to have disappeared – such as at Grootfontein, Lüderitz, Otjiwarongo, Outapi, Outjo and Swakopmund. A substantial number of files also appear to have gone missing in Mariental.

One Legal Assistance Centre researcher who visited eight different courts expressed shock at the high number of lost files at some courts, noting that the files for half of applications recorded as having been made in 2005 were missing in Walvis Bay. She noted further:

*Loss of records seems to be due to high staff turnover: a clerk leaves without briefing his or her successor as to the whereabouts of the files. In almost all the courts a few records had been lost. Most of the courts also had problems correctly numbering and/or registering the cases so that they generated duplicate case numbers or skipped case numbers. Every court seems to keep a register of the cases, so that these numbering problems are not too debilitating. The records themselves were generally complete. Some files even had tape recordings or transcripts of the court proceedings. In general, it was fairly easy to reconstruct what had happened from the paper records. The forms themselves, however, were sometimes not completed or pages were skipped.*<sup>14</sup>

Another researcher who visited nine different courts expressed similar concerns, noting that all of these courts lack a method for tracking files: *“If a clerk or magistrate removes a file for some reason, that file rarely makes it back. This often happens when files are pulled for reference in criminal and maintenance cases. The clerks were often able to track down the files, but the problem could be eliminated by implementing a method for tracking files.”*<sup>15</sup>

**There were a total of 1500 protection order applications nationwide during the first three full calendar years that the Combating of Domestic Violence Act was in operation – 2004 through 2006.**<sup>16</sup> During this period, all but two magistrates’ courts in the nation dealt with at least one application for a protection order; only Aranos and Otavi had no such applications. The number of applications increased dramatically over the course of the study, more than trebling nationwide between 2004 and 2006, from 211 applications in 2004 to 747 in 2006.

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<sup>13</sup> The Act does not provide for a specific procedure for managing the transfer of cases, unlike the Maintenance Act 9 of 2003 which was enacted in the same year. The Maintenance Act states that if the complainant moves beyond the area of jurisdiction of the court, the clerk must transfer the file to the new court, specifying that the clerk of the original court must retain copies of orders, judgements and records of payments and send by hand or registered post the original documents to the clerk of the new court. The clerk at the new court must number the case with the following consecutive number for maintenance cases for the year during which it was received. The regulations for the Maintenance Act (contained in Government Notice 233 of 2003, Government Gazette 3093) include a form to notify the defendant when the file is transferred. (See Maintenance Act 9 of 2003, section 24 and regulation 15.)

<sup>14</sup> Field notes of Antonia Carew-Watts, 2007. All of the researchers were asked to prepare field notes on their personal observations.

<sup>15</sup> Field notes of Erin Valentine, 2007.

<sup>16</sup> The Act came into force on 17 November 2003 (Government Notice 234 of 17 November 2003, Government Gazette 3094).

The spread of protection order applications also increased during these years: in 2004, just a little more than half of the nation's magistrates' courts had received protection order applications (17 out of 31; 55%), but by 2006, almost every court had received such applications (29 out of 31; 94%).

During the years following the study period, the number of protection order applications continued to increase. **By the end of 2008, every magistrate's court in the country had received at least one application for a protection order, and there were more than 3500 applications for protection orders during the first five full years of the law's operation.**<sup>17</sup> This increase could be a result of increasing public awareness of the Combating of Domestic Violence Act, an increase in the incidence or prevalence of domestic violence or an increased willingness on the part of victims to take action to protect themselves. It is most likely a result of some combination of these factors. **During the most recent three years for which data was collected (2006-2008) there was an average of over 900 protection order applications per year nationwide.**

As Table 8 indicates, the number of applications at individual courts over the five years after the Act came into force ranged from a minimum of one protection order application (at Aranos, Oranjemund and Otavi) to a maximum of 1381 protection order applications at Katutura (Windhoek) (39% of the 3542 protection order applications made nationwide during that period).

**The highest numbers of applications in the first five years of the law's operation were, predictably, made in the courts which serve areas with larger population concentrations – Katutura (39% of the total number of applications), Walvis Bay (9%), Swakopmund (7%), Oshakati (6%). High numbers of applications were made, more surprisingly, in Keetmanshoop (8%), Lüderitz (4%), and Mariental (3%) – all significantly exceeding the percentage of the urban population in these centres.** Several courts serving smaller populations had only a single application for a protection order during this five-year period (Aranos, Oranjemund and Otavi), while Okakarara and Khorixas received only 5 applications and Bethanie received only 7.

**TABLE 6**

Percent of urban population compared to percent of protection orders, 2004-2008			
Town	Population*	Percent of total urban population	Percent of protection orders**
Windhoek	233 529	38.7%	39.0%
Walvis Bay	43 611	7.2%	9.4%
Rundu	36 964	6.1%	2.3%
Oshakati	28 255	4.7%	5.8%
Swakopmund	23 808	3.9%	7.0%
Katima Mulilo	22 134	3.7%	0.7%
Rehoboth	21 308	3.5%	3.5%
Otjiwarongo	19 614	3.2%	1.7%
Keetmanshoop	15 778	2.6%	8.4%
Tsumeb	14 929	2.5%	1.4%
Lüderitz	13 295	2.2%	3.8%
Mariental	9 836	1.6%	3.0%

\* Urban population figures from Republic of Namibia, *2001 Population and Housing Census: National Report, Basic Analysis with Highlights*, July 2003: total urban population = 603 612

\*\* The figures in this column are based on Table 8 on page 255.

<sup>17</sup> Because the tallies provided by the magistrates' courts were not consistent during the two different information-collection exercises, it is not possible to give an exact total.

TABLE 7

### Protection order applications in all magistrates' courts in first five full years of operation of Combating of Domestic Violence Act, 2004-2008

We contacted all the magistrates' courts in the country telephonically in 2007 to ask for figures on applications for protection orders in 2004-2006. The figures collected in this way are the ones noted in **orange** in this table. In order to check and extend our data, we contacted all the courts in the country again telephonically, during either 2009 or 2011, to request data for the years 2004-2008. The figures collected in this follow-up exercise are the ones noted in **black** in this table. The column showing totals at the right uses the larger figure where these two data collection exercises resulted in divergent information.

Magistrates' courts	2004	2004	2005	2005	2006	2006	2007	2008	Total five years 2004-08 using largest numbers
Aranos	0	0	0	0	0	0	0	1	1
Bethanie	0	0	0	0	1	0	3	3	7
Eenhana	0	0	0	0	1	0	0	9	10
Gobabis	0	0 (No records for 2004)	13*	13	16*	19	21	27	80
Grootfontein	5	0	6	0	14	0	0	0	25
Karasburg	0	0	3	3	8	8	19	19	49
Karibib	1	1	1	1	10	10	1	7	20
Katima Mulilo	0	0	3	3	7*	9	11	3	26
Katutura	47	45	187	186	319	319	326	502	1381
Keetmanshoop	15	16	36*	35	66*	65*	86	92	296
Khorixas	0	0	4	4	1	1	1	0	6
Lüderitz	6	0*	16*	16*	24	24	38	51	135
Maltahöhe	0	0 (No records for 2004)	2	2	1	1	4	4	11
Mariental	17	7*	12	10	15	22	28	25	104
Okahandja	4	6	14*	20*	24	18	16	9	75
Okakarara	0	0	0	0	1	1	1	3	5
Omaruru	0	0	1*	2	2	1	2	12	18
Ondangwa	3	3	10	10	17*	18*	19	31	81
Opuwo	1	1	3	4	10	9	5	12	32
Oranjemund	0	0	0	0	1	1	0	0	1
Oshakati	6	5*	21*	27	40	37	64	69	206
Otavi	0	0	0	0	0	0	0	1	1
Otjiwarongo	16	0 (No records for 2004)	5	0 (No records for 2005)	13	13	13	13	60
Outapi	1	0* (No records for 2004)	4	0 (No records for 2005)	9	6	12	22	48
Outjo	1	0*	3	0	4	4	0	3	11
Rehoboth	14	12*	48	48	18*	17*	23	20	123
Rundu	0	9	15	15	14	14	20	22	80
Swakopmund	22	0*	43	46	15	15	57	107	247
Tsumeb	0	0	14	13	9	9	14	13	50
Usakos	3	3	6	6	6	5	5	1	21
Walvis Bay	49	49	72	72	81	81	87	43	332
<b>Total</b>	<b>211</b>	<b>157</b>	<b>542</b>	<b>536</b>	<b>747</b>	<b>727</b>	<b>876</b>	<b>1124</b>	<b>3542</b>

The courts highlighted in the first column indicate courts which we visited to collect information from court files. The asterisk (\*) marks courts where the information that there were no protection order applications for particular years is patently incorrect because we collected information from applications made in those years at that court, or where we collected information from more files than were reported to have been opened.

TABLE 8

Updated total of protection order applications at all magistrates' courts, 2004-2008							
This table uses the larger figures from two data collection exercises illustrated and explained in Table 7.							
Magistrate's Court	2004	2005	2006	2007	2008	Total number for all 5 years	Percent (per court)
Aranos	0	0	0	0	1	1	0.0%
Bethanie	0	0	1	3	3	7	0.2%
Eenhana	0	0	1	0	9	10	0.3%
Gobabis	0	13	19	21	27	80	2.3%
Grootfontein	5	6	14	0	0	25	0.7%
Karasburg	0	3	8	19	19	49	1.4%
Karibib	1	1	10	1	7	20	0.6%
Katima Mulilo	0	3	9	11	3	26	0.7%
Katutura	47	187	319	326	502	1381	39.0%
Keetmanshoop	16	36	66	86	92	296	8.4%
Khorixas	0	4	1	1	0	6	0.2%
Lüderitz	6	16	24	38	51	135	3.8%
Maltahöhe	0	2	1	4	4	11	0.3%
Mariental	17	12	22	28	25	104	3.0%
Okahandja	6	20	24	16	9	75	2.1%
Okakarara	0	0	1	1	3	5	0.1%
Omaruru	0	2	2	2	12	18	0.5%
Ondangwa	3	10	18	19	31	81	2.3%
Opuwo	1	4	10	5	12	32	0.9%
Oranjemund	0	0	1	0	0	1	0.0%
Oshakati	6	27	40	64	69	206	5.8%
Otavi	0	0	0	0	1	1	0.0%
Otjiwarongo	16	5	13	13	13	60	1.7%
Outapi	1	4	9	12	22	48	1.3%
Outjo	1	3	4	0	3	11	0.3%
Rehoboth	14	48	18	23	20	123	3.5%
Rundu	9	15	14	20	22	80	2.3%
Swakopmund	22	46	15	57	107	247	7.0%
Tsumeb	0	14	9	14	13	50	1.4%
Usakos	3	6	6	5	1	21	0.6%
Walvis Bay	49	72	81	87	43	332	9.4%
<b>Total</b>	<b>211</b>	<b>542</b>	<b>747</b>	<b>876</b>	<b>1124</b>	<b>3542</b>	<b>100.0%</b>
<b>Percent (per year)</b>	<b>6%</b>	<b>15%</b>	<b>21%</b>	<b>25%</b>	<b>32%</b>	<b>100%</b>	

The locations highlighted in orange in the table indicate the locations where data was collected from court files.

When analysed by region, there is a large difference between the percentage of the population living in some regions and the percentage of protection orders applied for by region. For example, as Table 9 on the following page illustrates, **the percentage of protection order applications for Karas, Erongo, Khomas and Hardap Regions was higher than average compared to the populations of these regions. In contrast, there was a low per capita level of protection order applications in all of the northern regions aside from Oshana, which is close to the national average.**

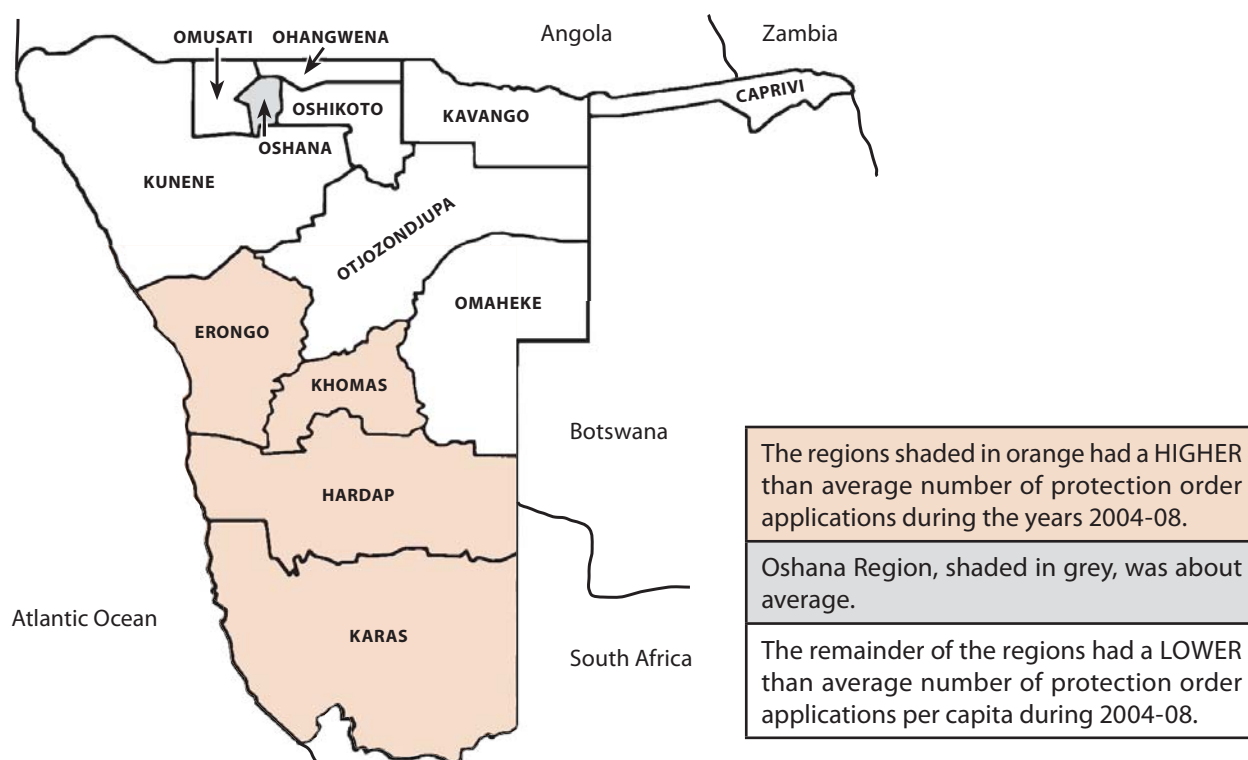
It was outside the scope of this study to determine the reasons for these inconsistencies. The presence of highly-populated urban areas such as Windhoek and Swakopmund-Walvis Bay in the Khomas and Erongo Regions probably explains the high proportion of protection applications in those regions. However, Karas and Hardap Regions, which have low population density and smaller urban centres, surprisingly had some of the

highest numbers of protection order applications. In the northern regions, communities which rely on customary norms may be less likely to involve magistrates' courts in family matters; Oshana is perhaps an exception as the region containing the largest urban centre in the north. Ease of access to court is another factor which could explain the discrepancies between regions, as well as the regional population's relative level of education and access to information. Further studies would be required to shed more light on the regional variations.

**TABLE 9**

Regional protection orders per capita, 2004-2008					
Region	Number of protection order applications by region, 2004-2008	Percent of all protection order applications, 2004-2008	Population in region (all ages)*	Number of protection order applications expressed as percent of regional population, 2004-2008	Number of protection order applications expressed as a rate per 10 000 people/region, 2004-2008
Karas	507	14.3%	69 329	0.73%	73
Erongo	670	18.9%	107 633	0.62%	62
Khomas	1381	39.0%	250 262	0.55%	55
Hardap	220	6.2%	68 249	0.32%	32
Oshana	287	8.1%	161 916	0.18%	18
Omaheke	80	2.3%	68 039	0.12%	12
Otjozondjupa	166	4.7%	135 384	0.12%	12
Kavango	80	2.3%	202 694	0.04%	4
Caprivi	26	0.7%	79 826	0.03%	3
Oshikoto	50	1.4%	161 007	0.03%	3
Kunene	17	0.5%	68 735	0.02%	2
Omusati	48	1.4%	228 842	0.02%	2
Ohangwena	10	0.3%	228 384	0.00%	0
<b>Total</b>	<b>3542</b>	<b>100.0%</b>	<b>1 830 300</b>	<b>0.19%</b>	<b>19</b>

\* Population figures are based on the 2001 census (Republic of Namibia, 2001 Population and Housing Census: National Report, Basic Analysis with Highlights, July 2003)



The regions shaded in orange had a HIGHER than average number of protection order applications during the years 2004-08.

Oshana Region, shaded in grey, was about average.

The remainder of the regions had a LOWER than average number of protection order applications per capita during 2004-08.



## 5.3.2 Representivity of sample

Information was collected from a total of 1122 applications for protection orders from 19 of Namibia's 31 magistrates' courts, in 12 of the country's 13 regions. This sample represents about 75% of all the applications for protection orders made in Namibia during the years covered by the study: 2004-2006.

The percentage of protection orders per region included in the sample is largely similar to the total percentage of protection orders per region, as illustrated by Table 10. The main difference is for Khomas Region where we purposefully included a lower percentage of orders (27%) compared with the actual proportion of orders (41%). The reason for this, as explained in section 5.2.1, was to prevent data from the Khomas Region from dominating the results and possibly obscuring the situation in other locations.

The time periods represented in the sample also compare well to those in the total universe of protection orders in Namibia during 2004-06, as shown in Table 11 on the following page.

The correspondence between the distribution of our sample and the distribution of the total universe of protection order applications ensures that our findings present an accurate picture of the overall situation.

**TABLE 10**

Representivity of sample by region, 2004-2006				
Region	Number of protection order applications in sample 2004-06	Proportion of sample	Total protection order applications in region 2004-06*	Proportion of total protection order applications 2004-06
Caprivi	12	1%	10	0.7%
Erongo	263	23%	312	20.8%
Hardap	117	10%	127	8.5%
Karas	162	14%	176	11.7%
Kavango	32	3%	29	1.9%
Khomas	300	27%	553	36.9%
Kunene	22	2%	27	1.8%
Ohangwena	0	0%	1	0.1%
Omaheke	34	3%	29	1.9%
Omusati	13	1%	14	0.9%
Oshana	101	9%	97	6.5%
Oshikoto	22	2%	23	1.5%
Otjozondjupa	44	4%	102	6.8%
<b>Total</b>	<b>1122</b>	<b>100%</b>	<b>1500</b>	<b>100%</b>

\* This table is based on the numbers of protection orders provided by the courts during our initial contact, shown in Table 1, as we used these numbers as the basis for our sample. The discrepancies in the later figures provided by the courts (shown in Table 7) were not large enough to affect the representivity of our sample.

**... domestic violence is a gender-based crime where men are the perpetrators and females are the survivors.**

University of Namibia (UNAM) and Southern African Research and Documentation Centre – Women In Development Southern Africa Awareness Programme (SARDC-WIDSAA), *Beyond Inequalities 2005: Women in Namibia*, Windhoek and Harare: UNAM/SARDC, 2005 at 39.

TABLE 11

Representivity of sample by year, 2004-06				
Year	Protection order applications in sample	Proportion of sample	Total protection order applications in Namibia	Proportion of total protection orders
2004	159	14%	211	14%
2005	413	37%	542	36%
2006	550	49%	747	50%
<b>Total</b>	<b>1122</b>	<b>100%</b>	<b>1500</b>	<b>100%</b>

### 5.3.3 Dates of protection order applications

Months where applications for protection orders were most frequently made were September (11%), November (10%) and October (10%), while April was the least common month for applications (6%), followed by January (7%). These differences, although seemingly small, are statistically significant.<sup>18</sup> However, we do not have a theory about the reasons for these differences in timing.

A study by the Legal Assistance Centre and the Law Reform and Development Commission on domestic violence conducted in 1999 (the “LAC-LRDC study”) selected the months of June, October and December to compare incidents of violent crimes and incidents of domestic violence in Namibia. June was selected as the coldest month and October as the hottest month, while December was selected because it encompasses a holiday season. The overall percentages of violent crimes reported to police during those months in 1994 were as follows: June (24%), October (37%) and December (40%). This generally mirrored the share of crimes which occurred in domestic relationships in June (21%), October (34%) and December (45%).<sup>19</sup>

In the present study, protection order applications were more evenly spread across the months. Selecting the same months analysed in the LAC-LRDC study for comparison – June (8%), October (10%) and December (9%) – there was no increase of protection order applications in December as noted in the numbers of crime reports relating to domestic violence in the earlier study.

We have not been able to discern any informative pattern from the timing of the protection order applications.

One clerk at a busy court noted that protection order applications tend to increase during holiday weekends or at the end of the month – which are the times when alcohol consumption tends to increase.

<sup>18</sup> Chi square:  $X^2(11, N=1018) = 32.93, p < .001$ .

<sup>19</sup> Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999 at 21.

TABLE 12

Month of protection order applications in sample (missing values excluded)		
Month	Number	Percent
January	67	6.6%
February	72	7.1%
March	92	9.0%
April	60	5.9%
May	85	8.3%
June	80	7.9%
July	85	8.3%
August	71	7.0%
September	113	11.1%
October	102	10.0%
November	103	10.1%
December	88	8.6%
<b>Total</b>	<b>1018</b>	<b>100.0%</b>

## 5.3.4 Problems with applications

### (a) Difficulties in filling in forms

The Act requires that clerks of court or prosecutors assist complainants with applications.<sup>20</sup> At most courts we visited, assistance is provided by the clerks of the court. However, at one court, prosecutors assisted complainants because the clerk did not speak the local languages and also because “*her attitude towards people approaching her is not good*”. But this resulted in some delays for complainants, as the prosecutors at the court were not always immediately available. Even where it is the clerks who assist with the applications, several magistrates were concerned that clients must wait too long for assistance.

One clerk of court interviewed felt that clerks should not be given this duty, feeling that clerks should be neutral in all cases and might be perceived as siding with complainants if they assist them with the forms. Another clerk suggested that there is a need for psychological support for clerks who are required to assist domestic violence complainants, because of the emotional burden of this task.

One prosecutor who assists complainants with protection order applications reports that it can take up to three hours to assist a complainant to complete an application form, and that the process can never be finished in less than two hours. Interestingly, a magistrate from the same court said that most application forms are not properly completed, with the result that the information given is often insufficient to justify a protection order.

***The application takes too much time. They must wait when they come in because we only have one clerk who handles everything.***

– magistrate, Swakopmund

Another magistrate suggested that the forms should be simplified so that complainants can complete them without needing assistance from the clerks of court. The desire for simpler forms is understandable, although it is important that the court be provided with sufficient information to make an immediate order, to accomplish the intended purpose of providing quick protection against potential violence.

One clerk of court suggested that forms should be in indigenous languages or at least in more simple English. Another clerk explained that complainants will usually give information in their own home language, which she translates into English and then reads back to them in their own language so that they can understand the statement before signing it. This procedure has been criticised in respect of police statements in rape cases, since any error in translation made in recording the statement is likely to be repeated in the process of re-translating the statement back to the complainant for verification – with the result that a statement taken in this way may contradict what the complainant later says in court.<sup>21</sup>

<sup>20</sup> Combating of Domestic Violence Act 4 of 2003, section 6(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.*”

<sup>21</sup> Legal Assistance Centre (LAC), *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Windhoek: LAC, 2006 at 248-50.

Another clerk suggested that the form should be very short (a maximum of two pages), and that complainants should be asked to put the relevant information into a narrative statement which could accompany the form – which is in any event the practice that is often followed now (about half of the applications examined had separate narrative statements). Tending towards the same procedure, another clerk indicated that he simply asks complainants to “*tell him their story*”, so that he can get the overall picture of the situation before actually filling in the form.

One magistrate emphasised the importance of having very detailed affidavits since the information from the complainant is the sole basis for the decision on the interim order; he reported that he had asked the local police who often assist complainants with the narrative statements to encourage complainants to be more specific.

**We suggest that the application form should be simplified, with more emphasis on narrative accounts guided by printed questions.**

## **(b) Sworn statements**

Only Commissioners of Oaths have the legal authority to commission affidavits which form the key component of protection order applications. The form provided for these applications is essentially an affidavit constructed in a pre-determined format.

Most of the clerks interviewed reported that they are Commissioners of Oaths, although one clerk replied categorically that “*Only the police are Commissioners of Oaths. Affidavits must be taken by the police.*”

Some clerks seemed unsure. One clerk stated that she was a Commissioner of Oaths, but said that she had heard of a circular to the effect that only principal clerks were Commissioners of Oaths; however, this clerk said that the duty sheets for clerks imply that all people appointed to the position of a clerk automatically become Commissioners of Oaths.

Those clerks who cannot (or think they cannot) commission statements address this problem by sending complainants to a police station to have their statements sworn before assisting them to complete the application process. But this procedure seems to be standard practice even for those clerks who stated that they *are* competent to commission affidavits. This description of the procedure was typical: “*When an applicant comes in and explains their situation, the clerk sends them back to the police to get a statement under oath explaining the reason why they need a protection order. After that, they come back to the clerk to fill out an application form.*” As a result of this, the process is slowed down and a number of potentially-valid applications may be discouraged.

Police follow a similar procedure if they are approached first: “*If the victim wants to open a case of domestic violence we will obtain a statement and investigate. The officer will then go and arrest the man. If they want a protection order, they go to the charge office and we take a statement from them and then take it to the court.*”

These accounts are confirmed by police documents detailing the standard procedure at Woman and Child Protection Units (WCPUs) in respect of protection orders: “*In cases where a complainant is seeking a protection order in terms of the [Combating of] Domestic Violence Act, the police at the WCPU take a statement from her, and either accompany her, or direct her to the nearest magistrate’s court to apply for an interim protection order.*”<sup>22</sup>

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<sup>22</sup> Ministry of Safety and Security, “The Development of Effective Law Enforcement Responses to Violence Against Women in Southern Africa”, 11 June 2009 (mimeo).

However, this approach raises a number of problems. One clerk described a situation in which complainants were sent back and forth between court and police station, with no staff available at the court to take statements and police sometimes being unwilling to play this role.

A clerk in Rehoboth reported that complainants are often reluctant to make their statements at the police station, which is more public: *“They ask if they can make the statement under oath here especially when there is sexual abuse. Some give up their intention of obtaining a protection order when we tell them to go to the police station to make a statement. The victims find the police station to be too public for them. They are supposed to go to WCPU but many times there officers are not there.”* This clerk, who reported that she was a Commissioner of Oaths, confusingly suggested that *“all clerks should be Commissioners of Oaths. This will enable the applicants to make sworn statements before them”*.

An interview with a high-ranking court official confirmed that legal clerks are in fact Commissioners of Oaths by virtue of their office, without requiring any specific appointment. Commissioners of Oaths are governed by the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.<sup>23</sup> Section 6 of this Act states: *“The Minister may, by notice in the Gazette, designate the holder of any office as a commissioner of oaths for any area specified in such notice, and may in like manner withdraw or amend any such notice.”* Such a notice was issued by the Council of Ministers of “South West Africa” in 1982, stating that *“the holder of any offices specified in Column 1 of the Schedule”* would be a Commissioner of Oaths for the *“Territory of South West Africa”*. The relevant portion of the Schedule covers the following government service employees:

*Any post in any Department established under the Government Service Act, 1980 (Act 2 of 1980) except the Prisons Service referred to in Item 21 [of the 1980 Act] which constitutes part of the Department of Justice, and the South West African Police Force, referenced to in item 28 [of the 1980 Act], which constitutes part of the Department of Police, with a salary scale of which the minimum notch is equal to or higher than the minimum notch of the salary scale attached to the post of administrative assistant.*<sup>24</sup>

This would seem sufficient to cover the same persons in analogous post-Independence posts.<sup>25</sup> In fact, we were informed that at least one magistrate’s office encountered a problem in the past when it was inundated with requests from members of the public for certification of documents and administration of oaths.

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<sup>23</sup> The administration of this South African Act was transferred to “South West Africa” by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. None of the amendments to the Act in South Africa after the date of transfer were applicable to “South West Africa”. Regulations governing oaths and affirmations are contained in South African Government Notice R.1258/1972. Regulations regarding holders of office who are Commissioners of Oaths are contained in South African Government Notice R.1257/1972, as amended by South African Government Notice R.56/1975, Government Notice AG 128/1982 (Official Gazette 4672) and Government Notice 100/2000 (Government Gazette 2312) (regional councillors to be Commissioners of Oaths).

<sup>24</sup> Government Notice AG 128 of 1 September 1982 (Official Gazette 4672).

<sup>25</sup> The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995. See sections 37 and 38 (on transitional provisions). According to Louis De Villiers Van Winsen, Andries Charl Cilliers and Cheryl Loots, *The Civil Practice of the Supreme Court of South Africa*, 4<sup>th</sup> edition, Kenwyn: Juta, 1997, at 373:

*After the attainment of independence by Namibia, persons previously appointed as commissioners of oaths by the South Africa Minister of Justice were deemed to have been appointed by the Minister of Justice of Namibia, and accordingly retained the power to administer oaths recognizable in the High Court of Namibia...*

**We suggest that the Ministry of Justice should issue a circular clarifying that clerks of court are authorised to act as Commissioners of Oaths for protection order applications, and outlining the procedure which should be followed. Some applicants may still be referred to police or other Commissioners of Oaths because of time pressures on clerks, but such referrals should not take place because of lack of clarity on the legal position.**

### **(c) Other procedural difficulties**

In Rehoboth, we were told about an agreement between police and the court for a procedure which would reduce the volume of protection order applications:

*The police had a workshop in October 2006 and decided if the victim comes here [to the court], we refer them to the police. Then the police will go to give the author of the mischief a warning. If the person does not stop, the complainant must go back to the police and make a statement and then come here for a protection order. This new procedure led to a reduction in protection order applications. Victims stopped coming to court. But now police are not there all the time and police often do not have motor vehicles to go to warn the respondents. So people have now started coming here again.*

While this can be viewed as a reasonable attempt to address lack of court capacity, it undermines one of the goals of the law, which is to give domestic violence victims an alternative to police action if they are reluctant to involve police. Other drawbacks to this approach were identified by the key informant in the statement quoted above.

Another procedural innovation was described in Rehoboth, where a clerk said, “*If a complainant comes, we refer her to the magistrate to see if she has enough grounds to file an application and if so, she is sent back to the clerk [to complete the application form]. The process then takes 1-2 days.*” This approach seems unwise, since the magistrate might unwittingly discourage a deserving complainant, without knowing the full story which the application form is designed to elicit.

**We recommend that the Ministry of Justice should issue standard procedural guidelines for dealing with protection order applications to ensure adherence to the law and consistency across courts.**

### **(d) Applications against multiple respondents**

There were six cases out of the sample of 1122 applications where complainants requested protection orders against multiple respondents – five cases involving 2 respondents and one case involving 5 respondents.<sup>26</sup> Most of these involved a spouse committing domestic violence with the aid of other family members – such as a spouse and a parent, or a spouse and a child. These cases generally involved a single application form, with different details for the different respondents where relevant. The six applications with multiple respondents were filed at five different courts.

**We recommend that courts should require a separate application form for each respondent, and issue separate protection orders for each respondent, to avoid confusion – since some of**

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<sup>26</sup> In the case with 5 respondents, a father sought a protection order against his daughter and her children (his grandchildren). The case was eventually struck off the roll because the parties agreed to refer the matter to the local traditional authority.

the provisions of the order (such as those on weapon ownership, temporary maintenance or child custody and access) might differ for different respondents even if they acted jointly to perpetrate the violence in question. It is also possible that the enquiries involving different respondents might be heard on different days, if not all of them responded to the summons to appear in court.

### 5.3.5 Applying for interim protection orders outside normal office hours

Some key informants interviewed expressed concern that there is no uniform system for dealing with after-hours applications.

One magistrate said he is always available and would have no problem sitting and issuing a protection outside working hours, but that this situation had never arisen in practice. In contrast, another magistrate said that after normal working hours, *“offices are closed and everyone has gone home. The person has to come when offices are open and operational”*.

One barrier to getting protection order outside normal working hours is that, even if a magistrate is available, there may be no one available to assist a complainant with completing the application form. One clerk suggested that police should have the capacity to complete the protection order application at the police station at any time, so that they can go directly to the magistrate and get the respondent out of the house immediately if there is immediate danger. However, the National Co-ordinator for the Woman and Child Protection Units disagreed, explaining that since the forms for protection order applications are long and complicated, it would be unrealistic to expect police to be trained to assist with this on top of their other duties – especially since police might only receive such applications infrequently.<sup>27</sup>

Another concern expressed by one clerk is that the decision-making process works differently after-hours than during office hours. The decision on the interim protection order can be made by a magistrate after-hours, but then the decision is based only on the papers – whereas at his court the magistrate normally speaks personally to the applicant if the application is made during office hours.

One clerk reported that complainants who arrive near the end of normal working hours are advised to go to the police station and lay a criminal charge; *“that way the respondent can be arrested immediately and the complainant will be out of harm’s way”*. The same approach is reportedly taken at another court, where complainants who seek protection orders after-hours are being referred to the Woman and Child Protection Unit to obtain immediate help if necessary, including a referral to a safe place to sleep if this is required. However, a magistrate at another court expressed frustration that complainants referred to Woman and Child Protection Units over weekends do not receive sufficient assistance, saying that *“police officers very often do not know that they can arrest the respondent for the weekend and hold him until Monday”*. Clerks at several other courts also referred to the option of a weekend arrest, or a formal warning from police as an interim measure. However, others complained that this avenue would not be effective because WCPU staff are not available on weekends. In any event, a criminal charge must be laid before an abuser can be arrested – and, as already noted, the protection order procedure is

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<sup>27</sup> Personal follow-up discussion with Chief Inspector Cronje, May 2011.

designed to provide a useful alternative for victims of domestic violence who do not want to have their abusers arrested.

One clerk who had never had an application after-hours thought that this was because members of the public do not know that it is possible to get assistance from the court after normal working hours and so go straight to the police outside those times.

Another clerk reported how she helps people after-hours at her house if necessary, or arranges for them to complete forms after-hours at the local police station:

*It rarely happens but there was a lady who asked to go to my house because she couldn't get time off during work hours so I arranged for forms to be taken to the police station where the lady could access them during the weekend. We also arrange to process applications over lunch hour for those who are working far away from town or have tight work schedules. For example, there was a case of a domestic worker who would have lost her wages if she had taken time off during her work hours to come to the court, so I arranged for her to come to my house in the evening and fill out the application forms which I then brought to the court the following day.*

The option of approaching a Woman and Child Protection Unit after-hours is not very satisfactory since the staff at these units also generally work only during normal office hours. The National Co-ordinator for the Woman and Child Protection Units is of the opinion that the magistrates' courts should have appropriately-trained personnel who are accessible to assist with protection order applications after-hours.<sup>28</sup>

A magistrate suggested that a better shelter network in Namibia would give complainants somewhere to go after-hours, where they could be safe until a protection order can be put into place.

**There is a need for the Ministry of Justice to give clear guidelines on appropriate after-hours procedures, including directives for emergency referrals to shelters or other places of safety where appropriate.**

## **5.3.6 Protection order applications and criminal charges**

**It did not seem clear to all of the key roleplayers that a protection order is designed to be an alternative to a criminal charge where a victim of domestic violence is reluctant to lay a charge against a spouse or a family member.** For example, one magistrate cited as an example of misuse the fact that some complainants “*use the protection order procedure to keep their husbands away from them instead of laying a criminal charge of assault at the police station*”. Many persons interviewed regarding after-hours procedure suggested laying a charge as an after-hours alternative to a protection order application, thus failing to recognise that the two procedures are not interchangeable options for many victims.

On the other hand, although the law does not say so explicitly, it is clear from both the law and the discussions which took place around its drafting that its intention was to allow a victim

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<sup>28</sup> *Ibid.*



of domestic violence to simultaneously lay criminal charges and apply for a protection order if he or she wishes. In fact, a protection order might help to protect a victim who has laid a criminal charge should the accused be released on bail pending the criminal trial,<sup>29</sup> or if there is a delay between the laying of the charge and the arrest of the accused.<sup>30</sup> One clerk noted that an arrest on a criminal charge might provide immediate protection if there is a delay in the protection order application process.

There were 28 cases in the sample of 1131 potential protection orders (just over 2%) where formal police warnings were included in the file, suggesting that some courts and court officials are aware that criminal interventions do not preclude protection order applications. One magistrate observed that most complainants who approach his court have laid a criminal charge at the same time as seeking a protection order.

However, in two cases, magistrates confusingly refused to grant a final protection order but suggested that the complainant should consider laying criminal charges. In another three cases, the court suggested a formal police warning as an alternative to a final protection order. These cases represent only a small number of the total. Nevertheless, it might be useful to amend the Act to state clearly that protection orders and criminal proceedings can be pursued either as alternatives or simultaneously, or to issue a circular for magistrates, clerks and police explaining this.

## 5.4 PROFILE OF COMPLAINANTS

### 5.4.1 Sex

The majority of complainants in the protection order applications were women (88%), while only 12% of complainants were men.

This is consistent with the LAC-LRDC Study, where 86% of victims of violent crimes committed in a domestic context were female. The statistics in that study showed that domestic violence is highly-gendered, as only 40% of the victims of other violent crime were female; the study concluded that “if domestic violence could be eliminated from our society, women would be significantly safer from violence”.<sup>31</sup>

TABLE 13

Sex of complainants		
Sex	Number	Percent
Male	139	12.4%
Female	979	87.3%
Not recorded	4	0.4%
<b>Total</b>	<b>1122</b>	<b>100.0%</b>

CHART 1: Sex of complainants (missing values excluded)



<sup>29</sup> Where a person has been accused of a domestic violence offence, a no-contact order and an order prohibiting the possession of any firearm or other specified weapon should be automatically imposed as conditions of bail. Criminal Procedure Act 51 of 1977, section 62(3), as amended by the Combating of Domestic Violence Act 4 of 2003. However, protection orders offer a wider range of potential protective measures which can be imposed.

<sup>30</sup> For example, the police might need time to investigate a criminal charge.

<sup>31</sup> Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999 at 27.

One police constable who was interviewed for this study felt that men and women are equally the victims of domestic violence, but that men are more reluctant to report it: *“Most of them are too shy to report or to say that they have such a problem of physical abuse at home. Or rather to admit that a woman is causing violence.”* This informant also worried that men do not know that they can approach Woman and Child Protection Units because of the units’ name: *“It was not officially announced or told to the men that this office can also be for them... There are less men who realise that they are also welcome here. I have always thought that if the name can be changed to also include men it would be better.”* In contrast, police at the Oshakati Woman and Child Protection Unit said, *“Men are also abused and they come here also. We try to make them feel comfortable”* – adding, however, that some men who approach the Woman and Child Protection Unit *“think that they will not get the necessary assistance”* and suggesting that *“a better space must be created for them”*.

**Under what circumstances do men apply for protection orders?** A magistrate in Katutura reported that the typical situation is that a woman will seek a protection order, then her male partner will also apply for one as a form of revenge. A magistrate in Rundu recalled two cases where men had applied for protection orders. In both cases, their female partners had damaged the men’s property when the men tried to end the relationship. A clerk in Rehoboth reported that she has handled a few cases where elderly men have reported being abused by their adult children. A clerk in Mariental recalled an unusual situation where a man had applied to have a protection order issued against himself (perhaps in an effort to bolster his own efforts to refrain from violence).

## **CASE STUDIES**

### **He said, she said**

#### **CASE ONE**

A husband brought an application for a protection order against his wife, claiming economic, emotional and physical abuse. He alleged, amongst other things, that while he was away the wife had beaten his 17-year-old daughter from another relationship (ie the wife’ stepdaughter) and forced her to sleep on the cold floor. He said that his wife had moved out of the joint residence after a confrontation, removing some of the couple’s property without his knowledge. The court granted an interim protection order against the wife, forbidding her from coming near the husband, his residence or his workplace. The order also granted the complainant husband exclusive occupation of the joint residence.

The wife filed a notice of intention to oppose confirmation of the protection order. In her responding affidavit, she denied mistreating the stepdaughter, saying that the stepdaughter had slept on the floor for only one night while her broken bed was being repaired. The respondent wife also reported that she and her husband had arguments which had become increasingly violent, with the husband assaulting her on four occasions by striking her with an open hand or fist. She also alleged that he had attacked her with a knife at one point, saying that she fled and locked herself in a room while he tried to break in with a spade. She denied assaulting him, saying that she had only tried to protect herself by grabbing and holding his arms. Because of the worsening situation, she feared for her life and had moved to a friend’s house along with some of her possessions. She alleged, therefore, that

the protection order the husband had requested was unjustified. The two parties eventually agreed that the interim protection order should be discharged.

A few months later, the wife made an application for a protection order against the husband, claiming threats and emotional abuse. She alleged that her husband had sworn at her, threatening to break into her room and throw out all her belongings unless she vacated the house. This application was remanded indefinitely.

#### **CASE TWO**

A 24-year-old wife made an application for a protection order against her 26-year-old husband. She claimed that she had asked him for their marriage certificate, but that he had refused to hand it over and started swearing at her. She also claimed that she had been assaulted and threatened, and that the abuse had been happening for about one month. She requested an order forbidding her husband to come near her or her residence. She also asked for exclusive occupation of their joint residence with use of all of the contents, as well as temporary custody of their 4-year-old daughter and maintenance of N\$400 for the child. An interim protection order along these lines was granted.

The husband brought an application for a protection order against his wife several days later. He claimed that his wife had physically assaulted him and threatened him with death, and that the money he gave her to buy food was used on alcohol. According to him, she bit him on both arms during one altercation and scratched his face and bit his fingers during another argument, requiring him to seek medical treatment. He also asserted that she threatened to stab him to death after he initiated divorce proceedings, noting that she had been previously convicted of assault with intent to cause grievous bodily harm in a fight with another woman. He sought a protection order forbidding his wife from coming near him, his residence or his workplace, and restricting communication except in connection with their child. He also requested exclusive occupation of the joint residence, along with certain furniture and clothing. The court granted an interim protection order with a prohibition on all communication. The husband's request for exclusive occupation of the residence was denied, but the wife was ordered to leave the specified furniture and clothing in the possession of the husband.

There was no information on file as to how this matter of reciprocal interim protection orders was ultimately resolved.

## **5.4.2 Age**

The majority of complainants (56%) were between the ages of 30-44 at the time of the application. About 13% of complainants were between the ages of 25-29 and about 11% were between the ages of 45-49. Only 7 complainants were children under age 18 (less than 1%). The small number of child complainants should not be taken to mean that children are not suffering domestic violence, but rather that they are less likely to be able to seek help in the form of protection orders. In fact, every application involving a child under the age of 18 was made by some adult acting on that child's behalf. The mean age for complainants was 38, although they ranged in age from 3 to 77.

Although there were relatively few elderly complainants in our sample, it was reported in Rehoboth and Keetmanshoop that elderly people are sometimes abused by grown children and grandchildren; the clerk in Keetmanshoop said, “Often, these older people are asked for money and if it is not given then physical violence is used.” Three complainants over age 70 in our sample had applicants who made the application for the protection order on their behalf.

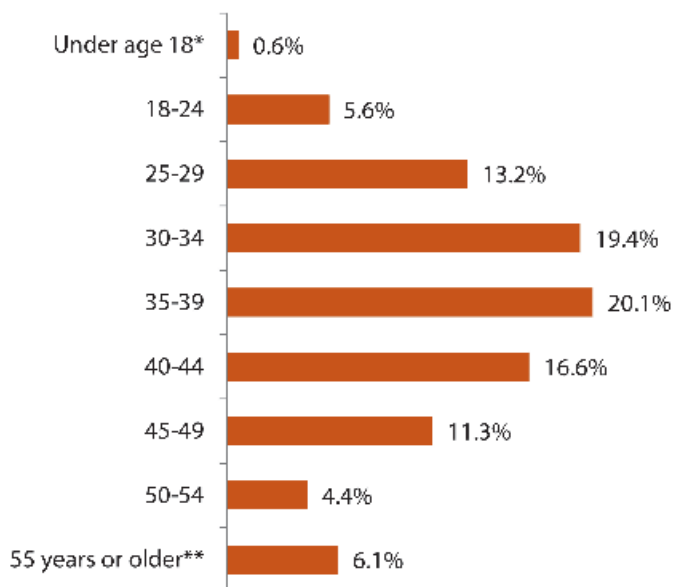
## CASE STUDY

### An abused child who applied for a protection order

*A clerk of court in Rehoboth told our researchers about a 2007 case where a 17-year-old girl successfully applied for a protection order on her own:*

I have only handled one protection order involving a child. A 17-year-old girl caught her stepfather staring at her. She was in her room changing and her stepfather was peeping at her from outside. She was very alarmed and feared that that her stepfather could rape her. She came for a protection order. The stepfather also subjects the girl’s mother to physical abuse. Her mother was unhappy about the protection order application. I phoned the uncle where the child has moved to and told him to tell the girl to come anyway. The application was filed and the protection order was served on the stepfather. He was removed from the house. The child is not back in the house yet. She is scared to go back because her mother is unhappy with her. The social worker said we should call all the siblings and discuss this matter with them.

**CHART 2: Age of complainants**  
(missing values excluded)



**TABLE 14**

Age of complainants		
Age group	Number	Percent
Under age 18*	7	0.6%
18-24	63	5.6%
25-29	148	13.2%
30-34	218	19.4%
35-39	226	20.1%
40-44	186	16.6%
45-49	127	11.3%
50-54	49	4.4%
55 years or older**	69	6.1%
Not recorded	29	2.6%
<b>Total</b>	<b>1122</b>	<b>100.0%</b>

\* All of the complainants in this age group had applicants who made the application for the protection order on their behalf.

\*\* Three complainants over age 70 had applicants who made the application for the protection order on their behalf.

**TABLE 15**

AGE OF COMPLAINANTS				
Number	Mean	Median	Minimum	Maximum
1102	38.0	37.1	3	77

## 5.4.3 Language group

The major apparent language groups of complainants were Afrikaans (35%), Oshiwambo (23%) and Damara>Nama (19%). This contrasts to national data on the most widely spoken languages which identifies Oshiwambo as the most commonly spoken language (48%) followed by Damara>Nama (13%) and Afrikaans (10%). Therefore Oshiwambo speakers appear to be under-represented and Afrikaans and Damara>Nama speakers over-represented. Apparent Otjiherero speakers (6%) were roughly comparable to their share of the population (9%),<sup>32</sup> while other language groups constituted very small proportions of the sample.

However, the language data must be treated with extreme caution for several reasons:

- (a) The probable language group has been extrapolated from the applicant's surname, and thus could be in error.
- (b) This method of determining language group is further complicated by the fact that married women tend to adopt their husbands' surnames. Thus, the use of surname as a proxy for language group is particularly unreliable for women who may have married men from different language groups.
- (b) The choice of locations to sample may have affected the language groups encountered.

The main point which can be derived from the data on this point is that **all major language groups seem to be represented, indicating that social or cultural barriers are not preventing members of any Namibian language groups from utilising the new law.**

## 5.4.4 Employment

**The majority of complainants (68%) listed some form of formal employment or self-employment on their applications.** Only 17% of complainants identified themselves as being unemployed. Housewives, pensioners and students are also represented in the sample, but people in these groups did not identify themselves as unemployed. In contrast, national data shows that the rate of unemployment under a 'broad definition' is 51.2%, while a 'strict definition' puts unemployment at 37.6%.<sup>33</sup>

**TABLE 16**

Apparent language group of complainants		
Apparent language group estimated from surname or information in file	Number	Percent
Afrikaans	396	35.3%
Oshiwambo	259	23.1%
Damara>Nama	218	19.4%
Otjiherero	67	6.0%
Silozi	34	3.0%
English	26	2.3%
Rukavango	20	1.8%
German	11	1.0%
Setswana	7	.6%
Other languages / dual language-speakers	42	3.7%
Impossible to identify	42	3.7%
<b>Total</b>	<b>1122</b>	<b>100.0%</b>

<sup>32</sup> Ministry of Health and Social Services (MoHSS), *Namibia Demographic and Health Survey 2006-07*, Windhoek: MoHSS, 2008 at 25.

<sup>33</sup> Ministry of Labour and Social Welfare, *Namibia Labour Force Survey*, Windhoek: Ministry of Labour and Social Welfare, 2008 at paragraph 6.7.1. The 'strict definition' of unemployment includes all persons aged 15-65 years who are without jobs, available for work, and actively seeking employment. The 'broad definition' of unemployment includes all persons without jobs and available for work whether or not they are actively seeking employment.

**Protection order complainants come from a broad social spectrum, as evidenced by the forms of employment listed on the application form.** The largest employment categories for complainants were clerks (10%), domestic workers (10%) and teaching professionals (7%). Complainants also included technicians and other skilled workers, motor vehicle operators, fishery workers and ship's crew, general labourers and farmers. Complainants from service industries included salespersons, personal service workers (such as chefs, hairdressers and waitresses), uniformed personnel (including police officers, members of the armed forces and other protective service workers such as fire-fighters and security guards), nurses and other health workers, people in financial and managerial positions, entrepreneurs/businesspersons, and other professionals (including accountants, architects, a doctor, a pastor, a missionary and an ambassador). There were also a few legislators and senior government officials amongst the complainants in the sample.

**This spread of professions illustrates the widespread nature of domestic violence. It also indicates that knowledge of the procedure for obtaining protection orders extends across all sectors of Namibian society.**

**TABLE 17**

<b>Occupation of complainants</b>		
<b>Occupation</b>	<b>Number</b>	<b>Percent</b>
Clerks	117	10.4%
Housekeepers and domestic workers	108	9.6%
Teaching professionals	76	6.8%
Salespersons	59	5.3%
Businessmen/women (self-employed)	55	4.9%
Nurses and other health-associated workers	54	4.8%
Supervisory and control officers	48	4.3%
Housewives	39	3.5%
Police officers	39	3.5%
Professionals	37	3.3%
General labourers	34	3.0%
Pensioners	32	2.9%
Personal service workers	32	2.9%
Corporate managers	26	2.3%
Technicians and skilled workers / operators / craft workers	24	2.1%
Finance and business service professionals and agents	17	1.5%
Students/scholars	12	1.1%
Fishery workers and ship crew	10	0.9%
Other protective service workers	8	0.7%
Armed forces	7	0.6%
Farmers	6	0.5%
Legislators and senior officials	6	0.5%
Motor vehicle operators	5	0.4%
Not employed	189	16.8%
Not recorded	82	7.3%
<b>Total</b>	<b>1122</b>	<b>100.0</b>

\* Categories base on Ministry of Labour, *Namibian Standard Classification of Occupations (NASCO-96): 1<sup>st</sup> Edition, 1996*

## 5.4.5 Rural versus urban

Several key informants said that rural people are less likely to apply for protection orders than those who live in cities or towns, because rural people are more likely to seek help from community elders or traditional leaders in terms of customary law.

We attempted to check for any urban-rural distinctions by using the address of the complainant. In Table 18 below, the rural category includes complainants who stay on farms, in villages or in very small urban centres (such as Sesfontein, Tses, Aroab and Groot Aub). The urban column includes cases where the complainant stays in the town where the court is located or in a nearby town – such as for example a complainant who resides in Ongwediva and applied for a protection order in Oshakati.

This grouping showed that **the vast majority of protection order applications (92%) come from persons in urban areas** – probably because of lower public awareness in rural areas, more difficulty in accessing courts and possibly greater reliance on extended family or traditional authorities to deal with such matters.

**The scarcity of protection order applications by rural dwellers points to the need to hold information sessions on the law in rural areas, to discuss specific obstacles to utilisation of the law with rural communities and to involve traditional leaders in popularising the law. The possibility of providing for protection order applications through mobile courts should also be considered.**

**TABLE 18**

Residence of complainants: urban versus rural						
City/town	Rural		Urban		Total	
	Number	Percent	Number	Percent	Number	Percent
Gobabis	4	11.8%	30	88.2%	34	100.0%
Katima Mulilo	0	0.0%	12	100.0%	12	100.0%
Katutura	1	0.3%	296	99.7%	297	100.0%
Keetmanshoop	10	8.4%	109	91.6%	119	100.0%
Lüderitz	1	2.3%	42	97.7%	43	100.0%
Mariental	8	22.2%	28	77.8%	36	100.0%
Okahandja	2	4.7%	41	95.3%	43	100.0%
Omaruru	7	87.5%	1	12.5%	8	100.0%
Ondangwa	23	69.7%	10	30.3%	33	100.0%
Opuwo	4	28.6%	10	71.4%	14	100.0%
Oshakati	12	18.8%	52	81.3%	64	100.0%
Outapi	11	84.6%	2	15.4%	13	100.0%
Outjo	3	37.5%	5	62.5%	8	100.0%
Rehoboth	0	0.0%	82	100.0%	82	100.0%
Rundu	2	6.1%	31	93.9%	33	100.0%
Swakopmund	0	0.0%	63	100.0%	63	100.0%
Tsumeb	1	4.5%	21	95.5%	22	100.0%
Usakos	1	7.1%	13	92.9%	14	100.0%
Walvis Bay	0	0.0%	168	100.0%	168	100.0%
<b>Total</b>	<b>90</b>	<b>8.1%</b>	<b>1016</b>	<b>91.9%</b>	<b>1106</b>	<b>100.0%</b>

Missing data excluded.

# 5.5 APPLICATIONS MADE ON BEHALF OF DOMESTIC VIOLENCE VICTIMS BY SOMEONE ELSE

excerpt from  
**Form 1, Section B**  
**APPLICATION FOR PROTECTION ORDER**

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.

\*\*\*

**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: .....



For purposes of this study, **an applicant is a person who makes an application for a protection order on behalf of someone else.** An applicant is distinguishable from the complainant, who is the person experiencing the domestic violence. Every application has a complainant; only a few have separate persons as applicants.<sup>34</sup>

An applicant may be a family member, police officer, social worker, health care provider, teacher, traditional leader, employer, counsellor, or any other person who has an interest in the well-being of the person who has suffered the violence.<sup>35</sup>

**There were only 22 applicants in our sample of 1122 applications – which accounts for less than 2% of the total.** The small number of applicants in the sample suggests that the procedural mechanism which allows someone to assist a victim of domestic violence is seldom used, with most applications being brought by complainants personally.

**However, it is noteworthy that the procedure was used particularly to protect the young and the old: All of the complainants below age 18 and several complainants over age 70 had applicants who sought a protection order on their behalf. This indicates that the procedural mechanism which provides for applicants is useful despite being seldom invoked.**

Applicants were roughly half men and half women. The majority of applicants were immediate or extended family members of the complainants – such as a parent, daughter, son, aunt or uncle. Other applicants were a social worker, a health care professional, a friend and two legal practitioners.

The applicants were all adults, ranging in age from 26 to 68 (with a mean age of 40.5), and they came from a range of language groups.

**TABLE 20**

AGE OF APPLICANTS ACTING ON BEHALF OF OTHER PERSONS				
Number	Mean	Median	Minimum	Maximum
19	40.5	37.8	26	68

An application may normally be made on behalf of someone else only if the victim of the violence gives written consent. However, an application can be made by someone else without such written consent if the complainant is:

- a minor;
- mentally incapacitated;
- unconscious;
- regularly under the influence of alcohol or drugs; or
- at risk of serious physical harm.

The last two exceptions require permission from the court.

**TABLE 19**

Age of complainants where other persons acted as applicants	
Age	Number
3	1
4	1
14	2
15	1
17	1
17	1
18	1
27	1
29	1
33	1
33	1
34	1
40	1
43	1
45	1
46	1
63	1
71	1
74	1
77	1
<b>Total</b>	<b>21</b>

<sup>34</sup> As noted in section 5.2.4, the two terms are not strictly separated in the statute in the way that we have utilised them for purposes of this report.

<sup>35</sup> Combating of Domestic Violence Act 4 of 2003, sections 1 and 4.

Of the 22 cases in the sample involving applicants, 9 of the applicants (just under half) attached written consent. Most of the cases without written consents attached (7 cases) involved minors, where no consent form is necessary. There were 5 other cases where it is reasonable to assume that the court found it appropriate to proceed without written consent – three of these cases involved complainants perceived as being at risk of serious harm, one involved a complainant who was unconscious and one involved a complainant who was elderly (and could have been mentally incapacitated or at risk of serious physical harm). One case appeared to name an “applicant” who was unwilling to act in this capacity. **Thus, although the sample of cases involving applicants is small, it seems that the consent requirement in such applications is being correctly applied.**

The form asked complainants to list the reasons why they were bringing the application on someone else’s behalf. For some minor complainants, applications were brought by concerned family members as in the following cases:

- In a case where a 17-year-old complainant alleged sexual abuse by the respondent uncle, the victim’s cousin made an application on her behalf because “*she regrets it*”.
- An applicant father, estranged from the respondent mother, filed a protection order application on behalf of his three-year-old complainant child because the respondent mother “*is threatening to kill her*”. The applicant claimed he had received numerous mobile phone messages “*in which the respondent is threatening or claiming to have killed the victim*”.
- A concerned applicant father requested a protection order on behalf of his 14-year-old daughter because the 18-year-old respondent in a romantic relationship with her was allegedly making threats and emotionally abusing her.

In cases where the complainants were adults, these were some of the reasons given by the applicants for filing an application on behalf of the complainant:

- An applicant daughter applied for a protection order on behalf of her 73-year-old mother because “*the interim protection order was done but expired... and [she was] in critical condition at the hospital*”.
- The “*need for justice*” was the reason given by an applicant son who filed an application on behalf of his mother.
- Two cases involved legal practitioners who filed protection order applications on behalf of their client-complainants. For example, in the case of a police woman complainant, her legal practitioner made an application on her behalf against a respondent who was a government minister.

**Although there were only a few cases in which someone acted on behalf of a victim of domestic violence to make a protection order application, it appears that this procedure is being used in appropriate circumstances and for the purposes which were intended. The procedure appears to be being used particularly to protect children, which was one of its main objectives.**

# 5.6 RELATIONSHIP BETWEEN COMPLAINANT AND RESPONDENT

## 5.6.1 Types of domestic relationship

excerpt from  
**Form 1, Section A**  
**APPLICATION FOR PROTECTION ORDER**

**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):  
.....  
.....  
.....

“Domestic relationships” under the Combating of Domestic Violence Act include intimate partners (covering marriage, cohabitation, boyfriends and girlfriends and any man and woman who have had a child together) and family members (parent and child, or other family members with some domestic connection).

**Most protection order applications in the sample involved married or divorced couples (almost 63%), or unmarried couples who are or were in a romantic relationship (almost 24%) – meaning that a total of 86% of the applications involved intimate partner violence. Moreover, almost two-thirds of complainants (64%) had children with, or were expecting a child with, the respondent.**

These statistical findings accord with the observations of key informants, who consistently reported that protection orders are most frequently sought by married couples, and secondarily by persons in boyfriend-girlfriend situations.

However, this predominance of intimate relationships should not obscure the fact that protection orders are also sought in other domestic relationships – parents sought them against their children and children against their parents, and siblings and grandparents of the abusers were also amongst the complainants. Other family relationships between complainant and respondent included in-law relationships, stepfamily relationships, cousin relationships, and relationships between aunts or uncles and their nieces or nephews. Some cases involved partners from former relationships (or their relatives), such as a father seeking a protection order against his daughter’s ex-boyfriend and a girlfriend of a deceased boyfriend whose family wished her to leave their home.

Interestingly, there were far more cases involving parents or grandparents who alleged abuse by children or grandchildren (45 cases, or about 4% of the total sample) than cases of children or grandchildren alleging abuse by parents or grandparents (6 cases, or less than 1%). (Note that the terms “children” and “grandchildren” here refer to relationship rather than age, and included adult offspring.)

The findings on relationships are broadly consistent with the LAC-LRDC study on domestic violence crimes, which also most frequently involved intimate partners – 64% of the criminal cases in that study involved intimate partners compared to 86% of the protection order applications in the present study. However, unmarried intimate partners were dominant in the criminal cases, where 49% involved violence by intimate partners during the course of the relationship or following its end, compared to 23% of the protection order applications – while the protection order applications were dominated by married couples (63%), compared to 19% of the criminal cases.<sup>36</sup> The fact that criminal cases, in contrast to protection orders, involved more unmarried romantic partners than spouses may relate to the fact that unmarried partners have no obligation to maintain each other financially and thus would not lose out on financial support if the perpetrator were jailed, or it may stem from a greater reluctance on the part of a spouse to lay criminal charge against another spouse, perhaps because of family pressures not to do this.

**TABLE 21**

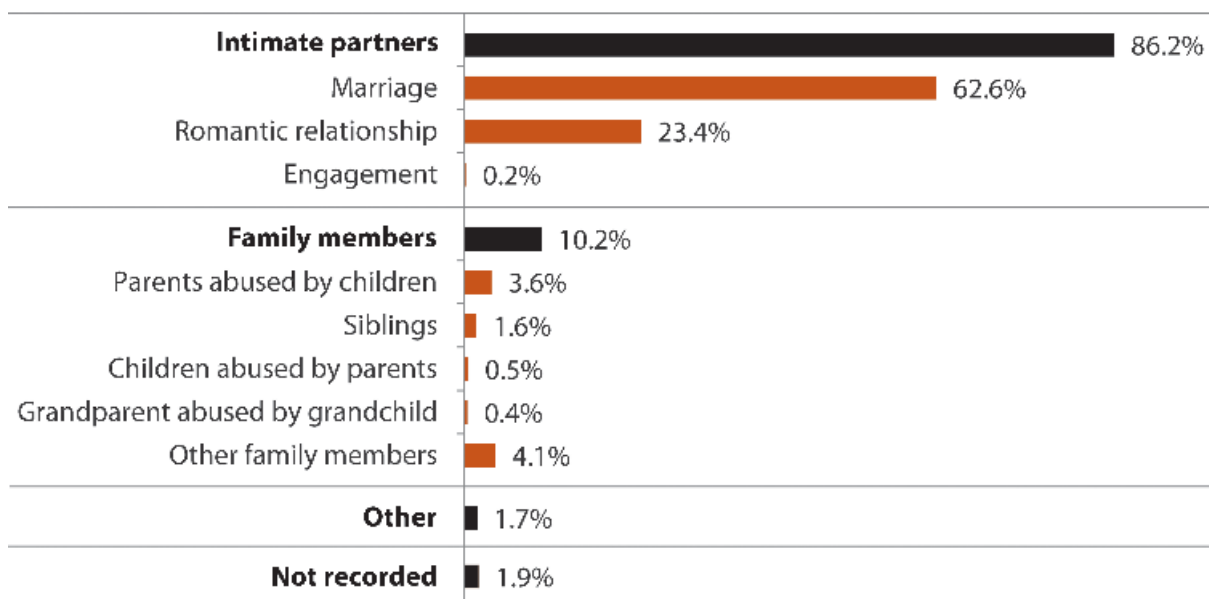
Relationship of complainant to respondent		
Relationship	Number	Percent
Wife	600	53.1%
Husband	59	5.2%
Ex-wife	43	3.8%
Ex-husband	6	0.5%
Girlfriend	101	8.9%
Boyfriend	11	1.0%
Ex-girlfriend	133	11.8%
Ex-boyfriend	22	1.9%
Mother	28	2.5%
Father	13	1.1%
Sister	12	1.1%
Brother	6	0.5%
Daughter	5	0.4%
Son	1	0.1%
Grandmother	4	0.4%
Other	87	7.7%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

**TABLE 22**

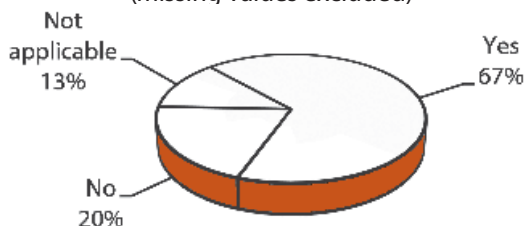
Domestic relationships in protection order applications		
Relationship	Number	Percent
<b>Intimate partners</b>	<b>975</b>	<b>86.2%</b>
• Marriage	708	62.6%
• Romantic relationship	265	23.4%
• Engagement	2	0.2%
<b>Family members</b>	<b>115</b>	<b>10.2%</b>
• Parents abused by children	41	3.6%
• Siblings	18	1.6%
• Children abused by parents	6	0.5%
• Grandparent abused by grandchild	4	0.4%
• Other family members	46	4.1%
<b>Other</b>	<b>19</b>	<b>1.7%</b>
<b>Not recorded</b>	<b>22</b>	<b>1.9%</b>
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

<sup>36</sup> Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999 at 29.

**CHART 3: Domestic relationships in protection order applications**  
(missing values excluded)



**CHART 4: Complainant has or is expecting child with respondent?**  
(missing values excluded)



**TABLE 23**

Complainant has or is expecting child with respondent?		
	Number	Percent
Yes	722	63.8%
No	215	19.0%
Not applicable because of nature of domestic relationship	136	12.0%
Not recorded	58	5.1%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

In 19 of the cases in the sample (less than 2%), there was no domestic relationship as defined by the law. This category included several persons whose relationships could be termed as “romantic rivals”:

- a new girlfriend seeking protection against her partner’s old girlfriend
- an ex-wife seeking a protection order against her ex-husband’s girlfriend.
- two cases involving husbands seeking protection from their wives’ boyfriends
- two cases involving wives and their husbands’ girlfriends, both involving violence or threatened violence by the wife against the girlfriend
- a case involving two women who had children by the same man.

None of these situations would fall within the law’s definition of “domestic relationship”.<sup>37</sup>

Some of the other types of relationships between complainants and respondents cited in protection order applications were even farther removed from the law’s definition. These non-domestic relationships included business partners, landlord and tenant, neighbours, friends, buyer and seller, colleagues and acquaintances. The fact that applications for protection orders were based on relationships such as these may indicate that there is some public misunderstanding concerning the purpose and criteria for protection orders.

<sup>37</sup> The law covers the extended family of spouses, and the extended family of people who are or were cohabiting as husband and wife, where these people would be related by affinity if the cohabiting partners had been married. It does not cover the previous romantic partners of spouses or other intimate partners. See Combating of Domestic Violence Act 4 of 2003, section 3.

On the other hand, the fact that there were relatively few applications which clearly fell outside the scope of “domestic relationships” indicates that such misunderstandings of the law are not widespread. Most of the cases where there was no “domestic relationship” were correctly dismissed, since the Combating of Domestic Violence Act does not apply to them.<sup>38</sup>

## 5.6.2 Common residence

excerpt from  
**Form 1, Section A**  
**APPLICATION FOR PROTECTION ORDER**

**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: .....

The application form asks complainants to say if they (a) are currently sharing a residence with the respondent or (b) previously shared a residence with the respondent.

**About 60% of the complainants stated that they were sharing a residence with the respondent at the time of the application.** While this figure undoubtedly includes mostly married and cohabiting couples, it also includes some other family members who were sharing a household, such as parents and children. The findings here are consistent with the LAC-LRDC study, where the complainant and accused were living in the same household at the time the violence occurred in 60% of the domestic violence cases.<sup>39</sup>

**Almost 42% of the parties who were currently sharing a residence with their alleged abusers had been living in the same residence for more than 10 years, while only 6% had been sharing a residence for less than one year.** The remainder of the parties currently

<sup>38</sup> There were a few such cases where an interim protection order was apparently issued, but none resulted in a final protection order.

<sup>39</sup> Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999 at 2.

sharing residences fell into middle time frames – 29% had shared a residence for five to nine years prior to the application, while 24% had shared a residence for one to four years. Thus, domestic violence – and more importantly, willingness to seek help for domestic violence – was evident in a large number of long-standing domestic relationships.

The cases involving parties who had previously shared a residence (but were not currently sharing a residence) similarly reflected long-term relationships, with just under two-thirds (61%) of these complainants having shared a residence with the respondent for more than four years, and about one-third (33%) having shared a residence with the respondent for more than ten years.

The length of time that the parties had shared a residence is consistent with the fact that the domestic violence reported was in many cases of a long-standing nature.

Many complainants seem to have misunderstood the two questions here, as over 200 answered “yes” to both questions on residence, indicating that they were both currently sharing a residence with the respondent *and* had previously shared a residence with the respondent. In other words, some seem to have answered yes to both questions to indicate continuity rather than to differentiate between a shared residence which is ongoing and a situation where the parties once shared a residence but were living separately at the time of the application.<sup>40</sup>

This is an understandable error, but the intention of the two questions is to differentiate between two different situations; to be more clear, the form should have asked something like (a) “Are you currently sharing a residence with the respondent?” and (b) “If you are not currently sharing a residence with the respondent, have you previously shared a residence with the respondent?”?

Another way of looking at the data is to note that **less than 8% of the complainants (89 complainants) had never shared a residence with the respondent in the case** – indicated by the fact that they answered “no” to both of the questions about a shared residence. Thus, it is clear despite the possible misunderstanding of the questions that **the vast majority of cases involved people who had at some point lived in a common household.**

**TABLE 24**

Residential arrangements between complainant and respondent			
	Shared residence	Number	Percent
Currently share a residence?	Yes	630	60.1%
	No	418	39.9%
	<b>Total</b>	<b>1048</b>	<b>100.0%</b>
Length of sharing a residence	Less than one year	35	6.4%
	1-4 years	129	23.5%
	5-9 years	156	28.5%
	10-14 years	103	18.8%
	15-19 years	63	11.5%
	20 years or more	62	11.3%
	<b>Total</b>	<b>548</b>	<b>100.0%</b>
Previously shared a residence?*	Yes	314	45.0%
	No	384	55.0%
	<b>Total</b>	<b>698</b>	<b>100.0%</b>
Length of previously sharing a residence	Less than one year	24	10.3%
	1-4 years	66	28.3%
	5-9 years	65	27.9%
	10-14 years	33	14.2%
	15-19 years	25	10.7%
	20 years or more	20	8.6%
	<b>Total</b>	<b>233</b>	<b>100.0%</b>

\* The figures here omit the 201 cases where the same complainant also said yes to the question which asked if he or she is currently sharing a residence with the respondent.

<sup>40</sup> It is, of course, possible that it is accurate to answer “yes” to both questions in some cases, such as where the parties shared a residence, lived separately for a time, and then shared a residence again. However, it does not seem likely that this situation was present in the more than 200 cases where complainants said that they were currently sharing a residence with the respondent and had also previously done so.

## 5.7 OTHER PERSONS AFFECTED

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**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

### 5.7.1 Number of other persons affected

Incidents of domestic violence affect others in the family and the household. The application form asks complainants to list any other people who are being affected by the domestic violence directed at the complainant. In the overwhelming majority of cases (95%), at least one other person was mentioned by the complainant as being affected by the domestic violence. In almost half of the cases (47%), the complainants cited two, three or four other persons. Some 2% of complainants asserted that ten to thirteen other persons were being affected. This means that **more than 4700 persons were allegedly affected by the domestic violence described in the 1122 applications in the sample – indicating that the impact of protection orders is potentially very broad.**

**TABLE 25**

Number of other persons affected by the domestic violence		
Number of persons named	Number of applications	Percent
0 (none mentioned)	57	5.1%
1	85	7.6%
2	141	12.6%
3	199	17.7%
4	189	16.8%
5	149	13.3%
6	111	9.9%
7	68	6.1%
8	52	4.6%
9	44	3.9%
10	14	1.2%
11	7	0.6%
12	3	0.3%
13	3	0.3%
<b>Total</b>	<b>1122</b>	<b>100.0%</b>

This table includes a pet mentioned by one complainant as being affected.

**TABLE 26**

Relationship to complainant of other persons affected by the domestic violence		
Relationship	Number	Percent
<b>Persons living in same household with complainant</b>	<b>2488</b>	<b>52.8%</b>
Relatives	2412	51.2%
Non-relatives	76	1.6%
<b>Persons living in separate households from complainant</b>	<b>2222</b>	<b>47.2%</b>
Relatives	764	16.2%
Non-relatives	1458	31.0%
<b>Total number of other persons affected</b>	<b>4710</b>	<b>100.0%</b>

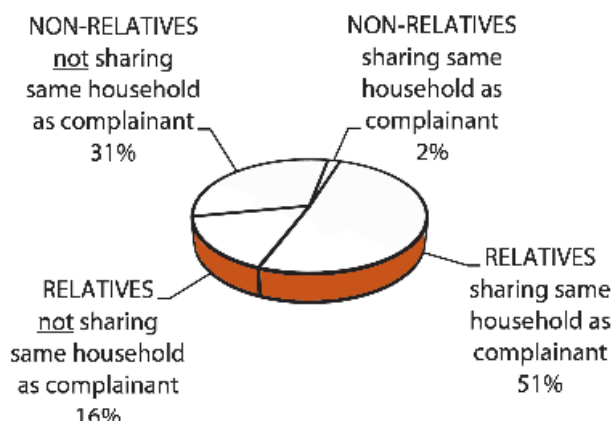
The pet has been removed from the tabulations here.



## 5.7.2 Profile of other persons affected

The majority of the persons cited as being affected by the domestic violence (51% of the total of 4710 other persons mentioned) were relatives sharing the same household as the complainant. Another 16% of the persons affected were relatives living in separate households, while 31% were non-relatives living in separate households. A very small number of people being affected were non-relatives sharing the same household (with most of these being domestic workers).

**CHART 5: Relationship to complainant of other persons affected by the domestic violence**



The largest category of relatives were children of the respondent and complainant, which could have included some adult offspring, accounting for almost one-third of the other persons affected (30%).

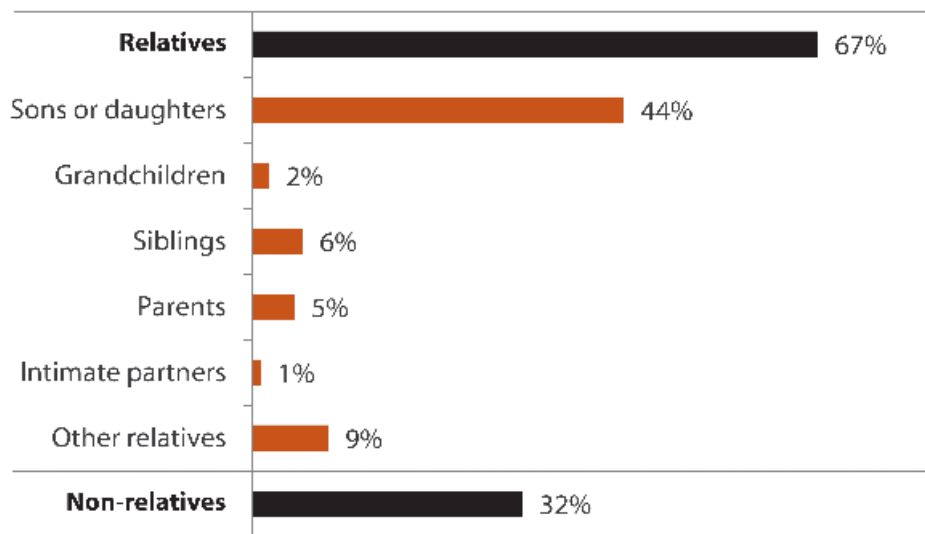
**TABLE 27**

Relationship to complainant of other persons affected by the domestic violence		
Relationship	Number	Percent
<b>Relatives</b>	<b>3173</b>	<b>67.4%</b>
<b>Son or daughter</b>	<b>2082</b>	<b>44.2%</b>
• Son/daughter of complainant and respondent	1427	30.3%
• Son/daughter of complainant	370	7.9%
• Son/daughter of spouse/partner	54	1.1%
• Son/daughter (not specified)	231	4.9%
<b>Grandchild</b>	<b>96</b>	<b>2.0%</b>
• Grandchild of complainant and respondent	16	0.3%
• Grandchild of complainant	58	1.2%
• Grandchild of spouse/partner	1	0.0%
• Grandchild (not specified)	21	0.4%
<b>Sibling</b>	<b>267</b>	<b>5.7%</b>
• Brother/sister of complainant	217	4.6%
• Brother/sister of spouse/partner	50	1.1%
<b>Parent</b>	<b>231</b>	<b>4.9%</b>
• Parent of complainant	200	4.2%
• Parent of spouse/partner	28	0.6%
• Parent (not specified)	3	0.1%
<b>Intimate partner</b>	<b>62</b>	<b>1.3%</b>
• Spouse	46	1.0%
• Boyfriend/girlfriend of complainant	14	0.3%
• Partner of respondent	2	0.0%
<b>In-law</b>	<b>4</b>	<b>0.1%</b>
• Spouse of son/daughter	4	0.1%
<b>Other family member</b>	<b>431</b>	<b>9.2%</b>
• Foster child	5	0.1%
• Other relative	426	9.0%

Table continues ►

<b>Non-relatives</b>	<b>1513</b>	<b>32.1%</b>
Witness	348	7.4%
Applicant	2	0.0%
Housekeeper / domestic employee	36	0.8%
Police officer / WCPU officer	28	0.6%
Medical practitioners and social worker	18	0.4%
Lawyer	6	0.1%
Pastor	3	0.1%
Other non-relative	1072	22.8%
Relationship not clear	24	0.5%
<b>Total</b>	<b>4710</b>	<b>100.0%</b>

**CHART 6: Relationship to complainant of other persons affected by the domestic violence**  
(missing values excluded)



**TABLE 28**

Sex of other persons affected by domestic violence		
Sex	Number	Percent
Male	1757	37.3%
Female	2465	52.3%
Unknown	488	10.4%
<b>Total</b>	<b>4710</b>	<b>100.0%</b>

**CHART 7: Sex of other persons affected by the domestic violence**  
(missing values excluded)



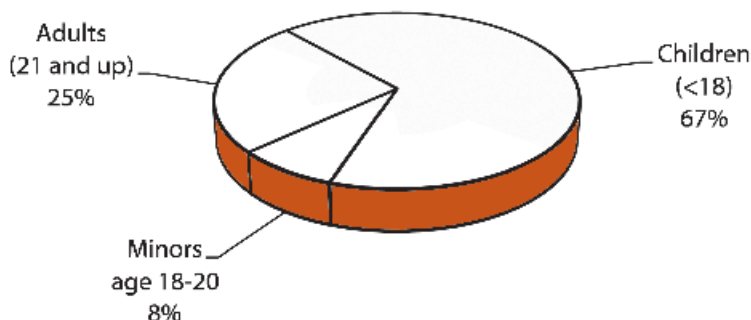
**TABLE 29**

Age group of other persons affected by domestic violence		
Age group	Number	Percent
<b>Children under 18</b>	<b>1820</b>	<b>38.6%</b>
0-4	383	8.1%
5-9	534	11.3%
10-14	580	12.3%
15-17	323	6.9%
<b>Minors age 18-20</b>	<b>219</b>	<b>4.6%</b>
18-20	219	4.6%
<b>Adults</b>	<b>680</b>	<b>14.4%</b>
21-24	158	3.4%
25-29	126	2.7%
30-34	85	1.8%
35-39	58	1.2%
40-44	45	1.0%
45-49	41	0.9%
50-54	54	1.1%
55-59	30	0.6%
60 years or older	83	1.8%
<b>Unknown</b>	<b>1991</b>	<b>42.3%</b>
<b>Total</b>	<b>4710</b>	<b>100.0%</b>

The majority of the other persons named as being affected by the domestic violence were girls or women (52%), compared to only 37% men or boys. (The sex of some 11% of the affected persons was not stated.) This shows that both the direct and the indirect impact of domestic violence falls disproportionately on females, again highlighting the gendered nature of the problem.

## 5.7.3 Children affected

**CHART 8: Age of other persons affected by the domestic violence** (missing values excluded)



**TABLE 30**

Age of other persons affected by the domestic violence		
Age group	Number	Percent
Children (<18)	1820	66.9%
Minors age 18-20	219	8.1%
Adults (21 and up)	680	25.0%
<b>Total</b>	<b>2719</b>	<b>100.0%</b>

Missing values excluded. Age reported for just under 58% of other persons cited.

The Combating of Domestic Violence Act defines a “child” as a person under the age of 18.<sup>41</sup> Looking at persons affected by the domestic violence for whom ages were given, children under the age of 18 accounted for 67%, with three-quarters (75%) of the total being minors under the age of 21.<sup>42</sup> In terms of the Combating of Domestic Violence Act, exposing children to domestic violence, or putting a child at risk of seeing or hearing such abuse, constitutes a form of domestic violence in itself as one manifestation of psychological abuse.<sup>43</sup>

About 93% of the affected children under age 18 were living in the same household with the complainant, making it likely that they were directly exposed to the alleged acts of violence. This indicates that more acts of domestic violence are being committed against children than might be at first apparent.

Furthermore, the fact that so many children are being affected by domestic violence increases the possibility that they will grow up to view violence as an acceptable mechanism for dealing with problems.<sup>44</sup>

All key informants were asked to tell us about cases “*involving children*”. Worryingly, virtually all of those interviewed understood this to refer only to cases where the violence was specifically targeting the child. Only two clerks we interviewed took a broader approach, with one noting that in most cases “*children are affected by the violence against the wife*” and another saying that all of the cases he handled involved children who could be affected by the surrounding violence. One other clerk noted that when children are involved in a case, he informs both the complainant and the respondent about the possible psychological impact of the violence on the children.

<sup>41</sup> Combating of Domestic Violence Act 4 of 2003, section 1.

<sup>42</sup> The age of majority in Namibia at the time of writing is 21. Age of Majority Act 57 of 1972. It is expected to be lowered to 18 by the forthcoming Child Care and Protection Bill which was not yet before Parliament.

<sup>43</sup> Combating of Domestic Violence Act 4 of 2003, section 2(2).

<sup>44</sup> See for example, Paulo Sérgio Pinheiro (Independent Expert for the United Nations Secretary-General’s Study on Violence against Children), *World Report on Violence against Children*, Geneva: United Nations, 2006 at 70.

The fact that few cases were cited by key service providers as “involving” children is worrying. If the involvement and vulnerability of children indirectly affected by violence is not recognised, the intended referrals to social workers for monitoring will not take place. This means that children who are being affected by family violence will not receive the support that is required to protect them and to break the chain of violence.

## 5.7.4 Type of effect on other persons

The most significant impacts of domestic violence on others are the emotional and psychological effects (50%), changes in relationships with the respondent (13%), exposure to threats and assault (12%) and fear, anxiety and other negative psychological reactions (6%). School performance and work performance were negatively affected for many of the bystanders, as well as economic security. More than 60 people (other than the direct victims of the violence) reportedly left home because of the violence, or were deprived of their homes as a result of it. Seven complainants reported that others affected by the violence had become suicidal.

**TABLE 31**

Effect of violence on others (multiple responses possible)		
Type of effect	Number of responses	Percent of total responses
Emotionally/psychologically affected	1106	49.7%
Relationship with respondent – negative affect	290	13.0%
Exposure to threats and assault	264	11.9%
Negative effect on school performance/studies	160	7.2%
Causes fear / anxiety / negative reaction	131	5.9%
Economically deprived	51	2.3%
Health affected	48	2.2%
Behaviour problems	43	1.9%
Deprived of home	34	1.5%
Left home	30	1.3%
Relationship with respondent – indifferent/defiant	19	0.9%
Negative effect on work performance	11	0.5%
Sexually threatened	7	0.3%
Suicidal	7	0.3%
Relationship with respondent – positive	5	0.2%
Had to receive counselling (eg for being molested)	2	0.1%
Other effects	16	0.7%
<b>Total</b>	<b>2224</b>	<b>100.0%</b>

If the complainants’ assessments of the effects of the violence on others are accurate, this information supports the notion that **domestic violence is not a private matter at all, but a social problem with profound effects on people outside the violent relationship – including many children.** The impacts observed also support the law’s identification of exposing children to domestic violence as a form of domestic violence in itself.

*Domestic violence is a chain that never stops – it involves a lot of people.*

– Clerk of court, Swakopmund

## 5.8 PROFILE OF RESPONDENTS

It should be remembered in respect of this section that, because there were six cases in which complainants cited multiple respondents, the 1122 applications examined involved a total of 1131 respondents.<sup>45</sup>

### 5.8.1 Sex

**CHART 9: Sex of respondents**  
(missing values excluded)



**TABLE 32**

Sex of respondents		
Sex	Number	Percent
Male	983	86.9%
Female	146	12.9%
Not recorded	2	0.2%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

**The majority of respondents were male (87%).** This is not surprising, given that most complainants were women and that most of the relationship involved were marriages or other intimate relationships.<sup>46</sup>

This finding is consistent with the LAC-LRDC study, which found that 93% of domestic violence crimes reported to the police were committed by men and that 60% of other violent crimes involved men as perpetrators.<sup>47</sup>

**This gender pattern could mean that men are generally more prone to commit acts of violence than women, which raises questions about the way that boys are socialised and trained. It could also mean that men are more reluctant to seek assistance when they suffer domestic violence, which could be a result of prevailing norms of masculinity.**

### 5.8.2 Age

**Close to half of respondents (48%) were between the ages of 30-44 at the time when the protection order application was made. Their age pattern is similar to that of complainants. About 9% of respondents were between the ages of 25-29 and 11% were between the ages of 45-49. Only two respondents were under the age of 18.**

More forms failed to record the ages of respondents than the ages of complainants, which is not surprising since the information comes from the application form completed by the complainant.

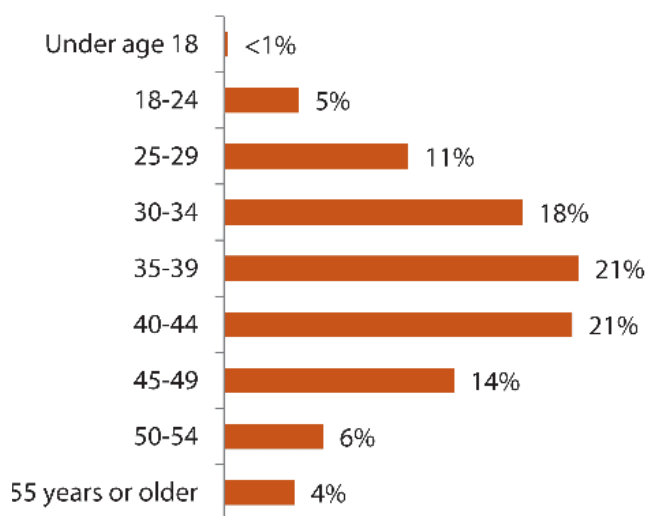
<sup>45</sup> See section 5.3.4 (part d) on multiple respondents.

<sup>46</sup> The Combating of Domestic Violence Act explicitly excludes same-sex relationships from its coverage by referring to marriage (which is possible in Namibia only between persons of the opposite sex), and then limiting its applicability to cohabitation and romantic relationships to those between persons “of different sexes”. See Combating of Domestic Violence Act, section 3(1)(a)(marriage), 3(1)(b)(cohabitation) and 3(1)(f)(intimate or romantic relationships).

<sup>47</sup> Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999 at 1.

The mean age for respondents was 38.5 (compared to 38 for complainants), and respondents ranged in age from 17 to 73 (compared to a range of 3 to 77 for complainants). Thus, like the victims of domestic violence, the alleged perpetrators span all age groups.

**CHART 10: Age of respondents**  
(missing values excluded)



**TABLE 33**

Age of respondents		
Age group	Number	Percent
Under age 18	2	0.2%
18-24	41	3.6%
25-29	101	8.9%
30-34	163	14.4%
35-39	193	17.1%
40-44	190	16.8%
45-49	126	11.1%
50-54	54	4.8%
55 years or older	38	3.4%
Not recorded	223	19.7%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

**TABLE 34**

AGE OF COMPLAINANTS AND RESPONDENTS					
Party	Number	Mean	Median	Minimum	Maximum
Complainant	1102	38.0	37.1	3	77
Respondent	908	38.5	38.1	17	73

The overall trend was for female complainants in intimate relationships to be younger than the male respondents. As Table 35 indicates, most of the wives who brought protection orders against their husbands were one to five years younger than the respondent (45%) or six to ten years younger (17%). This pattern holds true for other intimate relationships as well, with women typically being one to five years younger than their male partners.

**About 7% of the women in intimate relationships were more than ten years younger than their male partners, which could signal a more pronounced power imbalance. This subset of relationships could include some “sugar daddy” relationships (where an older man has a relationship with a significantly younger partner and provides material benefits during their relationship).** The power dynamics of “sugar daddy” relationships already position girlfriends or wives at an economic and social disadvantage; an added element of violence in the relationship could put these women at severe risk of injury and trauma, while the extreme level of dependency could dissuade a woman from leaving an abusive relationship in these circumstances.

**Potential “sugar mommy” relationships were not prevalent in the study.** Less than 2% of women complainants in past or current intimate relationships were more than ten years older than the male partners who allegedly abused them, and only a single male complainant alleged abuse by a female partner who was more than ten years older.

Amongst family members who made protection order applications, the age gaps between the complainant and respondent were consistent with relationships between the parties – with the age gaps between parents and children, for example, being in the range that one would expect to find.

TABLE 35

Age comparison between complainants and respondents in intimate relationships										
	Same age as respondent	1-5 years older than respondent	6-10 years older than respondent	11-15 years older than respondent	> 15 years older than respondent	1-5 years younger than respondent	6-10 years younger than respondent	11-15 years younger than respondent	> 15 years younger than respondent	Total
	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)	Number (Percent)
<b>Female complainants</b>										
Wife	49 (9.1%)	93 (17.2%)	22 (4.1%)	2 (0.4%)	2 (0.4%)	242 (44.7%)	94 (17.4%)	28 (5.2%)	9 (1.7%)	<b>541 (100.0%)</b>
Ex-wife	4 (10.0%)	9 (22.5%)	0 (0.0%)	1 (2.5%)	0 (0.0%)	16 (40.0%)	9 (22.5%)	1 (2.5%)	0 (0.0%)	<b>40 (100.0%)</b>
Girlfriend	5 (7.4%)	9 (13.2%)	5 (7.4%)	2 (2.9%)	0 (0.0%)	26 (38.2%)	15 (22.1%)	3 (4.4%)	3 (4.4%)	<b>68 (100.0%)</b>
Ex-girlfriend	8 (7.8%)	18 (17.6%)	7 (6.9%)	4 (3.9%)	1 (1.0%)	34 (33.3%)	24 (23.5%)	1 (1.0%)	5 (4.9%)	<b>102 (100.0%)</b>
<b>Total</b>	<b>66 (8.8%)</b>	<b>129 (17.2%)</b>	<b>34 (4.5%)</b>	<b>9 (1.2%)</b>	<b>3 (0.4%)</b>	<b>318 (42.3%)</b>	<b>142 (18.9%)</b>	<b>33 (4.4%)</b>	<b>17 (2.3%)</b>	<b>751 (100.0%)</b>
<b>Male complainants</b>										
Husband	1 (2.0%)	19 (38.8%)	15 (30.6%)	6 (12.2%)	4 (8.2%)	3 (6.1%)	0 (0.0%)	0 (0.0%)	1 (2.0%)	<b>49 (100.0%)</b>
Ex-husband	1 (20.0%)	2 (40.0%)	0 (0.0%)	1 (20.0%)	0 (0.0%)	1 (20.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	<b>5 (100.0%)</b>
Boyfriend	1 (33.3%)	0 (0.0%)	0 (0.0%)	1 (33.3%)	0 (0.0%)	0 (0.0%)	1 (33.3%)	0 (0.0%)	0 (0.0%)	<b>3 (100.0%)</b>
Ex-boyfriend	0 (0.0%)	5 (55.6%)	1 (11.1%)	0 (0.0%)	2 (22.2%)	0 (0.0%)	1 (11.1%)	0 (0.0%)	0 (0.0%)	<b>9 (100.0%)</b>
<b>Total</b>	<b>3 (4.5%)</b>	<b>26 (39.4%)</b>	<b>16 (24.2%)</b>	<b>8 (12.1%)</b>	<b>6 (9.1%)</b>	<b>4 (6.1%)</b>	<b>2 (3.0%)</b>	<b>0 (0.0%)</b>	<b>1 (1.5%)</b>	<b>66 (100.0%)</b>

Missing cases excluded; this table presents only intimate partner relationships where the ages of both the complainant and the respondent could be ascertained. Where percentages do not appear to total 100%, this is due to rounding.

### 5.8.3 Language group

The major apparent language groups of respondents follow the same patterns as those of the complainants, being Afrikaans (33%), Oshiwambo (22%) and Damara/Nama (16%). However, as noted in respect of complainants, this finding must be treated with extreme caution on methodological grounds. The congruence between the data on this point for complainants and respondents could be a result of the fact that the majority of domestic relationships involved in protection order applications are marriages, where the wife usually takes on the husband's surname. The surname is also likely to be the same amongst some family members (such as parent and child or sister and brother) in many Namibian cultural groups, although here the parties are obviously likely to belong to the same language group.

TABLE 36

Apparent language group of respondents		
Apparent language group estimated from surname or information in file	Number	Percent
Afrikaans	372	32.9%
Oshiwambo	253	22.4%
Damara/Nama	183	16.2%
Otjiherero	68	6.0%
Silozi	38	3.4%
English	33	2.9%
Rukwangali	21	1.9%
German	10	0.9%
Setswana	5	0.4%
San languages	1	0.1%
Others	66	5.8%
Impossible to identify	81	7.2%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

Amongst complainants and respondents who were in boyfriend-girlfriend relationships, where the surnames of the parties were more likely to be the ones they were born with (except perhaps for women previously married), at least 54% of girlfriend complainants appeared to share the same apparent language group as male respondents, while boyfriend complainants appeared to share the same language group as female respondents in at least 64% of such cases. The percentages were almost identical for ex-girlfriends and ex-boyfriends. These would appear to be the only relationships in which extrapolation from surnames might add to our understanding of the respective home language groups of complainant and respondent.

What is particularly interesting about this group is that **about one-third of the unmarried intimate partners involved in protection order applications did not appear to come from the same language group – which may indicate cultural differences that might have made it harder for them to resolve their differences with the help of extended family members or traditional leaders.**

**TABLE 37**

Comparison of apparent language groups of boyfriends and girlfriends involved in protection order applications								
Complainant's relationship to respondent	Same apparent language group		Different apparent language group		Either or both unknown		Total	
	N	%	N	%	N	%	N	%
Girlfriend	54	53.5%	32	31.7%	15	14.9%	<b>101</b>	<b>100.0%</b>
Boyfriend	7	63.6%	3	27.3%	1	9.1%	<b>11</b>	<b>100.0%</b>
Ex-girlfriend	77	57.9%	46	34.6%	10	7.5%	<b>133</b>	<b>100.0%</b>
Ex-boyfriend	14	63.6%	8	36.4%	0	0.0%	<b>22</b>	<b>100.0%</b>

## 5.8.4 Employment

As in the case of complainants, respondents came from a wide range of sectors in Namibia and were mostly employed. Some 24% of respondents were unemployed – slightly higher than the corresponding percentage of 18% for complainants, but still considerably lower than the national rate of 51,2% (broad measure) or 37.6% (strict definition).<sup>48</sup> Housewives, domestic workers, pensioners and students were represented in small numbers amongst the respondents.

The largest groups of respondents were technicians and other skilled workers (12%), general labourers (8%) and motor vehicle operators (8%). Respondents also included fishery workers, ship's crew members and farmers. Respondents from service industries included salespersons, personal service workers, clerks, uniformed personnel (including police officers, members of the armed forces and other protective service workers such as security guards), nurses and other health workers, people in financial and managerial positions, entrepreneurs and businesspersons, supervisory and control officers, and other professionals (including teachers). There were also a few legislators and senior government officials amongst the respondents in the sample. **The occupations of respondents, like those of complainants covered a broad spectrum and suggests that domestic violence is perpetrated by members of all sectors of Namibian society.**

**Almost 4% of respondents were police officers, 3% were employed in the armed forces and another 3% in other protective services – disturbing statistics since most such personnel would have access to firearms.**

<sup>48</sup> See note 33 above.



## **“Killer cop jailed for fifty years”**

A police constable convicted of murdering two women, and also raping one of them, at Sesfontein in February 2005 was sentenced to an effective 50 years’ imprisonment at the end of his trial in the High Court at Oshakati on Thursday last week.

...

On the morning of February 21 2005, the 75-year-old Albertine Tjitana, who was the grandmother of Mukuwe’s former girlfriend, was found dead at her house at the Kunene Region village. That same morning Hulda Sonja Mibagu Tjitana, a teenaged cousin of Mukuwe’s former girlfriend, was found dead in the house where the former girlfriend stayed. Found with her underwear pulled down and around her ankle, it was suspected that she had been raped.

Both women had been strangled, it was later established.

It was also discovered that the Sesfontein Police Station had been broken into during the night. A steel cabinet in which firearms were kept was found damaged inside the Police station, but it had not been opened.

Later that morning, Mukuwe was found outside Sesfontein. He was detained as a suspect in connection with the double murder.

In a written statement taken by another Police officer after Mukuwe’s arrest, he admitted that he had been responsible for the two killings. His explanation was that it had started as a matter of mistaken identity, as he was planning to kill his former girlfriend, Sandy Nuas, only to realise that he had instead murdered her cousin...

... In the statement he made after his arrest, and which Mukuwe unsuccessfully tried to wiggle out of during the trial, he stated: “When I came at the house, I open the door, I saw someone on the bed. My intention was to kill Sandy Nuas. I then strangled the deceased. I then later realised that it was a wrong person. I then went to look for Sandy at the house, but I didn’t get for Sandy. I then decided to kill the grandmother. I then killed the old lady again by strangling her. I then went to the Police Barracks and sleep. Before I went to the scene, I came to broke the window pane, and entered the office. I wanted to take the pistol but it was locked.”

Werner Menges, *The Namibian*, 16 August 2010

## **“Off-duty cop arrested for girlfriend’s death”**

Police Constable Andreas Hashiyana from Oshakati has been arrested on a murder charge after a teacher at Omahila Combined School in Omusati Region, Justina Eunice Aluteni (28), was shot dead in a bar at Oshakati on Wednesday night. The shooting happened in Champ Style Bar.

The Oshana Police Commander, Deputy Commissioner Ndahangwapo Kashihakumwa, said Constable Hashiyana is one of the VIP Protection officers guarding the Angolan consulate in Oshakati.

Hashiyana appeared in the Oshakati Magistrate’s Court yesterday charged with murder and illegal possession of a firearm. He was on leave at the time of the shooting and the alleged murder weapon is a Police AK-47.

Hashiyana and Aluteni, who were in a relationship, had been in the bar since the afternoon. Towards evening they started quarrelling, and Hashiyana left the bar and allegedly returned with the rifle concealed under a Police jacket. Noticing the rifle, Aluteni hid in a toilet but Hashiyana ordered her to come out. When she emerged from the toilet, he allegedly shot her several times and she died instantly. Hashiyana then allegedly ran away and threw down the AK-47 outside the bar. The Police found him later that night sleeping with his other girlfriend at Sky location near the Oshakati Police Station and arrested him.

Hashiyana allegedly got hold of the assault rifle by telling the protection officer on duty at the Angolan consulate that he had been sent to relieve her and she could go home. This gave him access to the weapons room at the consulate, where he allegedly took the AK-47 and a jacket to conceal it with.

Oswald Shivute, *The Namibian*, 12 December 2008

## 5.8.5 Previous convictions

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

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

..... not to the best of my knowledge

..... no

..... yes

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

Almost one-quarter of the respondents (24%) had previously been convicted of crimes, according to information provided by the complainants. Previous convictions for violent crimes were the most common within this category (56%), namely assault (41%), murder or homicide (6%), sexual offences (3%), crimes relating to firearms (3%), robbery (2%) and convictions for some form of domestic violence (1%). This indicates that domestic violence may be part of long-term patterns of violence.

The fact that some 6% of respondents had convictions for some alcohol or drug-related offence, and that some of the driving offences (8% of previous convictions) involved alcohol, is consistent with the high levels of drug and alcohol abuse attributed to respondents in these cases.

Respondents' other previous convictions included property crimes (20%), crimes involving dishonesty (5%), *crimen injura* (criminal insult) or making threats (5%), trespassing and arson (both less than 1%).

Not included in these tallies are the 26 respondents who reportedly had criminal cases pending against them, or the instances where a charge had been laid against a respondent but later withdrawn.

Although the majority of respondents were not known to have any previous convictions, it is nonetheless worrying that over 13% of the total number of 1131 respondents reportedly had previous convictions for *violent* crimes. Such a history of proven violence highlights the fact that domestic violence can be very dangerous, and also suggests that domestic abusers may be generally violent and not just violent in the domestic context. This is, above all, an indication that applications for protection orders need to be taken seriously.

*He is having a gun as well as a bow and arrow and he makes me sit in a corner and uses the bow and arrow and I musn't move because he might strike me... He once forced the gun down my throat and smashed my right hand with the gun.*

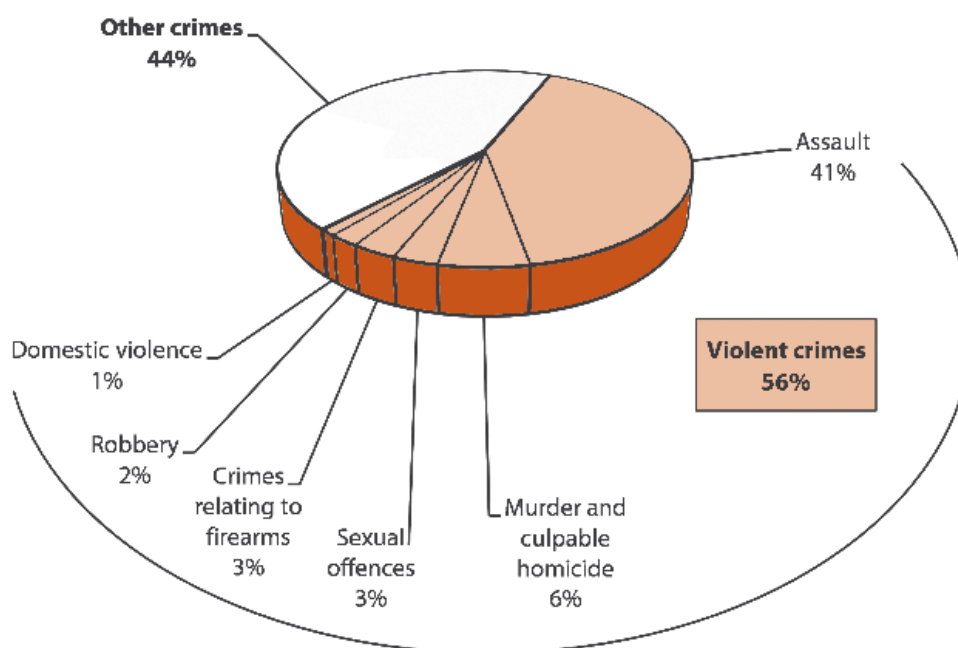
– 24-year-old woman bringing protection order application against her 30-year-old boyfriend, who has a drug abuse problem

**TABLE 38**

Respondents' previous convictions		
Category of crime	Number of respondents	Percent of respondents with convictions
<b>Assault</b> assault, assault GBH	110	40.9%
<b>Property crimes</b> theft, housebreaking, stock theft, illegal hunting, illegal import of endangered species, shoplifting	54	20.1%
<b>Alcohol and drug related</b> drunkenness, possession of drugs	16	5.9%
<b>Murder and culpable homicide</b> including attempted murder	17	6.3%
<b>Crimes involving dishonesty</b> fraud, forgery, making false statements to police	12	4.5%
<b>Crimen injuria, making threats</b> crimen injuria = unlawful, intentional, serious violation of another's dignity or privacy	12	4.5%
<b>Sexual offences</b> rape or attempted rape	8	3.0%
<b>Crimes relating to firearms</b> illegal possession or pointing of firearm, threatening someone with firearm, discharge of firearm in municipal area	8	3.0%
<b>Robbery</b>	5	1.9%
<b>Domestic violence</b>	3	1.1%
<b>Traffic offence / reckless driving / drunken driving</b>	21	7.8%
<b>Trespassing</b>	2	0.7%
<b>Arson</b>	1	0.4%
<b>Total</b>	<b>269</b>	<b>100.0%</b>
<i>Pending cases (theft, stock theft, defeating cause of justice, assault, fraud, rape)</i>	21	
<i>Charge was laid but later withdrawn</i>	5	

The shaded rows represent violent crimes.

**CHART 11: Crimes committed by respondents with previous convictions (24% of all respondents)**



## 5.8.6 Drug and alcohol use

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

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

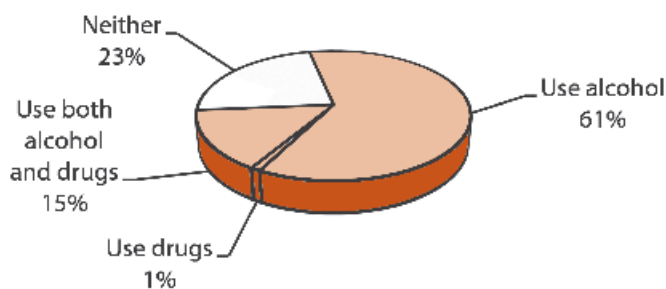
..... alcohol and drugs

give details: .....

The application form asked complainants to say if the respondent “uses or abuses” alcohol or drugs. It should be noted that this question on the form (reproduced above) is ordered in a somewhat confusing way, with the details which would logically go with a “yes” answer being listed under “no” – a matter which could be corrected simply by reversing the order of the “yes” and “no” answers on the form.

According to the complainants, the majority of respondents use intoxicants: 61% use alcohol but not drugs, a little over 1% use drugs but not alcohol and 15% use both alcohol and drugs. About 30% of the respondents who use intoxicants were characterised as heavy or excessive users/abusers of alcohol, while only about 8% were described as moderate or occasional drinkers.

**CHART 12: Respondents’ reported use or abuse of alcohol or drugs**  
(information provided in respect of 1021 respondents)



Just over 9% of the complainants perceived a correlation between increased alcohol consumption by the respondent and increased abuse.

While alcohol consumption is often linked to domestic violence, the fact that almost one-quarter of the abusers were *not* reported to use either alcohol or drugs is also noteworthy, as it underlines the fact that it is simplistic to blame alcohol use for the problem of domestic violence in Namibian society. It is probably a triggering factor for some abusers in the sense of removing inhibitions, rather than an actual root cause of domestic violence.

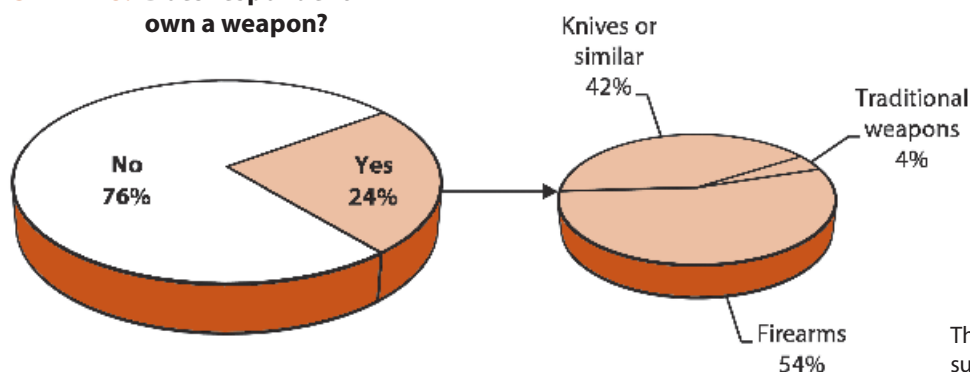
## 5.8.7 Weapon ownership

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

6. Does the respondent (the person who commits the abuse) own a weapon?  
 ..... no  
 ..... yes  
 what kind of weapon? .....

Complainants were asked to indicate if the respondent owned a weapon, and if so to indicate the kind of weapon. A little over one-fourth of all respondents (292 respondents, or 26%) were believed by the complainants to own one or more weapons. A few complainants went on to list some weapons, as well as some innocuous objects which can be used as weapons but are not actually weapons in themselves – such as rocks, bottles, belts and sticks. However, conventional weapons were reportedly owned by respondents in 24% of the applications. Complainants believed that 149 out of the 1131 respondents (13%) owned firearms. Complainants listed knives or similar weapons (pangas, axes) in respect of 113 respondents (10%), and traditional weapons (such as knobkerries) in respect of 11 respondents (1%).<sup>49</sup>

**CHART 13: Does respondent own a weapon?**



The percentages for the subcategories (type of weapon) are illustrated without taking multiple responses into account. Ordinary items which can be used as weapons (rocks, bottles, belts, sticks, etc) have been excluded from the calculations in both Chart 13 and Table 39.

**TABLE 39**

Type of weapon owned by respondents who reportedly owned weapons (multiple responses possible)		
Type of weapon	Number of responses	Percent of total responses
Firearm (gun, pistol)	149	54.6 %
Knife	79	28.9%
Panga	26	9.5%
Axe	8	2.9%
Knobkierie	9	3.3%
Other traditional weapons	2	0.7%
<b>Total</b>	<b>273</b>	<b>100.0%</b>

<sup>49</sup> Multiple responses to this question were possible, meaning that there were some cases where the complainant believed that the respondent owned multiple types of weapons. This tabulation does not take multiple responses and missing data into account, meaning that there may be some overlap between the percentages given.

## 5.8.8 Other characteristics of respondents

Three files contained medical reports (one from a doctor and two from psychiatrists) addressing the mental states of the respondents in question. One file contained a suicide note written by the respondent.

One file contained evidence that a respondent had been violent towards another person, presumably to illustrate a tendency to violence.

## 5.9 MOST RECENT INCIDENT OF DOMESTIC VIOLENCE

Applications for protection orders call for details about the most recent incident of domestic violence, as well as the history of domestic violence between the same parties. The information provided by the complainant (or applicant) for both of these categories is presented in this section.

It must be remembered that these details of the acts of domestic violence all come from the allegations made by the complainant on the application form; in some instances, the respondent may have disputed this version of the facts.

### 5.9.1 Length of time between most recent incident and application

excerpt from  
**Form 1 – APPLICATION FOR PROTECTION ORDER**  
**Section D**

**a) THE MOST RECENT INCIDENT OF ABUSE**

1. Date of the most recent incident of abuse:  
.....  
date month year

**BOTTOM OF FORM**

**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 at ..... this ..... day of .....

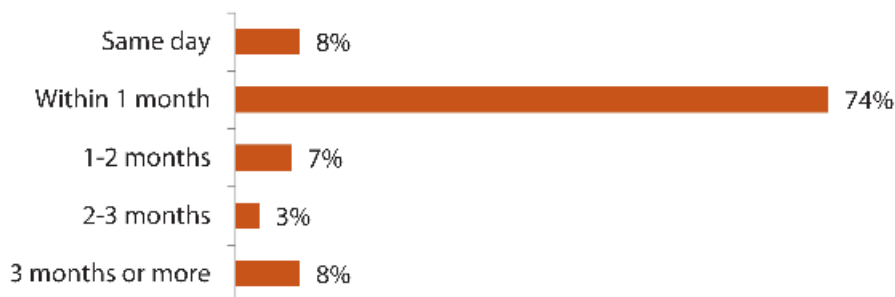
I hereby certify that the Deponent has acknowledged that he/she knows and understands the contents of this declaration which was sworn to / affirmed before me, and the Deponent's signature / thumb mark / mark was placed in my presence.

.....  
Signature of Commissioner of Oaths

Complainants were asked to give the date of the most recent incident of abuse. Each application form also has a place for a date and signature by the complainant (or applicant), as well as a place for the Commissioner of Oaths who witnesses it to insert a date. The date recorded here was treated as the date of the application.

**Applications for protection orders were typically made about 4 days after the most recent incident of violence. Almost 8% of the applications were made on the same day that the most recent act of violence occurred, illustrating a concern for urgency on the part of the complainant. More than 82% were made within one month of the most recent abuse, and almost all (92%) were made within three months of the most recent incident. The longest gap between the most recent incident and the application was over four years (in one unusual case).<sup>50</sup>**

**CHART 14: Time lapse between most recent incident of abuse and protection order application**



<sup>50</sup> Since our sample included only applications initiated in the years 2004-2006, we can conclude that this particular application ignored the provision of the Act which specifies that a protection order may not be granted solely on the basis of behaviour which took place before the commencement of the Act on 17 November 2003. Combating of Domestic Violence Act 4 of 2003, section 7(2)(a); brought into force by Government Notice 234 of 17 November 2003 (Government Gazette 3094).

## 5.9.2 Type of violence in most recent incident

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**a) THE MOST RECENT INCIDENT OF ABUSE**

\*\*\*

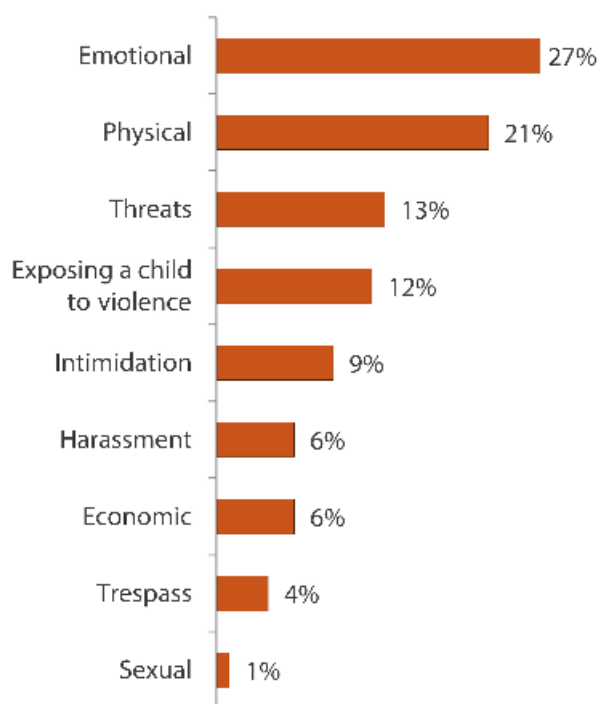
**2. Details of the most recent incident of abuse:**

The protection order applications examined included descriptions of every type of domestic violence articulated in the law, indicating that the extensive legal definition has been put to use in practice.

The complainants described the abuse they allegedly suffered in their own words; the grouping of descriptions into the various categories covered by the law was done by our statistical team during analysis.

The three most common types of domestic violence experienced during the applicant's most recent incident of abuse were emotional or psychological abuse (27%), physical abuse (21%), and threats or attempts to carry out acts of domestic violence (13%). Recent incidents of abuse also included sexual abuse (1%), economic abuse (6%), intimidation (9%), harassment (6%), trespass (4%) and exposing a child to acts of domestic violence (12%).

**CHART 15: Type of abuse in most recent incident**  
(multiple responses possible)



**TABLE 40**

Type of abuse in most recent incident (multiple responses possible)		
Type of abuse	Number of responses	Percent of total responses
Physical abuse	583	20.7%
Sexual abuse	39	1.4%
Economic abuse	169	6.0%
Intimidation	255	9.1%
Harassment	180	6.4%
Trespass	113	4.0%
Emotional, verbal or psychological abuse	765	27.2%
Threats or attempts to carry out any of these acts	369	13.1%
Exposing a child to acts of domestic violence	337	12.0%
<b>Total</b>	<b>2810</b>	<b>100.0%</b>



## CASE STUDIES

### Domestic violence and property grabbing

Sometimes members of the public fail to recognise that property grabbing can involve domestic violence. By property-grabbing, we refer to the situation where relatives of a deceased spouse (almost always the husband) lay claim to the couple's assets, sometimes stripping the household and depriving the widow of any means of livelihood, then attempting to legitimise their actions with reference to customary law. Relatives of the deceased in such instances usually help themselves to property without involving civil or traditional authorities to assist in determining who should inherit the items in question.

Property-grabbing could in some cases constitute a form of economic abuse under the Combating of Domestic Violence Act. Furthermore, if the widow resists, the property-grabbing may be accompanied by other forms of abuse.

However, not all cases of property grabbing would constitute economic abuse under the Act. For the Act to be applied there must be evidence of a "domestic relationship" between the complainant and the respondent. For example if a family member from another village comes to chase a widow out of her home, the widow cannot apply for a protection order against the family member unless she can prove a domestic relationship. If she has never had contact with the relative before, there is probably no domestic relationship. However where adult sons or daughters and their spouses chase the widow out of her home, there is a domestic relationship even if the widow and the adult offspring were not living together in the house at the time.

For example, in 2010, the Legal Assistance Centre was approached by a client who claimed that she was being chased out of the house where she had lived with her late partner for over 38 years. Because the couple had never concluded a formal civil or customary marriage, the communal land they lived on was allocated to their elder son after the death of the client's partner, and she maintained that her daughters and the deceased's brother had now evicted her from her home. She also alleged that these family members were verbally abusive and accused her of having caused the death of the deceased through witchcraft. We advised this client to seek a protection order against the relatives involved.

In another 2010 case, a client's brother-in-law moved into her homestead and lived there for over 9 months after her husband died. After this relative started selling off her cattle and personal possessions, she approached our offices. We assisted her to obtain a protection order on grounds of economic abuse. However, the police had not served the protection order a month after it had been obtained, so the brother-in-law was still coming to her home as he pleased. After the Legal Assistance Centre contacted the police to follow up, the order was served and the police explained the legal implications of the order to the client. The interim protection order in this case was made final, and helped to maintain the peace while the client was pursuing an underlying claim against the brother-in-law for compensation for the 25 head of cattle that he had wrongfully sold.

A third client approached the Legal Assistance Centre in 2010 with a complaint that her late husband's relatives and her two adult daughters were chasing her away from her late husband's communal land. She reported that they accused her of having caused the death of her husband and were continuously insulting her and pressuring her, with the assistance of an uncle, to leave her home. We advised the client to seek a protection order or an official police warning while she was taking action to protect her rights to continue to occupy the communal land in terms of the Communal Land Reform Act 5 of 2002 which protects widows in this regard.

Many complainants experienced multiple forms of domestic violence in the most recent incident. It was most common for complainants to list two or three different types of abuse as forming part of the most recent incident of domestic violence.

Without minimising any form of abuse, we attempted to ‘rank’ the various types of abuse in order to tabulate the multiple manifestations of abuse in a manageable way for individual applications. Using physical danger to the complainant as the operative standard, we ranked the forms of abuse for this exercise as follows:

- physical abuse
- sexual abuse
- intimidation (inducing fear by physical abuse, a threat of physical abuse, brandishing a weapon or other menacing behaviour)
- harassment (repeatedly following, pursuing, accosting or making persistent unwelcome communications)
- trespass
- economic abuse
- emotional, verbal or psychological abuse
- threats or attempts to carry out any of these forms of abuse
- exposing a child to acts of domestic violence against another person, or putting a child at risk of exposure to such acts (which would by its nature in most cases be accompanied by some other form of domestic violence).

This is not, of course, a perfectly accurate ranking. For instance, we are aware that a threat can be as much of a prelude to actual physical harm as intimidation or harassment, and we are also aware that economic and emotional abuse can be as debilitating for some complainants as physical or sexual abuse. However, the ranking utilised for this exercise can nevertheless serve as a rough approximation of physical danger, in an attempt to ascertain whether complainants are seeking protection orders for types of domestic violence which are hard to prove or even possibly trivial.

Using this scale, we prepared a tabulation which counted each protection order application only once, even if multiple forms of domestic violence were alleged, by placing it in the category of the most ‘physically dangerous’ violence involved in the most recent incident.

**This tabulation shows that more than half of the complainants reported that they had experienced physical abuse, either alone or in combination with other abuse, in the most recent incident of domestic violence.** Emotional abuse alone or in combination with other abuse, produced the next highest score in this tabulation, but it was far below physical abuse, being the ‘most dangerous’ form of recent abuse in less than 15% of the applications.

Intimidation and harassment were the most dangerous recent acts in 12% and 9% of the applications, respectively. Economic abuse was the main recent factor in 6% of the applications. Sexual abuse was relatively rare; it formed part of the most recent incident in only 1.4% of the applications and almost always occurred together with other forms of physical abuse.

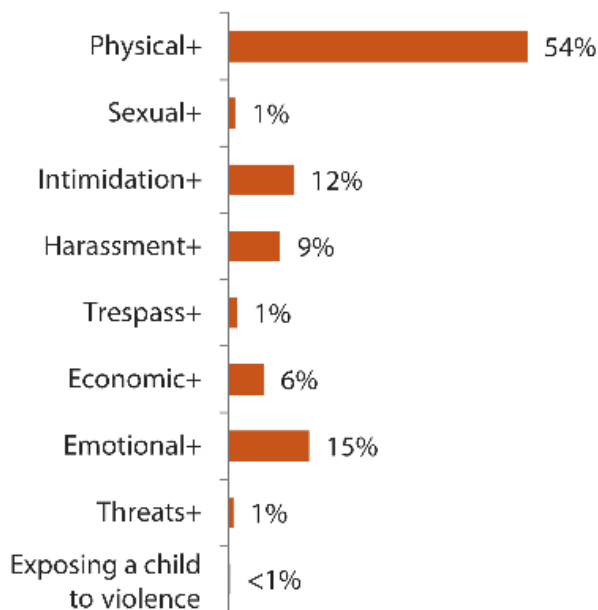
If we exclude the last four types of abuse in the ranking (economic abuse, emotional abuse, threats and exposing a child to domestic violence against another person), this leaves only those forms of abuse which involve a definite action aimed at producing physical

**TABLE 41**

Number of types of abuse per case		
Number of types of abuse	Number of applications	Percent
No response	59	5.2%
1	177	15.6%
2	351	31.0%
3	319	28.2%
4	158	14.0%
5	61	5.4%
6	5	0.4%
7	1	0.1%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

harm or inducing fear of physical harm. (Threats are excluded here because they can encompass threats of any kind of domestic violence, including for example the threat of economic abuse.) By this measure, **the vast majority of applications (78%) alleged that the most recent form of domestic violence included a definite action tied to physical harm or inducing fear of physical harm. This finding should put to rest any potential criticism that the law is being widely used to address petty incidents which pose no danger to the complainant.**

**CHART 16: Tabulation per application by most physically dangerous abuse alleged in most recent incident**  
(missing data excluded)



**TABLE 42**

Tabulation per application by most physically dangerous abuse alleged in most recent incident		
Type of abuse	Number	Percent
Physical or physical +	583	54.4%
Sexual or sexual +	12	1.1%
Intimidation or intimidation +	127	11.8%
Harassment or harassment +	100	9.3%
Trespass or trespass +	15	1.4%
Economic or economic +	67	6.3%
Emotional or emotional +	157	14.6%
Threats or threats +	9	0.8%
Exposing a child to domestic violence	2	0.2%
<b>Total</b>	<b>1072</b>	<b>100.0%</b>

Missing data excluded. The “+” indicates that the listed type of abuse was combined with other types of abuse.

It should also be noted that the emotional abuse reported by complainants can take virulent forms. For example, one file included a note which the respondent had addressed to the staff of a complainant’s workplace, saying that the complainant was HIV positive. Another respondent reportedly made a false accusation that a complainant was committing incest with her own son.

### 5.9.3 Weapon use in most recent incident

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**a) THE MOST RECENT INCIDENT OF ABUSE**

\*\*\*

**3. Was a weapon used?**

..... no

..... yes    describe weapon: .....

Complainants reported that a weapon was used in the most recent incident of domestic violence in almost a quarter of the protection order applications (24%). Several of the recent incidents involved multiple weapons; a total of 303 weapons were used in the most recent incident of domestic violence in 266 cases.

**TABLE 44**

Number of weapons used in most recent incident per case		
Number of weapons	Number of cases	Percent
1	232	87.2%
2	32	12.0%
3	1	0.4%
4	1	0.4%
<b>Total</b>	<b>266</b>	<b>100.0%</b>

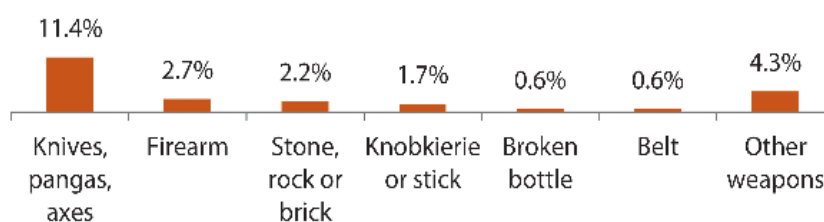
**TABLE 43**

Type of weapon used in most recent incident (multiple responses possible)		
Weapon	Number of responses	Percent of total responses
Firearm	31	10.2%
Knife, panga, axe	138	45.5%
• knife	111	36.6%
• panga	17	5.6%
• axe	10	3.3%
Stone, rock or brick	30	9.9%
Knobkierie or stick	24	7.9%
Bottle (broken)	10	3.3%
Belt	8	2.6%
Rope	3	1.0%
Other	59	19.5%
<b>Total</b>	<b>303</b>	<b>100.0%</b>

**TABLE 45**

Weapons used in most recent incident of domestic violence, by case (tabulated by most dangerous weapon)			
Weapons	Number of cases	Percent of cases involving weapons in most recent incident	Percent of all 1131 protection order applications in sample
<b>Firearm</b>	<b>30</b>	<b>11.3%</b>	2.7%
• Multiple firearms	1	0.4%	
• Single firearm alone	25	9.4%	
• Firearm + other weapon	4	1.5%	
<b>Knives, pangas, axes</b>	<b>129</b>	<b>48.5%</b>	11.4%
• Multiple cutting weapons (knife, panga, axe)	7	2.6%	
• Knife alone	95	35.7%	
• Knife + other weapon	10	3.8%	
• Panga alone	9	3.4%	
• Panga + other weapon	3	1.1%	
• Axe alone	4	1.5%	
• Axe + other weapon	1	0.4%	
<b>Knobkierie or stick</b>	<b>19</b>	<b>7.1%</b>	1.7%
• Knobkierie or stick alone	14	5.3%	
• Knobkierie or stick + other weapon	5	1.9%	
<b>Stone, rock or brick</b>	<b>25</b>	<b>9.4%</b>	2.2%
• Stone, rock or brick alone	23	8.6%	
• Stone, rock or brick + other weapon	2	0.8%	
<b>Broken bottle</b>	<b>7</b>	<b>2.6%</b>	0.6%
• Broken bottle alone	6	2.3%	
• Broken bottle + other weapon	1	0.4%	
<b>Belt alone</b>	<b>7</b>	<b>2.6%</b>	0.6%
<b>Other weapons alone</b>	<b>49</b>	<b>18.4%</b>	4.3%
<b>Total</b>	<b>266</b>	<b>100.0%</b>	<b>23.5%</b>

**CHART 17: Weapons used in most recent incident of domestic violence – percent of all 1131 protection order applications in sample (total 23.5%)**



In cases where weapons were used in the most recent incident, **the most common type of weapon employed was a knife**. Knives, pangas or axes were employed in almost half of the most recent incidents involving weapons (49% of the cases involving weapons, or 11% of the total sample of applications). Firearms were utilised in 11% of the most recent incidents involving weapons, or about 3% of the overall sample.

**Firearms, knives, pangas or axes were used in the most recent incident of domestic violence in 14% of the total number of protection order applications examined (159 out of 1131 applications).** Although weapons such as sticks, stones and broken bottles have been used as murder weapons in Namibia, it seems more likely that death or serious injury might result where firearms, knives, pangas or axes are employed in an incident of domestic violence.

**Everyday objects are often converted into instruments of violence in a domestic setting.** The objects which fell into the category of ‘other weapons’ show that many ordinary household items were deployed as weapons – including a broom, a shoe, scissors, a fork, a cup, a candle, a cigarette lighter, a cement flower pot and a plastic basin. Abusers reportedly deployed items as disparate as a car jack, a baseball bat and an oryx horn as weapons. Others used furniture, such as a chair, a table or a glass lamp. Tools such as screwdrivers, hammers and spades were fairly popular weapons. Some abusers used traditional weapons including sjamboks, an assegai, a spear, and a bow and arrow. One employed teargas. **This miscellaneous category comprised the next largest group of weapons used in the most recent incident of domestic violence, after knives, pangas and axes, being the key weapon in 8% of the protection order applications (88 out of 1131 applications).**<sup>51</sup> This indicates that removing conventional weapons from an abuser may be insufficient to protect the victim.

The pattern of weapon use in recent incidents on which protection orders were founded during 2004-2006 is more serious than that observed in the LAC-LRDC study of violent crimes in domestic relationships where data was collected in 1994.<sup>52</sup> There were slightly more protection order applications than domestic violence crime cases which did not involve *any* weapons, which is not surprising given that protection orders can cover things like economic and emotional abuse that do not generally involve weapons. However, the use of firearms – despite constituting only a small fraction of the total cases in both samples – is more than double that of the criminal case sample in the protection order sample (1.2% of the domestic violence crimes compared to 2.7% of the incidents of domestic violence which triggered protection order applications). The use of knives, pangas and axes is also found in a larger proportion of cases in the current study, although the increase here is less dramatic. In both studies, the vast majority of cases involved no weapon (not forgetting that no weapon is required to inflict injury by hitting, slapping, kicking etc). Another point of commonality is “*the perverse inventiveness of persons bent upon violence*”<sup>53</sup>, as a bewildering range of everyday objects were employed as weapons in cases in both studies.

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<sup>51</sup> The tally of 88 was derived by combining the totals from Table 45 on page 298 for “stone, rock or brick”, “broken bottle”, “belt” and “other weapons”. Note that this is a single response table.

<sup>52</sup> Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999 at 31-32.

<sup>53</sup> *Id* at 31.

**TABLE 46**

Comparison of weapons use in (a) LAC-LRDC study of domestic violence crimes (1994) and (b) most recent incident of domestic violence in protection order sample in current study (2004-2006) (multiple responses possible)				
Weapons	Used in domestic violence crimes in LAC-LRDC study		Used in most recent incident in protection order applications in current study	
	Number	Percent	Number	Percent
Firearm	6	1.2%	31	2.7%
Knife, panga, axe	49*	9.5%*	138	12.2%
Stick or club	35	6.8%	24	2.1%
Other	113	21.9%	110	9.7%
No weapon cited (other than hands, feet or fists)	328	63.7%	865	76.5%
<b>Total</b>	<b>515 cases citing 203 weapons*</b>		<b>1131 cases, citing 303 weapons</b>	

\* The number and percentage here are slightly understated as a few pangas are included in the category "other" in the LAC-LRDC study. The raw data underlying the published report is no longer available to ascertain the precise number of pangas included, although they would have been included as a separate category had there been more than a very small number.

**Note:** The tabulations for the current study come from Table 43 on page 298, with an added tabulation for cases with no weapon use calculated from Table 45 on that page (1131 applications with 266 of them involving weapons). In order to match the LAC-LRDC study, the "other" category here includes "stone, rock or brick", "bottle", "belt", "rope" and "other" from Table 43. The percentages are calculated on the basis of the total sample of cases. Because multiple responses were possible, these percentages do not total 100%.

We correlated the use of weapons in the most recent incident of domestic violence with the length of time since the first incident of domestic violence in the relationship, to see if there was any evidence that the use of particularly dangerous weapons such as firearms and knives could stem from an escalation of domestic violence over time. However, no clear patterns emerged from this exercise, with inherently dangerous weapons being used in violent relationships of widely-varying durations.

## 5.9.4 Physical injury to victim in most recent incident

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**a) THE MOST RECENT INCIDENT OF ABUSE**

\*\*\*

**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? .....

There is some overlap between the information recorded under “*most recent incident of abuse*” and “*past abuse*”, because some complainants did not distinguish clearly between these two questions. Accounts of past and present abuse and injuries were intermingled, with the same descriptions sometimes being repeated on both sections of the application form. We have reported the information as it was contained in the forms.

It should also be noted that some complainants answered “no” to the question about injuries, yet described apparent injuries in their descriptive responses to other questions (such as saying that they had been scratched and bitten). This means that the reported injuries may be an underestimate.

## (a) Physical injury

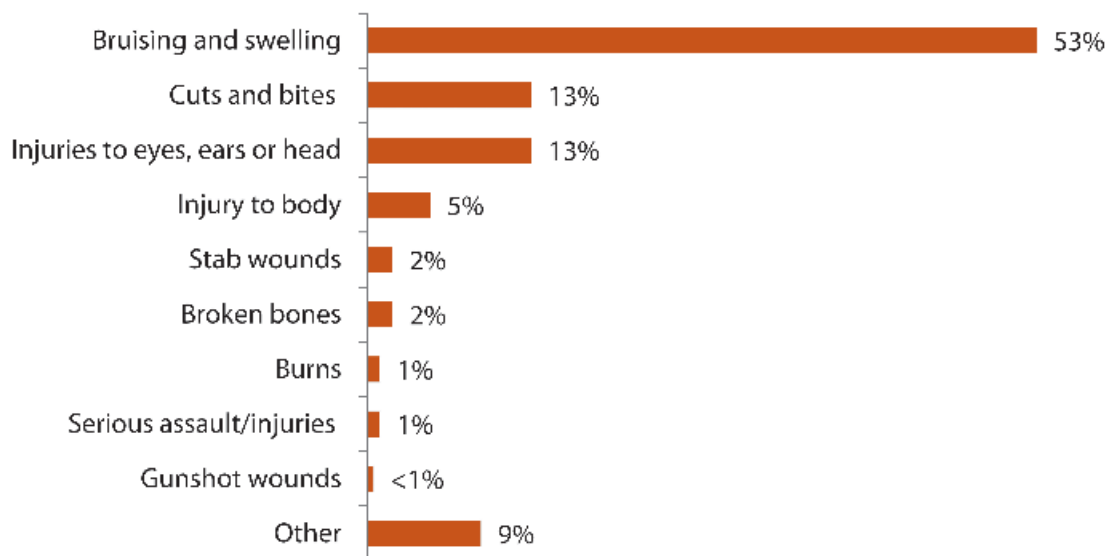
**CHART 18: Was the victim physically injured by the most recent incident of abuse?**  
(missing cases excluded)



**TABLE 47**

Physical injury to victim in most recent incident of abuse			
Was the victim physically injured?	Number	Percent (including missing cases)	Percent (excluding missing cases)
Yes	437	38.9%	42.9%
No	582	51.9%	57.1%
Missing	103	9.2%	
<b>Total</b>	<b>1122</b>	<b>100.0%</b>	<b>100.0%</b>

**CHART 19: Injuries reported by complainants from most recent incident of abuse**  
(multiple responses possible)



**Note:** The percentages shown are percentages of all injuries received.

Victims reported that they were physically injured in about 43% of the most recent incidents of abuse. The most common type of injuries reported during the most recent incidents of abuse were bruises (49% of reported injuries) – divided almost half and half between bruises to the body and bruises to the face. Other common injuries were cuts, lacerations, scratches or open wounds (12% of reported injuries). Eye-related injuries such as bleeding eyes, swollen eyes and blue eyes comprised almost 7% of the reported injuries. Other injuries experienced in at least 10-20 cases included injuries to joints, attempts at strangulation or suffocation of the victim, hair being pulled out, single or multiple stab wounds, bite wounds, and broken bones or fractured ribs. There were also some lost teeth, burns and injured ears.

TABLE 48

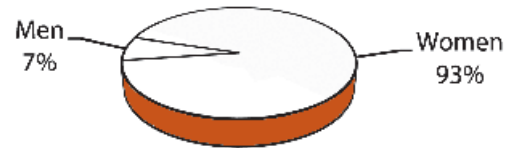
Details of injuries reported by complainants from most recent incident of abuse (multiple responses possible)		
Type of injury	Number of reports of this type of injury	Percent of all injuries reported
<b>Bruising and swelling (including pain and soreness )</b>	<b>324</b>	<b>53.0%</b>
• Bruises to face	137	22.4%
• Bruises to body	164	26.8%
• Pain or soreness	14	2.3%
• Swelling	9	1.5%
<b>Injuries to eyes, ears or head (including strangulation)</b>	<b>83</b>	<b>13.6%</b>
• Eye injury (poked eyes, bleeding eyes, swollen eyes, blue eyes)	40	6.5%
• Strangulation (marks) / suffocation; grabbing throat	19	3.1%
• Hair pulled out; pulled braids off	15	2.5%
• Ear injury	5	0.8%
• Lost teeth	4	0.7%
<b>Cuts and bites</b>	<b>82</b>	<b>13.4%</b>
• Cuts/lacerations/scratches to face, head or body / open wounds	72	11.8%
• Bite wounds	10	1.6%
<b>Injury to the body (including internal injuries and movement impairment)</b>	<b>29</b>	<b>4.7%</b>
• Injury to joints (knee, arm, hip, elbow, shoulder, wrist, jaw)	20	3.3%
• Injuries to genitals or reproductive organs (rape, kick in abdomen resulting in vaginal bleeding, unspecified sexual abuse)	4	0.7%
• Internal injuries (stomach, chest)	3	0.5%
• Walking/movement impaired	2	0.3%
<b>Stab wounds</b>	<b>12</b>	<b>2.0%</b>
<b>Broken bone, fractured ribs</b>	<b>10</b>	<b>1.6%</b>
<b>Burns (burned with iron on arm, with hot water on face and neck, with cigarette or lighter)</b>	<b>7</b>	<b>1.1%</b>
<b>Serious assault/injuries</b>	<b>6</b>	<b>1.0%</b>
• Serious assault all over the body	3	0.5%
• Severe injuries (unspecified)	2	0.3%
• Assaulted until unconscious	1	0.2%
<b>Gunshot wounds</b>	<b>1</b>	<b>0.2%</b>
<b>Other (including assault while pregnant, assault on a disabled person, assault on an infant/child in the care of the complainant, possible poisoning, injury reported but not specific)</b>	<b>57</b>	<b>9.3%</b>
• Injury reported but not specified	48	7.9%
• Fainted	3	0.5%
• Injury to infant or child other in care of complainant	2	0.3%
• Kicked/assaulted while pregnant	2	0.3%
• Paralysed for a few days (disabled complainant)	1	0.2%
• Burning sensation all over body possibly due to poisoning	1	0.2%
<b>Total</b>	<b>611</b>	<b>100.0%</b>

There were two reports of complainants being kicked or assaulted while pregnant. Two cases appear to have involved injury to a child of the main victim, with one of these involving a baby who was thrown against a wall. One disabled complaint reported being assaulted until losing consciousness, and then being paralysed for a few days. Four complainants reported injuries related to sexual abuse. Three suffered internal injuries.



It is lucky that there was only one report of a gunshot wound, given that firearms were wielded in 30 cases. Knives, pangas and axes were used more often, being brandished in 129 cases, but only 84 reported injuries could logically have been inflicted with these weapons (stab wounds, cuts and other open wounds).

**CHART 20: Injuries received by men and women in most recent incident of abuse**  
(missing data excluded)

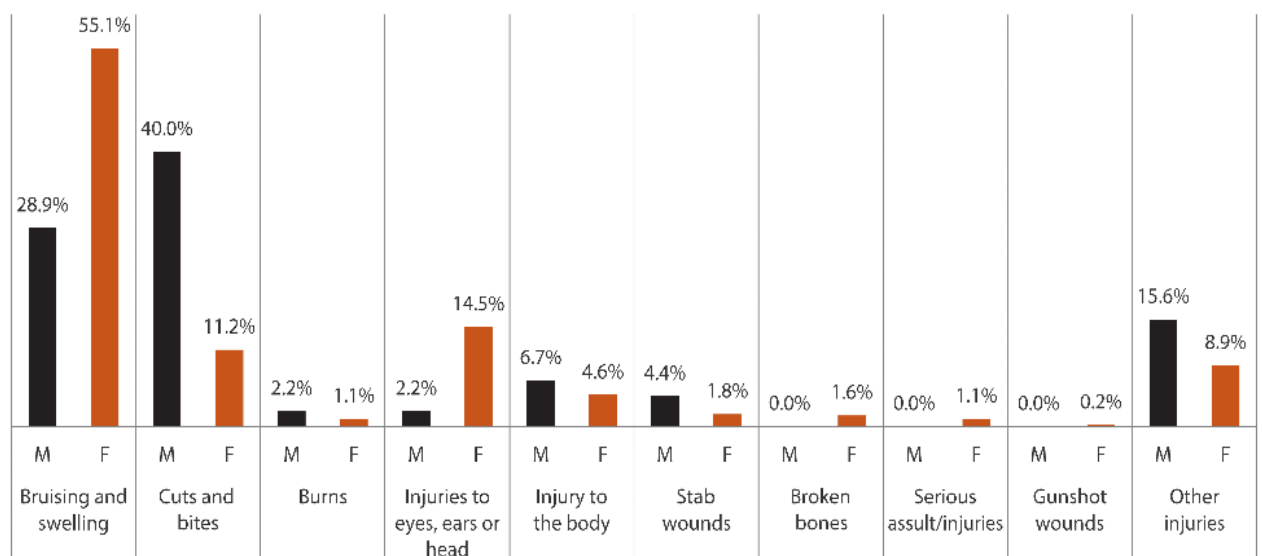


Male complainants were far less likely to be injured than female complainants in the most recent incident, even taking into account the different proportions of male and female complainants. Of the total number of reported injuries, 45 injuries were reported by men (7%) compared to 564 injuries reported by women (93%)<sup>54</sup> – against the background that the complainants were 12% male and 88% female.

Furthermore, women complainants suffered injuries that were more brutal in nature than those received by men during the most recent incidence of abuse. No men reported strangulation, broken bones, fractured ribs or any of the following injuries: lost teeth, injury to the ear, internal injuries, gunshot wounds, stab wounds, temporary paralysis, impaired movement, unconsciousness, fainting, injuries to genitals or hair being pulled out. Injured men tended to suffer bruises, cuts, lacerations, scratches, other open wounds, swelling or injuries to joints. Therefore, it appears that when women suffer injuries during an incident of domestic violence, the injuries tend to be more serious than those inflicted upon men.

Only a few complainants provided supporting evidence of their injuries. Twenty-three files (2%) contained medical reports, and thirteen others (1%) contained J-88 forms (forms usually used by doctors to record injuries of rape or other forms of sexual abuse when rape charges are filed, but also sometimes used to report injury in other criminal cases). One complainant included photographs of the injuries suffered. However, as discussed on the following pages, many more complainants (about 10%) provided details about medical treatment which could have made it possible for the court to access medical records or to subpoena medical personnel, if the court deemed this necessary.

**CHART 21: Type of injuries from most recent incident of abuse by sex of complainant**  
(multiple responses possible)



<sup>54</sup> The sex of persons who reported two injuries could not be ascertained. These cases have been excluded from the calculation

**TABLE 49**

Injuries from most recent incident of abuse by sex of complainant (multiple responses possible)								
Type of injury	Male		Female		Unknown		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Bruising and swelling (including pain, soreness and fainting)	13	28.9%	311	55.1%	0	0%	324	53.0%
Cuts and bites	18	40.0%	63	11.2%	1	50%	82	13.4%
Burns	1	2.2%	6	1.1%	0	0%	7	1.1%
Injury to eyes, ears or head (including strangulation)	1	2.2%	82	14.5%	0	0%	83	13.6%
Injury to the body (including internal injuries and movement impairment)	3	6.7%	26	4.6%	0	0%	29	4.7%
Stab wounds	2	4.4%	10	1.8%	0	0%	12	2.0%
Broken bones	0	0.0%	9	1.6%	1	50%	10	1.6%
Serious assault/injuries	0	0.0%	6	1.1%	0	0%	6	1.0%
Gunshot wounds	0	0.0%	1	0.2%	0	0%	1	0.2%
Other including assault while pregnant, assault on a disabled person, assault on an infant/child in the care of the complainant, possible poisoning, injury reported but not specific)	7	15.6%	50	8.9%	0	0%	57	9.3%
<b>Total</b>	<b>45</b>	<b>100.0%</b>	<b>564</b>	<b>100.0%</b>	<b>2</b>	<b>100%</b>	<b>611</b>	<b>100.0%</b>

**TABLE 50**

LAC-LRDC STUDY Injury in violent crime occurring in domestic relationship (based on police dockets opened in 1994)		
Type of injury	Number	Percent
Bruising	246	44.7%
Cuts and scrapes	61	11.1%
Stab wounds	57	10.4%
Head injury / brain damage	38	6.9%
Broken bones	6	1.1%
Gunshot wounds	0	0.0%
Other	9	1.6%
No injury	69	12.5%
Not clear from docket	64	11.6%
<b>Total</b>	<b>550</b>	<b>100.0%</b>

*He once beat me up and pushed a spray tin into my vagina. He abuses me very much, he even burnt me with a hot iron all over my body. He rapes me in my anus in front of our children. I had to leave my job because of the embarrassment of being beaten every day and go to job with a blue eye....*

24-year-old female complainant applying for a protection order against her 30-year-old boyfriend

*One serious incident was when I was pregnant, during April... He then started beating me with his hands and kicked me, threw me on the floor. I was laying on the floor because I was weak. I started bleeding from the nose because of his beating. He then locked the door when he noticed I was bleeding heavily. He started cleaning up the blood with a cloth. He chased me out of the sleeping room saying I am making the place dirty. He refused me to go to the hospital for treatment. He said I am not sick and if I die he will even bury me..., he doesn't care. I did not go to the hospital that day.*

22-year-old female complainant applying for a protection order against her boyfriend

The types of injuries suffered are broadly consistent with the findings of the LAC-LRDC study (1994 data),<sup>55</sup> although the data presented in this study has divided the types of injuries into a slightly broader range of categories.

The LAC-LRDC study reported a higher incidence of stab wounds (10%) compared with this study (2%). Perhaps the LAC-LRDC study captured more serious forms of injury in higher proportions because it focused on criminal charges.<sup>56</sup> It should be noted that anecdotal and media reports suggest that stabbing as a form of domestic violence is disturbingly common.<sup>57</sup>

## (b) Medical treatment

In the majority of cases where injuries were reported (57%), complainants did not seek medical treatment despite sustaining injuries; two complainants said that they were “*too afraid*” to seek medical attention, and another two were either “*not allowed*” to see a doctor or could not afford to pay for medical care. The perception of domestic violence as a private matter may in many cases inform a victim’s decision to avoid public disclosure of abuse by failing to seek medical treatment for an injury which might expose family affairs.

Of those who did seek medical treatment, 14 were men (8%) and 169 were women (92%), compared to the overall proportions of 12% male and 88% female complainants – thus confirming findings in other studies that domestic violence against perpetrated against women tends to be more severe than that perpetrated against men.<sup>58</sup>

Many complainants failed to answer the question about the length of time between the violence and the date when they sought treatment for their injuries. For those who did provide this information, 37% of complainants who sought medical treatment visited a doctor or nurse on the day of the incident and a total of 98% either on the same day or within a week after the incident. Only about 2% of these complainants waited more than a week before seeking medical attention.

**TABLE 51**

Did complainants seek medical attention after the most recent incident of abuse? (calculated only for those complainants who reported injuries)		
Medical attention	Number	Percent
Yes	183	41.9%
• Women	169	38.7%
• Men	14	3.2%
No	238	54.5%
• No, I was too afraid	2	0.5%
• Not allowed to see a doctor / no money	2	0.5%
• No (without further details)	234	53.5%
No answer to this question recorded	16	3.7%
<b>Total</b>	<b>437</b>	<b>100.0%</b>

**CHART 22: Did injured complainants seek medical attention after the most recent incident of abuse?**  
(missing data excluded)



**CHART 23: Sex of complainants who sought medical treatment for injuries sustained**  
(missing data excluded)



<sup>55</sup> Legal Assistance Centre (LAC) and Law Reform and Development Commission (LRDC), *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: LAC and LRDC, 1999, Table 20 at 32 (with table format altered for easier comparison).

<sup>56</sup> Although the LRDC report records a higher incidence of stabbing, much of the other data is less specific as 24.1% of the cases were either recorded as “no injury” or “not clear from the docket”.

<sup>57</sup> The WHO study and the SIAPAC study collected information on injuries spanning more than a single incident of violence and so will be compared with our figures on injuries reported from past abuse in section 5.10.4 below.

<sup>58</sup> See sections 4.3.3 and 4.3.4 in Chapter 4.

The question on the application form about treatment for injuries may have caused some confusion. As shown in the box at the beginning of this section, Question 4 is: “Were you (the victim) physically injured?” and Question 5 asks: “Did you (the victim) see a doctor or a nurse or other health practitioner?”. The intention is to find out if the victim got medical treatment *for the injuries suffered from the most recent incident of domestic violence*, although this is not explicitly stated. If Question 5 is answered “yes”, then there are follow-up questions about the treatment, including the date.

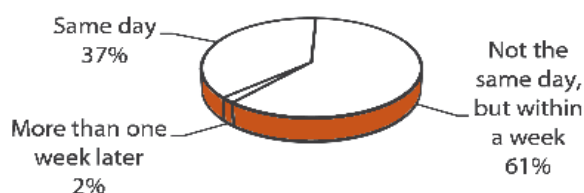
Four application forms listed a date for treatment which occurred *before* the most recent incident of abuse. This could be an error by the complainant in writing down the date, or an error by our field researchers in transcribing the date. However, it could also be that complainants did not understand that the question about medical visits was related to the injuries suffered in the most recent incident of abuse. They may have simply been referring to their last medical visit for any treatment, or they may have been referring to previous incidents of domestic violence. Because there is a potential for misunderstanding, this question should be clarified on the application form.

**TABLE 52**

Time lapse between most recent incident of abuse and complainant seeking medical attention for injuries received		
Time between most recent incident of abuse and medical treatment	Number	Percent
The same day	40	37.4%
Not the same day, but within a week	65	60.7%
More than one week later	2	1.9%
<b>Total</b>	<b>107</b>	<b>100.0%</b>

Omitting missing values as well as four answers which recorded a time period *prior* to the incident of violence.

**CHART 24: Time lapse between most recent incident of abuse and complainant seeking medical attention for injuries received (missing data excluded)**



**TABLE 53**

Treatment received for most recent incident of abuse (multiple responses possible)		
Treatment	Number of responses	Percent of total responses
Pain killers; pain tablets	53	20.9%
Unspecified injections	28	11.1%
Ointment	26	10.3%
Unspecified pills/tablets	23	9.1%
Unspecified medication	23	9.1%
Unspecified treatment for particular injuries (wounds, blue eye and swollen face, eyes, head and neck injury, swollen legs, bruises)	18	7.1%
Treatment for depression and stress / anti-depressants / sedatives	17	6.7%
Stitches	15	5.9%
X-rays	11	4.3%
Bandages/dressing	8	3.2%
Antibiotics	7	2.8%
Eye drops	4	1.6%
Kept for observation / hospitalised	3	1.2%
Counselling; referred to psychologist / social worker	3	1.2%
Treatment for high blood pressure	3	1.2%
Set the fracture; put in cast; strapped fractured ribs	2	0.8%
Operation; corrective surgery to nose; stab wound in stomach; eye operation	1	0.4%
Teeth extracted	1	0.4%
Oxygen	1	0.4%
Physiotherapy	1	0.4%
Treatment or its relation to the violence unclear	5	2.0%
<b>Total</b>	<b>253</b>	<b>100.0%</b>

The most common types of treatment received were pain killers and pain tablets (21%). Many complainants noted that they received injections, ointments, pills or other medication without giving any further details. **As indications of the seriousness of some of the injuries, 15 complainants received stitches, 11 were X-rayed, 3 were hospitalised and one complainant required surgery.** This complainant obviously sustained serious multiple injuries, as she required corrective surgery to the nose, eye surgery and surgery for a stab wound in the stomach.

One small anomaly which we investigated was that ten complainants reported broken bones or fractured ribs, but only eight sought medical treatment for such injuries. One of these complainants required a plaster cast and the strapping of fractured ribs, while another required surgery for what appears to have been a broken nose. The other six received treatment in the form of pills, ointments or unstated interventions. It is possible that some of the fractures involved broken fingers, toes, collarbones or other bones which may not have required setting. It is also possible that some complainants who thought that they had suffered broken bones were mistaken in the end, or that some complainants did not provide full details of their medical treatment on the application forms. It is not possible to determine more from the data.

The application form asks for details about the health facility and the health care practitioner involved in case there is a need for corroborating evidence. All of the complainants who said they sought medical treatment provided the name of the health facility, and almost two-thirds (65%) provided the name of the doctor or nurse who assisted them. The fact that these details were provided tends to support the veracity of the accounts of medical treatment.

## 5.9.5 Witnesses to most recent incident

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**a) THE MOST RECENT INCIDENT OF ABUSE**

\*\*\*

**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: .....

Complainants were asked two questions in a row on the application form about witnesses to the most recent incident of domestic violence: “*Did anyone else see or hear this incident of abuse?*” and “*Did any children see or hear this incident of abuse?*”

It appears that these were several forms of ambiguity in complainants’ understanding of these questions.

- (1) Some complainants included children in their responses to the general question about witnesses (Question 6), possibly referring to them again in their responses to the next question about children in particular (Question 7). Others appear to have discussed children only in their responses to the specific question about children and omitted them from their responses to the more general question.
- (2) Another point of confusion is that some complainants understood the term “children” to mean “offspring” and so listed their sons or daughters under the question about children regardless of age.<sup>59</sup> Others apparently understood the term as meaning “children under age 18” and still others may have understood it to mean “children” in the sense of “minors under age 21”.

The question on the form was actually intended to elicit answers about “children” in the sense of children under the age of 18. The reason for this is that the Combating of Domestic Violence Act states that causing or allowing children to see or hear domestic violence against someone with whom the child has a domestic relationship, or even putting a child at risk of this, is in itself a form of domestic violence. The Act defines “child” for this purpose to mean a person under the age of 18.<sup>60</sup>

Because of the legal significance of exposing children under age 18 to violence, the question about children who witnessed the incident asks for the age of the child and states “*give details*”; under the preceding question on adult witnesses, the form asks only for the name and contact details of each witness, in case evidence from the witness is needed. (However, in many cases we were able to glean information about the age of adult witnesses or their relationship to the complainant from other information provided by complainants in the applications.)

**Magistrates consulted about these questions felt that they are not particularly relevant on the general application form, since there could be a separate form for the rare cases in which a complainant would like assistance from the court in summoning a witness who is not willing to attend the enquiry voluntarily. If the questions on witnesses are retained, however, they should be re-written to eliminate the confusion which is evident.**

The confusion around these questions means that the responses to both questions must be viewed with caution.

**Looking at the responses to the question “*Did anyone else see or hear this incident of abuse?*”, the majority of the most recent incidents of domestic violence (69%) were witnessed by someone, with a single witness being reported in most of these cases. There were multiple witnesses in at least 23% of the cases where the violence was witnessed by**

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<sup>59</sup> The ages given indicate that at least 57 adult offspring were listed under the question about “children” who were exposed to the violence, which accounts for about 6% of the total number of “children” listed in response to that question.

<sup>60</sup> Combating of Domestic Violence Act 4 of 2003, sections 2(2) and 1 (definition of “child”).

others. (There were several cases with an undetermined number of witnesses in the form of neighbours or bystanders.) The fact that so many complainants reported that there were witnesses to the most recent incident of domestic violence tends to suggest that the incidents being reported were credible, since potential corroboration was offered.

Looking at the responses to the question “*Did any children see or hear this incident of abuse?*”, the most recent incident of domestic violence was observed by one or more children in the majority of cases (56%), with multiple children witnessing the violence in almost 40% of these cases. It was typically only one or two children who saw or heard the domestic violence, but there were a few cases where the violent incident was observed by five to seven children.

Because many complainants mixed children under the age of 18 and adults in their responses to both questions, we combined the answers to both questions for an analysis of the age groups, sexes and relationships of the persons involved. This seemed to us to be the best way to try to extract the information which the form actually intended to elicit. This approach also enabled us to remove most of the overlap in the answers to the two questions (where some complainants named the same individuals as witnesses in their replies to both questions).

When the answers to the two questions are combined, assuming minimal remaining duplication, there were some 1800 people in total who observed the most recent incident of domestic violence in the 1122 cases examined. This large number of witnesses suggests that abusers do not feel compelled

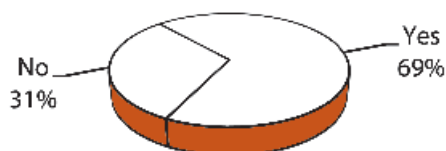
## “Did anyone else see or hear this incident of abuse?”

TABLE 54

Number of witnesses to most recent incident of abuse			
Number of witnesses	Number of cases	Percent of cases	Total number of witnesses
One	505	72.1%	505
Two	117	16.7%	234
Three	38	5.4%	114
Four	6	0.9%	24
Five	1	0.1%	5
Six	1	0.1%	6
Seven	1	0.1%	6
Undetermined (eg neighbours, bystanders)	8	1.1%	at least 8
Number not recorded	23	3.3%	at least 23
<b>Total</b>	<b>700</b>	<b>100.0%</b>	<b>at least 925</b>

Note: This table is based on the question as it was answered on the application form.

CHART 25: Were there witnesses to the most recent incident of abuse?



## “Did any children see or hear this incident of abuse?”

TABLE 55

Number of children who saw or heard most recent incident of abuse			
Number of child witnesses	Number of cases	Percent of cases	Total number of witnesses
One	340	59.9%	340
Two	138	24.3%	276
Three	59	10.4%	177
Four	13	2.3%	52
Five	5	0.9%	25
Six	2	0.4%	12
Seven	1	0.2%	7
Undetermined	2	0.4%	at least 2
Not recorded	8	1.4%	at least 8
<b>Total</b>	<b>568</b>	<b>100.0%</b>	<b>at least 899</b>

Note: This table is based on the question as it was answered on the application form. As explained on the preceding pages, complainants interpreted the reference to “children” in this question in different ways.

CHART 26: Did any children see or hear the most recent incident of abuse?



to hide their violence – perhaps because the abuser feels that his or her actions are justified, or is confident that others will not object or intervene.

Many complainants did not describe the sex, age or relationship of the adult witnesses to the violence, since the form did not ask for this information. However, despite the limitations of the form for research purposes, most complainants included some information about their relationship to adult witnesses. The sex of the witness could often be inferred, and in some cases the age and other characteristics of adults who observed the incident could be obtained from the answers to other questions on the form. Some identifying information is available in respect of 1784 of the 1800 witnesses.

Since only the question about children asked for ages, it is reasonable to assume

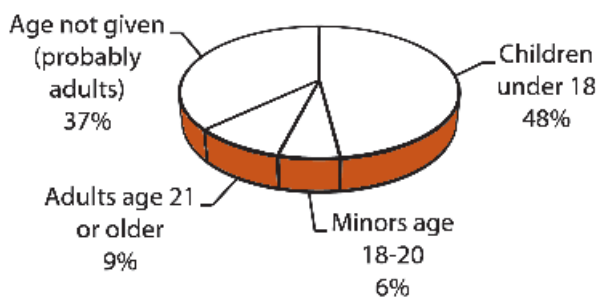
that most of the individuals for whom age was not given are adult witnesses. **We can say with confidence that more than 850 children were reportedly exposed to the most recent incident of violence in the 1122 cases examined.** (See Tables 59 and 60.)

As already noted, many complainants did not describe the adult witnesses to the violence since they were not asked for this information. Looking at the application forms where descriptions of the witnesses were provided (at any place in the form), it appears that most adult witnesses were family members. **Adult children of either the complainant or the respondent, or children born to them together, accounted for 15% of the adult witnesses.<sup>61</sup> About 5% of the adult witnesses were parents of the complainant, and another 5% were siblings of the complainant. Other relatives comprised about 11% of the witnesses.** Some 3% of the adult witnesses were the complainant’s current spouse or romantic partner, and a few others were adult children, siblings or parents of the current spouse or partner. Non-relative adult witnesses included housekeepers (17 cases), police (7 cases), lawyers (3 cases) and medical practitioners or social workers (5 cases). A slight majority of adult witnesses were female (54%). Information about the age of adult witnesses is missing in so many cases that it is not possible to draw conclusions on this point.

**TABLE 56**

Age groups of persons witnessing most recent incident of abuse (questions about adults and children who saw or heard violence combined)		
Age group	Number	Percent
Children (<18)	857	48.0%
Minors age 18-20	100	5.6%
Adults	161	9.0%
Age unknown	666	37.3%
<b>Total</b>	<b>1784</b>	<b>100.0%</b>

**CHART 27: Age groups of persons witnessing most recent incident of abuse**



*One day [my husband] beat our son and he almost beat me. [He] threatened to kill our son. [He] fetched the knife from the kitchen drawer. The children and myself, we ran into our main bedroom and... locked ourselves inside the room. My husband was then knocking hard at the door and threatening to break the door. After a while he told me I should open the door, he won't do anything to us again. When I opened the door [he] removed the children... and locked me inside... [He] started beating our son again... afterward... [w]hen he found me crying, he asked me why I am crying... From that day I decided to go to Women & Child Protection Unit again.*

27-year-old female complainant bringing a protection order against her husband

<sup>61</sup> We are assuming that where general reference was made to a son or daughter without further explanation, this probably referred to the son or daughter of the complainant.



TABLE 57

Demographic characteristics of adult witnesses to most recent incident of abuse			
	Characteristic	Number	Percent
Relationship to complainant	Spouse/partner	17	1.9%
	Boy/girlfriend of complainant (married or ex-married/ partnered)	8	0.9%
	Son/daughter (not specified)	17	1.9%
	Son/daughter of complainant and respondent	73	8.2%
	Son/daughter of complainant	45	5.0%
	Son/daughter of complainant's spouse/partner	4	0.4%
	Grandchild of complainant	3	0.3%
	Brother/sister of complainant	42	4.7%
	Brother/sister of spouse/partner	19	2.1%
	Parent of complainant	41	4.6%
	Parent of spouse/partner	11	1.2%
	Other relative	94	10.5%
	Housekeeper/domestic employee	17	1.9%
	Lawyer	3	0.3%
	Medical practitioner or social worker	5	0.6%
	Police/WCPU	7	0.8%
	Other non-relative	26	2.9%
	Unknown	463	51.7%
	<b>Total</b>	<b>895</b>	<b>100.0%</b>
Sex	Male	310	34.6%
	Female	482	53.9%
	Unknown	103	11.5%
	<b>Total</b>	<b>895</b>	<b>100.0%</b>
Age group	18-24	156	17.4%
	25-29	36	4.0%
	30-34	17	1.9%
	35-39	11	1.2%
	40-44	5	0.6%
	45-49	10	1.1%
	50-54	9	1.0%
	55-59	12	1.3%
	60 years or older	5	0.6%
	Unknown	634	70.8%
	<b>Total</b>	<b>895</b>	<b>100.0%</b>

Just over half of child witnesses were girls, and most (64%) were between the ages of 5 and 14 (35% were between 10 and 14 years old and 29% were between 5 and 9 years old). This group of witnesses represents mostly primary-school age children on whom the impact of witnessing domestic violence is not only detrimental to their development but also likely to negatively impact their performance in school.<sup>62</sup> Older children between 15 and 17 years of age comprised 18% of child witnesses, while children under the age of four represented 15% of all child witnesses.

Where children were witnesses, over 60% were the children of both the complainant and respondent. This means that most of the children in question were witnessing their parents engaged in domestic violence as abuser and victim. Another 15% were children of the complainant (but not the abuser), 2% were children of the complainant's spouse or

<sup>62</sup> See, for example, SMH Rose-Junius, VN Tjapepua and J de Witt, *An investigation to assess the nature and incidence of spousal abuse in three sub-urban areas in the Karas Region, Namibia*, Windhoek: Ministry of Health and Social Services, 1998 at 50 (citing international literature).

partner (where this was someone other than the abuser) and 6% were simply described as “sons” or “daughters” without further explanation. Other child witnesses included foster children, grandchildren, siblings of the complainant, or other relatives. Two child witnesses were children of the domestic worker in the household.

**TABLE 58**

<b>Demographic characteristics of child witnesses to most recent incident of abuse (for children under age 18)</b>			
	<b>Characteristic</b>	<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Son/daughter (not specified)	56	6.3%
	Son/daughter of both	540	60.7%
	Son/daughter of complainant	134	15.1%
	Son/daughter of spouse/partner	14	1.6%
	Foster child	2	0.2%
	Grandchild (not specified)	11	1.2%
	Grandchild of both	8	0.9%
	Grandchild of complainant	19	2.1%
	Brother/sister of complainant	8	0.9%
	Brother/sister of spouse/partner	1	0.1%
	Other relative (specify)	57	6.4%
	Other non-relative (specify)	6	0.7%
	Other (specify)	29	3.3%
	Housekeeper / domestic employee	2	0.2%
	Relationship not clear	2	0.2%
	<b>Total</b>	<b>889</b>	<b>100.0%</b>
<b>Sex</b>	Male	385	43.3%
	Female	459	51.6%
	Unknown	45	5.1%
	<b>Total</b>	<b>889</b>	<b>100.0%</b>
<b>Age group</b>	0-4	132	14.8%
	5-9	254	28.6%
	10-14	312	35.1%
	15-17	159	17.9%
	Unknown	32	3.6%
	<b>Total</b>	<b>889</b>	<b>100.0%</b>

As already explained, exposing a child to acts of domestic violence or putting a child at risk of exposure to domestic violence constitutes an independent form of domestic violence under the Combating of Domestic Violence Act;<sup>63</sup> therefore the presence of child witnesses to an act of domestic violence against the complainant multiplies the incidents of domestic violence by constituting an act of domestic violence towards the child in addition to the act of the domestic violence towards the complainant.

The exposure of children to domestic violence can produce a troubling legacy. Some impressionable youths may model their own behaviour on the example which they

<sup>63</sup> As noted in Chapter 4, one Namibian study which interviewed perpetrators found that all 27 convicted abusers stated that they had seen one of their parents use violence against the other parent when they were growing up. The other Namibian study of perpetrators found that about 90% of the sample of 200 imprisoned perpetrators of gender-based violence had observed or experienced parental violence during their childhoods. SMH Rose-Junius, VN Tjapepua and J de Witt, *An investigation to assess the nature and incidence of spousal abuse in three sub-urban areas in the Karas Region, Namibia*, Windhoek: Ministry of Health and Social Services, 1998 at 114-115 and Women’s Action for Development (WAD), the University of Namibia (UNAM) and the Namibia Prison Service (NPS), *Understanding the Perpetrators of Violent Crimes Against Women and Girls in Namibia: Implications for Prevention and Treatment*, WAD/UNAM/NPS, (undated publication) at 21. See section 4.8.2.5 of this study.

observe.<sup>64</sup> Other young people may be traumatised by witnessing violence between parents or other family members.<sup>65</sup>

The data shows that children continue to witness violence between their parents even after the children become adults. Although the majority of sons or daughters who witnessed abuse were children under the age of 18 (85%), another 9% were 18-20 (still legally minors<sup>66</sup>) and about 7% were adults when they witnessed the most recent incident of abuse. This suggests that some children may grow up watching their parents use violence – an extended bad example of how to conduct interpersonal relationships.

**TABLE 59**

Ages of “sons and daughters” who witnessed most recent incident of abuse		
Age group	Number	Percent
Son/daughter (<18)	730	84.6%
Son/daughter (18-20)	75	8.7%
Son/daughter (>= 21)	58	6.7%
<b>Total</b>	<b>863</b>	<b>100.0%</b>

**Note:** The offspring who witnessed the most recent incident of violence were divided roughly half and half between sons and daughters. (Missing values omitted.)

Looking at the information in this section holistically, the 1122 applications as a group involved over 4700 additional persons cited as being affected by the violence,<sup>67</sup> almost 900 adults who witnessed the most recent incident of violence and almost 900 children who saw or heard the most recent incident of violence. There is likely to be some overlap between these categories; it is quite likely that some of the people who *witnessed* the most recent incident of violence may also have been listed by complainants as being *affected by* the domestic violence – particularly since many of the witnesses were family members. Nevertheless, it seems safe to say that the violence which affected the 1122 complainants affected somewhere between 4700 and 6500 other people – making the ‘indirect victims’ of domestic violence some five to six times the number of the ‘direct victims’. This shows that incidents of domestic are not private affairs between the complainant and respondent, but have an impact upon many others.

## 5.9.6 Other evidence

As noted above, at least 36 complainants in the sample of 1122 included some documentary evidence of the injuries suffered, and one included photographs of her injuries. Other complainants included statements from third parties such as relatives and social workers, and reports from psychologists about the impact on affected children. In one case, a child’s teacher described the impact of the acts of domestic violence as being responsible for the “*unstable emotional condition of [the] child*”. A small number of files also included documentation on aspects of the relationship between the complainant and respondent, such as evidence related to marriage and divorce, maintenance and custody of children.

<sup>64</sup> SMH Rose-Junius, VN Tjapepua and J de Witt, *An investigation to assess the nature and incidence of spousal abuse in three sub-urban areas in the Karas Region, Namibia*, Windhoek: Ministry of Health and Social Services, 1998 at 33-34 and 39 (citing international literature).

<sup>65</sup> A 2004 survey of 6367 Namibian learners in grades 7, 8 and 9 in 96 schools covering all 13 regions found that 32.2% had made a plan about how to attempt suicide during the previous year and 36.6% of the learners surveyed said that they had attempted suicide one or more times during the previous year (with these proportions being similar for male and female learners). The most commonly-cited reason for wanting to commit suicide was “*I had family problems*”. Ministry of Health and Social Services (MoHSS), *Report on the Namibia School-Based Student Health Survey 2004*, Windhoek: MoHSS, 2008 at vi and 4. See section 4.4.1 of this study.

<sup>66</sup> At the time of writing, the age of majority in Namibia is 21 in terms of the Age of Majority Act 57 of 1972. A possible reduction of the age of majority to 18 is under discussion.

<sup>67</sup> See section 5.7.

# 5.10 HISTORY OF ABUSE

Only 38 (3%) out of 1122 complainants left the section on past abuse blank, indicating that at least 97% of the complainants had a history of abuse by the respondent (or at least one of multiple respondents) prior to the most recent incident of abuse.<sup>68</sup> This means that complainants are generally *not* seeking legal intervention after only a single episode of abuse.

**CHART 28: Did complainants report a history of abuse prior to the most recent incident of abuse?**



## 5.10.1 Duration of abuse

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**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)

.....

day
month
year

The application form asks complainants to answer two related questions: “How long has the abuse been happening?” and “When was the first incident of abuse? (if you can remember)”. There was some discrepancy between the time period self-reported by the complainants in their responses to the first question, compared to the time periods calculated by the researchers on the basis of the date of the first incident of abuse provided in response to the second question. However, given that these cases involved a history of abuse sometimes spanning 10 or 20 years, it is not surprising that complainants made some errors in either their recall of the precise date of the first incident of abuse or in their calculation of how much time had passed since that date. Some complainants who reported previous abuse left the space for the date of the first incident of abuse blank, probably because they could not remember it. The discrepancies between the two methods of calculating the period of prior abuse were not very large.

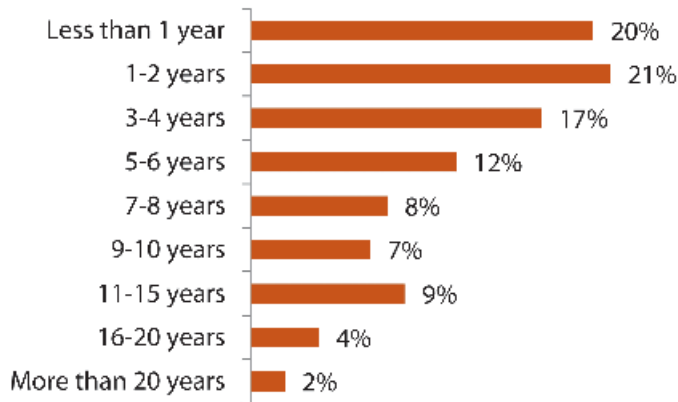
**In the typical case, the history of abuse stretched back about two years. Only 20% of applications were made within one year of the first incident of abuse, while 40% were made within two years after the first incident of abuse. About 17% of complainants reported a history of abuse dating back more than 10 years. Nineteen complainants (2% of those**

<sup>68</sup> It should be noted that 28 of the 38 cases where this section was blank come from the 2006 sample at the Swakopmund Magistrate’s Court. This raises the possibility that there was some unknown factor operating there; perhaps the clerk at that court in 2006 directed complainants to skip this section as a time-saving measure. This suggests that even more complainants may have experienced past abuse than our statistics indicate.

who reported a history of abuse) said that the abuse had lasted for *more than 20 years*. In the most extreme case, a complainant reported that the domestic violence had begun *more than 30 years* previously.

**CHART 29: Period of previous abuse**

(based on period of previous abuse reported by complainants)



**TABLE 60**

Duration of abuse prior to protection order application (1131 cases)		
	Duration of abuse in years – self-reported	Duration of abuse in years – calculated by researchers from date of first abuse
Number	817	766
Mean	5.4 years	4.9 years
Median	3.7 years	3.0 years
Mode	2.0 years	2.0 years

**TABLE 61**

Duration of abuse (comparing different measures of period of previous abuse)		
Period	Percent self-reported	Percent calculated by researchers from date of first abuse
Less than 1 year	20%	23%
1-2 years	21%	25%
3-4 years	17%	17%
5-6 years	12%	9%
7-8 years	8%	6%
9-10 years	7%	6%
11-15 years	9%	7%
16-20 years	4%	4%
More than 20 years	2%	2%

**Note:** The table shows the slight discrepancy between the two methods of calculation used to determine the previous period of abuse. We have focused on the self-reported period in the text above as this seems more likely to be accurate than a specific date recalled several years later. In any event, the differences between the two measures were minor.

## 5.10.2 Profile of past abuse

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**

\*\*\*

**3. What kind of abuse has happened in the past?**

.....

Any worries about the Combating of Domestic Violence Act being widely used for trivial matters should be laid to rest by the horrifying weight of detail regarding past abuse.<sup>69</sup>

For example, consider the following statistics about the history of abuse amongst the 1122 complainants in our sample:

- **733 (65%) had sustained injuries from past domestic violence**<sup>70</sup> (5 reported injuries from firearms at some point during the abuse, and 144 said that they had been injured with another weapon or object)
- **408 (36%) had sought treatment for their injuries**<sup>71</sup> (constituting 56% of those complainants who were injured by past abuse)
- **621 (55%) had received death threats**
- **132 (12%) had been threatened with firearms, and 203 (18%) had been threatened with other weapons or objects**
- **212 (19%) cited economic consequences of the abuse, such as losing their jobs or being deprived of property**
- **250 (22%) said that their children had been harmed or threatened, while 79 (7%) reported that other people had been harmed or threatened**
- **132 (12%) said that they had been forced to leave their homes either temporarily or permanently as a result of the abuse**
- **86 (8%) reported that their past abuse included sexual abuse**
- **26 complainants (2%) were abused while pregnant**
- **18 had contemplated or attempted suicide, while 9 said that other family members had contemplated or attempted suicide**
- **11 said that their abuser had contemplated or attempted suicide.**

**Some complainants reported a history of abuse which included some more unusual forms of torment:**

- 20 complainants were accused of witchcraft
- 15 complainants alleged that respondents had taken away medications which they needed, such as anti-retroviral drugs and anti-depressants
- 12 complainants said that they or their children had been kidnapped or that the respondent had removed their children from the home without their permission
- 5 complainants alleged that the respondents had deliberately infected them with HIV
- 4 disabled complainants were being abused by their brothers
- 2 complainants reported that the respondent had raped their daughters
- 1 complainant alleged that the respondent had killed her boyfriend two years previously.

**Quite a few complainants had previously turned to legal channels for help with the abuse.**

- 132 (12%) had at some point laid a criminal charge against the abuser
- 88 (8%) were in the process of divorcing the abuser, or considering a divorce
- 14 had previously applied for protection orders, and one reported that the respondent had violated the previous protection order.

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<sup>69</sup> The information presented here comes from various sources – the application forms, declarations by the complainant and the respondents, notes on the court proceedings, etc. We compiled information from different places in the court files in an attempt to put together the most comprehensive possible picture of the domestic violence and the life experiences which preceded the protection order application.

<sup>70</sup> This is noticeably more than the 43% of complainants who reported injury from the most recent incident of domestic violence.

<sup>71</sup> This is more than the 43% of injured complainants who sought medical treatment for injuries received in the most recent incident of domestic violence.

**A small number admitted taking the law into their own hands:** 4 fought back physically against the abuser, who then laid a charge against the complainant, while 3 reported that the respondent had previously sought a protection order against them.

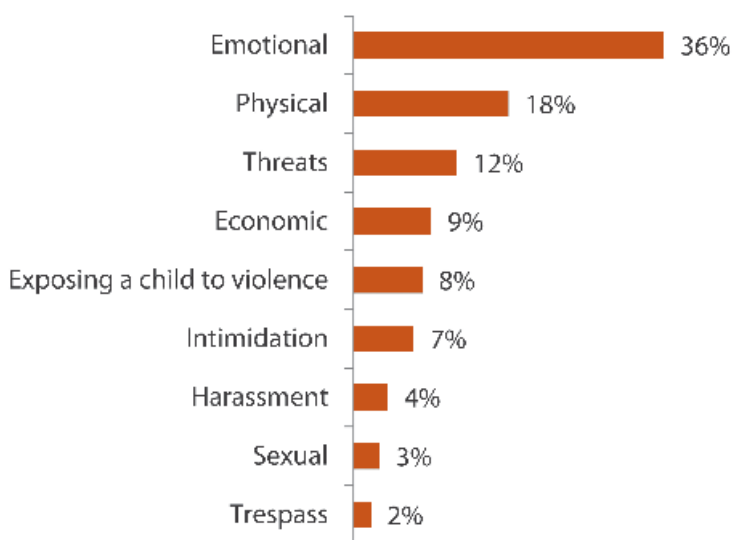
**More than a quarter mentioned the association between abuse and substance abuse:** 268 (24%) mentioned that the abuse tended to be connected with alcohol use, while 214 (19%) reported excessive alcohol abuse by the respondent and 36 (3%) mentioned the respondent’s abuse of drugs.

**There also seemed to be associations between the history of abuse and infidelity or allegations of infidelity.** There were 115 complainants (10%) who alleged that their abusive partners had (or threatened to have) an affair with a new partner, while 104 (9%) conversely reported accusations of infidelity or obsessive jealousy directed at them by their partners.

**TABLE 62**

Types of past abuse by respondent (multiple responses possible)		
Type of abuse	Number of responses	Percent of total responses
Physical abuse	812	18.3%
Sexual abuse	113	2.6%
Economic abuse	401	9.1%
Intimidation	327	7.4%
Harassment	170	3.8%
Trespass	103	2.3%
Emotional, verbal or psychological abuse	1598	36.1%
Threats or attempts to carry out threats	536	12.1%
Exposing a child to acts of domestic violence against another person	366	8.3%
<b>Total</b>	<b>4426</b>	<b>100.0%</b>

**CHART 30: Types of past abuse by respondent**  
(multiple responses possible)



**TABLE 63**

Number of types of past abuse per case		
Number of types of abuse per case	Number of cases	Percent
No response to this question	73	6.5%
1	120	10.6%
2	207	18.3%
3	217	19.2%
4	209	18.5%
5	164	14.5%
6	112	9.9%
7	28	2.5%
8	1	0.1%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

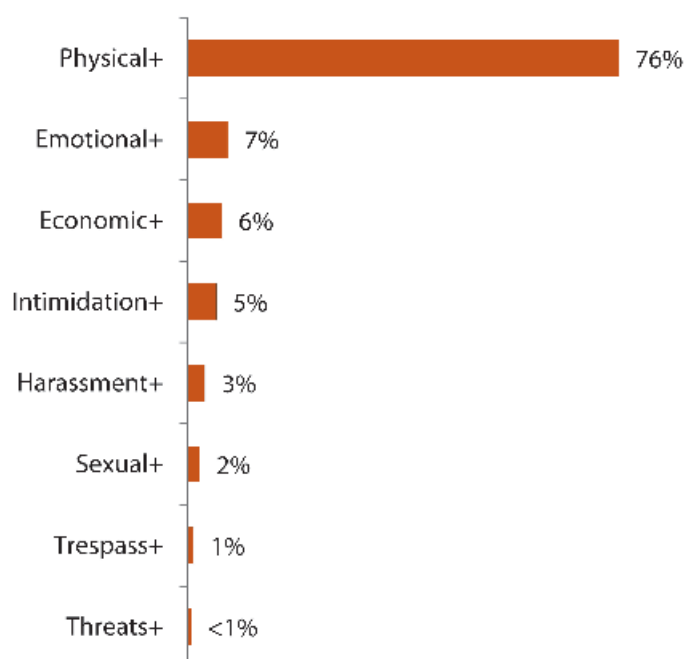
**The most common type of past abuse was emotional abuse, followed by physical abuse and threats.** Economic abuse and intimidation were also common. Sexual abuse was less frequently reported. One clerk spoke about a possible reason for this: “People are ashamed to say that their husband raped them – this is a problem.”

As in the case of the most recent abuse, we attempted to ‘rank’ and tabulate the multiple manifestations of abuse in a manageable way for individual applications. To reiterate, using physical danger to the complainant as the operative standard, we ranked the forms of abuse for this exercise as follows:

- physical abuse
- sexual abuse
- intimidation (inducing fear by physical abuse, a threat of physical abuse, brandishing a weapon or other menacing behaviour)
- harassment (repeatedly following, pursuing, accosting or making persistent unwelcome communications)
- trespass
- economic abuse
- emotional, verbal or psychological abuse
- threats or attempts to carry out any of these forms of abuse
- exposing a child to acts of domestic violence against another person, or putting child at risk of exposure to such acts (which would by its nature in most cases be accompanied by some other form of domestic violence).

This exercise demonstrated that **relatively few complainants highlighted past abuse consisting primarily of non-physical forms. About 78% of complainants had suffered past physical or sexual abuse (alone or in combination with other types of abuse). At the other end of the spectrum, only 7% of complainants cited a history of abuse consisting of emotional abuse without any accompanying form of physical or economic abuse.**

**CHART 31: Tabulation per application by most physically dangerous abuse alleged in past abuse**  
(missing data excluded)



**TABLE 64**

Tabulation per application by most physically dangerous abuse alleged in past abuse		
Type of abuse	Number	Percent
Physical or physical+	807	76.3%
Sexual or sexual+	18	1.7%
Intimidation or intimidation+	52	4.9%
Harassment or harassment+	36	3.4%
Trespass or trespass+	7	0.7%
Economic or economic+	60	5.7%
Emotional or emotional+	76	7.2%
Threats or threats+	2	0.2%
Exposing a child to domestic violence	0	0.0%
<b>Total</b>	<b>1058</b>	<b>100.0%</b>

Missing data excluded. The “+” indicates that the listed type of abuse was combined with other types of abuse.

The types of abuse encountered in the past are broadly similar to recent abuse, as is evident from Tables 65 and 66 and Chart 32 (on the following page).



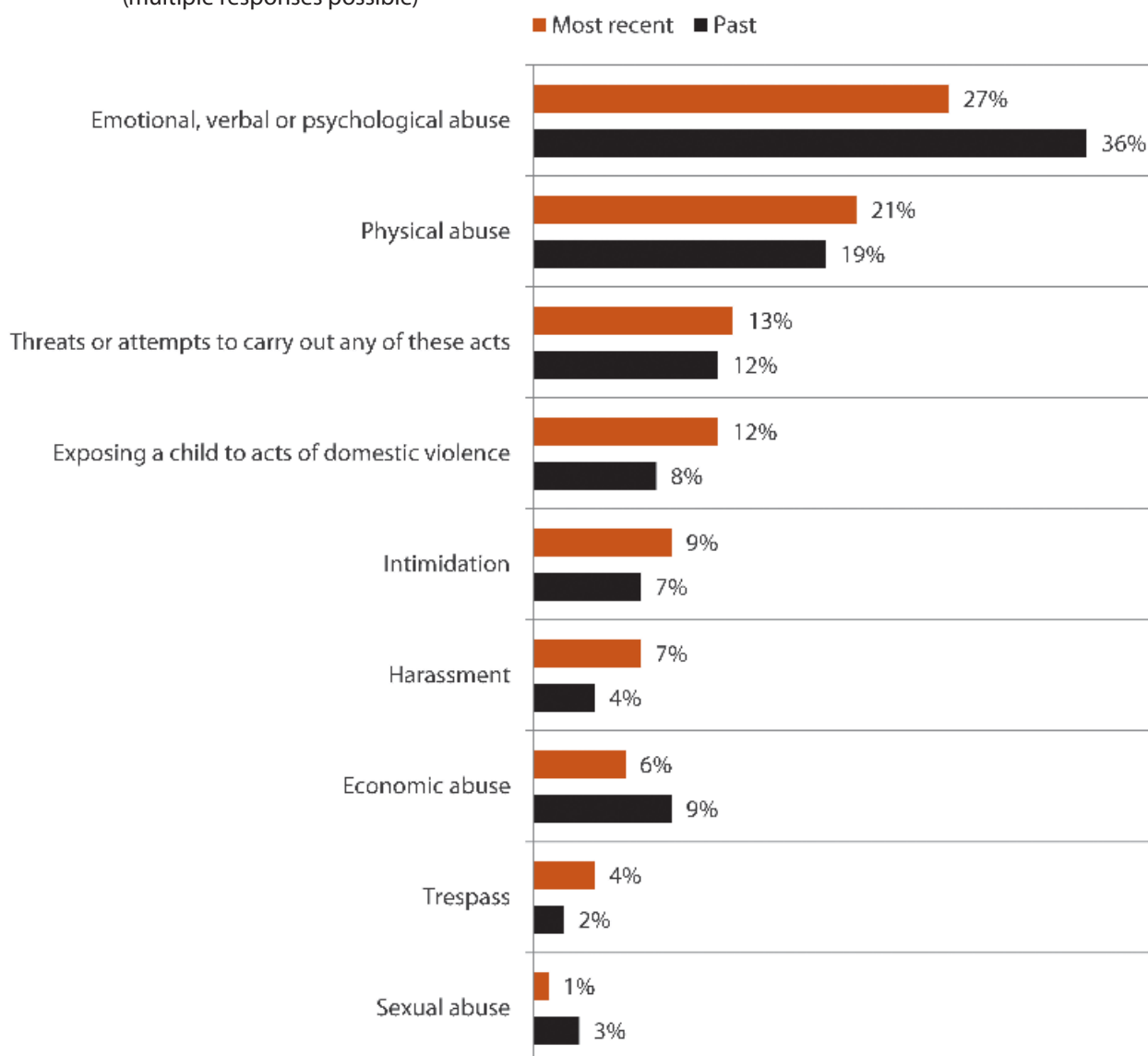
**TABLE 65**

Recent versus past type of abuse (multiple responses possible)		
Type of abuse	Percent most recent abuse	Percent past abuse
Physical abuse	20.7%	18.3%
Sexual abuse	1.4%	2.6%
Economic abuse	6.0%	9.1%
Intimidation	9.1%	7.4%
Harassment	6.4%	3.8%
Trespass	4.0%	2.3%
Emotional, verbal or psychological abuse	27.2%	36.1%
Threats or attempts to carry out any of these acts	13.1%	12.1%
Exposing a child to acts of domestic violence	12.0%	8.3%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>

**TABLE 66**

Recent versus past most physically dangerous abuse alleged (by case)		
Type of abuse	Percent most recent abuse	Percent past abuse
Physical or physical+	54.4%	76.3%
Sexual or sexual+	1.1%	1.7%
Intimidation or intimidation+	11.8%	4.9%
Harassment or harassment+	9.3%	3.4%
Trespass or trespass+	1.4%	0.7%
Economic or economic+	6.3%	5.7%
Emotional or emotional+	14.6%	7.2%
Threats or threats+	0.8%	0.2%
Exposing a child to domestic violence	0.2%	0.0%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>

**CHART 32: Type of abuse – most recent and past**  
(multiple responses possible)



# 5.10.3 Escalation of abuse over time

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**

\*\*\*

**4. Has the abuse been happening more often lately?**

..... no

..... yes

explain: .....

**5. Has the abuse become more severe lately?**

..... no

..... yes

explain: .....

Most complainants who reported a history of abuse also reported that the abuse had recently worsened, with 74% reporting that it had become more frequent and 70% reporting that it had become more severe – with most (64%) reporting that the abuse had become *both* more frequent *and* more severe. These statistics could be even higher, since approximately 13% of complainants with a history of abuse failed to answer either of the questions about recent changes in abuse.

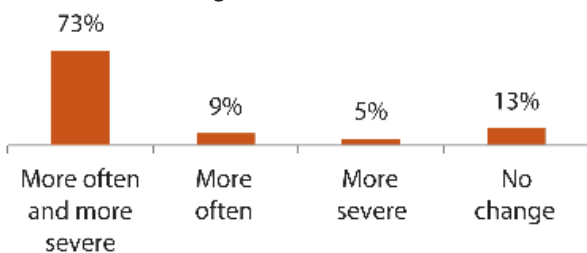
**CHART 33: Change in abuse lately – more often?**  
 (missing data excluded)



**CHART 34: Change in abuse lately – more severe?**  
 (missing data excluded)



**CHART 35: Change in abuse lately**  
 (missing data excluded)



**TABLE 67**

Change in abuse lately		Number	Percent
More often?	Yes	802	74.0%
	No	182	16.8%
	Not answered	100	9.2%
	<b>Total</b>	<b>1084</b>	<b>100.0%</b>
More severe?	Yes	755	69.6%
	No	211	19.5%
	Not answered	118	10.9%
	<b>Total</b>	<b>1084</b>	<b>100.0%</b>

Calculated for all complainants who filled in the section of the form on history of abuse

**TABLE 68**

Change in abuse lately	Number	Percent
Both more often and severe	692	63.8%
More severe only	47	4.3%
More often only	82	7.6%
Neither more severe nor more often	126	11.6%
Not answered	137	12.6%
<b>Total</b>	<b>1084</b>	<b>100.0%</b>

Calculated for all complainants who filled in the section of the form on history of abuse

Of the 1058 complainants who provided any details about past abuse, 9% reported the introduction of death threats as part of the escalation of abuse, 8% reported that new types of abuse had been added and 4% reported an increase in the severity of injuries resulting from the abuse. Complainants also frequently reported an increase in drinking associated with abuse and an intensifying effect on children and other family members over time. Some complainants reported that threats of abuse had become actual violence, while others reported greater difficulty in coping with the abuse. Some reported that abuse which began in private had subsequently started taking place in public. Others were experiencing new forms of social isolation (such as not being allowed to have visitors). Eighteen complainants reported that they had been forced to leave their homes because of the abuse. Three complainants reported that the abuse had continued despite police warnings or previous applications for a protection order.

**TABLE 69**

<b>Details regarding change in abuse</b> (multiple responses possible)			
<b>Type of change</b>	<b>Number of responses</b>	<b>Percent of the 821 complainants who reported worsening abuse</b>	<b>Percent of the 1058 complainants who provided details of past abuse</b>
Threats of abuse have now become actual abuse	14	1.7%	1.3%
New forms of abuse have begun	85	10.4%	8.0%
The victim's state of mind / ability to withstand the abuse is deteriorating	12	1.5%	1.1%
Impact on children or other family members is intensifying	65	7.9%	6.1%
Drinking associated with abuse is increasing	79	9.6%	7.5%
Victim has now been forced to leave home (temporarily or permanent)	18	2.2%	1.7%
Death threats introduced now	95	11.6%	9.0%
Victim has received more severe injuries / had to seek medical treatment	46	5.6%	4.3%
Victim is becoming more isolated / obsessively possessive abuser / no visitors	12	1.5%	1.1%
Sexual accusations increase: sleep with other men / own son	10	1.2%	0.9%
Main problem is sex: if she refuses, he threatens or forces her, or assaults her	5	0.6%	0.5%
Extra-marital affairs of abuser increase / worsen abuse / carry on / result in child	13	1.6%	1.2%
Abuser needs psychological help	2	0.2%	0.2%
Abuse has shifted from private to public	14	1.7%	1.3%
Continues with abuse despite warning / complainant previously applied for a protection order	3	0.4%	0.3%

Sexual relations were sometimes a site of increased conflict. There were reports that abusers' sexual infidelity had increased, as well as reports of increased allegations by abusers that complainants were being sexually unfaithful. (One abuser accused a complainant of sleeping with her own son.) A few complainants reported that sexual relations with the abuser had become a new area of abuse, with respondents having begun to threaten, assault or force them if they tried to refuse sex.

These reports of intensified violence in domestic relationships are consistent with international findings on the escalating nature of domestic violence, where incidents of

violence tend to increase in frequency and severity over time, sometimes ending tragically in the murder of the victim.<sup>72</sup>

Details about incidents of abuse were tabulated against the duration of the domestic violence by years, but no significant patterns emerged in connection with the number of years the abuse had been ongoing. Individual relationships seem to have a life cycle of their own, regardless of their duration.

## 5.10.4 Weapon use in past abuse

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**

\*\*\*

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

..... no

..... yes

explain: .....

Complainants were asked to state what weapons the abuser owns, and whether the abuser has used or threatened to use a weapon against the complainant in the past. As discussed in detail in section 5.8.7, the weapons identified by complainants as being owned by respondents included firearms, knives, pangas, axes, knobkieries and traditional weapons. Other complainants mentioned ownership of household items which had apparently been used as weapons in past domestic violence incidents, or used in the course of making threats: rocks, bottles, belts and sticks.

**Just over half of the respondents (53%) had used a weapon or threatened to use a weapon against the complainant in the past, according to the information provided by the complainants.**<sup>73</sup> There were 62 cases where complainants provided specific details about how respondents had mentioned weapons in conjunction with a threat of violence. The percentage of cases where respondents made credible threats involving weapons is probably higher. For example, 305 complainants reported that the respondent had threatened to kill them, but provided no further details. These threats may have contained detail about weapons which complaints did not record on the application forms.

<sup>72</sup> See, for example, Debie LeBeau, *The Nature, Extent and Causes of Domestic Violence Against Women and Children in Namibia*, paper prepared for the Women and Law Committee of the Law Reform and Development Commission (unpublished), 1996 at 2.

<sup>73</sup> Note that using a weapon or threatening to use a weapon could be a component of physical abuse, emotional abuse, harassment, intimidation or threats.

Of respondents who used weapons to threaten complainants, 91% were men (compared to the fact that 87% of the respondents were male), which is consistent with the fact while women may abuse, it is male respondents who are more likely to use greater force and inflict greater harm.<sup>74</sup> Where male respondents made threats involving weapons, the most common threats were threats to shoot or stab complainants, or both. Where women respondents made threats involving weapons, the most common threats were threats to use a knife. Women’s threats involving weapons tended to lack the shocking and gruesome detail of threats made by men, with threats by women (at least as reported by the complainants) being apparently more generic in nature than some of the terrifyingly-specific threats made by male respondents.

It seems as though almost any household item can be turned into a weapon. One complainant reported that the respondent threatened to kill her with a golf club, while another said that the respondent threatened her with a car jack. Another said that the respondent chases family members with a spade, one said that the respondent assaulted her with an electric fan and one said that she had been assaulted with a broom and a gas bottle.

In 26 of the 62 cases where details about threats involving weapons were given, respondents threatened complainants with weapons which the complainants knew that they owned or had access to<sup>75</sup> – which must have made the threats that much more credible and frightening.

On the other hand, some respondents who reportedly did not own weapons nevertheless mentioned weapons in the threats which they made. This could be because ordinary household items are used as weapons in domestic violence, or because respondents who made such threats intended to somehow obtain the weapons they mentioned. For example, one respondent threatened to buy a gun, while another threatened to bring one home to kill the complainant with. This shows that weapon ownership is not a good proxy for the danger of the situation.

It should be noted that a respondent who is deemed to be dangerous may be deprived of a weapon even if that weapon has not already been used to threaten or commit domestic violence.<sup>76</sup>

Even though removing a specific weapon is no guarantee of protection, it still seems to be a sensible precaution which could prevent escalation of domestic violence or help to minimise injury – at least in some cases.

**CHART 36: Does respondent own a weapon?**  
(missing data excluded)



Ordinary items which can be used as weapons (rocks, bottles, belts, sticks, etc) are excluded from these calculations.

**CHART 37: Use of weapon or threat to use weapon against complainant?**  
(missing data excluded)



<sup>74</sup> See N Andersson, A Ho-Foster, S Mitchell, E Scheepers and S Goldstein, “Risk factors for domestic violence: Eight national cross-sectional household surveys in southern Africa”, *BMC Women’s Health* 2007, at “Discussion”; available at <[www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2042491](http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2042491)>, discussed in section 4.3.1.3. See also SIAPAC 2008 at 67 and SIAPAC 2007 at 90, discussed in section 4.3.1.4.

<sup>75</sup> There were only 3 cases where the weapons cited in threats were different from the ones the complainant listed the respondent as owning some. See Table 72.

<sup>76</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(a). The question of whether such a provision is warranted is left to the court’s discretion; the provision does not specify any criteria for inclusion of this term in a protection order.

TABLE 70

Use of weapon to threaten complainant			
		Number	Percent
Respondent used or threatened to use weapon?	Yes	529	53.3%
	No	463	46.7%
	<b>Total</b>	<b>992</b>	<b>100.0%</b>

Missing data excluded.

TABLE 71

Correlation of weapon ownership with threats involving weapons				
Weapon ownership and threats	Threats with and without weapons			Total
	Weapon mentioned	Weapon not mentioned	No answer (threats)	
Respondent owns weapon and made threats	26	204	0	230
Respondent owns weapon but made no threats	0	0	41	41
Respondent does not own weapon but made threats	31	468	0	499
Respondent does not own weapon and made no threats	0	0	109	109
No answer (weapon ownership)	5	62	185	252
<b>Total</b>	<b>62</b>	<b>734</b>	<b>335</b>	<b>1131</b>

TABLE 72

Types of weapons owned correlated with types of threats (single responses)							
Type of threat	Firearm(s)	Knife	Axe	Gun and knife	Knife and other	Knife, panga and knobkierrie	Total
Threatened to kill me with a knife / stab me	0	3	0	0	0	0	3
Threatened to shoot us/me	4	0	0	0	0	0	4
Threatened to kill me and shoot my sister-in-law and husband for helping me	0	1	0	0	0	0	1
Threatened to kill me; said he would bring firearm home and shoot me	0	0	1	0	0	0	1
Threatened to shoot me and the people helping me	1	0	0	0	0	0	1
Threatened to shoot my father and brother	1	0	0	0	0	0	1
Told my sister that he will shoot me	1	0	0	0	0	0	1
Threatened to shoot and kill me	4	0	0	0	0	0	4
He will cut off my legs and head	0	0	0	0	1	1	2
He threatened to cut my head off and beat my oldest daughter to death	0	1	0	0	0	0	1
Threatens me with a knife and tells me to go away and get a divorce	0	1	0	0	0	0	1
Threatened to kill me if I ever open a domestic violence case against him; will shoot me from a distance	1	0	0	0	0	0	1
Ex-boyfriend threatened to shoot current husband	1	0	0	0	0	0	1
Threatened to throw a bomb (hand grenade) in the house for us all (brothers, sisters, father) to burn	0	0	0	1	0	0	1
Threatened to stab me full of holes all over my body; pour petrol over me and set me alight	0	1	0	0	0	0	1
Threatened to shoot me and himself	1	0	0	0	0	0	1
<b>Total</b>	<b>14</b>	<b>7</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>25</b>

Note that only the shaded rows involve threats which did *not* correlate with weapons known to be available to the respondent.

## 5.10.5 Injuries from past abuse

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**

\*\*\*

**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 other health facility: .....

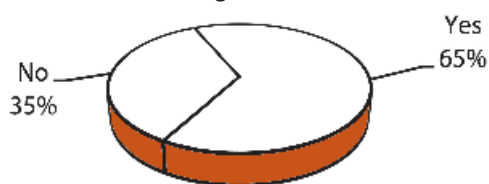
what treatment did you get? .....

As noted above, the information recorded under “*most recent incident of abuse*” and “*past abuse*” is sometimes intermingled or repeated, because complainants did not distinguish clearly between the most recent abuse and prior abuse. We have reported the information as it was contained in the forms.

### (a) Physical injury

Almost two-thirds of complainants had experienced injuries from past abuse (65%). The number who experienced physical injuries in past incidents of abuse was higher than the number who experienced physical injuries in the most recent incidents of abuse (43%). This indicates that injury is not necessarily the factor which drives an abused person to take the step of seeking legal help.

**CHART 38:** Has complainant been injured in past abuse? (missing cases excluded)



**TABLE 73**

Was the victim physically injured in the past abuse?	Number	Percent (including missing cases)	Percent (excluding missing cases)
Yes	651	58.0%	64.9%
No	352	31.4%	35.1%
Missing	119	10.6%	
<b>Total</b>	<b>1122</b>	<b>100.0%</b>	<b>100.0%</b>

TABLE 74

Details of injuries reported by complainants from past abuse (multiple responses possible)		
Type of injury	Number of reports of this type of injury	Percent of all injuries reported
<b>Bruising and swelling (including pain and soreness)</b>	<b>385</b>	<b>43.3%</b>
• Bruises to body	177	19.9%
• Bruises to face	172	19.3%
• Swelling	21	2.4%
• Back-ache/pain/soreness	14	1.6%
• Pain/soreness	1	0.1%
<b>Cuts and bites</b>	<b>100</b>	<b>11.3%</b>
• Cuts/lacerations/scratches to face/head	64	7.2%
• Cuts/lacerations/scratches to body	23	2.6%
• Bite wounds	13	1.5%
<b>Burns</b>	<b>10</b>	<b>1.1%</b>
• Burned, e.g. with iron on arm; hot water on face and neck	10	1.1%
<b>Injuries to eyes, ears or head (including strangulation)</b>	<b>118</b>	<b>13.2%</b>
• Eye injury: poked; bleeding eyes; swollen eyes; blue eye	70	7.9%
• Strangulation (marks) / suffocation; grabbing throat	19	2.1%
• Injury to the ear	11	1.2%
• Hair pulled out; pulled braids off	8	0.9%
• Lost teeth	8	0.9%
• Ear cut off	2	0.2%
<b>Injury to the body (including internal injuries and movement impairment)</b>	<b>34</b>	<b>3.8%</b>
• Injury to joints: knee, arm, hip, elbow, shoulder, wrist, jaw	29	3.3%
• Injuries to genitals; raped; kicked in abdomen (bleeding); sexual abuse (n.s.)	4	0.4%
• Internal injuries: stomach; chest	1	0.1%
<b>Stab wounds</b>	<b>34</b>	<b>4.0%</b>
• Stab wounds	34	4.0%
<b>Broken bones</b>	<b>39</b>	<b>4.4%</b>
• Broken bone; fractured ribs	39	4.4%
<b>Serious assault/serious injuries</b>	<b>8</b>	<b>0.9%</b>
• Severe injuries – not specified	8	0.9%
<b>Gunshot wounds</b>	<b>1</b>	<b>0.1%</b>
• Shot wounds	1	0.1%
<b>Other (including assault while pregnant, assault on a disabled person, assault on an infant/child in the care of the complainant, possible poisoning, injury reported but not specific)</b>	<b>160</b>	<b>17.8%</b>
• Open wounds	8	0.9%
• Stress resulted in epilepsy; emotionally injured	8	0.9%
• Child injured as well (baby thrown against the wall)	4	0.4%
• He kicked/assaulted her while she was pregnant	3	0.3%
• Miscarriage	2	0.2%
• Contracted HIV from respondent (gave it to her purposefully)	1	0.1%
• Paralysed for a few days (disabled CP); assaulted until unconscious	1	0.1%
• Got a stroke from emotional strain	1	0.1%
• Injury not specified	132	14.8%
<b>Total</b>	<b>887</b>	<b>100.0%</b>



**TABLE 75**

<b>WHO STUDY</b>	
<b>Types of injuries reported by women in Windhoek ever injured by intimate partner violence, 2001</b>	
<b>Type of injury</b>	<b>Percent of women reporting lifetime injury from domestic violence</b>
minor injuries (bruises, abrasions, cuts, punctures, and bites)	94%
sprains or dislocations	11%
burns	6%
deep cuts	17%
eye or ear injuries	44%
broken bones	19%
broken teeth	9%
other injuries	10%

**TABLE 76**

<b>SIAPAC STUDY</b>	
<b>Types of injuries from domestic violence during 12 months prior to survey in eight Namibian regions, 2007/08</b>	
<b>Type of injury</b>	<b>Percent of respondents who reported injury from domestic violence in the past 12 months</b>
scratches, abrasions, bruises	71%
cuts or bites	49%
broken eardrum, broken nose, eye injuries, broken jaw, related injury, teeth	36%
penetrating injury, deep cuts, gashes	24%
sprains, dislocations	14%
burns	13%
fractures, broken bones	7%

### **CASE STUDY**

#### **A violent attack**

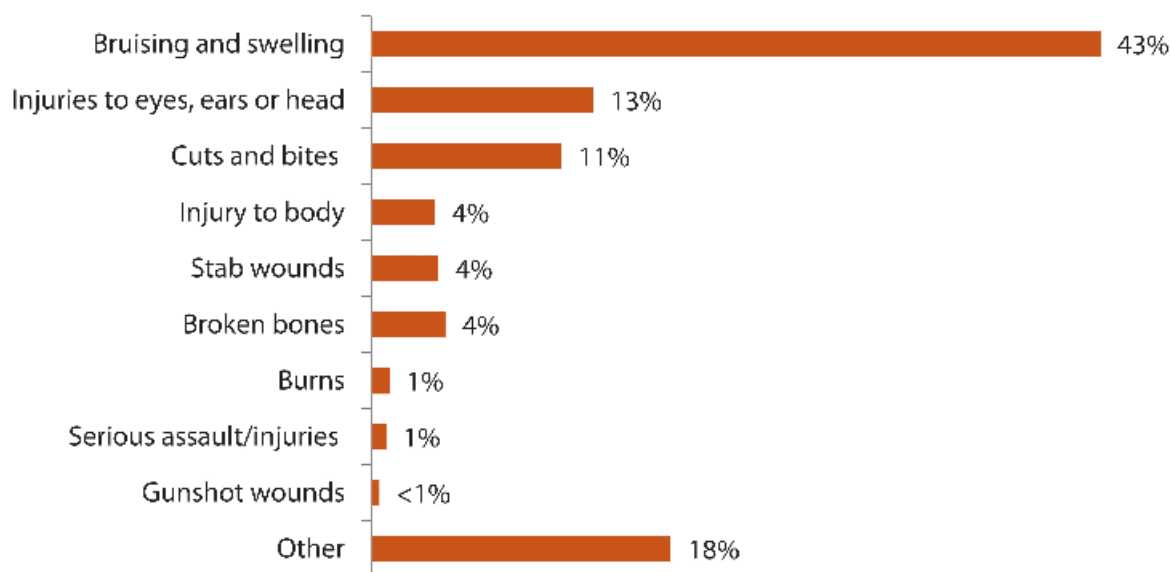
A 45-year-old complainant brought an application against her respondent boyfriend, describing a violent assault where he chased her under their children’s bed, beat her with a spade, lifted the bed off the complainant and then beat her with a brick. He then beat her with her own belt, before taking a pistol and aiming at her, only to find there were no bullets. Instead, he began stabbing her with scissors, causing her to bleed, held open her legs and threatened to stab her in her private parts. The complainant struggled and threw the scissors away from them, at which point the respondent took her shoe and threatened to remove her teeth with it. She hid her face while he struck her on her back. Eventually, the respondent fell asleep. The complainant later went to the hospital and was treated for her injuries. A medical report and a police report were included with the application.

*He picked me up and then threw me off from the bridge. I couldn’t move as I was injured very bad and laid there but he stood up there and said that I am lying. He came down the bridge and pulled me out of the river bed and beat me all the way....*

27-year-old complainant applying for a protection order against her boyfriend

As with the most recent incident of abuse, bruises and swelling (including pain and soreness) were the most common types of injuries sustained during past abuse (43% of all past injuries reported). Other commonly-reported past injuries were injuries to the head area (13%), including injuries to eyes or ears and strangulation, and cuts or bites (11%). There were many eye-related injuries (such as eyes which were poked or bleeding, and swollen or blue eyes), and two people indicated that the abuser had *cut off their ears*. Eight complainants said that the abuser had pulled their hair out, and eight had lost teeth from the abuse. More serious past injuries included broken bones or fractured ribs (4%) and stab wounds (almost 4%). Other injuries were described as being “serious” but without any further detail (about 1%). There was one report of a past gunshot wound. Three complainants had been kicked while pregnant, and four reported miscarriages as a result of the domestic violence.

**CHART 39: Injuries reported by complainants from past abuse**  
(multiple responses possible)



These results are similar to those in the WHO study figures on injuries from lifetime violence, although the WHO study found certain types of injuries to be reported more frequently than in our sample: head injuries (44% for WHO vs 13% here) and broken bones (20% for WHO vs 2% here).<sup>77</sup>

These results are also similar to the SIAPAC data on injuries suffered during the 12 months prior to the study. However, the SIAPAC study reports that 71% of respondents reported scratches, abrasions or bruises whereas only 54% of complainants in this study recorded bruising, cuts or scratches as injuries from domestic violence. About 36% of respondents in the SIAPAC study reported injuries to the eyes, ears or head (broken eardrum, broken nose, eye injuries, broken jaw, related injury, lost teeth) compared with about 13% in this study.<sup>78</sup>

<sup>77</sup> WHO *Multi-country Study*, 2005, Table 7.4 at 58, with table format altered for easier comparison. Note that the WHO study asked about lifetime injury from intimate partner violence while the comparable data in our study refers to past injury from domestic violence by the same perpetrator.

<sup>78</sup> SIAPAC 2008 at 65 and 62; see also SIAPAC 2007, Table A136, Annex at 36, with table format altered for easier comparison. Note that the SIAPAC study asked about injury from intimate partner violence during the 12 months preceding the survey, while the comparable data in our study refers to past injury by the same perpetrator without any time limit.

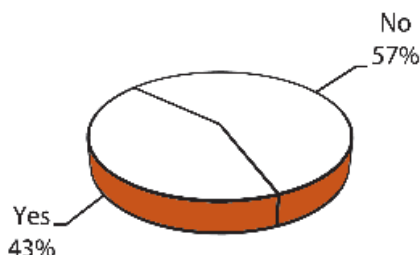
The answers to the questions on injury indicate that the application form is not totally successful in collecting the relevant information. An examination of all the information in the file indicates that 733 complainants in the sample had been injured by past abuse, but only 651 of those who answered the specific question on past injuries marked “yes” to this question.<sup>79</sup> The problem here is not clear, since the question seems unambiguous. It may be that the inconsistencies are simply a result of the fact that the form is relatively long and difficult.

## (b) Medical treatment

Looking at the specific answers to the questions about medical treatment and injury for past abuse, about half of the complainants who reported suffering injury from past abuse sought medical help (47%), which constitutes 28% of all 1122 complainants in the sample.<sup>80</sup> Three complainants reported that they were “*too afraid*” to seek medical attention, four were either not allowed to see a doctor or could not afford to pay for medical care, and four said that they were too embarrassed or ashamed to seek medical help.

This information may well be an underestimate. If we take information about injury and medical treatment from all the sources in the file (including narrative accounts and answers to other questions), then it appears that more than half of the complainants who indicated anywhere in the file that they were injured by past abuse sought medical treatment for past injuries (53%), constituting 36% of all 1122 complainants. Either approach gives us a picture of abuse which is generally serious, and frequently worsening over time.

**CHART 40: Did complainant seek medical attention for past abuse?**  
(missing values excluded)



**TABLE 77**

Did complainant seek medical attention for past abuse? (calculated only for those complainants who reported injuries)		
	Number	Percent
Yes	308	47.3%
No	321	49.3%
• No, I was too afraid	3	0.5%
• Not allowed to see a doctor / no money	4	0.6%
• No, too ashamed/embarrassed	4	0.6%
• No (without further details)	310	47.6%
No answer to this question	22	3.4%
<b>Total</b>	<b>651</b>	<b>100.0%</b>

<sup>79</sup> The percentages produced by the two different methods of calculation here are the same. Looking at all the files in their entirety, 733 out of 1122 complainants reported injuries from past abuse (65%). Looking only at the specific question on injury from past abuse, 651 out of the 1003 complainants who answered the question marked “yes” (65%).

<sup>80</sup> The question on medical treatment in this part of the application form clearly ties the medical treatment to the domestic violence by asking, “Did you (the victim) see a doctor or a nurse or other health practitioner **because of the abuse** in the past?” (emphasis added). In contrast, the corresponding question in the section of the form on the most recent incident of abuse asks only, “Did you (the victim) see a doctor or a nurse or other health practitioner?”. The question follows on a previous one about injuries from the most recent incident of abuse, but as explained in section 5.9.4, seven complainants misunderstood this question and seemed to reference their last medical treatment for any reason at all.

Even with the more clear wording used for this question in the part of the form on past abuse, 6 complainants cited medical treatment for injuries resulting from the abuse on a date which was *before* the date given for the first incident of abuse. These discrepancies could result from confusion about the dates of recollected past abuse rather than from a misunderstanding of the question.

As another example of confusing answers, 17 complainants stated that they received medical attention because of past abuse, but did not cite any injuries from past abuse. It is possible that these complainants were referring to medical treatment for mental distress which they did not consider to be “injuries”, but it is more likely that the answers given on the form here were merely inconsistent – as encountered in respect of many other questions on the form.

We eliminated these inconsistent responses from our calculations.

**Injured complainants who sought medical treatment for injuries did so mostly in the same year as the first incident of abuse (40%).** However, substantial numbers of complainants did not seek medical treatment – or perhaps did not need to seek medical treatment – until the abuse had been underway for 1-2 years (12%) or for 2-3 years (16%). Almost one-third did not seek, or perhaps did not need to seek, medical treatment until more than 3 years after the first incident of abuse. The questions on the application form do not reveal if delayed time frames for seeking medical help relate to an escalation in abuse which did not initially cause injuries, or to complainants who became less willing over time to suffer without seeking help.

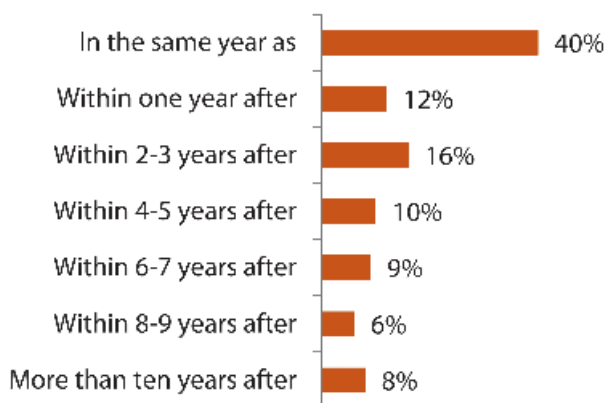
As for the most recent incident of abuse, the application form asks for details about the health facility and the health care practitioner involved in medical treatment for past abuse as a basis for possible corroborating evidence. Not quite as many complainants could provide details of medical treatment for past abuse as for the most recent abuse; with respect to past abuse, 79% named the health facility approached (compared to 100% for the most recent abuse), and half (50%) named the doctor or nurse who assisted them (compared to 65% for the most recent abuse). This is not surprising given the time lapses involved. However, once again, the detail provided suggests that the accounts of medical treatment were truthful, since it allows for potential corroboration with medical records.

**TABLE 78**

Date of medical visit compared to date of first incident of abuse		
	Number	Percent
In the same year as	56	39.7%
Within 1 year after	17	12.1%
Within 2-3 years after	22	15.6%
Within 4-5 years after	14	9.9%
Within 6-7 years after	12	8.5%
Within 8-9 years after	9	6.4%
More than 10 years after	11	7.8%
<b>Total</b>	<b>141</b>	<b>100.0%</b>

Missing data excluded.

**CHART 41: Date of medical visit compared to date of first incident of abuse**  
(missing data excluded)



## 5.10.6 Past threats

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**

\*\*\*

**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

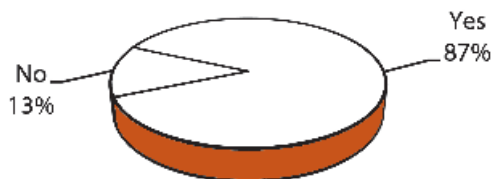
..... yes

..... no

give details: .....

About 87% of the complainants reported a history of abuse that had included threats.<sup>81</sup> Out of the total of 883 applications forms where complainants alleged that threats had been made, 796 recorded some detail about the past threats.

**CHART 42: Threats of violence as part of history of abuse?**  
(missing values excluded)



**TABLE 79**

Has respondent made threats against the complainant or anyone else?		
	Number	Percent
Yes	883	87.0%
No	78	7.7%
Not to the best of my knowledge	54	5.3%
<b>Total</b>	<b>1015</b>	<b>100.0%</b>

Missing data excluded.

As noted at the beginning of section 5.10.2, respondents threatened to kill 621 complainants (55%). Some of these death threats were conditional. For example, several respondents threatened to kill complainants if they reported the abuse to the police, if they sought a divorce or refused to continue the relationship, or if they tried to chase the respondent out of the house. One threatened to drive a car into the house if the complainant reported the abuse to the police. One threatened to kill the complainant if she revealed her positive HIV status to anyone. One respondent told a complainant that she “*belongs to him*” and that he would kill her if he ever saw her with anyone else.

One respondent threatened that he would kill the complainant, set her on fire and then kill himself. Other death threats included graphic descriptions of how the murder would be accomplished – two respondents threatened to cut the complainant’s head off, four threatened to cut the complainant to pieces, one threatened to strangle and stab the complainant, one threatened to break her neck and one threatened to stab the complainant full of holes, pour petrol over her and set her alight. One reportedly said, “*I will kill you like a dog but I will never go to jail.*”

Whether or not death was necessarily intended, some of the other threats of harm were grisly. One respondent threatened to cut the complainant open with a saw, while another said that he would push a pistol down the complainant’s throat and use her as a target for bow and arrow shooting. One said he would burn down her house with her inside, while four said that they would first stab the complainant and then burn down her house. Two respondents threatened to pour hot water over the complainant. One said that he would cut the complainant’s breasts off, with the added result that their daughter would then die of unhappiness about this. A woman threatened to pour acid over a male complainant and destroy his property if he did not take her back. One respondent threatened to take the complainant’s eyes out.

As noted in section 5.10.2, 250 complainants (22%) said that their children had been harmed or threatened, while 79 (7%) reported that other people had been harmed or threatened – including extended family members and friends. Many respondents threatened to kill entire families. For instance, one respondent said that he would throw a hand grenade into the house and destroy the entire family. Another said that he would force the entire family to drink rat poison. One respondent threatened to send someone with AIDS to rape the complainant’s 18-year-old daughter.

At least 53 respondents (accounting for 5% of all the respondents in the sample) threatened to kill themselves – usually saying that they would do this after having killed the complainant

<sup>81</sup> Such threats could form components of various different types of abuse. See footnote 73.

**and others first.** Four respondents said they would kill themselves if the complainants did not marry them. One said that it would best if the two “*would kill each other*”. This kind of threat could work as a deterrent to legal action on the part of complainants, since people who are really prepared to go so far as to kill themselves are unlikely to be deterred by court orders or threats of arrest.

**Arson was threatened by at least 34 respondents – in many cases this involved threats to houses with people inside, or to burn houses after killing the complainants.** Several other respondents threatened to burn people (or their corpses) – including four who intended to pour petrol over the complainant and set her alight.

According to a clerk of court in Keetmanshoop:

*The most common form of domestic violence that drives people to seek protection orders is threats. Many women are so afraid of being murdered or injured by their husbands and boyfriends. In today’s society, this threat cannot be taken lightly because there are so many incidences where woman and children are killed by men in Namibia within a domestic situation. Many of the threats in the protection order application include death threats with a knife or gun.*

## 5.10.7 Witnesses to past abuse

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**

\*\*\*

**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: .....

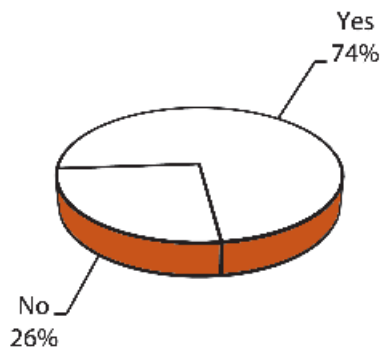
The two questions about witnesses to past domestic violence are identical to the two questions about witnesses to the most recent incident of abuse, and the same ambiguities discussed in section 5.9.5 for witnesses to the most recent abuse apply to the questions about witnesses to past abuse.<sup>82</sup> As above, we have analysed the data from the two questions together to attempt to ascertain the information which the questions intended to elicit.

<sup>82</sup> More than 80 adult offspring were listed under the question about “children” who witnessed past violence, showing that the same ambiguity discussed above occurred in these similar questions about past abuse.

The information about witnesses to past abuse is very similar to the information about witnesses to the most recent incident of abuse. It is likely that the witnesses to past violence and to the most recent violence were the same persons in many instances, since the most likely witnesses would be other members of the same household.

**“Did anyone else see or hear any past incidents of abuse?”**

**CHART 43: Were there witnesses to any past incidents of abuse?**  
(missing values excluded)



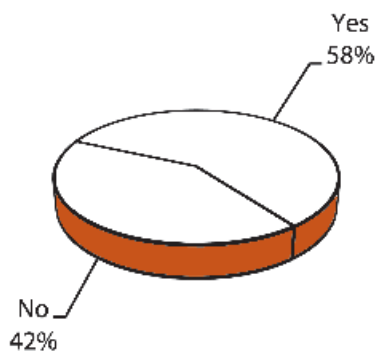
**TABLE 80**

Number of witnesses to past abuse			
Number of witnesses	Number of cases	Percent of cases	Total number of witnesses
One	484	67.0%	484
Two	136	18.8%	272
Three	36	5.0%	108
Four	8	1.1%	32
Five	2	0.3%	10
Six	1	0.1%	6
Undetermined (eg neighbours, bystanders)	4	0.6%	at least 4
Number not recorded	51	7.1%	at least 51
<b>Total</b>	<b>722</b>	<b>100.0%</b>	<b>at least 967</b>

**Note:** This table is based on the question as answered on the application form.

**“Did any children see or hear any past incidents of abuse?”**

**CHART 44: Did any children see or hear any past incidents of abuse?**  
(missing values excluded)



**TABLE 81**

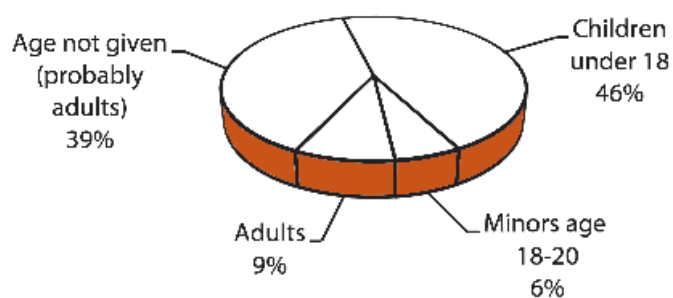
Number of children who saw or heard past abuse			
Number of witnesses	Number of cases	Percent of cases	Total number of witnesses
One	317	56.3%	317
Two	150	26.6%	300
Three	65	11.5%	195
Four	9	1.6%	36
Six	1	0.2%	6
Seven	1	0.2%	7
Undetermined	2	0.4%	at least 2
Not recorded	18	3.2%	at least 18
<b>Total</b>	<b>563</b>	<b>100.0%</b>	<b>at least 881</b>

**Note:** This table is based on the question as it was answered on the application form. As explained in section 5.9.5, complainants interpreted the reference to “children” in this question in different ways.

Most complainants reported that past domestic violence by the respondent had been witnessed by others. When the answers to the two questions are combined, assuming minimal duplication, there were some 1800 people in total who observed past domestic violence in the 1122 cases examined – about the same number as total witnesses to the most recent incident. Details about adult witnesses to past violence were not requested on the form, but could often be ascertained from the answers to other questions. Some identifying information is available for 1773 of the 1800 witnesses to past violence.

Since only the question about children asked for ages, we can assume that most of the individuals for whom age was not given are adult witnesses. We know for sure that more than 800 children were exposed to past domestic violence in the 1122 cases examined.

**CHART 45: Age groups of persons witnessing past abuse**



**TABLE 82**

Age groups of persons witnessing past abuse (questions about adults and children who saw or heard violence combined)		
Age group	Number	Percent
Children (<18)	814	45.9%
Minors age 18-20	111	6.3%
Adults	165	9.3%
Age not given	683	38.5%
<b>Total</b>	<b>1773</b>	<b>100.0%</b>

**TABLE 83**

Demographic characteristics of adult witnesses to past abuse			
	Characteristic	Number	Percent
<b>Relationship to complainant</b>	Spouse/partner	12	1.3%
	Boy/girlfriend of complainant (married or ex-married/partnered)	4	0.4%
	Son/daughter (not specified)	24	2.6%
	Son/daughter of both	98	10.7%
	Son/daughter of complainant	58	6.4%
	Son/daughter of spouse/partner	4	0.4%
	Grandchild of complainant	3	0.3%
	Brother/sister of complainant	49	5.4%
	Brother/sister of spouse/partner	15	1.6%
	Parent (not specified)	1	0.1%
	Parent of complainant	42	4.6%
	Parent of spouse/partner	15	1.6%
	Other relative (specify)	85	9.3%
	Other non-relative (specify)	13	1.4%
	Other (specify)	460	50.4%
	Housekeeper / domestic employee	12	1.3%
	Witness	1	0.1%
	Lawyer; counsel	2	0.2%
	Medical practitioners; social worker	2	0.2%
	Police officer / WCPU officer	11	1.2%
Relationship not clear	1	0.1%	
	<b>Total</b>	<b>912</b>	<b>100.0%</b>
<b>Sex</b>	Male	297	32.6%
	Female	522	57.2%
	Unknown	93	10.2%
	<b>Total</b>	<b>912</b>	<b>100.0%</b>
<b>Age group</b>	18-24	175	19.2%
	25-29	37	4.1%
	30-34	19	2.1%
	35-39	10	1.1%
	40-44	6	0.7%
	45-49	7	0.8%
	50-54	7	0.8%
	55-59	2	0.2%
	60 years or older	13	1.4%
	Unknown	636	69.7%
	<b>Total</b>	<b>912</b>	<b>100.0%</b>

Most adult witnesses to past violence were family members, with the relationship profiles being almost identical to those for witnesses to the most recent incident of abuse – reinforcing our theory that many of the witnesses to past abuse were the same individuals as the witnesses to the most recent abuse. Adult children of either the complainant or the respondent, or both,



accounted for 20% of the witnesses.<sup>83</sup> About 5% of the adult witnesses were parents of the complainant, and another 5% were siblings of the complainant. About 2% of the adult witnesses were the complainant’s current spouse or romantic partner. Other relatives comprised about 9% of the witnesses. Non-relative adult witnesses included housekeepers (12 cases), police (11 cases), lawyers (2 cases) and medical practitioners or social workers (2 cases). A slight majority of adult witnesses to past abuse were female (57%). Information about the age of adult witnesses is missing in so many cases that it is not possible to draw conclusions on this point.

**TABLE 84**

<b>Demographic characteristics of child witnesses to past abuse (children under age 18)</b>			
	<b>Characteristic</b>	<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Son/daughter (not specified)	56	6.5%
	Son/daughter of both	529	61.4%
	Son/daughter of complainant	143	16.6%
	Son/daughter of spouse/ partner	19	2.2%
	Grandchild (not specified)	10	1.2%
	Grandchild of both	6	0.7%
	Grandchild of complainant	22	2.6%
	Brother/sister of complainant	9	1.0%
	Other relative (specify)	37	4.3%
	Other non-relative (specify)	3	0.3%
	Other (specify)	26	3.0%
	Relationship not clear	1	0.1%
	<b>Total</b>	<b>861</b>	<b>100.0%</b>
<b>Sex</b>	Male	371	43.1%
	Female	436	50.6%
	Unknown	54	6.3%
	<b>Total</b>	<b>861</b>	<b>100.0%</b>
<b>Age group</b>	0-4	106	12.3%
	5-9	251	29.2%
	10-14	292	33.9%
	15-17	165	19.2%
	Unknown	47	5.5%
	<b>Total</b>	<b>861</b>	<b>100.0%</b>

**The patterns for child witnesses to present and past abuse are also similar and probably describe the same individuals in most cases. Just over half of the child witnesses to past abuse were girls, and most (63%) were between the ages of 5 and 14.**

Where children were witnesses, over 61% were the children of both the complainant and respondent. Almost 17% were children of the complainant (but not the abuser), 2% were the son or daughter of the complainant’s spouse or partner and 6.5% were simply described as “sons” or “daughters” without further explanation. Other child witnesses included grandchildren, siblings of the complainant, or other relatives.

**In section 5.9.5, we have already discussed the detrimental impact on children who witness violence (particularly between their own parents), the fact that exposing a child to domestic violence between others is a form of domestic violence against that child, and the fact that children who witness such violence may grow up thinking that domestic**

<sup>83</sup> As in the case of witnesses to the most recent incident of domestic violence, we are assuming for witnesses to past violence that where general reference was made to a son or daughter without further explanation, this probably referred to the son or daughter of the complainant. We have made a similar assumption about an unspecified “parent”.

violence is a normal or acceptable form of behaviour which they may then replicate. It appears that that many of the children discussed on the application forms were witnesses to repeated violence, which can only intensify these harmful effects.

## 5.10.8 Effect of past abuse on complainant

excerpt from  
**Form 1, Section D**  
**APPLICATION FOR PROTECTION ORDER**

**b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)**

\*\*\*

**12. How has the abuse affected you (the victim)?**  
(examples: stress, missing work or school or losing a job, health problems, depression, etc)

**TABLE 85**

<b>Effect of abuse on complainant</b> (multiple responses possible)		
<b>Type of effect</b>	<b>Number of responses</b>	<b>Percent of total responses</b>
Emotional/psychological problems (including severely traumatised / nervous breakdown)	936	49.9%
Health problems	452	24.1%
Work-related problems	335	17.9%
Financial problems	72	3.8%
Isolation (lost contact with family, afraid to visit, restricted from contact with others by respondent)	24	1.3%
Suicidal	15	0.8%
Lost accommodation	12	0.6%
Missing school/studies	8	0.4%
Contemplating revenge	7	0.4%
Alcohol consumption (due to stress)	6	0.3%
Infected with HIV	2	0.1%
Serious effect on relationship with current/new partner	2	0.1%
Racial discrimination*	1	0.1%
No effect	3	0.2%
<b>Total</b>	<b>1875</b>	<b>100.0%</b>

\* The meaning of this answer is not clear, but perhaps involved a cross-cultural domestic relationship.

The effects of abuse most frequently reported by complainants included emotional or psychological issues (50%), physical health problems (24%) and work-related difficulties (18%). Many experienced financial difficulty (4%), while a few complained of isolation from family members or others, a temptation to commit suicide or to drink more alcohol, or the loss of accommodation. Eight claimed that the violence had caused them to miss out on school or studies, seven were contemplating revenge against the abuser, and two complainants alleged that they were infected with HIV through incidents of domestic violence. Only three complainants indicated that the domestic violence had no effect on them.

# 5.11 REQUESTS FOR PROTECTION ORDERS

One part of the application form (“Section E”) requires complainants to list what elements they would like the court to include in the protection order against the respondent.

Every protection order should automatically state that the respondent must not commit any further acts of violence. Other terms of the protection order can include orders related to surrendering weapons, giving the complainant exclusive occupation of the joint residence, leaving property for the complainant’s use in the joint residence and various no-contact provisions. It is also possible for such orders to include temporary orders relating to maintenance or to child custody and access – to allow the complainant a reasonable opportunity to make use of the normal channels for such orders.

In 7% of applications, Section E was left completely blank, with no indication of recommended terms for the proposed protection order. Therefore, the information on this section of the forms was analysed for only 1051 applications, out of requests from 1122 complainants for protection orders against 1131 respondents.

## 5.11.1 Basis for protection orders

A protection order can be granted only where some form of domestic violence – defined to include a mere threat of domestic violence – has already occurred. Looking at the answers to the questions on the application forms about the most recent incident of abuse together with the answers to the questions about the history of domestic violence, what types of domestic violence are serving as the basis for protection order applications? Is there any indication that large numbers of complainants are seeking protection order applications for trivial incidents?

An examination of all the information on the application forms indicates that 77% of the applicants had experienced physical abuse (aside from sexual abuse) either in the most recent incident of abuse, or in previous incidents in the history of the abusive relationship. Adding sexual abuse would raise this total even higher.

In other words, more than three-fourths of the applicants had experienced physical abuse in the past – a type of abuse for which there is more likely to be reliable concrete evidence (compared to emotional abuse or threats, for example). This statistic indicates that protection orders are not being sought for minor or trivial incidents.

**CHART 46: Did applicant experience physical abuse?**  
(excludes sexual abuse)



**TABLE 86**

Complainants describing physical abuse other than sexual abuse (by case)		
	Number	Percent
No physical abuse described	261	23.1%
Physical abuse described in BOTH most recent incident of abuse and past abuse	520	46.0%
Physical abuse described only in MOST RECENT INCIDENT of abuse	63	5.6%
Physical abuse only in PAST abuse	287	25.4%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

Missing data excluded.

This statistic also suggests that protection orders are not serving a preventative function by being sought before actual physical violence has occurred. This may be partly because the law providing for protection orders was so new at the time of the data collection. However, the data in this study and in previous studies suggests that victims of domestic violence often seek help only after the violence has been taking place for some time, and sometimes only after there have been injuries. Ideally, protection orders will eventually be used in a more preventative fashion, to help stop threats of harm from resulting in actual harm.

## 5.11.2 Requests for emphasis on specific types of violence

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

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.

Section E of the application form allows for identification of specific forms of violence already committed by the respondent, which can be given special emphasis in the order.

Every valid application must involve at least one previous act of domestic violence as defined in the Combating of Domestic Violence Act, since otherwise there would be no basis for a protection order. Yet only half of the protection order applications indicated specific types of domestic violence already committed for special emphasis in the order.

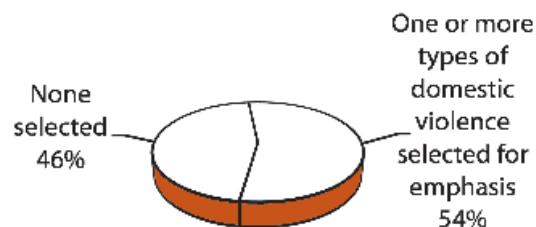
Looking at this from another angle, **even though the purpose of the application for the protection order is to prevent further acts of domestic violence by the respondent, at least 43% of application forms did not indicate types of domestic violence already committed by the respondent for special emphasis in the order.** Perhaps this section is not being filled in because this section of the form essentially repeats questions regarding the most recent and past incidents of abuse in the previous section of the application form (Section D). It may also be that the absence of a box to tick or the lack of question numbering in the format of the form caused some complainants to overlook this question.

**TABLE 87**

Complainants' requests for emphasis on certain types of domestic violence	Number	Percent
One or more types of domestic violence marked for emphasis	565	50.0%
None of the types of domestic violence marked for emphasis	486	43.0%
Section E on items for inclusion in protection orders not completed at all	80	7.1%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

Most complainants who completed this part of the form indicated more than one type of violence for emphasis; 565 complainants indicated a total of 3165 types of violence for special emphasis. The most frequently mentioned acts of domestic violence already committed by the respondent and proposed for special emphasis in the protection order are emotional, verbal or psychological abuse (16%), physical abuse (other than sexual abuse) (15%), threats or attempts to carry out any acts of domestic violence (14%), economic abuse (11%), harassment (11%), intimidation (11%) and sexual abuse (6%). It should be noted the responses on physical abuse combined with the responses on sexual abuse – the two most direct forms of physical violence – constitute the largest category of acts of domestic violence cited for special emphasis in the protection order (21% together).

**CHART 47: Complainants' responses on Section E of the application form**  
(Forms where Section E was not completed have been excluded.)



If the multiple responses are ranked and combined as we have done for other questions involving types of abuse, so that there is only one response per case, then **the vast majority of the applications which indicated previous acts of domestic violence for special emphasis in the protection order cited physical or sexual abuse amongst the types of previous abuse (84%), while only about 1% indicated emotional abuse or threats unaccompanied by other actions.** This is another indication that most protection order applications are being used for serious, concrete forms of domestic violence rather than trivial disagreements or actions which are by their nature difficult to prove.

This is consistent with the finding in section 5.11.1 that 77% of the applicants had experienced physical abuse (aside from sexual abuse) either in the most recent incident of abuse, or in previous incidents in the history of the abusive relationship (or both). The number of complainants who indicated physical abuse (other than sexual abuse) for special emphasis appears somewhat higher (at about 82%) than the percentage of complainants who described physical abuse as having already occurred (77%) – but this is explained by the fact that there were more missing cases on the issue of special emphasis. Looking at raw numbers, 870 applications described physical abuse in either the most recent incident or a past incident, while 464 applications requested that physical abuse be given special emphasis in the protection order. (See Table 86 on page 337 and Table 88 on the following page.)

Some inconsistencies in the application forms were evident on this point. Looking at the example of intimidation, 11% of complainants indicated that this type of domestic violence had already been committed by the respondent and should be given special emphasis in the protection order. Yet, our researchers' categorisations of the descriptions of past abuse showed that only 9% of complainants indicated that intimidation was a component of the most recent incident of abuse and only 7% indicated that intimidation was a component of past abuse. It is possible that these two categories do not overlap fully, so that those who experienced intimidation as a component of the most recent incident of abuse and those who experienced intimidation as a component of past abuse could add up to 11% of the

entire sample – but it is even more likely that the categories caused confusion to some complainants. Similar inconsistencies exist for the other types of domestic violence. The most likely explanation for the inconsistencies is that complainants are unlikely to think in terms of legal categories. For example, a complainant might incorrectly interpret an action as constituting intimidation or harassment without clearly understanding the meaning of these terms.

**All protection orders direct the respondent to refrain from all acts of domestic violence. Thus, any type of domestic violence committed while a protection order was in force would constitute a breach of that order. Therefore, underscoring particular acts of domestic violence for “special emphasis” may be redundant or even confusing.** Magistrates consulted about this issue felt that selecting particular types of violence for emphasis on the application forms and the resulting protection orders was not a useful exercise. **Since this mechanism is not usefully or consistently utilised, we suggest that this element be eliminated as a way of simplifying the application forms.**

One of the functions of the application form is to provide an illustration of the acts of domestic violence which are covered by the law, to guide complainants to complete the form fully. However, a simplified list of the types of domestic violence covered by the Combating of Domestic Violence Act already appears at the very beginning of the form for information. Thus, the list of types of violence to be emphasised in the protection order could be deleted without reducing the information provided to complainants about the legal meaning of “domestic violence” in Namibia.

**TABLE 88**

Types of abuse proposed for special emphasis in protection order (multiple responses possible)		
Type of abuse	Number of responses	Percent of total responses
Physical abuse	464	14.7%
Sexual abuse	186	5.9%
Economic abuse	358	11.3%
Intimidation	345	10.9%
Harassment	355	11.2%
Trespass	275	8.7%
Emotional, verbal or psychological abuse	515	16.3%
Threats or attempts to carry out any of these acts	440	13.9%
Exposing a child to acts of domestic violence against another person	227	7.2%
<b>Total</b>	<b>3165</b>	<b>100.0%</b>

Missing data excluded.

**TABLE 89**

Number of types of abuse proposed for special emphasis in protection order		
Number of types of abuse	Number	Percent
None	566	50.0%
1	11	1.0%
2	25	2.2%
3	50	4.4%
4	91	8.0%
5	90	8.0%
6	92	8.1%
7	99	8.8%
8	68	6.0%
9	39	3.4%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

**TABLE 90**

Types of abuse proposed for emphasis in protection order – tabulation per application by most physically dangerous type of abuse		
Type of abuse	Number	Percent
Physical or physical+	462	81.8%
Sexual or sexual+	11	1.9%
Intimidation or intimidation+	48	8.5%
Harassment or harassment+	17	3.0%
Trespass or trespass+	12	2.1%
Economic or economic+	9	1.6%
Emotional or emotional+	5	0.9%
Threats or threats+	1	0.2%
Exposing a child to domestic violence	0	0.0%
<b>Total</b>	<b>565</b>	<b>100.0%</b>

Missing data excluded. The “+” indicates that the listed type of abuse was combined with other types of abuse.

## 5.11.3 Requests for removal of weapons

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR 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.

The provision in the Act relating to weapons reads as follows:

- (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...<sup>84</sup>*

The application form asks complainants to indicate what the requested protection order should say about weapons. They could request that all firearms in the respondent's possession be handed over to police, or they could site "other specific weapons". They could also indicate whether they thought that the respondent's firearm licence or licences should be suspended. Search and seizure is not addressed on the application form, presumably since this authorisation would be the province of the court.

**There were requests that the protection order should order the respondent to hand over all firearms in 12% of the protection order applications.** Complainants also listed specific weapons (including some firearms) in another 12% of the protection order applications.

In 38 cases, constituting between 3% and 4% of this group, complainants requested the removal of *both* firearms *and* other weapons. This means that **about one-fifth of the complainants (20%) requested the removal of some kind of weapon.**

**Where complainants cited specific weapons which they wanted respondents to surrender to police, the most frequently cited weapons were blade weapons (knives and pangas) (48%) and firearms (22%) – the types of weapons which are most potentially fatal in their use.**

<sup>84</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(a).

**TABLE 91**

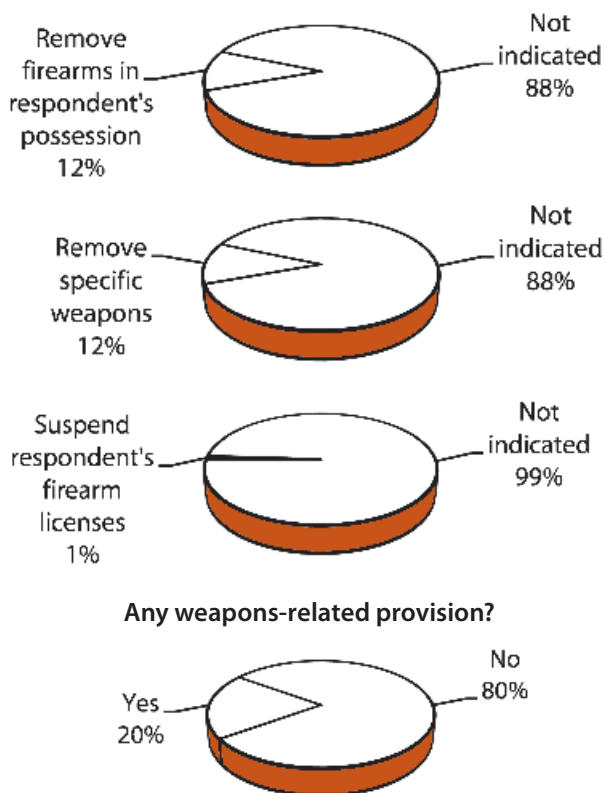
Requests for protection order terms relating to weapons (multiple responses possible)		
Term	Number	Percent
All firearms in his/her possession	125	11.9%
Not indicated	926	88.1%
<b>Total</b>	<b>1051</b>	<b>100.0%</b>
Other specific weapons	126	12.0%
Not indicated	925	88.0%
<b>Total</b>	<b>1051</b>	<b>100.0%</b>
The respondent's firearm licenses must be suspended	12	1.1%
Not indicated	1039	98.9%
<b>Total</b>	<b>1051</b>	<b>100.0%</b>

**TABLE 92**

Requests for removal of weapons (by case)		
Term	Number	Percent
All firearms in his/her possession (only)	87	8.3%
Other specific weapons (only)	88	8.4%
All firearms in his/her possession AND other specific weapons	38	3.6%
Not indicated	838	79.7%
<b>Total</b>	<b>1051</b>	<b>100.0%</b>

**CHART 48: Requests for protection order terms relating to weapons**

(Forms where Section E was not completed have been excluded.)



Weapons were used against 266 complainants in the most recent incidents of abuse, yet only 213 complainants requested the removal of all firearms or other weapons as Table 92 shows. One reason for this discrepancy may be the fact that some of the “weapons” used in the most recent incident of violence were ordinary items utilised as weapons rather than objects which are clearly identifiable as weapons in themselves. For example, it would be rather nonsensical for a protection order to require confiscation of a brick, a stone, a belt, a hoe or a broken bottle. Knives are also a problematic weapon, as it would probably be difficult to rid the average household of all knives. Pangas also have benign uses, such as for chopping firewood. In any event, removal of these weapons by police would not necessarily contribute meaningfully to the safety of complainants since these are not difficult or expensive to obtain.

The number of applicants requesting the removal of weapons of the respondent was also somewhat lower than the number of respondents listed as possessing weapons. There were 292 respondents cited as owning weapons, but only 213 complainants requested the removal of weapons in the protection order. This discrepancy may again be explained by the inclusion of some ordinary items utilised as “weapons” in complainants’ responses to the question about weapon ownership.

Complainants asserted that 149 respondents owned firearms. However, it appears that only about 125 complainants requested that firearms be removed from respondents’ possession. Perhaps some complainants who had not yet been threatened with firearms did not consider their removal to be necessary.



Only a small number of complainants (12) requested suspension of respondents' firearm licences.

It is important that obvious weapons (and particularly firearms) should be removed from violent situations – even if they have not been previously used in this context – because the escalating nature of domestic violence is well-established, as reflected in the experience of complainants in our study. It should be remembered in this regard that although weapons were used in only about one-quarter of the most recent incidents of abuse, respondents *threatened to use* them (or conversely *used them to threaten* complainants) in about half of all cases.<sup>85</sup> In the event of continuing acts of domestic violence by a respondent who has already used or threatened to use a weapon, the complainant could face considerable risk of increased violence in instances where a weapon remains close at hand.

TABLE 93

Specific weapons complainants wanted respondent to surrender to police (multiple responses possible)		
Weapon	Number of responses	Percent of total responses
Firearm	33	22.1%
Knife	53	35.6%
Panga	18	12.1%
Axe	6	4.0%
Knobkierie	6	4.0%
Stick	4	2.7%
Belt	3	2.0%
Other	16	10.7%
Traditional weapons	10	6.7%
<b>Total</b>	<b>149</b>	<b>100.0%</b>

TABLE 94

Weapons owned by respondent		Weapons used in most recent incident		Requested terms of protection order: weapons complainant wants respondent to turn over to police	
Weapon	Number	Weapon	Number	Weapon	Number
Firearm	149	Firearm	33	All firearms	125
Knife	79	Knife	111	Knife	53
Panga	26	Panga	17	Panga	18
Axe	8	Axe	10	Axe	6
Knobkierie	9	Knobkierie	5	Knobkierie	6
Traditional weapons	2	Traditional weapons	8	Traditional weapons	10

*He then took a fire-arm (a pistol) black in colour and then said, "I read newspapers and I hear about people being killed by their boyfriends, today it's going to be you." He said one bullet was mine, the other his. He then aimed at me but [the gun] did not go off as there were no bullets. He then took a plastic [packet] from underneath the bed in which there were rounds [of ammunition]. He started putting in rounds but they were just falling on the floor...*

45-year-old female complainant bringing an application against her boyfriend

<sup>85</sup> It may be that some respondents "*threatened to use a weapon*" (ie I will shoot you), while others "*used a weapon to threaten*" (ie pointing a gun). These are somewhat different types of threats, although perhaps equally frightening. We have not captured the distinction between these two situations.

## 5.11.4 Requests for no-contact provisions

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**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

The provision in the Act relating to no-contact terms of protection orders reads as follows:

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

\*\*\*

(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;*

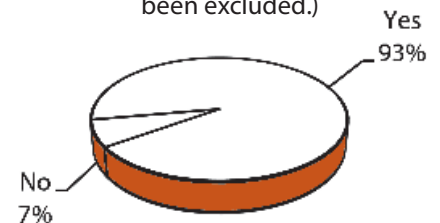
(ii) *forbids the respondent from making, except under conditions specified in the order, any communication to the complainant, any child or other person in the care of the complainant or specified members of the complainant's family, including direct or indirect personal, written, telephonic or electronic 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...<sup>86</sup>*

**A considerable majority of applications (87%) requested some type of protection order provision prohibiting contact between the respondent and complainant. The percentage is even higher if we disregard the applications where Section E was not completed at all; 93% of the complainants who filled in Section E requested some no-contact provision. In many cases, a complainant requested multiple no-contact provisions instead of only indicating that the respondent must be ordered not to come near the complainant at all.**

**CHART 49: Request for no-contact provision?**

(Forms where Section E was not completed have been excluded.)



The Act allows complainants to request restrictions on contact or communication by the respondent with persons other than themselves or children or other persons in their care, provided that such other persons have given consent.

These “third parties” do not necessarily have to be in a domestic relationship with the complainant or the respondent. For example, the abusive spouse of a domestic worker might be harassing the domestic worker's employer in an attempt to get access to the domestic worker, or an abusive spouse might be intimidating the family's domestic worker in order to get information about the movements of the other spouse. A parent who is abusing a child might turn his or her wrath on the schoolteacher who assisted the child to seek a protection order. These are some examples of the kinds of situations the law was designed to cover.

<sup>86</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(b).

The Act requires a consent form (“Form 3”) from any third party who is to be covered by a no-contact provision, with the exception of a child or other person who is in the care of the complainant. (Without a consent requirement, this provision could easily be abused; for example, spouses might attempt to get court orders prohibiting contact with persons their partners were having affairs with.) When children (other than children in the complainant’s care) are to be covered by no-contact orders, a consent form is required from the parent or guardian of the child. Therefore, there should be a consent form in respect of all persons listed as beneficiaries of orders prohibiting contact by the respondent where these persons do not fall within the exception (“*the complainant or any child or other person in the care of the complainant*”).

However, there were only 69 signed consent forms attached to the 235 protection order applications containing third-party no-contact provisions, along with one consent form that was attached but not signed. Some of the cases where forms were missing could have been cases where consent was not required because the third party was a child or another person in the care of the complainant. Other possible explanations for the dearth of forms could include instances where forms had gone missing from the files examined, the failure of applicants to obtain and execute consent forms or the use of single forms to cover multiple persons, such as where one parent or guardian provided a single consent form for multiple children. This multitude of possibilities made it impossible for us to ascertain whether consent forms were absent in cases where they should have been included, or whether magistrates correctly refused to grant orders prohibiting contact with third parties in the absence of the necessary consent forms.

## **(a) Prohibitions on physical contact**

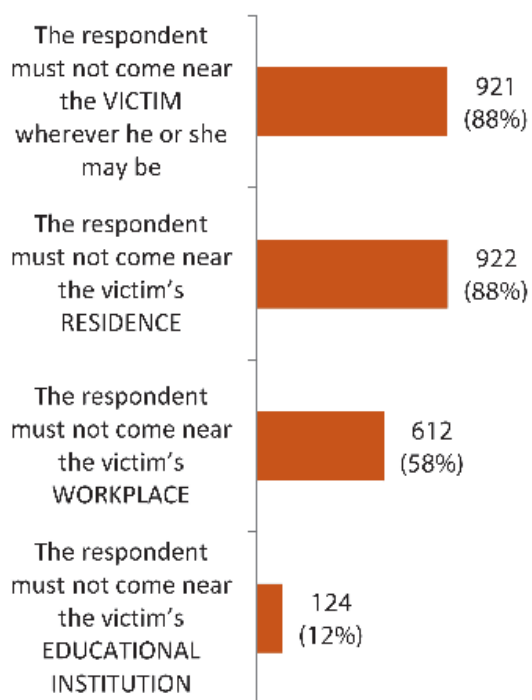
The application form divides the possible restrictions on physical contact into five different categories:

- the victim in any place
- the victim’s residence
- the victim’s workplace
- the victim’s educational institution
- other specified addresses (such as 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).

**There were 921 applications (88% of the total) where complainants elected to request the general option: “*The respondent must not come near the victim wherever he or she may be*”. Many of the same applications included requests for additional no-contact provisions relating to the complainant’s home, workplace or educational institution. There were no-contact provisions pertaining to the complainant’s residence in 88% of the cases, pertaining to the complainant’s workplace in 58% of the cases, and pertaining to the complainant’s educational institution in 12% of the cases.**

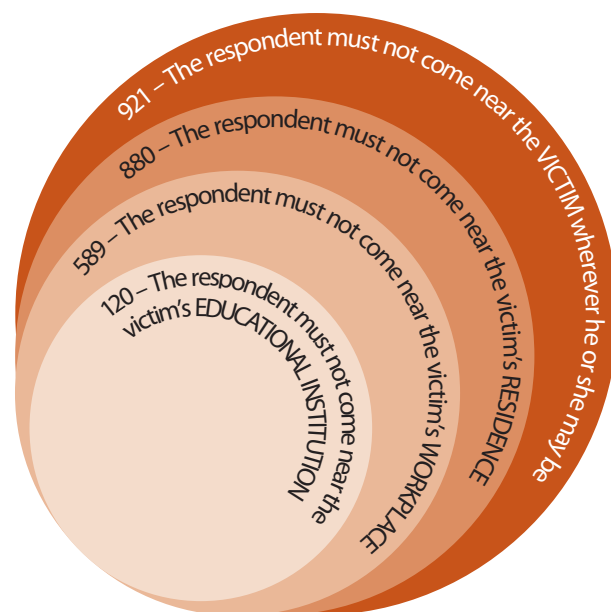
While these additional provisions may seem essentially redundant, it probably provides an extra safeguard to list specific addresses associated with the complainant rather than just providing a general provision forbidding contact with the complainant wherever he or she may be. Otherwise, proof that a protection order has been violated may become complicated as a respondent who is present at one of these addresses could aver that he or she was unaware that the complainant was present at that time. Furthermore, the orders pertaining to specific locations could help prevent the respondent from approaching or harassing family members, co-workers or fellow students in search of the complainant.

**CHART 50: Provisions on physical contact requested by all complainants**



Forms where Section E was not completed have been excluded.

**CHART 51: Multiple provisions on physical contact requested by the same complainants**



**Note:** The overlap between requests was not quite as perfect as this graphic indicates, but the diagram gives an approximation of the relationship between multiple requests for varying no-contact provisions.

A slightly different form of no-contact provision allows the complainant to propose a specific place or address which the respondent should be prohibited from coming near. This is intended to provide for restriction from a place *other than* the complainant's residence, workplace or educational institution – all of which are covered by explicit provisions on the form. The idea here is that the complainant might name a place involving another person who has been threatened, such as the residence of a friend or a family member, a child's school – or another place associated with the complainant, such as a temporary shelter where the complainant is staying. Because this provision is particularly likely to protect or involve people other than the complainant, the form asks the complainant to state reasons why the respondent should be restricted from this place or address. If the place in question is another person's private residence, then that person's consent must be provided, to satisfy the Act's requirement of consent for extending any no-contact provision to third parties (other than children or other persons in the complainant's care).

**CHART 52: Request that respondent be restricted from a specific address (other than complainant's residence, workplace or educational institution)?**  
(Forms where Section E was not completed have been excluded.)



**TABLE 95**

Reasons for request to restrict respondent from specific address other than complainant's home, workplace or education institution		
Reason (multiple answers possible)	Number of responses	Percent of total responses
Fear of abuse / threat of abuse	177	66.5%
Concerns for children	37	13.9%
Home/workplace of third party	20	7.5%
Relationship problems	12	4.5%
Prevent interference with work/business	7	2.6%
Abuser must change behaviour	3	1.1%
Abuser's intoxication	2	0.8%
Other	8	3.0%
<b>Total</b>	<b>266</b>	<b>100.0%</b>

About 39% of complainants (409 persons) requested that the respondent be prohibited from being present at a specific address other than the complainant’s residence, workplace or educational institution. Only about 65% of this group provided reasons for this request. Some of the reasons given were consistent with the purpose of the provision on the form. For example, 37 complainants cited places connected with their children, fearing threats of violence against the children, that the respondent would terrorise the children to try to get them to reveal the complainant’s whereabouts, or negative impacts on the children’s school performance. Twenty complainants explained that the address is that of third party who is somehow involved, such as the workplace of a complainant’s fiancé, the home of a complainant’s parents or the residence of a friend who had assisted the complainant.

But most complainants gave reasons that did not really explain the request as intended. For example, most who gave reasons (65%) cited fear of abuse or the threat of abuse. A few described the breakdown in the relationship between the complainant and respondent – for instance, one complainant explained she and the respondent “do not understand each other” any longer while another simply indicated she no longer wished to communicate with the respondent. Eleven complainants used this spot on the form to list their own residences, workplaces or educational institutions – which should have been listed in other places on the form.<sup>87</sup>

Thus it appears that some complainants are misunderstanding this part of the form and failing to use this space to provide the needed justification for prohibiting the respondent from being at an address which does not have an immediately obvious connection with the complainant. An amendment to the form or an explanatory note here might help elicit the information necessary to support no-contact provisions at addresses other than those obviously associated with the complainant.

The high number of requested no-contact provisions may seem inconsistent at first glance with the fact that 60% of the complainants shared a residence with the respondent at the time of the application, but this fits with the fact that 87% of such complainants requested orders for exclusive occupation of the common residence (as will be discussed in detail in section 5.11.4). Thus, it is clear that many complainants who were living in a common household with the respondent wanted the respondent to be ordered to leave the common home, and then to stay away from them.

## (b) Prohibitions on communication with complainant

About 59% of the complainants who completed Section E requested prohibitions or restrictions on communication by the respondent.

Virtually all of these requests were combined with requests for protection order provisions prohibiting physical contact by the respondent: only five applications requested restricted communication without also requesting no physical contact.

About one-third of the complainants (34%) requested no physical contact, but without desiring any restrictions on communication – probably contemplating communication

**CHART 53:** Request that respondent be restricted from communication with complainant?  
(Forms where Section E was not completed have been excluded.)



<sup>87</sup> This constitutes 2.7% of the total number of requests in this category. Because the number is so small, we have not excluded it from the calculations regarding this provision.

by telephone or some other remote means. Only 7% of the complainants in the sample failed to request *either* of these types of provisions.

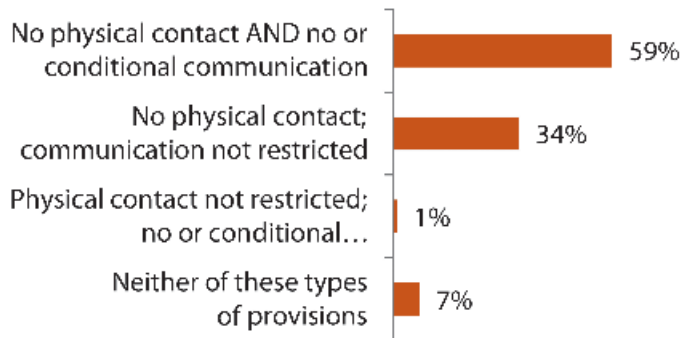
Looking only at the complainants completing Section E who were in intimate partner relationships with the respondent at the time of the application (717 out of 771 married couples or romantic partners), 61% requested limits on communication with the respondent – a sure sign that the relationship was breaking down.

**Prohibitions on communication were requested in about half of the cases (49%) where the complainant was the parent or grandparent of an abusive child or grandchild.** (A parent-child or grandparent-grandchild relationship was present in 45 cases in the sample, and was the next largest category of relationship after intimate partners even though amounting to only about 4% of the total sample.)

Almost one-third of the complainants who request prohibitions on communication wanted *all* communication by respondent to be forbidden (32%). The rest suggested some limited practical exceptions. The most frequently-requested category of exceptions to prohibitions on communication with the complainant was communication only with respect to children (33% of the requests for conditions) – for example, complainants suggested conditions such as “*only if any of the children are sick or need help*” or “*if the child is severely sick or dead*”. Another commonly requested option involved communication only via or in the presence of a third party (19%), such as by sending a message through a relative of the complainant or going to the police and contacting the complainant from there. The third parties suggested for monitoring communication included police, social workers, pastors, lawyers and family members.

Other proposed exceptions were to allow communication only with respect to work or finance (7 cases), such as only when borrowed money is returned or only with respect to property (2 cases). Some complainants preferred very strict conditions for communications, such as only in case of emergency (11 cases) or only by court order (8 cases). Given the correlation of alcohol use and incidents of domestic violence, it is surprising that there were only 10 requested conditions of communication related to the sobriety of the respondent, such as “*only when he is sober and does not intend to hurt me*” and “*only in connection with the children when he is sober*”.<sup>88</sup>

**CHART 54: Requests for restrictions on physical contact cross-tabulated with requests for restrictions on communication**  
(Forms where Section E was not completed have been excluded.)



**CHART 55: Requests by intimate partners for restriction on communication from respondent?**  
(Forms where Section E was not completed have been excluded.)



**CHART 56: Requests by parents or grandparents for restriction on communication from respondent child or grandchild?**  
(Forms where Section E was not completed have been excluded.)



<sup>88</sup> Note that 268 applications indicated that there was alcohol or drug use associated with the abuse, 214 applications described the respondent as abusing alcohol excessively and 36 applications described the respondent as using alcohol and drugs, or drugs alone, excessively.

**TABLE 96**

Restrictions requested on communication with complainant		
Proposed restrictions and conditions	Number	Percent
No communication at all	148	32%
Limited communication	315	38%
Only with respect to children	153	33%
Only in presence of third party	43	9%
Only via third party	30	6%
Only with respect to children in presence of third party	9	2%
Only at third party location	4	0.9%
Only by phone or other specified method	18	4%
Only in case of emergency	11	2%
Only by court order	8	2%
Only with respect to work or finance	7	1.5%
Only if sober	6	1.3%
Only with respect to children if sober	4	0.9%
Contingent on divorce or separation	4	0.9%
On arrangement with complainant	3	0.6%
Only with respect for property	2	0.4%
Other	13	2.8%
<b>Total</b>	<b>463</b>	<b>100%</b>

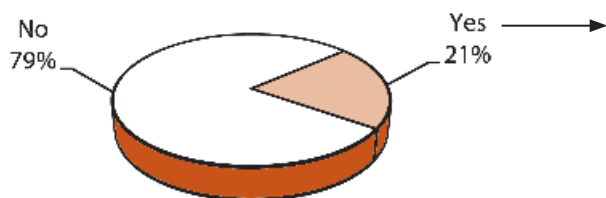
*When he calls and makes threats, I feel insecure about myself... I live in fear.*

31-year-old wife applying for protection order against her husband

### (c) Prohibitions on communication with third parties

About one-fifth of complainants (21%) requested a protection order provision prohibiting the respondent from communicating with specified third parties except under certain conditions. Most of these requests proposed prohibitions relating to multiple third parties.

**CHART 57: Request for prohibition on communication with third parties?**  
(Forms where Section E was not completed have been excluded.)



**CHART 58: Request for prohibition on communication with third parties – number of parties to be covered**

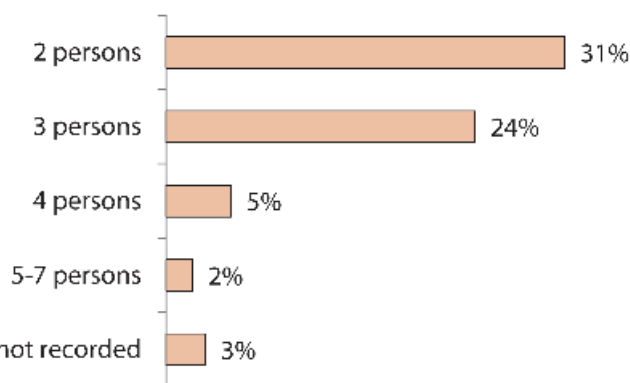




TABLE 97

Demographic characteristics of third parties covered in requests for no-communication provisions			
	Characteristic	Number	Percent
Relationship to complainant	Spouse/partner	10	2.1%
	Boy/girlfriend of complainant	3	0.6%
	Partner of respondent	1	0.2%
	Son/daughter (not specified)	27	5.8%
	Son/daughter of both	223	47.9%
	Son/daughter of complainant	74	15.9%
	Son/daughter of complainant's spouse/partner	2	0.4%
	Grandchild of both	2	0.4%
	Grandchild of complainant	2	0.4%
	Brother/sister of complainant	26	5.6%
	Parent of complainant	23	4.9%
	Other relative	29	6.2%
	Housekeeper / domestic employee	3	0.6%
	Other non-relative	15	3.2%
	Other	19	4.1%
	Relationship not clear	7	1.5%
	<b>Total</b>	<b>466</b>	<b>100.0%</b>
Sex	Male	190	44.4%
	Female	238	55.6%
	<b>Total</b>	<b>428</b>	<b>100.0%</b>
Age group	0-4	63	14.5%
	5-9	96	22.1%
	10-14	78	18.0%
	15-17	44	10.1%
	18-20	32	7.4%
	21-24	26	6.0%
	25-29	28	6.5%
	30-34	13	3.0%
	35-39	6	1.4%
	40-44	12	2.8%
	45-49	8	1.8%
	50-54	13	3.0%
	55-59	6	1.4%
	60 years or older	9	2.1%
		<b>Total</b>	<b>434</b>

Most of the persons named as third party subjects of requested no-communication provisions were children under age 18 (65%). Sons or daughters of the complainant and respondent together comprised 48% of the total, and children of the complainant comprised 16%. The remainder of the children named were sons or daughters whose parents were not specified, grandchildren, siblings of the complainant or children whose relationship to the parties was unspecified. Adults named as subjects of no-communication orders included the complainant's siblings or parents, the complainant's current spouse or partner, other relatives and a few domestic workers.

Two-thirds of the requests for no-contact provisions covering third parties suggested that there should be no conditions under which the respondent should be permitted to communicate with the third party. Where exceptions were proposed, they included conditions such as in the presence of a third party (7%) or, in respect of children named as third parties, on arrangement with the complainant (7%). Conditions requiring the respondent to be sober for communication were attached to ten third-party no-contact requests involving children, but not for any third-party no-contact requests in respect of adults.

Other exceptions proposed for no-contact provisions between the respondent and a third-party child included communication only by phone or another specified method (5 cases) or at a third-party location (3 cases). The potential role of the respondent in the life of these children as a parent or caregiver could have motivated such proposals for exceptions. One complainant was content for the respondent to have limited contact with the child because he “*supports the child and has a bond or relationship with him*”. In contrast, another complainant explained it was her daughter who “*insisted on no contact at all with the respondent [because he] has previously abused her*”. Children are a particularly vulnerable group, especially if they have already been affected by domestic violence; it is easy to understand why complainants may seek restrictions which minimise any potential risk for further exposure to abuse.

**TABLE 98**

Requested conditions for communication with third parties (by age group)	Children (<21)		Adults (>=21)		Age unknown		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
In presence of third party	19	8.6%	4	4.7%	1	4.3%	24	7.3%
On arrangement with complainant	23	10.4%	0	0.0%	0	0.0%	23	7.0%
Only with respect to children	8	3.6%	2	2.3%	3	13.0%	13	3.9%
Only if sober	10	4.5%	0	0.0%	0	0.0%	10	3.0%
Friendly communication only	6	2.7%	4	4.7%	0	0.0%	10	3.0%
By phone or other specified method only	5	2.3%	0	0.0%	0	0.0%	5	1.5%
At third party location	3	1.4%	0	0.0%	0	0.0%	3	0.9%
Under no circumstances	2	.9%	1	1.2%	0	0.0%	3	0.9%
Via third party	0	.0%	0	0.0%	1	4.3%	1	0.3%
No communication	0	.0%	0	0.0%	1	4.3%	1	0.3%
Other	145	65.6%	75	87.2%	17	73.9%	237	71.8%
<b>Total</b>	<b>221</b>	<b>100.0%</b>	<b>86</b>	<b>100.0%</b>	<b>23</b>	<b>100.0%</b>	<b>330</b>	<b>100.0%</b>

**The possibility of no-contact orders pertaining to third-party children raises some interesting questions where the respondent is one of the child’s parents, as an order forbidding contact could undermine this parent’s right of reasonable access to the child.** The parent in question could have underlying joint custody (in the case of married parents), or a right of access under a divorce order or in terms of the Children’s Status Act 6 of 2006. It seems justifiable to restrict access to a child who is the subject of the protection order, but the risk to the child is perhaps more questionable when the child is named only as an adjunct to an order in respect of the complainant. Restricting contact might be necessary to preserve a child’s safety, but there may also be cases where it could be requested for spite, or because the complainant views this as an easier way to prevent access than applying straightforwardly to a magistrate’s court or to a High Court for an order restricting or denying access.

**It is, in fact, unclear how the Combating of Domestic Violence Act fits together with the Children’s Status Act in this regard.** In the case of unmarried parents, section 14 of the Children’s Status Act gives an automatic right of reasonable access to a non-custodial parent who has acknowledged parentage of a child “*unless a competent court, on application made to it, directs otherwise*”. (There is a supplementary procedure whereby an unmarried parent who has not voluntarily acknowledged parentage may apply to a children’s court for an order granting a right of reasonable access to that child.)

The Children’s Status Act contains a specific procedure whereby certain specified persons “*may seek a court order restricting or denying access to the non-custodian parent of a child born outside marriage*”. The procedure is designed to work as follows:

- (5) *A person who seeks a court order restricting or denying access to the non-custodian parent of a child must make an application in the prescribed form and manner and the children’s court must consider the application in the presence of the applicant or his or her authorised legal representative.*
- (6) *An order applied for in terms of subsection (5) may only be made after the prescribed attempts have been made to notify the child’s parents, the child’s primary caretaker and any other person or persons with custody or guardianship of the child immediately prior to the application, and that person has or those persons have been given an opportunity to be heard.*
- (7) *In the course of an application referred to in subsection (5), the court may institute any investigation that it deems necessary and order any person to appear before it, and may order one or more of the parents to pay the costs of such investigation or appearance.*
- (8) *If, in an application made in terms of subsection (5), the applicant proves that there is a risk of immediate harm to the child from continued access by the non-custodian parent, the children’s court may make a temporary ex parte order denying access to the non-custodian parent with immediate effect, which order remains in force until such time as the consideration of an application for a court order denying access to the non-custodian parent in terms of subsection (5) is concluded.<sup>89</sup>*

The procedure thus provides for a quick *ex parte* order if the child shown to be at risk of harm from continued access – such as in a situation of domestic violence.

Section 4(3) of the Children’s Status Act provides that the procedures for orders restricting or denying access to a non-custodian parent (amongst other procedures) will apply with the necessary changes to children of divorced parents. In other words, where a divorce order of the High Court has granted custody to one parent and access to another, the children’s court is authorised to issue an order revoking, varying or substituting the High Court order for custody or access if there are changed circumstances.

A no-contact order directed at a non-custodial parent under the Combating of Domestic Violence Act would be an order of “*a competent court, on application made to it, directing otherwise*” – and so would seem to be a valid way of restricting a right of access acquired by virtue of the Children’s Status Act. However, the overlap of procedures for denying or restricting access under the two different laws could encourage complainants to choose one over the other for expediency.

**The best interests of the child are paramount in assessing the safety and well-being of children and justify protection of a child from abuse or the risk of exposure to acts of domestic violence. However, in order to deploy consistent policy regarding the protection of children, the various laws relating to parental rights and responsibilities toward their children should be harmonised on this issue.**

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<sup>89</sup> Children’s Status Act 6 of 2006, section 14(5)-(8).

## 5.11.5 Requests relating to exclusive occupation of joint residence

### (a) Requests for exclusive occupation of joint residence

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**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 reside.**

The Combating of Domestic Violence Act provides that a protection order may include a provision granting the complainant and dependents of the complainant “*exclusive occupation of a joint residence*” – but only “*if an act of physical violence has been committed*”.<sup>90</sup> The Act does not indicate whether “physical violence” is limited to “physical abuse” as defined in the Act, or if “physical violence” encompasses all types of domestic violence that include physical acts of violence, such as sexual abuse or physical forms of harassment. The fact that the term “physical violence” is used in this provision instead of the term “physical abuse”, which is given a specific meaning, can probably be understood to indicate that the broader meaning of “physical violence” was intended. However, it would be useful to add a definition of “physical violence” to the Act to remove all doubt.

The provision in the Act relating to exclusive occupation of a joint residence reads in full as follows:

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

*\*\*\**

- (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...<sup>91</sup>*

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<sup>90</sup> The full text of the provision is quoted in the following paragraph.

<sup>91</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(c).

## CASE STUDY

### Requirement of physical violence for order for exclusive occupation of joint residence

*The following is an excerpt from a letter directed to the relevant court by the Legal Assistance Centre in respect of an interim protection order. (Personal details have been changed or removed to preserve client confidentiality.)*

20 November 2009

**RE: Protection Order xx/2009**

The above mentioned case was brought to our attention by the respondent of the case, "Lena". The protection order states that she must leave the joint residence. Lena came to the Legal Assistance Centre to ask whether this order was fair.

According to the Combating of Domestic Violence Act of 2003 section 14 2(c), the respondent may only be required to leave the shared residence if an act of physical violence has been committed:

#### **14 Terms of protection order**

(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 –*

\*\*\*

(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,*

\*\*\*

... On review of the protection order, we are concerned that there is insufficient evidence to show that physical violence or physical abuse as defined in the Act occurred. The only situation cited appears to be *"the respondent grabbed the complainant with unknown intention", a comment that seems to be substantiated in the narrative: "my girlfriend jump to me and to tie me a knot (holding my t-shirt at the neck which I was wear) while she was naked, and she grabbed me my car key from my hands and she threw it outside..."*

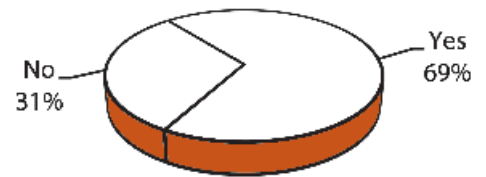
We feel that this citation is not sufficient to meet the definition of physical violence. As a result, the respondent should not be asked to leave the joint residence as this may only be ordered in situations where physical violence has occurred. In light of the above issue, we would like to request that the protection order is reviewed.

\*\*\*

*The Legal Assistance Centre did not receive a response to this letter and the client did not return to the Centre for further assistance or help. Therefore we are unable to confirm whether the issue was resolved.*

Requests for exclusive occupation of a joint residence were common. Exclusive occupation was requested in 52% of all protection order applications (551 out of the 1051 applications where Section E was completed), and by 69% of complainants who were living in the same household with the respondent at the time of the application (412 out of the 597 cases amongst these 1051 applications where the applicant and respondent shared a joint residence).

**CHART 59:** Did complainants sharing a household with the respondent request exclusive occupation of the joint residence?  
(based on the 1051 applications where Section E was completed)



**TABLE 99**

Joint residence compared to requests for exclusive occupation of joint residence				
Cross-tabulation		Complainant requests exclusive right to occupy joint residence?		
		Yes	Not indicated	Total
Complainant and respondent share residence?	Yes	412	185	597
	No	118	285	403
	Not indicated	21	30	51
	Total	551	500	1051

Based on the 1051 cases where Section E of the application form was completed.

There were at least 118 cases where the complainant requested the exclusive right to occupy the joint residence, but indicated that the complainant and the respondent were *not* sharing a residence at the time of the application. These could represent instances where the complainant had already moved out of a joint residence to escape the violence, instances where the respondent was a frequent visitor to the complainant’s residence, instances where complainants misunderstood the purpose of this potential provision, or instances where complainants were attempting to misuse the protection order procedure. It appears likely that misunderstandings account for many of these cases, as many discrepancies and internal inconsistencies were noted in the completion of the application forms, on this and other points (as will be discussed further below).

About 89% of the complainants who requested exclusive occupation of a joint residence were women, compared to 11% men. This mirrors almost exactly the proportion of women versus men amongst all the complainants (88% women compared to 12% men).

**CHART 60:** Sex of complainants requesting exclusive occupation of joint residence



It was, not surprisingly, mostly spouses who made requests for exclusive occupation of a joint residence – 68% of those who made this request were respondents’ wives and 6% were respondents’ husbands, with another 3% being ex-wives and ex-husbands. The next largest category constituted informal romantic partners – girlfriends (8%), boyfriends (2%), or former boyfriends or girlfriends (about 5% together). Parents seeking occupation of a joint residence apart from their children accounted for 3% of the sample. The group also included three grandmothers, one daughter and a handful of brothers and sisters.

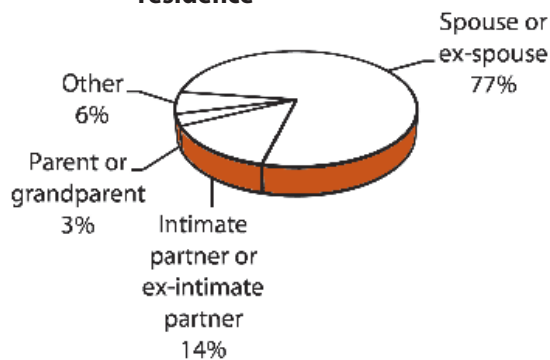
*In recent times the war against domestic violence gained little momentum as more and more women and children lose their lives in the sanctity of their own homes.*

*S v Likuwa (18/2010) [2011] NAHC 30 (2 February 2011)*

*The neighbours obviously witnessed this woman’s ordeal but did nothing to stop it. One wonders what kind of society we are becoming!*

*S v Basson (CC 23/2010) [2011] NAHC 186 (1 July 2011)*

**CHART 61: Relationship of complainant to respondent in requests for exclusive occupation of joint residence**



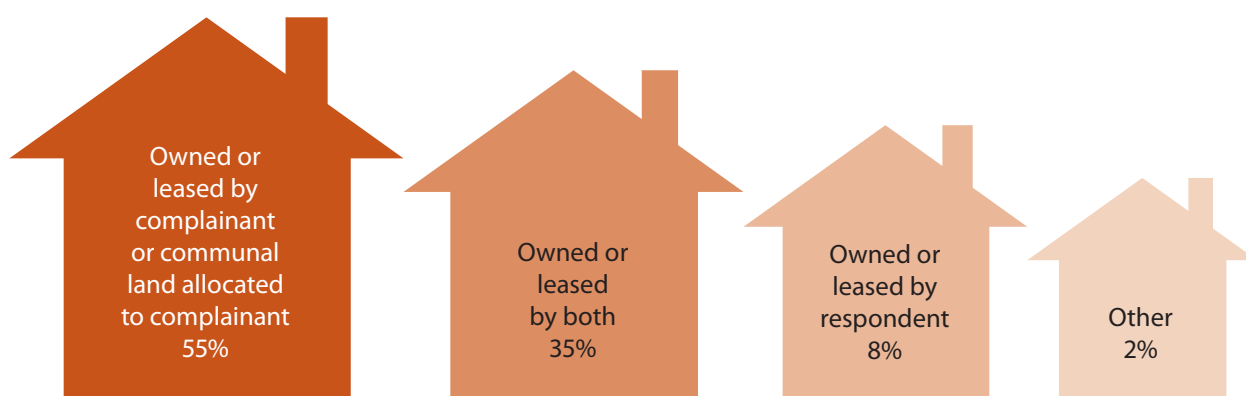
**TABLE 100**

Relationship of complainant to respondent in requests for occupation of joint residence		
Relationship	Number	Percent
Wife	369	67.5%
Husband	33	6.0%
Ex-wife	16	2.9%
Ex-husband	1	0.2%
Girlfriend	41	7.5%
Boyfriend	8	1.5%
Ex-girlfriend	24	4.4%
Ex-boyfriend	3	0.5%
Mother	11	2.0%
Father	4	0.7%
Daughter	1	0.2%
Grandmother	3	0.5%
Sister	5	0.9%
Brother	3	0.5%
Other	25	04.6%
<b>Total</b>	<b>547*</b>	<b>100.0%</b>

\* In 4 cases where exclusive occupation of a joint residence was requested, the parties' relationship could not be determined.

interim protection order is in place, or whether the bills and rent will continue to be paid by the respondent after he or she is ordered to leave the home. (Protection order terms relating to maintenance will be discussed below.)

**CHART 62: Ownership of joint residence in requests for exclusive occupation (missing data excluded)**



Interestingly, the majority of these requests involved residences which were owned or leased by the *complainant* (54%), or jointly owned or leased by the complainant and respondent (34%). Few involved residences owned or leased by the respondent alone (8%) and only 2 cases involved residences on communal land – with both of these involving communal land allocated to the complainant. Other types of living arrangements where complainants requested exclusive occupation of joint residences included a house owned by a parent, as well as various other third-party residences.

Thus, most requests for exclusive occupation involved complainants trying to protect their sole property rights, or to gain peaceful enjoyment of shared property rights. Fears that protection orders might be abused to undermine the property rights of innocent respondents appear to have been misplaced.

The data also raises the question of whether complainants understand that it is possible to request a protection order provision granting them exclusive occupation of a joint residence owned or leased by the respondent. Clerks of court should take care to ensure that this option is explained.

Key informants report that orders for exclusive occupation of a joint residence are common, and that complainants are often concerned about issues such as what they should do if the respondent comes back to the house after the



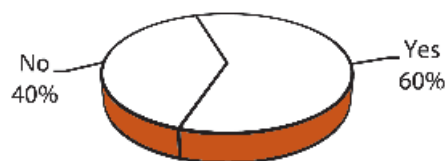
**TABLE 101**

Exclusive occupation of a joint residence		Number	Percent
Complainant requests exclusive occupation	Complainant requests exclusive right to occupy joint residence	551	52.4%
	Not indicated	500	47.6%
	<b>Total</b>	<b>1051</b>	<b>100.0%</b>
Ownership status of joint residence	Owned by complainant	204	37.0%
	Owned by respondent	33	6.0%
	Owned by both	153	27.8%
	Leased by complainant	64	11.6%
	Leased by respondent	7	1.3%
	Leased by both	19	3.4%
	On communal land allocated to complainant	2	0.4%
	Other	11	2.0%
	Not indicated	58	10.5%
	<b>Total</b>	<b>551</b>	<b>100.0%</b>

### (b) Requests for all contents of joint residence to be left for complainant’s use

Some 60% of complainants who requested exclusive occupation of a joint residence also requested that all the contents of the joint residence must be left in place when the respondent leaves (332 out of the 551 complainants who requested exclusive occupation of the joint residence). There were also 22 complainants who requested that all the contents of the joint residence must be left for the complainant’s use, without making a request for exclusive occupation of the joint residence – which could have been an oversight or a misunderstanding in completing the form, or could have reflected situations where the parties had separated but not yet divided their possessions.

**CHART 63:** Request for exclusive occupation of joint residence combined with request for use of all contents of the residence?



**TABLE 102**

Requests for exclusive occupation of joint residence compared to requests that all contents of joint residence be left for complainant’s use				
Cross-tabulation		All of the contents of the joint residence must be left there for the complainant’s use		
		Yes	Not indicated	Total
The complainant is requesting the exclusive right to occupy the joint residence	Yes	332	219	551
	Not indicated	22	478	500
	<b>Total</b>	<b>354</b>	<b>697</b>	<b>1051</b>

Based on the 1051 cases where Section E of the application form was completed.

Looking only at those cases where complainants recorded reasons for requesting that the contents of the residence be left for the complainant’s use, the following were the most cogent reasons offered:

- The contents belong to the complainant (29%), or were mostly paid for by complainant (5%).
- Children remaining in the care of the complainant will need the use of the property – with some complainants asserting that the household contents were purchased primarily for the children’s use (30%).

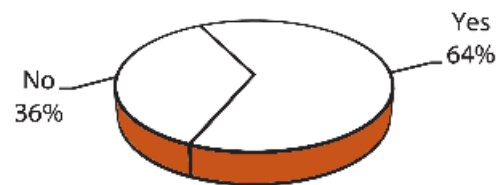
- The house, the land or the contents are the joint property of the complainant and the respondent (9%) – with the presumed implication being that the respondent’s behaviour justifies deprivation of his or her interest in the use of the property for the temporary period in question.
- A divorce is pending, which will result in formal division of the property (6%).
- The respondent has already removed what he or she wanted or needed (3%).
- The respondent has behaved unfairly with property in the past – such as by previously removing property of the complainant from the joint residence, damaging shared property or property belonging to the complainant, or selling household property to pay for alcohol or drugs (3%).
- The complainant uses the household contents to earn a living (3 cases, or about 1%).

Somewhat less persuasively, about 5% of the complainants simply asserted that they need the property, that they cannot afford to purchase similar property on their own, or that the property was bought for their use. In considering these figures, it should be noted that one-fifth (20%) of the complainants did not record any reasons on the application form to support their request – although an explanation may have been offered to the magistrate in person in some instances.

### (c) Requests for specific items in joint residence to be left for complainant’s use

In 36% of requests for exclusive occupation of a joint residence, the complainant identified specific items which he or she wanted to remain at the joint residence for the complainant’s use (198 out of the 551 complainants who requested exclusive occupation of the joint residence).

**CHART 64:** Request for exclusive occupation of joint residence combined with request for use of specific contents of the residence?



There were 22 cases where a complainant asked that specific items remain at the joint residence for the complainant’s use, without asking for exclusive occupation of the joint residence. These could have been cases, for example, where the respondent had voluntarily left the joint residence but the property of the respective parties was not yet divided.

**TABLE 103**

Requests for exclusive occupation of joint residence compared to requests that specific items at joint residence be left for complainant’s use				
Cross-tabulation		Specific items must be left at the joint residence for the complainant’s use		
		Yes	Not indicated	Total
The complainant is requesting the exclusive right to occupy the joint residence	Yes	198	353	551
	Not indicated	22	478	500
	Total	220	831	1051

Based on the 1051 cases where Section E of the application form was completed.

Quite a few complainants (158) requested that *all* the contents of the joint residence be left behind for their use, and also requested that some *specific* contents remain. This could reflect a misunderstanding of the question, or perhaps it was intended to present a fall-back position or to emphasise the most important items.

**TABLE 104**

Requests that all contents of joint residence be left for complainant's use compared to requests that specific items at joint residence be left for complainant's use				
Cross-tabulation		Specific items must be left at joint residence for complainant's use		
		Yes	Not indicated	Total
All contents of joint residence must be left for complainant's use	Yes	158	196	354
	Not indicated	62	635	697
	Total	220	831	1051

Based on the 1051 cases where Section E of the application form was completed.

Conversely, 83 complainants who completed the section on *specific* items actually used this provision to indicate that *all* contents should be left for the complainant's use – 52 requested here that all property/everything in the house should be left behind, 11 requested that all household items and furniture be left, 16 requested that everything aside from the respondent's personal belongings must be left and 4 requested that all the furniture must be left.

These inconsistencies suggest that the form should be revised and simplified – perhaps by eliminating the distinction between “all of the contents” and specific “items”, and simply asking complainants to indicate if anything in the joint residence should be left behind for the complainant's use, and to give reasons for this request.

It is difficult to categorise the wide variety of specific items listed, but this list gives some idea of the tenor of the requests for specific items by providing a few examples of the items we have grouped into each category. The most common items listed fell into the following categories:

- furniture: beds, tables, chairs, wall units, etc (226 requests)
- basic appliances: stoves, fridges, freezers, washing machines, microwaves, hotplates, etc (122 requests)
- entertainment equipment: televisions, stereos, CD or DVD players, satellite dish, etc (62 requests)
- kitchenware, linens and other small household items: pots, cutlery, baskets, buckets, curtains, garden tools, etc (58 requests)
- vehicles: cars, trailers, caravans, bicycles (25 requests)
- personal items of complainant or children: clothes and other personal belongings (27 requests)
- building materials: zinc sheets, bricks, poles (11 requests).

There were a few requests for computers, livestock, generators, and property used for business. There were also a very small number of requests for house keys, identification documents or medical aid cards. One complainant rather poignantly wanted the couple's wedding cake.

Almost half of the complainants (43%) who requested that specific items be left behind gave no motivations. Those who did offer reasons cited motivations similar to those underlying the requests for *all* the contents of a joint residence to be left with the complainant. Requests for certain items were made because they belonged to the complainant or had been paid for by the complainant, or because they were intended for the benefit of the children. Others simply stated that they needed the specified items, that the items in question were joint property, or that they should be left behind as an interim measure until a pending divorce was finalised. In two cases, the complainant feared that the respondent would otherwise sell the specified items.

## CASE STUDY

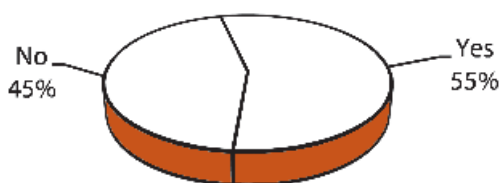
### Protecting specific property

In 2008, a male client approached the Legal Assistance Centre. This man was a builder by profession. One weekend he had a quarrel with his girlfriend. She applied for a protection order against him, with the result that his working tools were locked in her premises, making it impossible for him to complete his contract work. The couple had two children together, and he relied on his tools for income to support the family. It is not clear if the court order was broad enough to cover the building tools, or whether it was being misapplied by the girlfriend. The client, while not disputing the protection order in general, wanted access to his tools so that he would continue working. He was advised to apply for a modification of the provisions of the protection order specifically granting him access to the tools of his trade, as the court has the power under section 14(2)(f) of the Combating of Domestic Violence Act to assign certain property to either the complainant or the respondent.

### (d) Requests for police assistance relating to joint residence

Complainants requested that a police officer remove the respondent from the joint residence in connection with 55% of the requests for exclusive occupation of a joint residence. In 50% of requests for the exclusive occupation of a joint residence, police accompaniment was requested if the respondent needed to return to the joint residence to remove personal belongings. These requests for police assistance in reorganising the household emphasise the complainants' fears of the response which might be triggered by the granting of the request for exclusive occupation.

**CHART 65:** Request for exclusive occupation of joint residence combined with request for police officer to remove the respondent from joint residence?



**CHART 66:** Request for exclusive occupation of joint residence combined with request for police officer to accompany the respondent to collect personal belongings from the joint residence?



There were a few cases where these requests were made without an accompanying request for exclusive occupation of the joint residence (28 requests that a police officer remove the respondent from the joint residence and 42 requests for police accompaniment if the respondent needed to return to the joint residence to remove personal belongings). These could reflect misunderstandings of the purpose of the provisions in question, or situations where the respondent had moved out of a joint residence but the complainant feared that he or she might return.

## 5.11.6 Requests relating to alternative accommodation

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**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:**

.....

.....

The provision in the Act relating to alternative accommodation is as follows:

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

*\*\*\**

- (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...<sup>92</sup>*

As the text of the Act indicates, the provisions for alternative accommodation were intended as an alternative to an order for exclusive occupation of a joint residence. The reference to arrangements other than rented accommodation was intended to cater for the diversity of living arrangements found in Namibia. For example, a respondent might be ordered to construct a separate hut for the complainant on communal land, or to provide a dwelling in an informal settlement area.

<sup>92</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(d).

Only 7% of complainants who were sharing a household with the respondent (43 out of 630) requested that the respondent be ordered to pay rent for suitable alternative accommodation for the complainant and his or her dependents. Another 21 complainants who did *not* appear to be sharing a joint residence with the respondent requested that the respondent be ordered to pay rent for alternative accommodation. These could be cases where the complainant had already fled the common home to escape the violence, and was living in a shelter with family or friends or in alternative accommodation which was deemed unsuitable.

Requested rental payments ranged from N\$60/month to N\$3000/month, with the typical request being N\$500/month.

There were 27 complainants who asked that the respondent be ordered to make “other arrangements” for alternative accommodation, with only two of these apparently not sharing a joint residence with the respondent. Thus, 4% of complainants who were sharing a household with the respondent (25 out of 630) requested arrangements for alternative accommodation. Sixteen of these complainants requested *both* the payment of rent and “other arrangements”. For example, some wanted water or electricity bills to be paid in addition to rent. Others made requests for the respondent –

- to provide building materials so the complainant can construct informal housing
- to pay transport so that the complainant can return to her parents’ home
- to provide furnishing such as beds and bed linens to facilitate a move to alternative accommodation
- to pay maintenance which would enable the complainant to provide alternative accommodation for herself and the children.

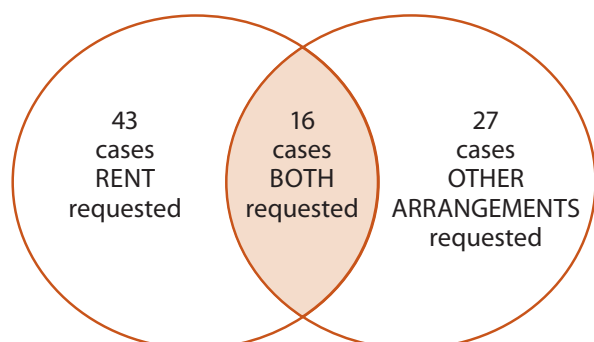
These requests seem reasonable; generally, there is no indication of outrageous requests which could be interpreted as attempts to exploit respondents. Only one request seemed somewhat excessive, where one male complainant wanted the respondent family member to provide accommodation for him, his wife and all his dependants.

**TABLE 105**

Requests for rent and other arrangements for alternative accommodation				
Cross-tabulation		Complainant and respondent share common residence?		
		Yes	Not indicated	Total
Respondent must pay RENT for alternative accommodation	Yes	43	21	64
Respondent must make OTHER ARRANGEMENTS for alternative accommodation	Yes	25	2	27
<b>Total</b>		<b>68*</b>	<b>23</b>	<b>91**</b>

\* Sixteen of these complainants requested BOTH rent and some other arrangements, meaning that 52 different complainants out of the 630 who were sharing a joint residence with the respondent requested some provision on alternative accommodation (8%).

\*\* 75 different complainants made requests pertaining to alternative accommodation (7% of the 1051 complainants who completed Section E).



**TABLE 106**

Requests for rent for alternative accommodation		
Monthly rental requested (N\$)	Number	52
	Mean	794
	Median	500
	Minimum	60
	Maximum	3000

## 5.11.7 Requests relating to securing complainant's property

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**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:** .....

.....

The provisions in the Act relating to requests for protection of property separate from an order for exclusive occupation of a joint residence are as follows:

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

*\*\*\**

- (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...<sup>93</sup>*

<sup>93</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(e)-(d).

## (a) Requests for police assistance

There were a total of 173 requests for police to accompany complainants to collect personal items (constituting 16% of the complainants who completed Section E).

This provision was intended to apply in cases where the parties shared a joint residence which was not going to be occupied by the complainant, but it does not seem to have been understood that way by all complainants.

Complainants in some 19% of the cases where the complainant and the respondent shared a joint residence made requests for an order that police should accompany them to the joint residence to collect personal belongings. At least 51 complainants who did *not* share a joint residence with the respondent also made this request – which could have involved parties who previously shared a joint residence, or situations where one person’s belongings had found their way to another’s residence through visits, sharing or borrowing.

However, oddly, there were 67 cases where complainants made requests for police assistance to collect belongings from the joint residence *and* requests to remain in the joint residence. This could indicate confusion, or it might have been intended as a fall-back position in case the request to remain in the joint residence was denied. It might also have reflected a fear that the respondent would destroy or hide the complainant’s belongings before the respondent was removed pursuant to an order for exclusive occupation.

**TABLE 107**

Police assistance to collect property and shared residence					
Cross-tabulation		Complainant and respondent share residence?			
		Yes	No	Not indicated	Total
A police officer must accompany the complainant to collect personal belongings	Requested	116	51	6	173
	Not indicated	481	352	45	878
	Total	597	403	51	1051

**TABLE 108**

Police assistance to collect property and exclusive occupation of joint residence				
Cross-tabulation		Complainant requests exclusive right to occupy joint residence?		
		Requested	Not indicated	Total
A police officer must accompany the complainant to collect personal belongings	Requested	67	106	173
	Not indicated	484	394	878
	Total	551	500	1051

## (b) Requests that specified items be left in complainant’s possession

Complainants could request the court to order that certain specified items be left in their possession. Only 21% of all the complainants who completed Section E specified any items, even though this request could be relevant both where the parties shared a joint residence and where they lived apart. For example, a respondent living in a separate household could have acquired property belonging to the complainant on loan, as a mechanism of control or simply by virtue of the relationship. Where the parties did share a joint residence, a request for specific items could be consistent both with the respondent leaving a joint residence, or with the complainant being the one to re-locate – and could refer to items still in the joint residence, or already removed from the joint residence to some other location.



Items specified fell mainly into the following categories:

- furniture: beds, tables, chairs, wardrobes, wall units, etc (193 requests)
- basic appliances: stoves, fridges, freezers, washing machine, etc (105 requests)
- kitchenware, linens and other small household items: cutlery, cleaning utensils, iron, baskets, buckets, sheets, curtains, etc (82 requests)
- personal items of complainant and children: personal belongings, clothing, cosmetics, photo album (65 requests)
- entertainment equipment: television, CD or DVD player, satellite dish, etc (64 requests)
- vehicles: cars, bicycles (23 requests)
- livestock: pigs, chickens, cattle, goats (10 requests)
- building materials: tools, zinc plates or corrugated iron sheets, window and door frames (10 requests).

A few complainants requested documents such as marriage and death certificates, school reports or ID documents, or security-related items such as computer passwords, house keys and a remote for a security gate. There were also a few requests for computers and for business-related property. Four complainants requested certain books and one wanted possession of a pet.

This list of items appears very similar to the one discussed above concerning specific items requested to be left behind in the joint residence of the parties for the use of the complainant, but there is actually *not* a large degree of repetition between the two questions in individual application forms. The lists are similar primarily because both questions concern household necessities, which are similar in nature in most households.

The reasons cited to motivate the requests for specific items were similar to those cited in other questions about property.

## CASE STUDY

### Economic abuse of husband by wife

*The following is an excerpt from an email received from a client in 2003, shortly after the Combating of Domestic Violence Act came into force, edited for clarity and to disguise personal details.*

I would kindly like to seek legal advice from your office in the following respect. I am married in community of property to my wife and over the weekend we had differences and quarrelled over issues pertaining to our marriage. At the end of the quarrel my wife decided while I was out to town to take all our jointly-owned properties including our jointly-owned car to her aunt's house. When I returned from town I found that the whole house was completely empty, not even curtains were left behind. I went to her aunt's place to check on her and to find out what was going on. While I was there, she told me that I had chased her from the house and that's why she decided to take all her things. I would like to mention that nothing from what she took is hers as she did not bring anything to the house when I got married to her; instead, most of the properties I bought before our marriage and the rest we bought together in marriage or they were gifts given to us at our wedding. Now as I write to you my wife lives with all our goods and our car at her aunt's place and our house is unattended as I am in another town for work. The house is vulnerable. Although there are only two beds left which can be stolen, the house itself could be damaged.

I would therefore like to be advised as to what legal recourse do I have as a husband married in community of property. Does my wife have a right to take all our joint properties out of our house to her aunt's place? Equally, does the aunt have a right to house and use these properties without my consent? Can I open a criminal case of theft?

*The client was advised on his legal options: to lay a charge of theft, to seek a protection order or to file for divorce.*

### (c) Orders to respondent not to take sell, damage, give away or otherwise deal in any property in which complainant has an interest or a reasonable expectation of use

About 27% of the complainants who completed Section E requested an order directing the respondent not to sell, damage, give away or otherwise deal in property in which the complainant has an interest or a reasonable expectation of use. About 118 of these 280 complainants repeated some or most of the items listed in the response to the previous question about items which should be left in the complainant's possession. If the repeats are eliminated from the tabulations of this second question, then we are left with 162 new requests (which constitute about 15% of the applications).

The repetition could reflect misunderstanding of the application form, or it may have been done intentionally by some as a fall-back position if the previous request was for some reason not granted.

**TABLE 109**

<b>The respondent must not deal in any property in which the victim has an interest or a reasonable expectation of use</b>		
	<b>Number</b>	<b>Percent</b>
Yes	162	15.4%
Not indicated	889	84.6%
<b>Total</b>	<b>1051</b>	<b>100.0%</b>

\* This table omits those cases where complainants provided a substantially similar list of items which should be left in their possession in response to a previous question, in order to avoid exaggerating complainants' concerns about property.

Many complainants mentioned houses and vehicles here, apparently concerned that respondents might dispose of key joint assets without their consent. Many of the items of concern pertained to the function and maintenance of the household (furniture and appliances). Several mentioned property used for business purposes, while a few cited livestock. Some of the items mentioned were small personal items (such as books and plants). Perhaps some complainants were concerned that the respondent might vindictively damage or dispose of personal property which was of little value, while other property may have been specified because of its value (such as jewellery or a watch). A considerable number of complainants once again comprehensively referred to all household items or to everything in the house.

## 5.11.8 Requests for temporary maintenance

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**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: .....

The law allows complainants to request an order for temporary maintenance for the complainant, or for children or other dependents of the respondent, for a maximum period of 6 months, on the theory that someone who is experiencing domestic violence is unlikely to be able to cope with a variety of simultaneous court procedures, and yet should not feel compelled to stay in a violent situation because of economic necessity.

A request for temporary maintenance is possible only where the respondent has a legal liability to maintain the person in question under the applicable law on maintenance. For example, husbands and wives have a mutual duty of maintenance under existing law, but cohabiting partners do *not* have a legal obligation to maintain each other. Parents always have an obligation to maintain their minor children, regardless of whether the children were born inside or outside marriage, while adult children will in some circumstances have a responsibility to maintain their elderly or disabled parents. There are weaker obligations of maintenance between other family members in certain circumstances.

The relevant provision in the Act reads as follows:

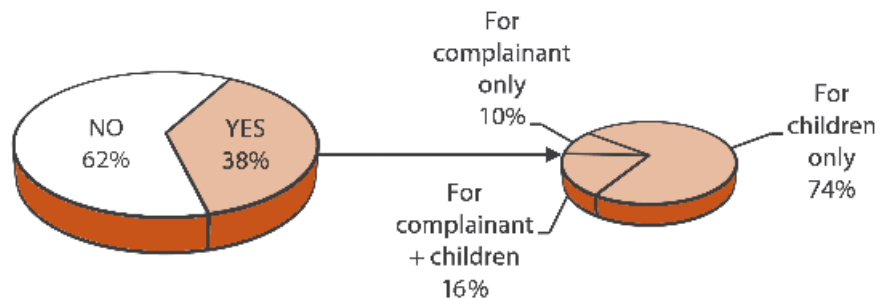
(2) A protection order may, at the request of the applicant or on the court’s own motion, include any of the following provisions –

\*\*\*

(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...<sup>94</sup>

Maintenance was requested by the complainant in about 38% of cases where complainants completed Section E. Most of these were requests for maintenance for children in the care of the complainant (28% of all complainants, or 74% of those who requested maintenance), followed by requests for maintenance for children *and* for the complainant (6% of all complainants, or 17% of those who requested maintenance). Very few of the maintenance requests were *only* for the complainant (4% of all complainants, or 10% of those who requested maintenance).

**CHART 67: Request for temporary monthly maintenance?**  
(forms where Section E was not completed have been excluded)



**TABLE 110**

Requests by complainant for temporary monthly maintenance		
Request	Number	Percent
Request for temporary monthly maintenance	395	37.5%
No request for maintenance indicated	657	62.5%
<b>Total</b>	<b>1052</b>	<b>100.0%</b>

**Note:** Forms where Section E was not completed have been excluded in Tables 110 and 111.

**TABLE 111**

Beneficiary for whom maintenance was requested?		
Beneficiary	Number	Percent
Children only	291	73.7%
Complainant and children	65	16.5%
Complainant only	39	9.9%
<b>Total applications requesting maintenance</b>	<b>395</b>	<b>100.0%</b>

**TABLE 112**

Maintenance requests for children			
Number of children for whom maintenance was requested	Number of cases	Percent of all cases where maintenance requested for children	Total number of children potentially affected
One	136	38.2%	136
Two	122	34.3%	244
Three	65	18.3%	195
Four	24	6.7%	96
Five	9	2.5%	45
<b>Total</b>	<b>356</b>	<b>100.0%</b>	<b>716</b>

<sup>94</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(h).

**Maintenance requests for children typically involved only one or two children, and the children involved were fairly evenly divided between boys and girls. Most of the requests for child maintenance (84%) involved children under the age of 15.**

There were 19 applications seeking maintenance for children over age 18, which is the age at which maintenance orders normally stop.<sup>95</sup> It is possible that some of these cases involved offspring who were still studying, or offspring with disabilities for whom the parental duty of support would extend indefinitely. It could also be that some of the complainants who filled in the application form did not know that maintenance normally ceases at age 18.

The vast majority of the children involved in these requests were children born to the complainant and the respondent together. There were a handful of applications (19) where the complainant requested maintenance for a child of the complainant who was apparently not related by blood to the respondent (such as a child of the complainant and another partner, or a child of the complainant's spouse or partner); these appear to be based on a misunderstanding of the provisions of the current law, as there is no legal obligation on persons to provide maintenance for stepchildren.

**TABLE 113**

<b>Demographic characteristics of children for whom maintenance was requested</b>			
	<b>Characteristic</b>	<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Son/daughter (not specified)	30	4.2%
	Son/daughter of both	658	91.9%
	Son/daughter of complainant	19	2.7%
	Son/daughter of spouse/partner	3	0.4%
	Grandchild (not specified)	1	0.1%
	Grandchild of complainant	4	0.6%
	Other relative (specify)	1	0.1%
	<b>Total</b>	<b>716</b>	<b>100.0 %</b>
<b>Sex</b>	Male	327	47.5%
	Female	361	52.5%
	<b>Total</b>	<b>688</b>	<b>100.0%</b>
<b>Age</b>	0-5	237	33.8%
	6-14	348	49.6%
	15-18	98	14.0%
	19 or older	19	2.7%
	<b>Total</b>	<b>702</b>	<b>100.0%</b>

**TABLE 114**

<b>Amount of maintenance requested</b>					
<b>Baneficiary</b>	<b>Number</b>	<b>Mean</b>	<b>Median</b>	<b>Minimum</b>	<b>Maximum</b>
Complainant	101	N\$1059	N\$500	N\$100	N\$10000
All children (per case)	338	N\$879	N\$600	N\$100	N\$9500
Per child	678	N\$443	N\$300	N\$50	N\$8000
<b>Total amount: complainant (if any) and children (if any)</b>	<b>376</b>	<b>N\$1075</b>	<b>N\$600</b>	<b>N\$150</b>	<b>N\$12500</b>

<sup>95</sup> Section 26(1)(d) of the Maintenance Act 9 of 2003 states: "A maintenance order made in favour of a child must, unless the order otherwise provides, with respect to that child, cease if and when... the child attains the age of 18 years, but if the child is attending an educational institution for the purpose of acquiring a course which would enable him or her to maintain himself or herself, the maintenance order does not terminate until the child attains the age of 21 years."

**TABLE 115**

Amount of maintenance requested per child by age group of child					
Age	Number	Mean	Median	Minimum	Maximum
0-5	233	N\$418	N\$300	N\$50	N\$3000
6-14	330	N\$426	N\$300	N\$50	N\$8000
15-18	93	N\$563	N\$300	N\$100	N\$3000
19 or older	13	N\$634	N\$500	N\$150	N\$3000

Amounts of temporary maintenance requested ranged from N\$100/month to N\$10 000/month for complainants, and from N\$50 to N\$8 000 per month per child. They were typically N\$500/month for the complainant and N\$300/month per child. The total amount of maintenance requested per case, whether for complainant, for children or for some combination of the two, was typically N\$600/month. Requests for child maintenance were slightly higher for older children than for younger children.

## 5.11.9 Requests for temporary orders on custody and access

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**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: .....

The relevant provisions in the Act read as follows:

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

\*\*\*

- (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...*<sup>96</sup>

**One anomaly is that complainants may request temporary custody of “any child of the complainant or any child in the care of a complainant”, while provisions forbidding or restricting access may be requested only in respect of “any child of the complainant”. The purpose of making such a distinction is not clear, and we recommend harmonising the two provisions on this point by limiting them both to children of the complainant and respondent.**

**Both custody and access are incidents of parental rights and responsibilities, and the domestic violence context should not be the forum for giving a complainant or a respondent custody or access rights over a child of other parentage.** For example, a complainant might be caring for a niece or a nephew or a grandchild in the role of a primary caretaker who has been delegated by the child's legal custodian to look after the child on a temporary basis. In such a situation, it is possible that neither the complainant nor the respondent would have any formal custody or access rights over that child and so custody and access in such instances should not be really be addressed in an abbreviated domestic violence proceeding. In such a case, should the child be in danger, a social worker should be contacted to assess the situation to see if the child should be removed from the household in terms of the Children's Act (or, once the forthcoming Child Care and Protection Bill becomes law, to see if the offender should be removed from the home).<sup>97</sup>

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<sup>96</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(i)-(j).

<sup>97</sup> Children's Act 33 of 1960, sections 26-ff. The draft Child Care and Protection Bill contains similar provisions on the removal of the child. It also provides for the temporary removal of the alleged offender to protect a child's safety pending a children's court enquiry, as an alternative to removal of the child. See sections 130-ff of the draft bill as it stood at June 2010.

## Appropriate forum for deciding temporary custody

### 1) PROTECTION ORDER VERSUS HIGH COURT ORDER

In an unreported case, the respondent in a High Court case (the child's father) had obtained a protection order against a close friend of the child's mother. This protection order included a temporary custody order for the minor child. The applicant (the child's mother) subsequently obtained a rule nisi in an *ex parte* urgent application seeking custody of this child. On the return date, the applicant sought confirmation of the interim order made by the High Court while the respondent sought its discharge.

One question raised was whether the Combating of Domestic Violence Act was the appropriate vehicle for the order for temporary custody of the minor child. The Court held:

*I do not see anything wrong with the learned magistrate granting a temporary protection order, coupled with a temporary custody order... it would have flown in the teeth of logic and common sense if the Windhoek Magistrates' Court had granted only an interim protection order in terms of Act No. 4 of 2003 without an accompanying order of temporary custody, for, how could the respondent protect the minor child if the minor child was not in his custody?*

The Court confusingly found that the applicant should have utilised the appeal procedure provided in the Combating of Domestic Violence Act if she wanted to challenge the temporary order, while noting that the applicant in the present case was actually not a party to the protection order proceeding. The Court stated:

*Granted, the applicant was not a party to the application for a protection order in the Magistrates' Court, but she had an interest in the inclusion of the provision of s 2(i) of the Act, granting interim sole custody of the minor child to the respondent (applicant in respect of the protection order).*

The Court concluded that this interest would have entitled the present applicant to utilise the appeal proceeding under the Combating of Domestic Violence Act. However, section 18 of the Combating of Domestic Violence Act (which deals with appeals) refers only to the complainants and respondents in respect of the protection order – although perhaps other interested parties could find some avenues for joinder in the Rules of the High Court.

The Court held that, although the High Court as upper guardian of all minors had the power to supersede the protection order with another order on the question of custody, it was wrong for the applicant in the present case to have proceeded on an *ex parte* basis.

*... I come to the inexorable and reasonable conclusion that in bringing the *ex parte* application on urgent basis aimed at taking away an entitlement acquired by the respondent in terms of a statute and through a competent court, without notice to the respondent, the applicant failed to observe natural justice and fairness. Accordingly, I think I should refuse to confirm the rule nisi ... because to confirm the rule is to condone*



*and give judicial blessing to the applicant's breach of natural justice and disrespect of fairness... I hasten to add that if the applicant and the respondent continue unreasonably to haggle over the minor child... and the matter came before me again... I will consider placing the minor child in a State-sponsored social welfare care until a second motion court seized with the divorce matter initiated by the applicant orders otherwise.*

This concern seems somewhat misplaced, given that the protection order had apparently made a decision giving custody to the respondent without hearing the applicant, who was not a party to that proceeding.

*Beukes v Beukes and Another* (A22/2009) [2009] NAHC 15 (3 March 2009)

## 2) PROTECTION ORDER VERSUS INTERIM RULING IN DIVORCE PROCEEDING

Another unreported case also addresses the question of the correct forum for custody issues. In this case, a divorce proceeding between the parties was pending. The applicant mother bought a Rule 43 proceeding on an urgent basis seeking custody of the couple's two minor children while the divorce action was pending.<sup>98</sup> The applicant mother had already obtained an interim protection order against the respondent father, and the enquiry to decide on whether this interim protection order would be confirmed as a final order was still pending when the Rule 43 application came before the High Court.

*What triggered the applicant's application is said to be the fact that the respondent on 15 September 2010 picked up the two minor children from their respective schools and kept them when the applicant was at the time enjoying the right of custody and control.*

The High Court held that the applicant should rather seek temporary custody of the children at the protection order enquiry which was pending, since the magistrate's court was already seized with the matter:

*I cannot think of no good reason why the applicant on the facts of this application could not wait for the hearing set down for 30 September 2010 at the Domestic Violence Court where the relief sought in this application could as well have been sought seeing that the minor children's custody and control issue was already dealt with by that court and a hearing in due course was imminent.*

*Martin v Arowolo* (I 2247/2010) [2010] NAHC 140 (22 September 2010)

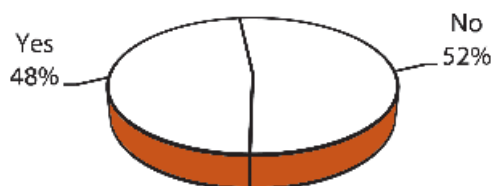
***These cases illustrate the need for guidance on how to choose between overlapping forums on questions of custody.***

<sup>98</sup> This refers to Rule 43 of the Rules of the High Court contained in Government Notice 59 of 10 October 1990 (Government Gazette 90), as amended. Rule 43 deals with interim relief in divorce proceedings. It provides a simple and quick procedure for interim maintenance, among other things.

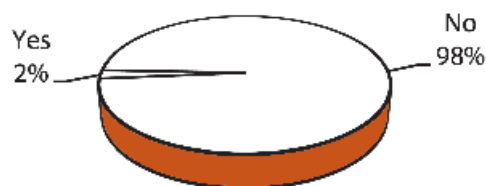
## (a) Requests for temporary custody of children to be granted to complainant or third party

Almost half of the complainants (48%) requested custody of children, while another 2% (21 persons) requested that custody of children be granted to some other person. As with maintenance, requests for custody to be granted to the complainant typically involved one or two children. Most of these custody requests came from mothers, with only 8% (39 cases) involving requests from fathers for custody of minor children.

**CHART 68: Request for temporary custody of children to be given to complainant?**  
(forms where Section E was not completed have been excluded)



**CHART 69: Request for temporary custody of children to be given to third party?**  
(forms where Section E was not completed have been excluded)



**TABLE 116**

Number of children covered by request for temporary custody to complainant			
Number of children	Number of cases	Percent of cases where custody requested	Total number of children potentially affected
One	187	37.0%	187
Two	186	36.8%	372
Three	85	16.8%	255
Four	31	6.1%	124
Five	14	2.8%	70
Number not recorded	2	0.4%	2
<b>Total</b>	<b>505</b>	<b>100.0</b>	<b>1010</b>

The many applications for temporary custody raise the question of who had custody (or was perceived to have had custody) of these children at the time of the application. A request for temporary custody would seem to make sense only where the respondent has sole or shared custody of the child at the outset. Furthermore, the Act allows a request concerning temporary custody to be made by the complainant only in respect of children of the complainant or in the care of the complainant. Therefore, most of the requests for temporary custody should involve minor children of both the complainant and the respondent – or children of the complainant and someone else where the respondent has for some reason been given custody.

Furthermore, most of the requests should involve cases where the complainant and the respondent are married, or where a court order (such as a divorce order) has previously granted custody of a child to the complainant and the respondent together, or to the respondent. In the case of unmarried parents, if there is no agreement between the parents on who is to be the custodian and no order made by a children's court in terms of the Children's Status Act, then custody would appear to rest with the mother of the child under the surviving common law.<sup>99</sup>

<sup>99</sup> There is a lack of clarity on this point. Most legal experts consulted take the view that since the Act provides no default position, the unrepealed common law must fill the gap – meaning that mothers have sole custody and guardianship in the absence of agreement or court order. On the other hand, Regulation 4(3) issued under the Children's Status Act 6 of 2006 says that the Minister of Gender Equality and Child Welfare (or someone designated by the Minister) has the authority to make decisions on behalf of such a child until the issue of who will have custody of the child is resolved – an approach that is clearly not very practical. See Government Notice 267 of 3 November 2008 (Government Gazette 4154).

If the respondent has no custody rights, then the complainant should have the legal ability to care for and control the child in question without interference – although the complainant might need an order forbidding the respondent from *interfering* with the complainant’s exercise of his or her legal rights over the children in question.

Indeed, most of the requests for temporary custody involved children of both the complainant and the respondent (as Table 117 indicates). About 83% of the custody requests came from complainants who were spouses or ex-spouses of the respondent, while another 16% involved unmarried intimate partners.

**TABLE 117**

<b>Demographic characteristics of children in respect of whom complainant requests temporary custody</b>			
	<b>Characteristic</b>	<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Son/daughter (not specified)	48	4.8%
	Son/daughter of both	898	89.1%
	Son/daughter of complainant	35	3.5%
	Son/daughter of spouse/partner	7	0.7%
	Grandchild (not specified)	1	0.1%
	Grandchild of both	2	0.2%
	Grandchild of complainant	10	1.0%
	Other relative (specify)	6	0.6%
	Relationship not clear	1	0.1%
	<b>Total</b>	<b>1008</b>	<b>100.0%</b>
<b>Sex</b>	Male	460	47.8%
	Female	502	52.2%
	<b>Total</b>	<b>962</b>	<b>100.0%</b>
<b>Age group</b>	0-4	256	27.4%
	5-9	265	28.4%
	10-14	244	26.2%
	15-17	100	10.7%
	18-20	57	6.1%
	21-24	10	1.1%
	30-34	1	0.1%
	<b>Total</b>	<b>933</b>	<b>100.0%</b>
<b>Relationship of complainant to respondent</b>	Girlfriend	63	6.3%
	Boyfriend	7	0.7%
	Wife	756	75.1%
	Husband	46	4.6%
	Ex-wife	31	3.1%
	Ex-husband	4	0.4%
	Brother	2	0.2%
	Mother	5	0.5%
	Other	4	0.4%
	Ex-girlfriend	77	7.6%
	Ex-boyfriend	12	1.2%
	<b>Total</b>	<b>1007</b>	<b>100.0%</b>

There were a few requests by complainants for temporary custody of grandchildren (13 complainants made such requests). For example, in a situation where a complainant is being abused by an adult child, the complainant might want to request temporary custody of grandchildren (children of the respondent) who might be at risk. There were also cases where complainants requested custody of children who were related to the complainant in some other way, such as nieces and nephews. These requests would presumably fall under the provision of the Act on children “*in the care of a complainant*”.<sup>100</sup> However,

<sup>100</sup> Combating of Domestic Violence Act, section 14(2)(i).

where the respondent is not the legal custodian of the children in question, then the court should surely give the child's custodian notice and opportunity to be heard before making any order for temporary custody. This aspect of the Act should be reviewed and revised.

**A few complainants seem to have misunderstood the concept of custody, since there were 11 complainants who requested "custody" of adults over the age of 21.** There could be cases where it makes sense to speak of custody of an adult, such as an adult with a mental disability, or this could be an error on the part of these complainants about the concept of custody.

There were a small number of cases (21) involving requests for custody to a third party. These followed similar patterns, most often involving one or two children of the complainant and respondent together.

**Legal practitioners and magistrates have reported that some parents are abusing the Combating of Domestic Violence Act as a channel to seek custody of children when there is no real domestic violence.** This is not always a result of intentional misuse of the law, but sometimes just confusion on the part of the public. For example, the Legal Assistance Centre assisted a unmarried father in 2009 who was seeking an order for temporary custody for his child under the Combating of Domestic Violence Act – even though he conceded that there was no domestic violence and no actual danger to the child – because he was unaware of the procedure for seeking custody under the Children's Status Act. Once informed of the correct legal procedure, he withdrew his protection order application and made an application for custody under the Children's Status Act. He was granted temporary custody of his daughter for a two-month period, pending a social worker report on long-term custody.

**The draft Child Care and Protection Bill contains an amendment designed to prevent accidental or intentional misuse of the domestic violence law by tightening the requirements for provisions addressing temporary custody (making this possible only where there is "serious and imminent danger to the child" and requiring an immediate social worker investigation):**

*(2) Section 14 of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) is hereby amended by the substitution for paragraph (i) of subsection (2) of the following paragraph:*

- “(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] there is serious and imminent danger to the child in question, in which case the court must refer the matter to a designated social worker, as defined in section 1 of the Child Care and Protection Act, 2010 (Act No. X of 2010), for an investigation to be completed within the period specified by the court, upon which the court may, notwithstanding the absence of a party to the proceedings, make a final order regarding sole custody;”<sup>101</sup>*

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<sup>101</sup> Section 240(2) of the draft Child Care and Protection Bill as it stood at June 2010.

## (b) Requests to refuse or restrict access by respondent to children of complainant

“Access”, although not defined in the Combating of Domestic Violence Act, was intended to refer to the parental right of a non-custodial parent to maintain contact with a child through means such as visits and communication. There is some overlap between the concept of access which applies only between parent and child, and the more general concept of “contact” which could apply to any relationship. The application form adds to the potential confusion between these two related concepts by using the term “contact” underneath the heading “custody” and “access” (see excerpt from application form reproduced on page 372).

In 12% of the applications, under the heading of “access”, the complainant requested that the respondent be refused all contact with specific children – with 92% of these requests coming from female complainants and only 8% (10 cases) coming from male complainants.

In another 27% of applications, the complainant requested that the respondent be allowed contact with the children only under certain conditions – with 88% of these requests coming from female complainants and only 12% (16 cases) coming from male complainants.

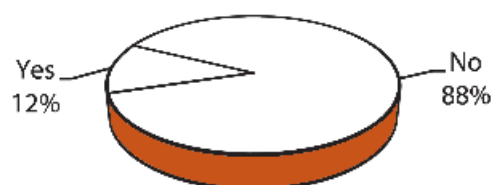
As would be expected, the vast majority of children involved in these requests were children of the complainant and the respondent together, although there were a few instances where such requests involved children of the complainant, step-children or grandchildren of the parties, or children of other family members.

**TABLE 118**

<b>Demographic characteristics of children for whom complainant requests NO CONTACT by respondent</b>			
	<b>Characteristic</b>	<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Son/daughter (not specified)	9	3.4%
	Son/daughter of both	183	68.8%
	Son/daughter of complainant	42	15.8%
	Son/daughter of spouse/partner	3	1.1%
	Grandchild of both	1	0.4%
	Grandchild of complainant	9	3.4%
	Other relative (specify)	10	3.8%
	Other non-relative (specify)	3	1.1%
	Other (specify)	6	2.3%
	<b>Total</b>	<b>266</b>	<b>100.0%</b>
<b>Sex</b>	Male	113	45.4%
	Female	136	54.6%
	<b>Total</b>	<b>249</b>	<b>100.0%</b>
<b>Age group</b>	0-4	53	22.6%
	5-9	63	26.8%
	10-14	49	20.9%
	15-19	40	17.0%
	20-24	22	9.4%
	25-29	6	2.6%
	30-34	1	0.4%
	35-39	1	0.4%
	<b>Total</b>	<b>235</b>	<b>100.0%</b>

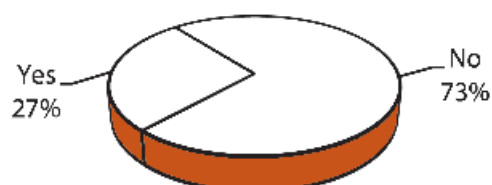
**CHART 70: Request for respondent to be refused all access to specified children?**

(forms where Section E was not completed have been excluded)



**CHART 71: Request for respondent to be allowed only conditional access to specified children?**

(forms where Section E was not completed have been excluded)



**TABLE 119**

Demographic characteristics of children for whom complainant requests only <b>CONDITIONAL ACCESS</b> by respondent			
	Characteristic	Number	Percent
Relationship to complainant	Son/daughter (not specified)	19	3.3%
	Son/daughter of both	525	91.6%
	Son/daughter of complainant	20	3.5%
	Grandchild of complainant	6	1.0%
	Other relative (specify)	3	0.5%
	<b>Total</b>	<b>573</b>	<b>100.0%</b>
Sex	Male	260	47.9%
	Female	283	52.1%
	<b>Total</b>	<b>543</b>	<b>100.0%</b>
Age group	0-4	143	26.7%
	5-9	172	32.1%
	10-14	133	24.9%
	15-17	54	10.1%
	18-20	27	5.0%
	21-24	6	1.1%
	<b>Total</b>	<b>535</b>	<b>100.0%</b>

**TABLE 120**

Number of children for whom complainant requests <b>NO ACCESS</b> by respondent			
Number of children	Number of cases	Percent of cases where no access requested	Total number of children potentially affected
One	49	37.7%	49
Two	46	35.4%	92
Three	20	15.4%	60
Four	8	6.2%	32
Five	5	3.8%	25
Seven	1	0.8%	7
Number not indicated	1	0.8%	1
<b>Total</b>	<b>130</b>	<b>100.0%</b>	<b>266</b>

**TABLE 121**

Number of children for whom complainant requests only <b>CONDITIONAL ACCESS</b> by respondent			
Number of children	Number of cases	Percent of cases where conditional access requested	Total number of children potentially affected
One	99	34.5%	99
Two	111	38.7%	222
Three	55	19.2%	165
Four	18	6.3%	60
Five	3	1.0%	15
Number not indicated	1	0.3%	1
<b>Total</b>	<b>287</b>	<b>100.0%</b>	<b>562</b>

Special cases reported below

Some of the conditions proposed involved visiting schedules similar to those which might be found in a divorce order (such as on weekends, or every second weekend). Some requested that access be restricted to daytimes or be allowed only in the presence of third parties (such as the complainant's mother, the respondent's mother or the respondent's girlfriend). Some (55 complainants) requested that access to children take place only under the supervision or in the presence of police or a social worker, while a few others suggested supervision by pastors. Some (46 complainants) also specifically requested that the respondent be sober when in contact with the children.

Some complainants wanted the respondent to have access to the children only at their house or in their presence, while others proposed arrangements which would allow the child to be transferred or visited in a manner which would prevent the complainant and the respondent from having to come into contact with each other (such as the complainant dropping the child off at the house of the respondent's mother when the respondent wanted to see the child, or having the respondent send his sister to collect the child for visits). Several complainants requested that contact take place only if the child wants it, and several complainants wanted access to take place only after being arranged in advance by telephone.

**On the whole, the proposed conditions seemed reasonable. Interestingly, five complainants wrote on their forms something to the effect that they had no right to interfere with the relationship between the respondent and his children.**

There is a substantial degree of overlap between requests forbidding access to children of the complainant, and requests to restrict contact with third parties; almost two-thirds of the general provisions forbidding third-party contact involved children of the complainant, and there were 81 cases where similar requests were repeated under both questions. This is understandable, since the general no-contact provisions appear first on the application form, before complainants could be expected to see that there is a more specific provision dealing with children of the complainant.

**TABLE 122**

<b>Requests pertaining to children born to complainant and respondent together</b>		
<b>Type of request</b>	<b>Number</b>	<b>Percent</b>
Respondent not to communicate with them in any way (only)	216	49.0%
Respondent to be refused all contact with the child (only)	144	32.7%
Both of the above	81	18.4%
<b>Total</b>	<b>441</b>	<b>100.0%</b>

One manifestation of this confusion is evidenced by the fact that **several requests for no-contact with adult children were made here; there were requests for “custody” of 11 persons over the age of 21 and requests for restricted “access” to 17 adults. Unless the requests related to severely disabled adults, complainants in these cases must have understood the term “children” in the sense of “offspring” rather than “minors”, and used this question for a request which should have been made in the context of the more general no-contact provisions of protection order discussed above.** The theory that many of these instances were a result of confusion in completing the forms is supported by the fact that just over half of the “adult children” cited in the provision on custody and access (13 out of 25) were also listed under the previous requests about prohibiting communication with third parties.

The Act technically restricts the possible protection order provision on access to children of the complainant who are under 18, as the provision quoted at the beginning of this

section (section 14(2)(j)) must be read together with the definition of “*child*” in section 1 of the Act. No-contact orders covering adults would fall under the third party no-contact provisions covered by section 14(2)(b) of the Act, discussed above, and they would require the consent of the third party in question. However, there is nothing on the application form which would make this distinction clear to complainants.

The overlap encountered in respect of the access provisions and the no-contact provisions is not serious, as the main concern is for complainants to provide sufficient information to enable the court to decide whether to grant a protection order and what provisions to include. This assumes, however, that courts are able to consider the substance of the application form without missing vital information because it was recorded in an unexpected place on the form. It would be useful to see if the application forms could be streamlined and clarified on this point, as duplication of information makes the application form harder for the complainant to complete and more time-consuming for the court to examine.

However, worryingly, the same confusion seems to have been experienced by some courts, as there were interim protection orders which granted “custody” of adult children (10 cases) to the complainant, or restricted parental “access” to adult children (12 cases). Unless these were all disabled or incapacitated children who required parental care as adults, this indicates that **the forms need to make the meaning of custody and access more clear, in contrast to the other more general restrictions on contact and communication.**

## 5.11.10 Requests to keep complainant’s address confidential

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**h) OTHER ORDERS REQUESTED:**

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

The court is authorised to keep the complainant’s physical address a secret if requested to do so by the complainant, but this obviously makes it impossible for the court to include a provision in the protection order forbidding the respondent to enter the complainant’s residence: “*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.*”<sup>102</sup>

In just over 10% of the applications, complainants (mostly female complainants) requested that their addresses should not be revealed to the respondent.

<sup>102</sup> Combating of Domestic Violence Act 4 of 2003, section 6(5). This is not really problematic, however, as the court could order that the complainant’s physical address be kept secret while also ordering the respondent not to come near the complainant wherever he or she may be.



**CHART 72: Sex of complainants who requested that their addresses should not be revealed to the respondent**



This small number is consistent with the fact that complainants and respondents were sharing a household at the time of the application in about 60% of the cases; in these cases, it would serve no purpose to keep the complainant’s address a secret.

The small number is also consistent with the fact that 88% of complainants requested an order that the respondent should be forbidden to enter or come near their physical address.

## 5.12 POTENTIAL WITNESSES FOR COMPLAINANT

excerpt from  
**Form 1, Section E**  
**APPLICATION FOR PROTECTION ORDER**

**WITNESSES**

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

As discussed in previous sections, the application form asks about witnesses to the most recent incident of violence and to past abuse. This informs the court about potential witnesses who might come to testify voluntarily or in response to a summons. There is a separate section on the application which is aimed at making sure that witnesses identified by the complainant as being relevant will be present at the enquiry.

The complainant is entitled to get assistance from the court in summoning witnesses. Regulation 4(11) states: “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.”<sup>103</sup>

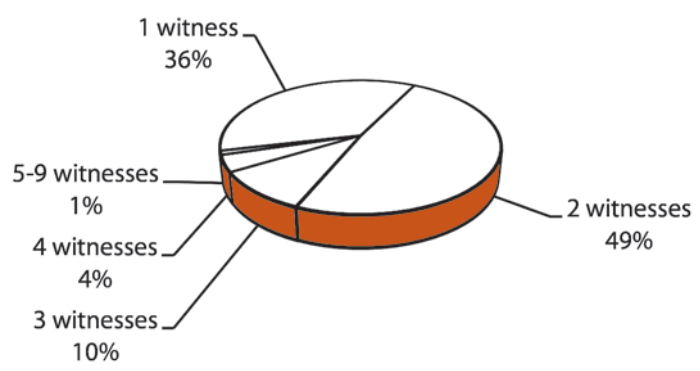
This is because a complainant who has no legal representation would not know the correct procedure for issuing a summons. The court may limit the number of witnesses to be summoned, in order to keep down costs which may have to be covered by the state,<sup>104</sup> and because a complainant without legal guidance may request more witnesses than are reasonable or necessary.

<sup>103</sup> Regulations issued under the Combating of Domestic Violence Act 4 of 2003, Government Notice 235 of 17 November 2003 (Government Gazette 3094). The wording of this regulation appears as it is written; it is somewhat unclear.

<sup>104</sup> Section 20 of the Combating of Domestic Violence Act 4 of 2003 provides that there are no costs for making an application for a protection order, although the state can recover some or all of the costs from either of the parties in appropriate circumstances.

Most of the applicants were ready to provide supporting evidence for their allegations. Over 72% identified witnesses who could come to court to give evidence in support of their applications – with more than half of these complainants (64%) indicating that there were multiple witnesses who could testify. Most complainants who offered witnesses named two potential witnesses, but some named up to nine.

**CHART 73: Number of witnesses identified by complainant to provide supporting evidence for application**



Out of the 1121 people proposed as witnesses overall, 40% were family members of the complainant. Very few (less than 1%) were professionals such as doctors, social workers, pastors or lawyers, while another 1% were police officers. Others were domestic workers or spouses or partners of the complainant.

Complainants provided ages for only about one-third of the potential witnesses – but about 12% of witnesses whose ages were listed were children under the age of 18, while another 4% were between the ages of 18 and 21.

It is worrying that so many children were witnesses to one or both parents engaged in situations of domestic violence, and being asked to provide testimony about such a traumatic event could compound the child’s distress and raise conflicting feelings of loyalty. One magistrate interviewed reported that she discourages situations where children are asked to testify against their fathers. So even where children were listed on the application forms as *potential* witnesses, this does not mean that they actually gave evidence in court.

Some of the proposed witnesses had reportedly witnessed “everything”, while others had seen or overheard some previous attacks or incidents. Others were people who had assisted the victim in the aftermath of the violence in some way. In two cases, applicants who brought protection order applications on behalf of complainants were also listed as witnesses to the domestic violence.



***The neighbours obviously witnessed this woman’s ordeal but did nothing to stop it. One wonders what kind of society we are becoming!***

*S v Basson (CC 23/2010) [2011] NAHC 186 (1 July 2011)*

Given the perception of domestic violence as a “private” matter, the number of proposed witnesses is surprisingly high and gives some indication of how domestic violence is in fact not “private” but a problem which spills over into the family and community and affects large numbers of people.

Magistrates consulted at a training session in 2011 suggested that there is no real need for complainants to list the potential witnesses on the application form. The list of names on its own has no probative value, and most complainants and respondents cite witnesses who come to the enquiry voluntarily without needing to be summoned. If either party needs court assistance to summon a witness (such as a medical practitioner who treated injuries received from the alleged domestic violence), this request could be made to the clerk of the court on a separate form instead of being part of the standard application form.

**TABLE 123**

<b>Demographic characteristics of potential witnesses identified by complainants</b>			
	<b>Characteristic</b>	<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Spouse/partner	13	1.2%
	Boy/girlfriend of complainant (married or ex-married/partnered)	6	0.5%
	Son/daughter (not specified)	34	3.0%
	Son/daughter of both	110	9.8%
	Son/daughter of complainant	63	5.6%
	Son/daughter of spouse/partner	1	0.1%
	Grandchild of both	1	0.1%
	Grandchild of complainant	9	0.8%
	Brother/sister of complainant	53	4.7%
	Brother/sister of spouse/partner	12	1.1%
	Parent of complainant	60	5.4%
	Parent of spouse/partner	2	0.2%
	Other relative	103	9.2%
	Other non-relative	26	2.3%
	Other (specify)	294	26.2%
	Police officer / WCPU officer	15	1.3%
	Housekeeper / domestic employee	12	1.1%
	Medical practitioners; social worker	9	0.8%
	Applicant	2	0.2%
	Pastor	2	0.2%
	Lawyer/counsel	1	0.1%
Relationship not clear	3	0.3%	
Unspecified witnesses (name provided; but no other information on this person contained in file)	290	25.9%	
	<b>Total</b>	<b>1121</b>	<b>100.0%</b>
<b>Sex</b>	Male	388	34.6%
	Female	635	56.6%
	Unknown	98	8.7%
	<b>Total</b>	<b>1121</b>	<b>100.0%</b>
<b>Age group</b>	Children (<18)	130	11.6%
	Minors age 18-20	48	4.3%
	Adults (>=21)	180	16.1%
	Age unknown	763	68.1%
	<b>Total</b>	<b>1121</b>	<b>100.0%</b>

## 5.13 INTERIM PROTECTION ORDERS

An interim protection order is a temporary protection order granted by a magistrate if there is sufficient evidence that domestic violence has been committed by the respondent, based on information supplied by the complainant. It is granted on an *ex parte* basis, which means that the magistrate issues this temporary order before having heard the respondent's side of the story.

This procedure was provided in the law because delays in providing protection could endanger complainants' safety. The idea is that the interim order will provide temporary protection, by remaining in place while a hearing is scheduled where both sides of the story can be fully aired. The respondent always has an opportunity to be heard before the interim order is made final.

When an interim protection order is issued, a document labelled "Form 5" is completed by the magistrate or clerk of the court. Copies are provided to the complainant and to the respondent. The interim protection order must in every case state that the respondent is not to commit any further acts of domestic violence.<sup>105</sup> It can contain additional provisions, depending on the specific terms which have been requested and granted by the court as being appropriate to the specific situation at hand.<sup>106</sup>

The basic criteria for granting either an interim protection order or a final protection order are the same:

- There must be evidence that the respondent is or was committing domestic violence toward the complainant (noting that where a respondent has encouraged another to commit an act of domestic violence toward the complainant, this act will be attributed to the respondent).
- There must have been some act of domestic violence committed since the Act came into force on 17 November 2003.
- No protection order can be granted solely on the basis of minor or trivial acts, unless such behaviour forms part of a pattern which establishes a need for protection.<sup>107</sup>

The court is obliged to consider any application for a protection order "*as soon as reasonably possible*" after receiving it.<sup>108</sup> Before making a decision on either an interim protection order or a final protection order, the court may require oral evidence or further evidence of any nature, and summon any person to appear before the court for the purpose of providing relevant evidence.<sup>109</sup> After considering the application the court has the following options:

- The court *must* issue an interim protection order "*notwithstanding the fact that the respondent has not been given notice of the proceedings and an opportunity to be heard*" if it is satisfied that there is sufficient evidence to show that the respondent is or was committing domestic violence towards the complainant.
- The court may refer the matter for further enquiry without making any order "*if the circumstances so require*".

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<sup>105</sup> Combating of Domestic Violence Act 4 of 2003, section 14(1).

<sup>106</sup> *Id*, section 14(2).

<sup>107</sup> *Id*, section 7(1)-(3) and (5).

<sup>108</sup> *Id*, section 8(1).

<sup>109</sup> *Id*, section 8(2).

- The court may grant part of the relief applied for and refer any outstanding issues to a further enquiry.
- The court may dismiss any application which it considers to have “no merit”.<sup>110</sup>

An interim protection order is by its nature a temporary order. There are two routes whereby it can be confirmed as a final protection order, depending on whether or not the respondent opposes it. Every interim protection order must set a “return date”. A respondent who wants to oppose the order must do so on or before this return date, which is normally 30 days from the date on which the interim protection order is issued.<sup>111</sup> If the respondent does not oppose the order, the court must confirm it (provided that the court is satisfied that the interim protection order was properly served on the respondent so that the respondent had a fair chance to oppose it).<sup>112</sup> If the respondent does oppose the order, the court is supposed to hold an enquiry on or after the return date, which gives both parties a chance to present their evidence. Then, at the end of this enquiry, the court can decide whether to make the interim protection order into a final order, with or without amendments.<sup>113</sup> As will be discussed in more detail below, less than one-third of the interim protection orders in the sample were made into final protection orders, for reasons which are often unclear.

**In general, it was very difficult to ascertain the final results of protection order applications, because information about the procedure followed was more or less clear and complete only in about 220 out of the applications for 1131 protection orders (19%). Thus, our findings involve some guesswork, but should be sufficiently reliable to give an accurate picture of general trends.**

*This crime was committed within the privacy of a household where members of that household should feel safe, loved and protected. It was committed out of sight of eyewitnesses. Such is the nature of domestic violence. It often goes undetected because it happens in the privacy of homes and because victims fear to speak out. Domestic violence has become an everyday occurrence before the courts and also arouses strong indignation from society.*

*S v Amupolo* [2011] NAHC 59 (28 February 2011) (footnotes omitted)

*All too often disputes within a domestic relationship are resolved by resorting to violence. This situation has become untenable and there is a growing concern in society that violent crimes against women and children are on the increase... A consistent message should be that it is safe for victims of domestic violence to speak up and that they would be heard.*

*S v Likuwu* [2011] NAHC 30 (2 February 2011)

<sup>110</sup> *Id*, section 8(3).

<sup>111</sup> *Id*, section 8(4)(a) and 8(5).

<sup>112</sup> *Id*, section 10.

<sup>113</sup> *Id*, section 12(16).

## 5.13.1 Interim protection orders granted

The results of applications for interim protection orders are supposed to be indicated on Form 5,<sup>114</sup> but in some cases files contained information about the case outcomes without containing Form 5 (often in the form of notes in or on the files).

**It appears that over three-quarters of protection order applications resulted in interim protection orders (77%).** (There were applications by 1122 complainants for protection orders against 1131 respondents; this constituted, in effect, applications for 1131 protection orders, 866 of which were granted.) **This figure could be even higher since it is unclear in almost 13% of cases whether an interim protection order was issued in response to the application or not.**

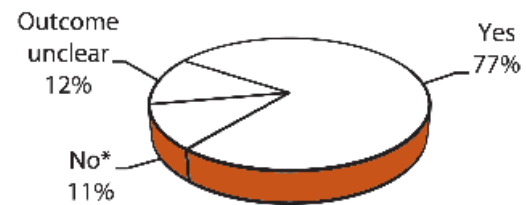
**The case files indicated that no interim protection order was issued in about 11% of applications.** In

four of these cases, although no interim protection order was granted, a final protection order was on file in a format indicating that it was not preceded by an interim protection order.<sup>115</sup> In these cases, presumably the magistrate was not satisfied on the basis of the original application that there was sufficient evidence to grant an interim protection order, but was satisfied after the enquiry at which evidence could be presented in person by both parties that there were grounds to issue a final protection order.

In a few cases, the material in the file indicates that the magistrate dismissed the application for an interim protection order for reasons such as these:

- insufficient grounds to grant an interim protection order;
- the case was not a domestic violence case but rather involved maintenance, divorce or criminal law issues; or
- the parties did not have a domestic relationship with each other as defined in the law.

**CHART 74: Did the application for a protection order result in an interim protection order?**



\* This includes four cases where a final protection order was issued without being preceded by an interim protection order.

<sup>114</sup> Regulation 6 states:

*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.

<sup>115</sup> There are two forms which can be used for final protection orders. Where an interim protection order was issued and is being confirmed (as it stands or with some amendments), the court uses Form 9A for the final protection order. Form 9B is used where a final protection order granted at the conclusion of an enquiry is not preceded by an interim protection order, or where an interim protection order is discharged and replaced by a different final protection order. If the final protection order is being made without being preceded by an interim protection order, the court is supposed to mark the item on Form 9A which reads: "The Court makes the attached protection order for the first time on this date, and this protection order is hereby declared final", and then attach Form 9B. This is what is directed by Regulation 10:

*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.

The magistrate can also accomplish the same result with a typed or handwritten order which is similar to that provided for by the forms.

**Most of cases where protection order applications were unsuccessful do not give any indication of the reasons why.** A magistrate from the Gobabis court noted that most of the protection order applications he has seen were not properly completed and therefore contained insufficient information to justify a protection order.

In 84 applications (just over 7%), we have assumed that no interim protection order was issued because Form 5 was either absent or empty and the file contained some other information indicating that no interim order was issued (such as a notation that the application was withdrawn or struck from the roll).

It is clear from file notations that complainants in at least 21 cases decided not to proceed with the application for a protection order before any interim or final order was issued. In another 15 cases, the court appears to have deferred making any decision on the application until after an enquiry where both parties could be heard, then struck the matter from the roll because both parties were absent on the date of the enquiry. One of these files contained a sworn statement from the complainant saying that the parties were reconciled. Thus, **at least 3% of the protection order applications failed to result in an interim protection order because they were withdrawn or abandoned before any decision was made.** There were a few other cases where the complainant appears to have abandoned the process before the application was even complete. In one case, the complainant died before the application went forward, as evidenced by a death certificate in the file.

**Although there are many cases where we cannot figure out why the original application did not lead to an interim protection order, such evidence as there is suggests that there are quite a few complainants who change their minds and fail to carry through with the process.** This is not surprising in the context of domestic violence, since taking legal action of any sort within a domestic relationship is a step that can understandably be fraught with emotional conflict. However, it also raises fears that **there could be some complainants who were pressured to abandon their applications or prevented from completing the process by violent respondents.**

The Act has safeguards which should apply if a complainant does not appear at an enquiry; in such a case, *“the court must direct the station commander of the police station named in the application to enquire into the reasons for such nonappearance, 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”*.<sup>116</sup> **But there are no safeguards which apply if the application is abandoned by the complainant at an earlier stage. Perhaps a social worker should be asked to monitor such situations.**

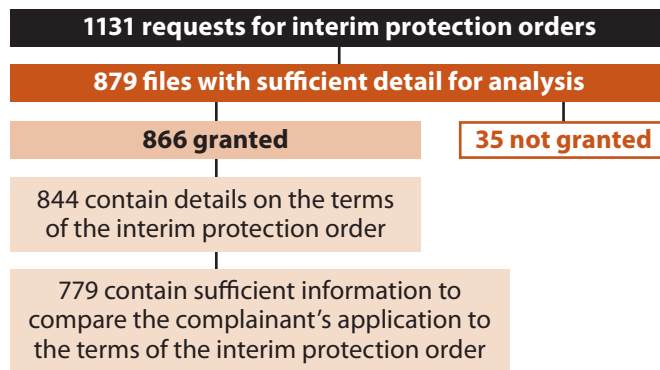
It seems that **most complainants who pursue their applications receive at least an interim protection order. Taking into account those who appear to have abandoned their applications at an early stage, about 80% of the complainants in our sample who filed and pursued an application for a protection order were successful.** The reasons why many interim orders were not confirmed as final orders will be addressed below. The key point here is that the **courts appear to take it seriously when complainants allege domestic violence, and tend to be willing to order interim protection if a reasonable case is made out by the complainant.**

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<sup>116</sup> Combating of Domestic Violence Act 4 of 2003, section 12(15).

There were 879 files which contained sufficient information for detailed analysis – 844 cases where interim protection orders were granted and 35 cases where the application for an interim protection order was dismissed. The group of 844 successful interim protection orders with files containing sufficient information for analysis forms the basis of most of the discussion which follows.

**CHART 75**

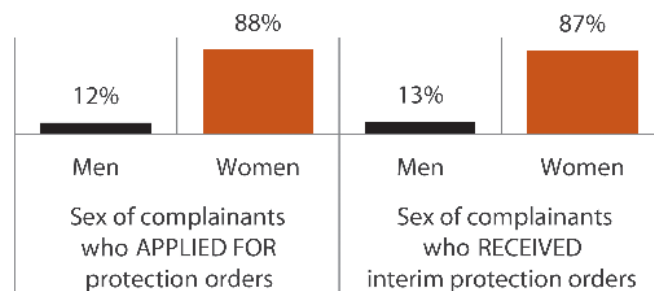


## 5.13.2 Who received interim protection orders?

Of the 866 interim protection orders apparently granted, we could analyse data about the complainant in 844 cases.

**Men and women were about equally successful in their applications; the total pool of complainants constituted 88% women and 12% men, while the successful complainants were almost identically divided at 87% women and 13% men. This shows that the allegations made by some men that the domestic violence procedures are biased against them appear to be without foundation.**

**CHART 76: Sex of complainants who applied for and received interim protection orders**



**Ages of successful complainants similarly followed the same patterns as the ages of those who made applications.** Although few protection orders are being sought or utilised to protect children directly, many protection orders would have the *effect* of protecting children from a violent environment – such as where they give the complainant and the complainant’s dependents exclusive occupation of a joint residence, or include children in no-contact provisions. The data indicates that **protection orders are most often relevant to children where the violence is being directed at another family member instead of, or in addition to, the children in the household.**

**TABLE 124**

Age of complainants				
Age group	Applications		Interim protection orders	
	Number	Percent	Number	Percent
17 years or less	7	0.6%	6	0.7%
18-24	63	5.6%	35	4.1%
25-29	148	13.2%	114	13.5%
30-34	218	19.4%	162	19.2%
35-39	226	20.1%	169	20.0%
40-44	186	16.6%	143	16.9%
45-49	127	11.3%	94	11.1%
50-54	49	4.4%	37	4.4%
55 years or older	69	6.1%	56	6.6%
Not recorded	29	2.6%	28	3.3%
<b>Total</b>	<b>1122</b>	<b>100.0%</b>	<b>844</b>	<b>100.0%</b>



The domestic relationships of those who were granted interim protection orders also follows the patterns of relationships in the pool of applications.

**TABLE 125**

Relationship of complainant to respondent				
	Applications		Interim protection orders	
	Number	Percent	Number	Percent
Wife	600	53.1%	463	54.9%
Husband	59	5.2%	41	4.9%
Ex-wife	43	3.8%	34	4.0%
Ex-husband	6	0.5%	4	0.5%
Girlfriend	101	8.9%	76	9.0%
Boyfriend	11	1.0%	9	1.1%
Ex-girlfriend	133	11.8%	88	10.4%
Ex-boyfriend	22	1.9%	16	1.9%
Mother	28	2.5%	23	2.7%
Father	13	1.1%	7	0.8%
Sister	12	1.1%	8	0.9%
Brother	6	0.5%	6	0.7%
Daughter	5	0.4%	45	5.3%
Son	1	0.1%	4	0.5%
Grandmother	4	0.4%	2	0.2%
Other	87	7.7%	18	2.1%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>	<b>844</b>	<b>100.0%</b>

The vast majority of applicants who brought protection order applications on behalf of other complainants were successful in getting an interim protection order – 18 out of 22 (82%). Five of the 18 interim protection orders granted in these circumstances were made on behalf of children under the age of 18. (Because of the small size of this group, further analysis of the demographic characteristics does not seem useful.)

## CASE STUDY

### A concerned son who helped his mother

A 53-year-old male applicant applied for a protection order on behalf of his mother, who was 77 years old, against her intimate partner (who was also her cousin). The file included a statement from the complainant saying that she had sent her son to make the application on her behalf due to her poor health and difficulty in moving.

The basis of the complaint was the respondent’s alcohol abuse, death threats and threatening use of weapons, which were all causing the complainant to feel depressed and unsafe. The application also noted that a number of grandchildren, ranging in age from 7 to 39, were also being affected by the domestic violence. At the time of the application, the respondent was already in custody at the local police station, as the complainant had laid a charge against him. The application requested no-contact provisions, a blanket ban on all communication, and the surrender of the respondent’s weapons to the police.

The court made an interim protection order containing the requested no-contact provision, but not the requested prohibition on communication. The order further stated that the respondent could not go to the joint residence and must stay away from the complainant and her family.

The file contained no information on whether this interim protection order was made final.

## 5.13.3 How long does it take to obtain an interim protection order?

We attempted to determine the timeframe between the application and the decision on the interim protection order. Because of missing or clearly erroneous data,<sup>117</sup> we can analyse the timeframe in only 688 of the cases which resulted in interim protection orders. **The time between the date of application and the date when the application was granted or dismissed ranged from a decision made on the same day to a decision made more than one year later. The decision was typically made on the same day as the application (41% of cases) or the next day after the date of the application (19%).**

**A total of 60% of the applications resulted in decisions in less than 48 hours, while more than two-thirds (69%) were made within 2-3 days after the application. This suggests that in a majority of cases courts are cognisant of the urgent nature of protection order applications. However, the extended time period (2 days or more) between application and decision in 40% of the cases is a cause for concern, given the potential danger to the complainant in domestic violence situations.**

**TABLE 126**

Time difference between date of application and date of signature of interim protection order			
Frequency	Number	Percent	Cumulative percent
Same day	283	41.1%	41.1%
Next day	130	18.9%	60.0%
2-3 days	61	8.9%	68.9%
4-5 days	55	8.0%	76.9%
6-10 days	55	8.0%	84.9%
11-15 days	26	3.8%	88.7%
16-30 days	26	3.8%	92.4%
> 30 days	52	7.6%	100.0%
<b>Total</b>	<b>688</b>	<b>100.0%</b>	

The data from interviews is consistent with the findings that the process of getting a decision from the magistrate is usually fairly quick. One clerk of court said that the decision on the interim protection order is made “*immediately*”. Another clerk said that the decision is usually made by the magistrate within an hour, and a third clerk said, “*It can take an hour. But mostly it is same day.*” Several other clerks said that the decision is normally made on the same day that the application is filed, with one saying that the magistrate usually makes a decision within 24 hours, with 3 days being the maximum. One magistrate similarly said that protection orders are usually granted on the same day as the application, reporting that it takes about 20 minutes to review the application.

In Katutura, however, one clerk reported that it usually takes two days for the magistrate to make a decision because there is no specialised magistrate to handle domestic violence cases, which results in many postponements. In Keetmanshoop, the clerk reported that interim protection orders are usually granted on the same day but can take up to a week if no magistrate is available; she recalled a period when the magistrates were all attending workshops at the same time, leaving no magistrate in place at the court, which caused delays in the issue of protection orders. One clerk in Mariental similarly said that it can take up to one week to obtain an interim protection order because “*sometimes the magistrates are out*”; another clerk in Mariental said that “*it can take upwards of one to two weeks for the interim protection order*” because “*magistrates do not make time for protection orders*”.

<sup>117</sup> The erroneous data constitutes 17 cases where Form 5 (interim protection order) was signed *before* the date of the protection order application, which must reflect errors on the part of the court or our researchers.

Some courts seem to attend to protection orders only on certain days. In Usakos, the clerk reported that there was a weekly schedule for interim protection orders, with applications submitted during the week being reviewed by the magistrate on Friday and approved or rejected the following week: *“We share a Magistrate with Karibib. The protection orders get handled on Fridays. If I fill out a protection order application on a Friday, by the following Friday the magistrate will issue the interim protection order. Then it takes another week for the hearing. So, it takes two weeks total.”*. Similar systems were described in Oshakati (where protection orders were reportedly handled only on Mondays and Fridays), and in Okahandja: *“There are certain days when the magistrates attend to protection order applications. In our case here at Okahandja, it is Wednesdays and thereafter within a week, an order may or may not be issued.”*

It appears that at some courts, protection orders receive lower priority when staffing is short. Some magistrates seem to feel that victims of domestic violence could get relief through other channels – such as by laying criminal charges, seeking a divorce or applying for maintenance – and so afford higher priority to the criminal matters and maintenance cases on their court rolls.

The timeframe for decisions on protection orders must be considered in light of the fact that there is a general problem with understaffing of magistrates’ courts in Namibia, resulting in a backlog of cases which affects many areas of law and not just domestic violence.<sup>118</sup> However, it is debatable whether the prioritisation as practiced is sufficiently sensitive to the dangers of domestic violence.

One clerk of court advises complainants to lay criminal charges against the respondent at the same time as seeking a protection order, as this might provide more immediate help: *“Many people come and they fear for their lives. They ask us what they should do to get protection immediately. We advise them to lay a criminal charge because protection orders take a while to obtain, but with a criminal charge, the respondent can be locked up immediately as we pursue the protection order.”*

**It must be remembered that the date on which the protection order is granted is not the date when it comes into force; it becomes effective only when it is served on the respondent, meaning that delays in this process can be particularly dangerous for the complainant.** A prosecutor in Gobabis emphasised the fact that despite a prompt decision on an interim order, the entire process can take much longer: *“It takes a day or two for the interim protection order to be granted.*

*In two weeks to a month the respondent receives the interim protection order. In very serious cases – it differs from case to case – it can take a week. And then with the final protection order, for the respondent to come in and appear before the magistrate, it takes about two months.”* The timeframe for service of interim protection orders is explored in section 5.14 below.



<sup>118</sup> The Minister of Justice reported in April 2011 that 56 900 new cases were added to magistrate’s court rolls in the 2010-2011 financial year, on top of 141 556 existing cases. “Court delays improving”, *The Namibian*, 26 April 2011. As of July 2011, there were 32 magistrates’ courts in Namibia (not counting periodic courts which sit in different places), staffed by approximately 80 magistrates.

## 5.13.4 Criteria for decision-making

The Act essentially describes a two-part decision-making process.

**The decision on whether or not to grant a protection order is supposed to be based only on the question of whether or not domestic violence has been committed.** Section 8(3) (a) of the Act states that the court “*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*”. Section 7(1) states that “*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*”.

Narrow exceptions are provided by section 7(2), which states that “*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.*” This latter exception is further elucidated by section 7(3), which states that “*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.*” Thus, the court is technically obligated to grant an interim protection order when presented with credible evidence of any form of domestic violence as that term is defined in the statute, so long as the acts complained of are not minor or trivial and occurred, at least in part, after the law came into force.

**Every protection order is supposed to have a mandatory general provision which prohibits the respondent from committing any further acts of domestic violence against the complainant.**<sup>119</sup>

The magistrate has discretion to determine what other terms should be included in a protection order. Requests for specific provisions can be granted or denied, and terms can be included by the magistrate without having been requested by the complainant. **In deciding what other provisions to include, the magistrate is supposed to have regard to several additional factors:**

- (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.*<sup>120</sup>

The interviews we conducted shed some light on decision-making processes. One magistrate described the key factors as being “*whether or not the two parties live in the same house; are there any children involved, especially young ones; who is the bread winner; and lastly if this act of domestic violence has happened before*”. Another magistrate described the most important issue as being “*genuine fear of domestic violence*” on the part of

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<sup>119</sup> Combating of Domestic Violence Act 4 of 2003, section 14(1).

<sup>120</sup> *Id.*, section 7(4).

the complainant. Yet another magistrate identified the most relevant factors as being “*the type of abuse, the well-being of the complainant, what the complainant wants, the willingness of the complainant*”.

One magistrate reported that the two factors he found most relevant in protection order applications were firstly, how long the physical abuse has been going on and secondly, whether the complainants have genuine, imminent fear for their lives. It is true that a court, in deciding what provisions to include in a protection order, is supposed to have regard to the history of domestic violence by the respondent towards the complainant and the existence of immediate danger to persons or property. But protection orders can be based on non-physical forms of domestic violence such as economic or emotional abuse, and fear for one’s safety or well-being need not amount to fear for one’s life. Therefore, this magistrate seemed to be ‘over-interpreting’ the law to some extent. (This magistrate estimated that he grants about half of the applications for protection orders which he considers, which is somewhat below the 77-80% rate of success in the sample considered in this study.)

Still another magistrate described the key factors as the kind of relationship between the parties, the kind of violence reported, the history of violence and the interests of any children involved – which he treated as the highest priority. This magistrate reported that he gives priority to deciding cases where children may be at risk, particularly with respect to making a quick decision on an interim protection order and on issues pertaining to maintenance. This magistrate also requests social worker reports where children are involved, and tries to avoid separation of children when deciding questions of custody.

Another magistrate said that the key factor in respect of a decision on an *interim* protection order is the degree of risk to the complainant: “*The biggest factor is physical danger to her or others in the house. Where there is no physical abuse, we might not grant an interim protection order (ie where there is only psychological abuse).*” It is logical that a court would feel inclined to assess the presence of imminent *physical* danger as a key factor in deciding on the need to issue an interim *ex parte* order rather than deferring the decision on the application until after both parties can be heard – since the damage from *psychological* abuse is more likely to occur over the long term than between the date of application and the date of enquiry. However, the Act does not explicitly allow this, but instead says that an interim protection order *must* be granted if the court is satisfied that domestic violence (which can include economic or emotional abuse) has been committed.

**A misreading of the Act which sets the threshold for protection orders too high would be likely to undermine the goal of stopping domestic violence at an early stage, before it results in serious harm.**

## **5.13.5 Overview of terms of interim protection orders**

The potential terms of protection orders fall into several different categories:

- a general prohibition on further domestic violence, with the optional possibility of emphasising particular forms of violence;
- terms pertaining to weapons;
- no-contact provisions;
- orders for exclusive occupation of a joint residence, with or without ancillary orders pertaining to the contents of that residence;

- orders for the provision of alternative accommodation (where exclusive occupation of a joint residence is not requested or deemed inappropriate);
- orders pertaining to the safeguarding of the complainant’s property interests;
- orders for temporary maintenance;
- orders pertaining to custody or access of children of the complainant; and
- additional orders.

Only 779 of the 866 interim protection orders issued (90% of the interim protection orders in the sample) can be analysed for purposes of comparison between the terms requested by the complainant and the terms contained in the interim protection order, because this is the total number of files examined which contained *both* Section E of Form 1 (where the complainant specifies requested terms) and Form 5 (the completed interim protection order).

**The average number of provisions requested and granted in interim protection orders was eight. Complainants typically requested the inclusion of nine provisions in the protection orders they sought, and interim protection orders most often contained six provisions.** The highest number of requested terms was 20, while the highest number of terms included in an interim order was 17.

However, there was more of a divergence between requests and orders than these figures might indicate. **Typically, four to six of the provisions requested by the complainant would be included, one or two provisions requested would *not* be granted, and one to two provisions would be included by the court despite not having been requested.**

Because of this divergence, in examining the different types of terms which could be included in an interim protection order, we will investigate three different questions:

- What proportion of the interim protection orders in the sample included this term?*
- What proportion of complainant requests for this term were successful?*
- What proportion of these terms resulted from the court’s own initiative as opposed to complainant requests?*

It is necessary to consider all three of these angles in order to get a clear picture of how protection orders are working in practice.

**TABLE 127**

Number of protection order requests compared with number of protection order terms			
Number of provisions requested		Number of provisions granted	
Number	779	Number	779
Mean (average)	8	Mean (average)	8
Median (middle value)	8	Median (middle value)	8
Mode (most frequently occurring value)	9	Mode (most frequently occurring value)	6
Minimum	0	Minimum	0
Maximum	20	Maximum	17

**TABLE 128**

Number of protection order requests compared with number of protection order terms (more detailed breakdown)					
	Mean	Median	Mode	Minimum	Maximum
Number of provisions requested and granted	6	5	4	0	14
Number of provisions requested, but NOT granted	2	1	1	0	15
Number of provisions NOT requested, but granted	2	1	0	0	14
Number of provisions NOT requested and NOT granted	16	16	15	5	26

## 5.13.6 Emphasis on specific types of domestic violence

<p>excerpt from <b>Form 5</b> <b>INTERIM PROTECTION ORDER</b></p> <p>2. You are hereby ordered not to commit any further acts of domestic violence against the complainant or the complainant’s dependants, either directly or by getting the help of another person to carry out the violence. You are ordered to refrain from all acts of domestic violence, and in particular from the types of violence indicated in the list below:</p> <p>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.</p>
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All interim protection orders contain a standard provision ordering the respondent “*not to commit any further acts of domestic violence against the complainant or the complainant’s dependants, either directly or by getting the help of another person to carry out the violence*” and “*to refrain from all acts of domestic violence*”. However, the interim protection order can also direct the respondent to refrain “*in particular*” from certain types of domestic violence.

Only a minority of complainants requested an emphasis on particular types of violence (432), while a slight majority of interim protection orders marked particular types of violence for emphasis (506). There were only 360 interim protection orders which fell into both of these categories, making it possible to compare the complainant’s wishes against the court’s decision.

**TABLE 129**

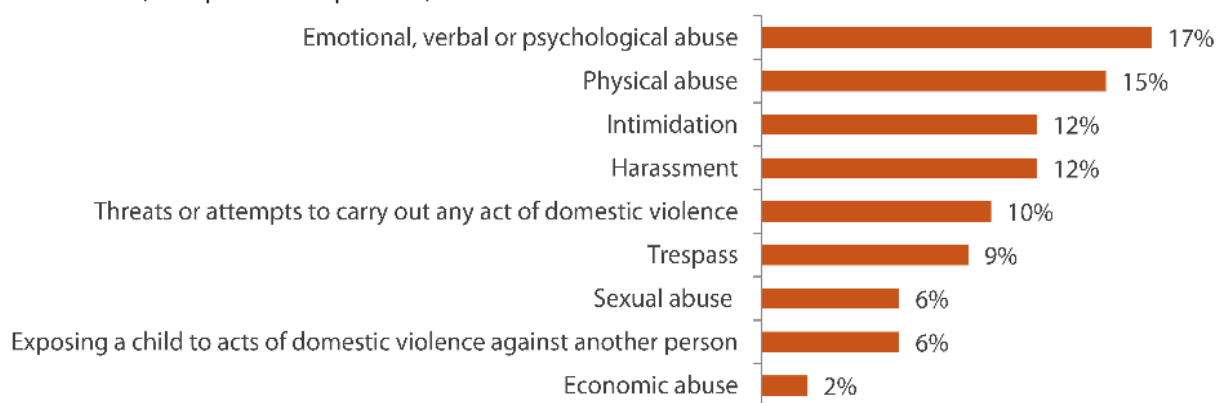
Emphasis on specific types of domestic violence				
Requests for emphasis by complainant cross-tabulated with emphasis in interim protection orders		Interim protection order (Form 5)		
		One or more types of domestic violence emphasised	No specific type of domestic violence emphasised	Total
Application form (Section E of Form 1)	One or more types of domestic violence indicated for emphasis	360	72	432
	No specific type of domestic violence indicated for emphasis	146	201	347
	<b>Total</b>	<b>506</b>	<b>273</b>	<b>779</b>

Overall, specific types of domestic violence indicated for special emphasis in the interim protection order were indicated with the following frequency:

- physical abuse (15%)
- sexual abuse (6%)
- intimidation (12%)
- economic abuse (2%)
- harassment (12%)
- trespass (9%)
- emotional, verbal or psychological abuse (17%)
- threats or attempts to carry out any of these acts (10 %)
- exposing a child to acts of domestic violence against another person (6%).

The interim protection orders which selected some specific types of domestic violence for emphasis identified six different types of violence each, on average (out of a total of nine possibilities). This degree of multiple emphasis suggests that the exercise is not particularly useful, since emphasising virtually everything is tantamount to emphasising nothing in particular.

**CHART 77: Specific types of abuse emphasised in interim protection orders**  
(multiple choices possible)



**TABLE 130**

Emphasis on specific types of abuse in interim protection orders		
Type of abuse emphasised (multiple choices possible)	Number of selections	Percent of total selections
Physical abuse	469	15.4%
Sexual abuse	188	6.2%
Economic abuse	360	11.9%
Intimidation	371	12.2%
Harassment	362	11.9%
Trespass	282	9.3%
Emotional, verbal or psychological abuse	505	16.6%
Threats or attempts to carry out any of these acts	310	10.2%
Exposing a child to acts of domestic violence against another person	190	6.3%
<b>Total</b>	<b>3037</b>	<b>100.0%</b>

Out of the total of 779 interim protection orders in the sample, 506 emphasised specific types of domestic violence. This table is based on those 506 orders.

Most complainants who singled out some types of domestic violence for emphasis in the protection order got at least some of what they requested on this score. The types of domestic violence where the complainant's requests for emphasis were *least* often successful were exposing children to domestic violence and threats of violence, followed by trespass and sexual abuse. More than 90% of requests for emphasis on all other types of violence were granted.

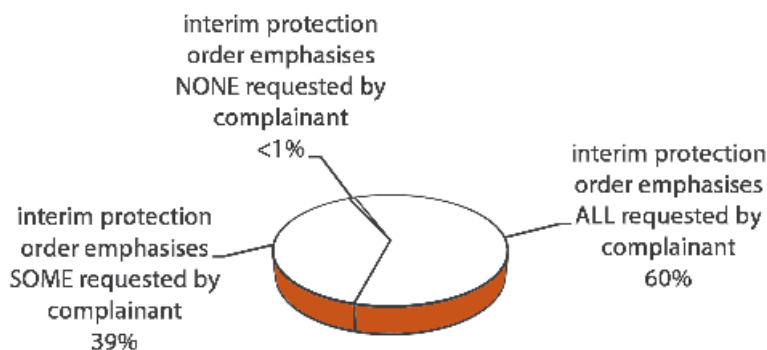


It was relatively unusual for the court to select particular types of domestic violence for emphasis in the absence of a request for this from the complainant. The types of domestic violence most often selected for emphasis by the court *in the absence of a request from the complainant* were exposing a child to violence (added by the court's own initiative in 19% of the orders which emphasised this), trespass (15%), harassment and intimidation (both 12%), and economic and sexual abuse (both 11%).

**Magistrates consulted at a training session in 2011 on this issue were unanimous in the view that including emphasis on specific types of violence in the protection order is not legally relevant or particularly useful in a practical sense. We would therefore recommend that the forms should be revised to exclude this element, and**

**rather include a standard statement of the legal definition of “domestic violence” so that the full spectrum of violence covered by the order is clear to the respondent.**

**CHART 78: Emphasis on specific types of abuse**



**TABLE 131**

Emphasis on specific types of abuse – comparison by case		
Case outcome	Number	Percent
ALL types of domestic violence indicated by complainant were emphasised in interim protection order, PLUS some additional ones	56	15.6%
ALL types of domestic violence indicated by complainant were emphasised in interim protection order, with no additional ones	161	44.7%
SOME types of domestic violence indicated by complainant were emphasised in interim protection order, PLUS some additional ones	56	15.6%
SOME types of domestic violence indicated by complainant were emphasised in interim protection order, with no additional ones	85	23.6%
NONE of the types of domestic violence indicated by complainant were emphasised in interim protection order, but the order emphasised some that complainant had not indicated	2	0.6%
<b>Total</b>	<b>360</b>	<b>100.0%</b>

This table is based on the 360 cases where the complainant's requests can be compared to the interim protection order outcomes.

**TABLE 132**

Emphasis on specific types of abuse – success of requests by complainants			
Outcome of complainant requests		Number	Percent
Physical	Requested and granted	309	96.9%
	Requested, but not granted	10	3.1%
	<b>Total</b>	<b>319</b>	<b>100.0%</b>
Sexual	Requested and granted	114	88.4%
	Requested, but not granted	15	11.6%
	<b>Total</b>	<b>129</b>	<b>100.0%</b>
Economic	Requested and granted	213	91.0%
	Requested, but not granted	21	9.0%
	<b>Total</b>	<b>234</b>	<b>100.0%</b>
Intimidation	Requested and granted	216	93.1%
	Requested, but not granted	16	6.9%
	<b>Total</b>	<b>232</b>	<b>100.0%</b>

Table continues ►

<b>Harassment</b>	Requested and granted	221	90.6%
	Requested, but not granted	23	9.4%
	<b>Total</b>	<b>244</b>	<b>100.0%</b>
<b>Trespass</b>	Requested and granted	161	87.0%
	Requested, but not granted	24	13.0%
	<b>Total</b>	<b>185</b>	<b>100.0%</b>
<b>Emotional</b>	Requested and granted	322	95.5%
	Requested, but not granted	15	4.5%
	<b>Total</b>	<b>337</b>	<b>100.0%</b>
<b>Threats</b>	Requested and granted	222	74.2%
	Requested, but not granted	77	25.7%
	<b>Total</b>	<b>299</b>	<b>100.0%</b>
<b>Exposing child</b>	Requested and granted	114	70.8%
	Requested, but not granted	47	29.2%
	<b>Total</b>	<b>161</b>	<b>100.0%</b>

This table is based on the 360 cases where the complainant's requests on emphasis can be compared to interim protection order outcomes on emphasis, looking only at the cases where the complainant requested that emphasis be placed on specific forms of violence.

**TABLE 133**

<b>Emphasis on specific types of abuse – basis for interim protection order outcomes where specific types of abuse were emphasised</b>			
<b>Source of term in protection order</b>		<b>Number</b>	<b>Percent</b>
<b>Physical</b>	Requested and granted	309	98.1%
	Not requested, but granted	6	1.9%
	<b>Total</b>	<b>315</b>	<b>100.0%</b>
<b>Sexual</b>	Requested and granted	114	88.4%
	Not requested, but granted	15	11.6%
	<b>Total</b>	<b>129</b>	<b>100.0%</b>
<b>Economic</b>	Requested and granted	213	89.5%
	Not requested, but granted	25	10.5%
	<b>Total</b>	<b>238</b>	<b>100.0%</b>
<b>Intimidation</b>	Requested and granted	216	88.2%
	Not requested, but granted	29	11.8%
	<b>Total</b>	<b>245</b>	<b>100.0%</b>
<b>Harassment</b>	Requested and granted	221	87.7%
	Not requested, but granted	31	12.3%
	<b>Total</b>	<b>252</b>	<b>100.0%</b>
<b>Trespass</b>	Requested and granted	161	84.7%
	Not requested, but granted	29	15.3%
	<b>Total</b>	<b>190</b>	<b>100.0%</b>
<b>Emotional</b>	Requested and granted	322	95.8%
	Not requested, but granted	14	4.2%
	<b>Total</b>	<b>336</b>	<b>100.0%</b>
<b>Threats</b>	Requested and granted	222	94.9%
	Not requested, but granted	12	5.1%
	<b>Total</b>	<b>234</b>	<b>100.0%</b>
<b>Exposing child</b>	Requested and granted	114	81.4%
	Not requested, but granted	26	18.6%
	<b>Total</b>	<b>140</b>	<b>100.0%</b>

This table is based on the 360 cases where the complainant's requests on emphasis can be compared to interim protection order outcomes on emphasis, looking only at the orders from that group which placed emphasis on specific forms of abuse.

TABLE 134

Emphasis on specific types of abuse – overview			
Overview of all requests and outcomes		Number	Percent
Physical	Requested and granted	309	85.8%
	Requested, but not granted	10	2.8%
	Not requested, but granted	6	1.7%
	Neither requested nor granted	35	9.7%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Sexual	Requested and granted	114	31.7%
	Requested, but not granted	15	4.2%
	Not requested, but granted	15	4.2%
	Neither requested nor granted	216	60.0%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Economic	Requested and granted	213	59.2%
	Requested, but not granted	21	5.8%
	Not requested, but granted	25	6.9%
	Neither requested nor granted	101	28.1%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Intimidation	Requested and granted	216	60.0%
	Requested, but not granted	16	4.4%
	Not requested, but granted	29	8.1%
	Neither requested nor granted	99	27.5%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Harassment	Requested and granted	221	61.4%
	Requested, but not granted	23	6.4%
	Not requested, but granted	31	8.6%
	Neither requested nor granted	85	23.6%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Trespass	Requested and granted	161	44.7%
	Requested, but not granted	24	6.7%
	Not requested, but granted	29	8.1%
	Neither requested nor granted	146	40.6%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Emotional	Requested and granted	322	89.4%
	Requested, but not granted	15	4.2%
	Not requested, but granted	14	3.9%
	Neither requested nor granted	9	2.5%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Threats	Requested and granted	222	61.7%
	Requested, but not granted	77	21.4%
	Not requested, but granted	12	3.3%
	Neither requested nor granted	49	13.6%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
Exposing child	Requested and granted	114	31.7%
	Requested, but not granted	47	13.1%
	Not requested, but granted	26	7.2%
	Neither requested nor granted	173	48.1%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>

This table is based on all 360 cases where the complainant's requests on emphasis can be compared to interim protection order outcomes on emphasis, to give a more comprehensive picture of interim protection order outcomes on this point.

## 5.13.7 Removal of weapons

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

### WEAPONS

3.1 You are ordered to hand over to the police all firearms in your possession other specific weapon(s) (list: .....).

3.2 Your firearm licence is hereby suspended.

\*\*\*

### ADDITIONAL ORDERS

It is further ordered as follows:

\*\*\*

5.2 A police officer from the ..... police station must seize the following weapons from the respondent: .....

Looking at the 844 protection orders in the sample with sufficient details for analysis, respondents were required to hand over all weapons or specific weapons in 18% of such orders: about 7% of the respondents were ordered to hand over all firearms in their possession to the police, and 11% were ordered to hand over other specified weapons, with the most common weapons named being firearms (47%) and knives (24%). Surprisingly, one order to hand over specific weapons covered a stick and one covered a belt; taking away such ordinary objects seems unlikely to protect the complainant effectively in practice, but could perhaps have symbolic significance.

**TABLE 135**

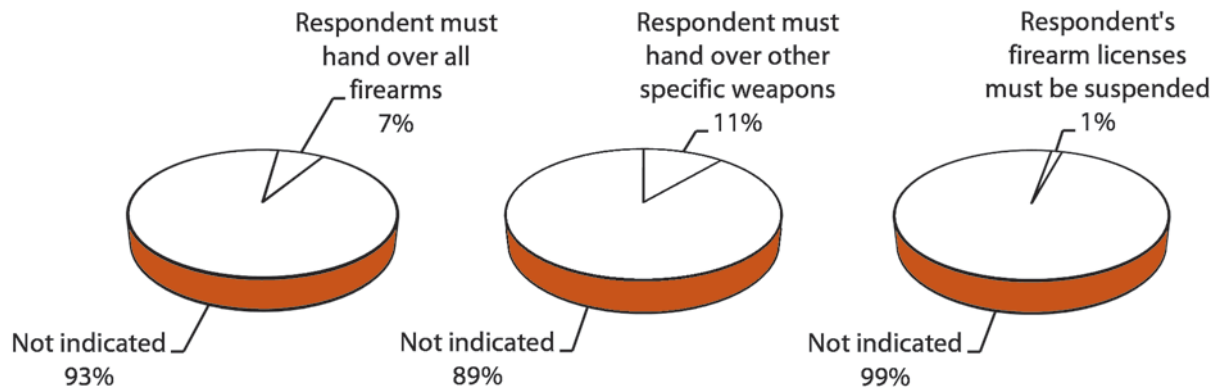
Interim protection order provisions on weapons		
Type of provision	Number	Percent
Respondent must hand over all firearms	56	6.6%
Not indicated	788	93.4%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
Respondent must hand over other specific weapons	95	11.3%
Not indicated	749	88.7%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
Respondent's firearm licenses must be suspended	13	1.5%
Not indicated	831	98.5%
<b>Total</b>	<b>844</b>	<b>100.0%</b>

This table is based on the 844 interim protection orders in the sample where details of the order can be ascertained.

**TABLE 136**

Specified weapons respondent must hand over to the police (multiple weapons could be named)		
Type of weapon	Number	Percent of total weapons named
Firearm	51	46.8%
Knife	26	23.9%
Panga	9	8.3%
Axe	6	5.5%
Knobkierie	2	1.8%
Stick	1	0.9%
Belt	1	0.9%
Traditional weapons	1	0.9%
Other	12	11.0%
<b>Total</b>	<b>109</b>	<b>100.0%</b>

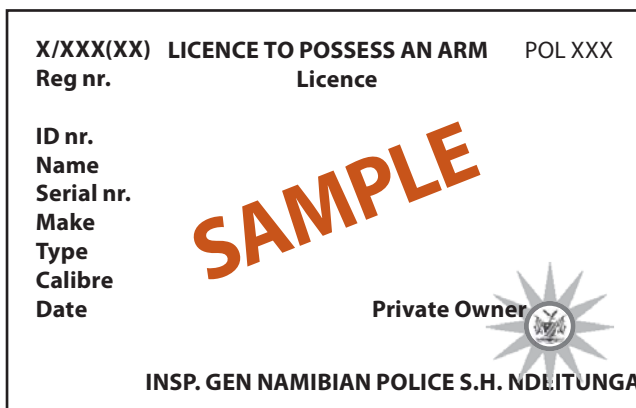
**CHART 79: Interim protection order provisions on weapons**



Looking at the 779 interim protection orders which could be examined for comparison between the complainants' requests and the terms of the interim protection order, **complainants' requests for respondents to hand over weapons to the police were successful roughly half of the time. Courts made orders pertaining to weapons in many cases where this was not requested by the complainant** – close to half (43%) of the orders to hand over specific weapons to the police were made at the court's own initiative, and almost a quarter of the orders to hand over all firearms (24%). However, in the vast majority of cases, no provision concerning weapons was either requested or granted. Removal of weapons may not be much of a safeguard in any event; one clerk of court noted with concern that it is very easy to obtain a firearm in Namibia.

**Less than 2% of interim protection orders included orders for the suspension of respondents' firearm licences. Since each firearm licence applies only to a single specific weapon, this extra precaution would not actually be necessary if the firearm were confiscated by police. Courts made orders to suspend all firearm licences at their own initiative in 10 cases, compared to only 2 cases where such an order was made at the request of the complainant.** Magistrates consulted felt that the existing provision for suspension of firearm licences in protection orders is not useful since there is no mechanism in the Act or regulations for communicating this to the state officials responsible for firearm licences.

It would seem to make more sense to adjust this potential protection order provision (with appropriate amendments to the Combating of Domestic Violence Act and the Arms and Ammunition Act if necessary), so that a magistrate in appropriate cases could combine a protection order enquiry with a consideration of whether the respondent should be declared "*unfit to possess arms*" in terms of the Arms and Ammunition Act. This could disqualify the respondent in question from possessing *any* firearm for a period of up to two years. (See the relevant provisions in the box on the following pages.)



**SAMPLE OF FIREARM LICENCE**

excerpt from the  
**ARMS AND AMMUNITION ACT 7 OF 1996**

**10 Declaration of persons to be unfit to possess arms**

(1) *If a member of the Police is, on the ground of information contained in a statement made under oath or affirmation, of the opinion that there is reason to believe that any person is a person-*

(a) *who has threatened or expressed the intention to kill or injure himself or herself or any other person by means of an arm;*

(b) *whose possession of an arm is not in the interest of that person or any other person as a result of his or her mental condition his or her inclination to violence, whether an arm was used in the violence or not, or his or her dependence on intoxicating liquor or a drug which has a narcotic effect; or*

(c) *who handles an arm in a reckless manner,*  
*the member concerned shall forthwith report the matter to the magistrate of the district in which such person is.*

(2) (a) *This subsection, in so far as it provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of any person's home, is enacted upon the authority conferred by that Sub-Article.*

(b) *A member of the Police may, if he or she has reason to believe that a person contemplated in subsection (1) has an arm in his or her possession, mutatis mutandis in accordance with Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), without prior notice, enter any premises vehicle or vessel and search and seize any such arm as if such arm were concerned in the commission of an offence.*

(3) *The magistrate referred to in subsection (1) or any other magistrate designated by him or her may, on receipt of a report contemplated in that subsection, direct the Inspector-General to-*

(a) *serve a notice in writing upon-*

(i) *the person concerned, calling upon such person to appear before that magistrate at such time and date as may be specified in the notice, in order to answer such alleged grounds of unfitness to possess an arm as may be specified in the notice;*

(ii) *any person who made a statement in connection with the matter, also to appear before that magistrate;*

(b) *instruct the member of the Police contemplated in subsection (1), or any other such member acting in his or her stead, to attend the proceedings.*

(4) *Any person appearing in pursuance of a notice issued under paragraph (a)(i) of subsection (3) shall be entitled-*

(a) *to be represented by a legal practitioner;*

(b) *to cross-examine the person who has been called upon in terms of paragraph (a)(ii) of subsection (3) to appear, under oath or affirmation taken by the magistrate or cause him or her to be so cross-examined through any such legal practitioner, to such extent as the magistrate with a view to a fair and just investigation may allow.*

(5) Upon proof that every notice referred to in paragraph (a) of subsection (3) was duly served upon the person to whom it was addressed, the magistrate may at any time subsequent to the time specified in the notice, whether or not such person complies with the notice, declare the person contemplated in subparagraph (i) of that paragraph to be unfit to possess an arm if the magistrate having regard to-

(a) any reasons, submissions or evidence advanced under oath by or on behalf of such person; and

(b) any other sworn or affirmed information or evidence at his or her disposal,

is satisfied that such person is a person contemplated in paragraph (a), (b) or (c) of subsection (1).

(6) Subject to subsection (7), a person who is convicted by a court of-

(a) a contravention of a provision of this Act relating to the unlawful possession of an arm without the required licence, permit or other authorization. or of section 38(1)(i), (j), (k), (l) or (m), or of any other offence in the commission of which an arm was used (excluding any such conviction following upon the payment of an admission of guilt fine in terms of section 57 of the said Criminal Procedure Act, 1977), is deemed to be declared unfit to possess an arm, unless the court determines otherwise;

(b) an offence referred to in Schedule 1 of this Act in the commission of which an arm was not used, may except in the case where such a conviction follows upon the payment of an admission of a guilt fine referred to in paragraph (a), be declared unfit to possess an arm in the discretion of the court concerned.

(7) The court shall upon convicting any person referred to in paragraph (a) of subsection (6) of where the court exercises a discretion as referred to in paragraph (b) of that subsection, bring the provisions of the paragraph concerned to the notice of such person and afford him or her an opportunity to advance reasons and present evidence why he or she should not be declared or deemed to be declared unfit to possess an arm.

(8) A person declared or deemed to be declared unfit to possess an arm in terms of subsection (5) or (6), shall be so unfit for such period of not less than two years as may be fixed by the court concerned.

## **11 Effect of declaration of unfitness**

(1) All licences, authorizations or permits to possess arms and ammunition referred to in paragraphs (a) and (b) of section 12(1), issued to any person declared under section 10 to be unfit or who is deemed in terms of that section to have been declared unfit to possess an arm, shall cease to be valid as from the date of the declaration concerned.

(2) Subject to sections 29 and 44, no person declared or deemed to be declared under this Chapter to be unfit to possess an arm, shall have an arm in his or her possession at any time while the declaration is of force.

TABLE 137

Interim protection order provisions on weapons – success of requests by complainants			
Outcome of complainant requests		Number	Percent
Hand over all firearms	Requested and granted	41	43.6%
	Requested, but not granted	53	56.4%
	<b>Total</b>	<b>94</b>	<b>100.0%</b>
Hand over other specific weapons	Requested and granted	51	56.0%
	Requested, but not granted	40	44.0%
	<b>Total</b>	<b>91</b>	<b>100.0%</b>
Firearm licenses must be suspended	Requested and granted	2	28.6%
	Requested, but not granted	5	71.4%
	<b>Total</b>	<b>7</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request pertaining to weapons.

TABLE 138

Interim protection order provisions on weapons – basis for interim protection order outcomes where orders contained terms on weapons			
Source of term in protection order		Number	Percent
Hand over all firearms	Requested and granted	41	75.9%
	Not requested, but granted	13	24.1%
	<b>Total</b>	<b>54</b>	<b>100.0%</b>
Hand over other specific weapons	Requested and granted	51	56.7%
	Not requested, but granted	39	43.3%
	<b>Total</b>	<b>90</b>	<b>100.0%</b>
Respondent's firearm licenses must be suspended	Requested and granted	2	16.7%
	Not requested, but granted	10	83.3%
	<b>Total</b>	<b>12</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included provisions on weapons.

TABLE 139

Interim protection order provisions on weapons – overview			
Overview of all requests and outcomes		Number	Percent
Hand over all firearms	Requested and granted	41	5.3%
	Requested, but not granted	53	6.8%
	Not requested, but granted	13	1.7%
	Neither requested nor granted	672	86.3%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
Hand over other specific weapons	Requested and granted	51	6.5%
	Requested, but not granted	40	5.1%
	Not requested, but granted	39	5.0%
	Neither requested nor granted	649	83.3%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
Respondent's firearm licenses must be suspended	Requested and granted	2	0.3%
	Requested, but not granted	5	0.6%
	Not requested, but granted	10	1.3%
	Neither requested nor granted	762	97.8%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant's requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.



## 5.13.8 No-contact provisions

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

### NO-CONTACT PROVISIONS

- 3.3 You must not come near the complainant wherever he or she may be.
- 3.4 You must not enter or come near the complainant's residence, which is at the following address: .....
- 3.5 You must not enter or come near the complainant's workplace, which is at the following address: .....
- 3.6 You must not enter or come near the complainant's educational institution, which is at the following address: .....
- 3.7 You must not enter or come near the following place or address: .....  
.....
- 3.8 You must not communicate in any way with the complainant, except under the following conditions (if any): .....
- 3.9 You must not communicate in any way with the following person(s), except under the following conditions (if any).
- name: .....  
conditions (if any): .....
- name: .....  
conditions (if any): .....
- name: .....  
conditions (if any): .....

### (a) Prohibitions on physical contact

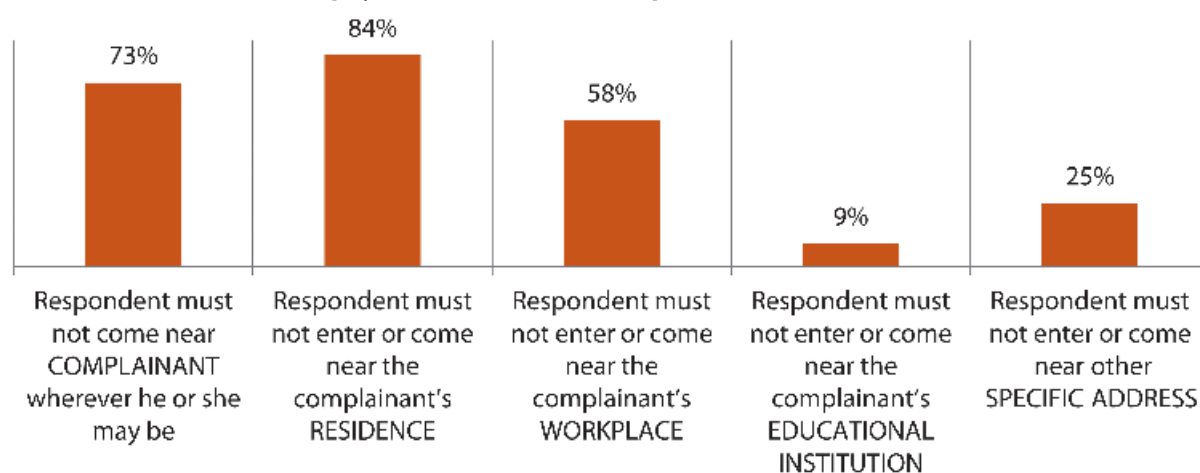
Looking at the 844 interim protection orders in the sample which contain sufficient details for analysis, two-thirds (66%) included at least one form of no-contact order. Particularly common were orders requiring the respondent to stay away from the complainant's residence (contained in 84% of all the interim protection orders in the sample) or to stay away from the complainant wherever he or she may be (contained in 73% of all the interim protection orders in the sample). About 58% of the interim protection orders in the sample contained no-contact orders pertaining to the complainant's workplace – which is a high percentage considering that only 68% of all the complainants indicated that they were employed. Only a few (9%) had orders pertaining to the complainant's educational institution, probably reflecting the fact that few complainants were students.

The vast majority of requests for general no-contact provisions or for restrictions from the complainant’s residence or workplace were successful, along with about half of the requests for restriction from educational institutions or other specific addresses. Most general no-contact provisions and restrictions from the complainant’s residence or workplace resulted from requests by the complainant. The court more often proposed restrictions from educational institutions (perhaps seeking to protect younger complainants) or other specific addresses (perhaps seeking to protect third parties).

**TABLE 140**

Prohibitions on physical contact in interim protection orders		
	Number	Percent
Respondent must not come near COMPLAINANT wherever he or she may be	617	73.1%
No such order	227	26.9%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
Respondent must not enter or come near the complainant’s RESIDENCE	710	84.1%
No such order	134	15.9%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
Respondent must not enter or come near the complainant’s WORKPLACE	486	57.6%
No such order	358	42.4%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
Respondent must not enter or come near the complainant’s EDUCATIONAL INSTITUTION	77	9.1%
No such order	767	90.9%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
Respondent must not enter or come near the following other SPECIFIC ADDRESS	209	24.8%
No such order	635	75.2%
<b>Total</b>	<b>844</b>	<b>100.0%</b>

**CHART 80: Prohibitions on physical contact in interim protection orders**



*What I am requesting, I just want him to support my children and he must leave us alone. I am going to move out of his place and he must not come near me or my children. I did not [give] him permission to abuse me like this. I want to go on with my life. I cannot take it anymore.*

22-year-old female complainant applying for a protection order against her boyfriend

*The respondent is taking his stress out on us. He expects us to solve his problems. If we don't help he swears at us and starts to get violent and threatens us. He never comes to our house in good faith.*

66 year-old-male complainant applying for a protection order against his 27-year-old son

**TABLE 141**

<b>Prohibitions on physical contact in interim protection orders – success of requests by complainants</b>			
<b>Outcome of complainant requests</b>		<b>Number</b>	<b>Percent</b>
<b>Respondent must not come near COMPLAINANT</b>	Requested and granted	560	81.5%
	Requested, but not granted	127	18.5%
	<b>Total</b>	<b>687</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's RESIDENCE</b>	Requested and granted	625	90.8%
	Requested, but not granted	63	9.2%
	<b>Total</b>	<b>688</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's WORKPLACE</b>	Requested and granted	389	85.1%
	Requested, but not granted	68	14.9%
	<b>Total</b>	<b>457</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's EDUCATIONAL INSTITUTION</b>	Requested and granted	45	51.1%
	Requested, but not granted	43	48.9%
	<b>Total</b>	<b>88</b>	<b>100.0%</b>
<b>Respondent must not enter or come near the following other SPECIFIC ADDRESS</b>	Requested and granted	140	46.8%
	Requested, but not granted	159	53.2%
	<b>Total</b>	<b>299</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request for some no-contact provision.

**TABLE 142**

<b>Prohibitions on physical contact in interim protection orders – basis for interim protection order outcomes where orders contained no-contact provisions</b>			
<b>Source of term in protection order</b>		<b>Number</b>	<b>Percent</b>
<b>Respondent must not come near COMPLAINANT</b>	Requested and granted	560	95.6%
	Not requested, but granted	26	4.4%
	<b>Total</b>	<b>586</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's RESIDENCE</b>	Requested and granted	625	94.1%
	Not requested, but granted	39	5.9%
	<b>Total</b>	<b>664</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's WORKPLACE</b>	Requested and granted	389	86.1%
	Not requested, but granted	63	13.9%
	<b>Total</b>	<b>452</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's EDUCATIONAL INSTITUTION</b>	Requested and granted	45	60%
	Not requested, but granted	30	40%
	<b>Total</b>	<b>75</b>	<b>100.0%</b>
<b>Respondent must not enter or come near the following other SPECIFIC ADDRESS</b>	Requested and granted	140	72.2%
	Not requested, but granted	54	27.8%
	<b>Total</b>	<b>194</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included some no-contact provision.

**TABLE 143**

<b>Prohibitions on physical contact in interim protection orders – overview</b>			
<b>Overview of all requests and outcomes</b>		<b>Number</b>	<b>Percent</b>
<b>Respondent must not come near COMPLAINANT</b>	Requested and granted	560	71.9%
	Requested, but not granted	127	16.3%
	Not requested, but granted	26	3.3%
	Neither requested nor granted	66	8.5%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's RESIDENCE</b>	Requested and granted	625	80.2%
	Requested, but not granted	63	8.1%
	Not requested, but granted	39	5.0%
	Neither requested nor granted	52	6.7%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's WORKPLACE</b>	Requested and granted	389	49.9%
	Requested, but not granted	68	8.7%
	Not requested, but granted	63	8.1%
	Neither requested nor granted	259	33.2%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>Respondent must not enter or come near complainant's EDUCATIONAL INSTITUTION</b>	Requested and granted	45	5.8%
	Requested, but not granted	43	5.5%
	Not requested, but granted	30	3.9%
	Neither requested nor granted	661	84.9%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>Respondent must not enter or come near the following other SPECIFIC ADDRESS</b>	Requested and granted	140	18.0%
	Requested, but not granted	159	20.4%
	Not requested, but granted	54	6.9%
	Neither requested nor granted	426	54.7%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant’s requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

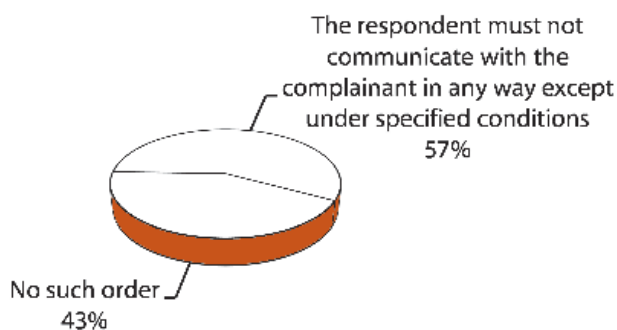
## **(b) Prohibitions on communication with complainant**

**More than half of all interim protection orders in the sample (57%) contained a restriction on communication with the complainant by the respondent. Most of these (60%) allowed for limited communication under specified conditions, with the others forbidding communication completely.**

The most common types of conditions attached to no-contact provisions were communication only in circumstances related to the children (31%) or only via a third party (16%) such as specified family members, a police officer or a social worker. There were a few exceptions for emergencies or for financial matters. For example, one order allowed the respondent to telephone the complainant to let her know when he had deposited the money to repay a loan from her. Several made exceptions for communication about child maintenance. Several allowed communication if the respondent was sober, and two allowed communication if there were no accompanying assaults or insults (understandable but difficult to enforce).

**About 72% of the requests for restrictions on communication with the complainant were granted, and some 74% of the interim protection orders containing no-communication provisions resulted from a request by the complainant.**

**CHART 81: Prohibitions on communication with complainants in interim protection orders**



**TABLE 144**

Prohibitions on communication with complainants in interim protection orders		
	Number	Percent
The respondent must not communicate with the complainant in any way except under specified conditions	484	57.3%
No such order	360	42.7%
<b>Total</b>	<b>844</b>	<b>100.0%</b>

**TABLE 145**

Conditions attached to communication with complainants		
Condition	Number	Percent
None (no communication under any circumstances)	162	39.8%
Only with respect to children	128	31.4%
Only via third party	67	16.5%
Only by telephone	17	4.2%
Only in case of emergency	8	2.0%
Only concerning financial matters	7	1.7%
Only when sober	7	1.7%
Only by arrangement	4	1.0%
Other conditions	7	1.7%
<b>Total</b>	<b>407</b>	<b>100.0%</b>

**TABLE 146**

Prohibitions on communication with complainants in interim protection orders – success of requests by complainants			
Outcome of complainant requests		Number	Percent
<b>Respondent must not communicate with complainant (except under specified conditions)</b>	Requested and granted	335	72.2%
	Requested, but not granted	129	27.8%
	<b>Total</b>	<b>464</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request for some no-contact provision.

**TABLE 147**

Prohibitions on communication with complainants in interim protection orders – basis for interim protection order outcomes where orders contained such provisions			
Source of term in protection order		Number	Percent
<b>Respondent must not communicate with complainant (except under specified conditions)</b>	Requested and granted	335	73.5%
	Not requested, but granted	121	26.5%
	<b>Total</b>	<b>456</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included some no-contact provision.

**TABLE 148**

Prohibitions on communication with complainants in interim protection orders – overview			
Overview of all requests and outcomes		Number	Percent
<b>Respondent must not communicate with complainant (except under specified conditions)</b>	Requested and granted	335	43.0%
	Requested, but not granted	129	16.6%
	Not requested, but granted	121	15.5%
	Neither requested nor granted	194	24.9%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant's requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

Following a similar pattern as that seen in the applications, a majority of interim protection orders (57%) contained provisions specifying no physical contact with the complainant *and* restrictions on communication between the respondent and the complainant. Only four interim protection orders included a restriction on communication without also including an order forbidding physical contact.

### (c) Prohibitions on communication with third parties

About one-fifth of the interim protection orders in the sample contained provisions restraining the respondent from communicating with someone other than the complainant. Most of these third party provisions covered one to three individuals, most of whom were children of the complainant and respondent together, or children of the complainant (including both adult offspring and children under age 18). Siblings, parents, grandchildren and other relatives of the complainant were also mentioned, as well as the current spouses or partners of the complainant and a few domestic workers. Just over two-thirds (67%) of the third parties covered by such orders were under age 18. There were slightly more females (57%) than males amongst the persons covered.

**TABLE 149**

Prohibitions on communication with third parties		
	Number	Percent
Order contains a restriction on communication with third parties	176	20.9%
No such provision	668	79.1%
<b>Total</b>	<b>844</b>	<b>100.0 %</b>

**TABLE 150**

Number of third parties covered by orders prohibiting communication			
Number of persons	Number of cases	Percent	Total number of persons
One	68	38.6%	68
Two	53	30.1%	106
Three	38	21.6%	114
Four	14	8.0%	56
Five	2	1.1%	10
Seven	1	0.6%	7
<b>Total</b>	<b>176</b>	<b>100.0%</b>	<b>361</b>

**CHART 82: Prohibitions on communication with third parties**

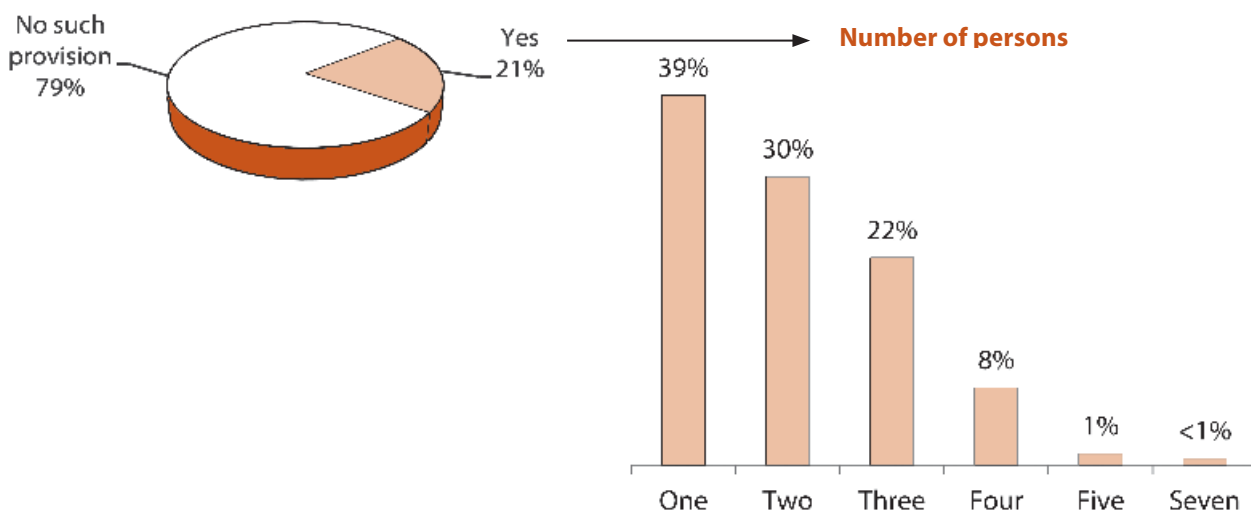


TABLE 151

Demographic characteristics of third parties covered by order prohibiting communication by respondent				
	Characteristic	Number	Percent	
Relationship to complainant	Son/daughter of complainant and respondent	147	40.7%	
	Son/daughter of complainant	46	12.7%	
	Son/daughter (not specified)	29	8.0%	
	Son/daughter of spouse/partner	2	0.6%	
	Grandchild of both	2	0.6%	
	Grandchild of complainant	8	2.2%	
	Brother/sister of complainant	16	4.4%	
	Brother/sister of spouse/partner	3	0.8%	
	Parent of complainant	27	7.5%	
	Other relative	24	6.6%	
	Spouse/partner of complainant	9	2.5%	
	Boy/girlfriend of complainant	2	0.6%	
	Housekeeper / domestic employee	4	1.1%	
	Witness	1	0.3%	
	Other non-relative	9	2.5%	
	Other (not clear)	28	7.8%	
	Relationship not clear	4	1.1%	
		<b>Total</b>	<b>361</b>	<b>100.0%</b>
Sex	Male	137	42.8%	
	Female	183	57.2%	
	<b>Total</b>	<b>320</b>	<b>100.0%</b>	
Age group	0-4	33	11.4%	
	5-9	72	24.8%	
	10-14	61	21.0%	
	15-17	28	9.7%	
	18-20	11	3.8%	
	21-24	15	5.2%	
	25-29	12	4.1%	
	30-34	6	2.1%	
	35-39	6	2.1%	
	40-44	10	3.4%	
	45-49	5	1.7%	
	50-54	12	4.1%	
	55-59	6	2.1%	
		<b>Total</b>	<b>290</b>	<b>100.0%</b>

About 65% of the restrictions on communication with third parties were absolute, while others set conditions similar to those provided for communication with complainants. The most common condition was for contact to be permitted only if a police officer, lawyer or social worker is present (15%), followed by contact only by appointment or permission (5.5%) and contact only if a family member is present (4%). Amongst the other conditions ordered were contact only if about the children (2%), if requested by the child or if the child is sick.

About 62% of the requested provisions restricting communication with third parties were granted by the court. Conversely, about 66% of the provisions of this nature were the result of requests by the complainant. Courts seem to have been willing to intervene to protect third parties in domestic violence situations, initiating over 36% of such provisions granted. (As Table 142 shows, courts similarly initiated almost 30%

of the orders restricting the respondent from being at or near an address other than the complainant's home, workplace or school, also designed to help protect third parties.) However, as already noted, only a relatively small number of the interim protection orders in the sample included provisions prohibiting contact with third parties at all (about 20%).

**TABLE 152**

<b>Prohibitions on communication with third parties</b>		
	<b>Number</b>	<b>Percent</b>
No contact may be made	194	66.2%
Contact only if supervised by a police officer, lawyer or social worker	43	14.7%
Contact by appointment/permission	16	5.5%
Contact only if a family member is present	11	3.8%
Contact can be made by a relative only	6	2.0%
Other (when the respondent is sober, provided the respondent does not threaten the complainant, if a family member is sick)	6	2.0%
Contact restricted on a time basis (monthly or weekly)	5	1.7%
Contact may only be made if it is about the children	5	1.7%
Contact under supervision (unspecified who will supervise / supervision of the complainant)	4	1.4%
Contact must be requested by the child/if the child is sick	3	1.0%
<b>Total</b>	<b>293</b>	<b>100%</b>

**TABLE 153**

<b>Prohibitions on communication with third parties in interim protection orders – success of requests by complainants</b>			
<b>Outcome of complainant requests</b>		<b>Number</b>	<b>Percent</b>
<b>Respondent must not communicate with specified persons in any way</b>	Requested and granted	104	62.3%
	Requested, but not granted	63	37.7%
	<b>Total</b>	<b>167</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request for a provision restricting communication with third parties.

**TABLE 154**

<b>Prohibitions on communication with third parties in interim protection orders – basis for interim protection order outcomes where orders contained such provisions</b>			
<b>Source of term in protection order</b>		<b>Number</b>	<b>Percent</b>
<b>Respondent must not communicate with specified persons in any way</b>	Requested and granted	104	65.8%
	Not requested, but granted	54	34.2%
	<b>Total</b>	<b>158</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included a provision restricting communication with third parties.

**TABLE 155**

<b>Prohibitions on communication with third parties in interim protection orders – overview</b>			
<b>Overview of all requests and outcomes</b>		<b>Number</b>	<b>Percent</b>
<b>Respondent must not communicate with specified persons in any way</b>	Requested and granted	104	13.4%
	Requested, but not granted	63	8.1%
	Not requested, but granted	54	6.9%
	Neither requested nor granted	558	71.6%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant's requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.



## 5.13.9 Exclusive occupation of joint residence

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

**EXCLUSIVE OCCUPATION OF A JOINT RESIDENCE**

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

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

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

**3.12 You must leave the following items at the joint residence for the use of the complainant ..... (date).**

.....  
.....

\*\*\*

**ADDITIONAL ORDERS**

It is further ordered as follows:

\*\*\*

**5.3 A police officer from the ..... police station must remove the respondent from the joint residence.**

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

Protection orders can include orders for exclusive occupation of a joint residence, along with ancillary orders about the contents of this residence and police assistance with enforcement and protection during the transition. Such provisions are available only “*if an act of physical violence has been committed*”.<sup>121</sup>

Courts are expected to take into account the following factors in considering whether or not to make such orders:

- the length of time that the residence has been shared by the complainant and the respondent (without prejudicing a complainant who has at any stage fled the common residence for safety reasons);

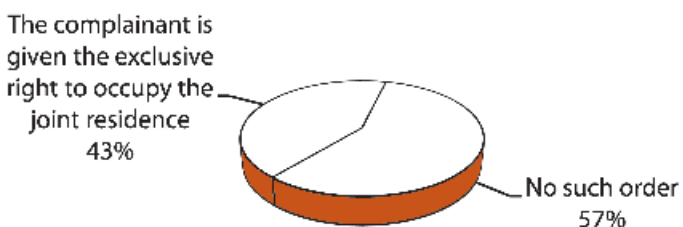
<sup>121</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(c).

- 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 and any children in the complainant’s care;
- any undue hardship that may be caused to the respondent or to any other person as a result of such an order; and
- 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.<sup>122</sup>

## (a) Exclusive occupation of residence

Close to half of all interim protection orders (43%) included an order giving the complainant an exclusive right to occupy a joint residence – a relatively high proportion considering that only 60% of the complainants who sought protection orders were sharing a common residence with the respondent. The vast majority of such orders were accompanied by some provision pertaining to household contents.

**CHART 83: Exclusive occupation of joint residence in interim protection orders**



**TABLE 156**

Exclusive occupation of joint residence in interim protection orders		
	Number	Percent
The complainant is given the exclusive right to occupy the joint residence	360	42.7%
No such order	484	57.3%
<b>Total</b>	<b>844</b>	<b>100.0%</b>

Almost two-thirds of requests for exclusive occupation of a joint residence were granted as part of interim protection orders (360 out of 551 requests). Curiously, some 18% of these complainants did not indicate on their application form that they were currently sharing a residence with the respondent. These could have included complainants who had already fled a joint residence, complainants who had been displaced from their own homes by respondents or complainants who misunderstood the application forms. There may have been cases where complainants spoke personally with magistrates before the decision was made, and thus had a chance to amplify the information on the written application form.

**TABLE 157**

Sharing of joint residence compared to interim protection orders in exclusive occupation of joint residence				
Cross-tabulation		Complainant granted exclusive right to occupy joint residence?		
		Yes	Not indicated	Total
Complainant currently shares a residence with respondent	Yes	266	211	477
	No	64	241	305
	Missing	30	32	62
	<b>Total</b>	<b>360</b>	<b>484</b>	<b>844</b>

We have attempted a close analysis of which complainants were granted exclusive occupation of a joint residence, because this provision may be more controversial than other terms in protection orders. Most complainants who were granted a right of exclusive occupation of a joint residence were women, which is not surprising given that the vast majority of complainants overall were women. However, **women fared somewhat better than men in the success rates of requests for a right of exclusive occupation**, as Table 158 shows.

<sup>122</sup> *Ibid.*

**TABLE 158**

<b>Sex of complainants requesting and receiving right to exclusive occupation of joint residence</b>				
<b>Sex</b>	<b>Complainant REQUESTS exclusive occupation of joint residence</b>		<b>Complainant GRANTED occupation of joint residence in interim protection order</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
Male	63	11.4%	30	8.3%
Female	488	88.6%	330	91.7%
<b>Total</b>	<b>551</b>	<b>100.0%</b>	<b>360</b>	<b>100.0%</b>

The vast majority of these orders (at least 88%) involved intimate partners of some sort. Almost three-fourths of complainants who were granted a right of exclusive occupation of a joint residence were spouses (74%), mostly wives (71%). Another 9% appear to have been cohabiting partners of the respondents (mostly girlfriends and a few boyfriends). About 4% were parents of the respondents. These predominant relationship categories are consistent with situations where the parties would logically have had a common home or some kind of right to a common home.

**TABLE 159**

<b>Relationship of complainant to respondent in cases where complainants granted exclusive right to occupy joint residence in interim protection orders</b>		
<b>Relationship to respondent</b>	<b>Number</b>	<b>Percent</b>
Wife	248	70.7%
Husband	12	3.4%
Ex-wife	9	2.6%
Ex-husband	1	0.3%
Girlfriend	28	8.0%
Boyfriend	4	1.1%
Ex-girlfriend	16	4.6%
Mother	11	3.1%
Father	3	0.9%
Sister	2	0.6%
Brother	2	0.6%
Grandmother	1	0.3%
Other	14	4.0%
<b>Total</b>	<b>351</b>	<b>100.0%</b>

One of the factors which the court is required to consider in making such an order is the length of time that the parties have shared a joint residence. One intent behind this requirement is to prevent complainants from acting opportunistically. Also, where the parties have only recently begun sharing a common home, it is likely to be easier for them to make alternative arrangements – such as returning to a previous residence.

The interim protection orders which granted complainants exclusive occupation of a joint residence seem to have complied with the law on this point. Where complainants in these cases were currently sharing a joint residence, the mean time period was 10 years and the median time period was 8 years; where they had previously shared a joint residence (but were not currently doing so), the mean time period was 7 years and the median time period was 5 years. Some had been living in the same home for more than 30 years (with this group probably including some parents and children).

**TABLE 160**

<b>Exclusive occupation of a joint residence: average duration of living together (in years)</b>					
	<b>Number</b>	<b>Mean</b>	<b>Median</b>	<b>Minimum</b>	<b>Maximum</b>
Currently sharing residence	238	10.0	8.0	0	37
Previously sharing residence	84	7.2	5.0	0	35

Only about 5% of the parties in this group had been sharing a home for less than one year (12 cases where the parties were currently living in a common home, and 5 cases where they had previously lived in a common home).

**TABLE 161**

Sharing joint residence: time period			
	Time	Number	Percent
Currently sharing joint residence: time period	Less than one year	12	5.0%
	1-4 years	54	22.7%
	5-9 years	70	29.4%
	10-14 years	41	17.2%
	15-19 years	27	11.3%
	20 years or more	34	14.3%
	<b>Total</b>	<b>238</b>	<b>100.0%</b>
Previously shared joint residence: time period	Less than one year	5	6.0%
	1-4 years	34	40.5%
	5-9 years	22	26.2%
	10-14 years	9	10.7%
	15-19 years	10	11.9%
	20 years or more	4	4.8%
	<b>Total</b>	<b>84</b>	<b>100.0%</b>

Cases with missing data excluded.

About 54% of the orders granting a right of exclusive occupation to the complainant covered residences owned or leased by the complainants, with another 35% covering residences jointly owned or leased – for a total of 89%. This indicates that protection orders are *not* generally being abused to try and gain temporary rights to the property of respondents, who were the sole owners or leaseholders of the residence in question in only 6% of these cases.

The fact that almost two-thirds of complainants were successful in their requests for exclusive occupation of a joint residence is not surprising, given the high proportion of cases where complainants were simply trying to gain peaceful enjoyment of their own property; where the residence was owned by the complainant, requests for exclusive occupation were granted in about half of all requests, compared to about 40% of the much smaller number of such requests in cases where the joint residence was owned by the respondent.

**TABLE 162**

Ownership status of joint residence where interim protection order granted right of exclusive occupation to complainant		
Ownership	Number	Percent
Owned by complainant	105	41.0%
Owned by respondent	11	4.3%
Owned by both	89	34.8%
Leased by complainant	31	12.1%
Leased by respondent	5	2.0%
Leased by both	9	3.5%
On communal land allocated to complainant	1	0.4%
Other	5	2.0%
<b>Total</b>	<b>256</b>	<b>100.0%</b>

**TABLE 163**

Ownership of residence and right of exclusive occupation of joint residence – requests compared to interim protection orders granted					
Ownership of residence	Requests		Interim protection orders		Success rate
	Number	Percent	Number	Percent	
Residence owned/leased by or on communal land allocated to COMPLAINANT	270	54.8%	137	53.5%	51%
Residence owned/leased by BOTH	172	34.9%	98	38.3%	57%
Residence owned/leased by RESPONDENT	40	8.1%	16	6.3%	40%
Other	11	2.0%	5	2.0%	45%
<b>Total</b>	<b>493</b>	<b>100.0%</b>	<b>256</b>	<b>100.0%</b>	<b>52%</b>

One question raised by this data is: why would a complainant need an order for exclusive occupation of a joint residence which the complainant alone owns or leases? If the parties are married, then there are certain common-law principles which currently apply to the matrimonial home regardless of the marital property regime which applies to the marriage, and regardless of which spouse owns or leases the home. Both spouses have a right to occupy the matrimonial home, and neither spouse has a right to eject the other spouse from the matrimonial home without providing suitable alternative accommodation, even if the matrimonial home is owned by one spouse alone. A similar principle applies to the appurtenances of the matrimonial home, such as the furniture. However, a spouse has the right to protect his or her occupation of the matrimonial home against interference by the other spouse, which occurs most often in the form of domestic violence or threats of such violence. The traditional remedy in such cases has been to seek an interdict from the High Court restraining the violent spouse from remaining in or entering the matrimonial home.<sup>123</sup> The possibility of obtaining a provision in a protection order for exclusive occupation of the matrimonial home is another way of lawfully overruling the normal right to joint occupation.

If the parties are not married, in theory the complainant could evict the respondent and lay a charge of trespass if the respondent refused to comply. However, in a context where there is already domestic violence, the potential perils of following this course of action are obvious.

Most of the orders for exclusive occupation in the sample of interim protection orders were the result of requests by the complainant (80%), with about 20% being at the court's initiative.

**TABLE 164**

<b>Exclusive occupation of joint residence – success of requests by complainants</b>			
<b>Outcome of complainant requests</b>		<b>Number</b>	<b>Percent</b>
<b>Exclusive occupation of joint residence</b>	Requested and granted	270	63.7%
	Requested, but not granted	154	36.3%
	<b>Total</b>	<b>424</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request for exclusive occupation of the joint residence.

**TABLE 165**

<b>Exclusive occupation of joint residence – basis for interim protection order outcomes where orders contained such a provision</b>			
<b>Source of term in protection order</b>		<b>Number</b>	<b>Percent</b>
<b>Exclusive occupation of joint residence</b>	Requested and granted	270	79.6%
	Not requested, but granted	69	20.4%
	<b>Total</b>	<b>339</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included a provision for exclusive occupation of the joint residence.

**TABLE 166**

<b>Exclusive occupation of joint residence – overview</b>			
<b>Overview of all requests and outcomes</b>		<b>Number</b>	<b>Percent</b>
<b>Exclusive occupation of joint residence</b>	Requested and granted	270	34.7%
	Requested, but not granted	154	19.8%
	Not requested, but granted	69	8.9%
	Neither requested nor granted	286	36.7%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant's requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

<sup>123</sup> HR Hahlo, *The South African Law of Husband and Wife*, 4th edition, Wynberg: Juta, 1975 at 121-22; June Sinclair, *The Law of Marriage*, Volume I, Cape Town: Juta, 1996 at 476-477.

The Combating of Domestic Violence Act sets different limits on the duration of provisions relating to exclusive occupation of the joint residence in *final* protection orders, depending on the ownership of the premises:

- 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.*<sup>124</sup>

An interim protection order by its nature remains in force only until the return date, after which it must be confirmed as a final protection order to remain in force. Accordingly, in the vast majority of cases (about 94%) courts appear to have made orders for exclusive occupation of the joint residence effective only up until the return date (when the respondent is supposed to appear in court to give his or her side of the story), until such time as a final order was issued (on an unspecified date), or some approximation of one of these.<sup>125</sup>

However, a very small number of interim protection orders provided for exclusive occupation of the joint residence for a longer duration. The interim protection order would not normally remain effective beyond the return date (taking postponements into account<sup>126</sup>). Therefore, the orders for exclusive occupation of the joint residence of longer duration must have been intended to put the respondent on notice of what duration was being contemplated should the interim protection order be confirmed as a final protection order; even though it is unlikely that a court could be sure what duration would be appropriate for such an order prior to hearing from the respondent at the enquiry.

The few orders with dates of validity ending more than 30 days *prior* to the return date are hard to understand, as the return date is supposed to be 30 days *after* the date the interim protection order is issued – although the court may extend this period to ensure that at least 10 days have elapsed since the respondent received the interim protection order.<sup>127</sup> These few cases probably reflect errors by the court or the researchers who transcribed the data.

**While is not possible for the interim protection order to have more than a temporary duration, it would be useful to a respondent who must decide whether or not to oppose**

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<sup>124</sup> Combating of Domestic Violence Act 4 of 2003, section 15(a)-(c). No duration is specified where the order pertains to a residence on communal land allocated to the complainant or the respondent (or both).

<sup>125</sup> The rows shaded grey in Table 167 have been included in this category.

<sup>126</sup> Combating of Domestic Violence Act 4 of 2003, section 12(11): “If a court postpones an enquiry it must extend any interim protection order which is in force accordingly.”

<sup>127</sup> *Id.*, section 8(5).

the order to know the *contemplated* duration of an order for exclusive occupation of a joint residence. Thus, it would be useful to provide a place on the form where magistrates could indicate the likely or maximum duration of the provision if the order is confirmed without opposition. The current wording of the form does not really allow for this, since it refers to the length of time that the provision will “*remain in force*”, which is technically only until the return date, or until the interim order is confirmed or replaced by a final order. **The wording of the form should be revised to allow the magistrate to indicate the duration which will be operative if the respondent fails to oppose the interim order.**

**TABLE 167**

<b>Duration of orders for EXCLUSIVE OCCUPATION of joint residence in interim protection orders</b>		
<b>Duration</b>	<b>Number</b>	<b>Percent</b>
> 30 days before return date	1	0.3%
1-30 days before return date	4	1.2%
Until return date	253	74.9%
For 30 days	2	0.6%
Until date of enquiry	3	0.9%
Until final order	51	15.1%
1-30 days after return date	9	2.7%
Until expiry date	1	0.3%
30 days-12 months after return date	2	0.6%
> 12 months after return date	2	0.6%
Until further notice	10	3.0%
<b>Total</b>	<b>338</b>	<b>100.0%</b>

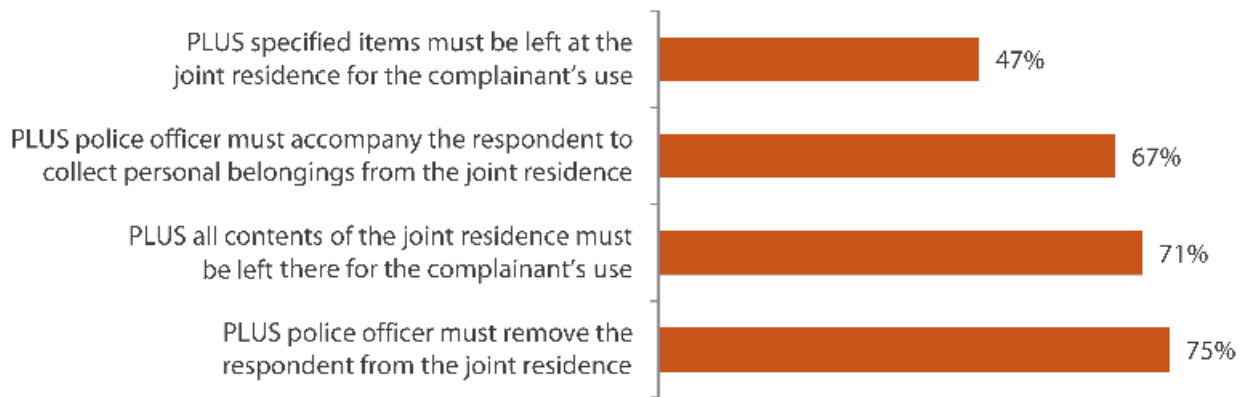
## **(b) Orders pertaining to contents of joint residence and police assistance with removing respondent and respondent’s personal belongings**

Many of the orders for exclusive occupation of a joint residence were accompanied by ancillary orders aimed at preventing violence from arising around property disputes.

**TABLE 168**

<b>Ancillary orders given together with order for exclusive occupation of joint residence</b>			
		<b>Number</b>	<b>Percent</b>
<b>Complainant is given exclusive right to occupy the joint residence</b>		360	100.0%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
<b>PLUS all contents of the joint residence must be left there for the complainant’s use</b>	Yes	254	70.6%
	Not indicated	106	29.4%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
<b>PLUS specified items must be left at the joint residence for the complainant's use</b>	Yes	171	47.5%
	Not indicated	189	52.5%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
<b>PLUS police officer must remove the respondent from the joint residence</b>	Yes	269	74.7%
	Not indicated	91	25.3%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>
<b>PLUS police officer must accompany the respondent to collect personal belongings from the joint residence</b>	Yes	243	67.5%
	Not indicated	117	32.5%
	<b>Total</b>	<b>360</b>	<b>100.0%</b>

**CHART 84: Ancillary orders given together with order for exclusive occupation of joint residence**



**Three-quarters (75%) of the interim orders which authorised the complainant to have exclusive occupation of a joint residence also ordered that a police officer must remove the respondent from the common residence.** This is very sensible, as it would probably be extremely dangerous for a complainant who had already experienced some form of physical violence to confront the respondent alone with a piece of paper ordering his or her removal. So, without police assistance, it is difficult to imagine how an order for exclusive occupation would be enforced. **In the same vein, more than two-thirds of these orders (68%) specified that a respondent who wanted to collect personal belongings from the common residence must be accompanied by a police officer.**

**About 71% of the interim protection orders for exclusive occupation of a joint residence also ordered that all of the contents of that residence must remain in place for the complainant's use. About 48% of the orders for exclusive occupation included an order stating that specified contents of the joint residence must remain in place for the complainant's use. There was a big overlap between these two categories; 87% of the interim protection orders which included an order pertaining to specific contents of a residence also contained an order referring to all the contents of the residence, and 62% of the interim protection orders which included an order referring to all the contents of the residence also included an order pertaining to specific contents of the residence.**

Furthermore, quite a few orders pertaining to specific items essentially covered all the contents of the joint household, by covering “everything in the house”, “everything except respondent's personal belongings”, “all household items and furniture” or similar.

We theorised that the overlap between requests for both types of provisions pertaining to contents could have stemmed from confusion about the application form or from complainants' desire to present a fall-back position in case the court did not grant the more inclusive order pertaining to all contents, but that theory does not apply to the actual order. Perhaps some magistrates felt it useful to give emphasis to specific items, or perhaps the logic of including overlapping provisions was not carefully considered given the urgency of such applications.

**TABLE 169**

Overlap between orders for <u>all</u> contents of joint residence and <u>specified</u> contents of joint residence				
Cross-tabulation		Specified items must be left at the joint residence for the complainant's use		Total
		Yes	Not indicated	
All contents of the joint residence must be left there for the complainant's use	Yes	189	115	304
	Not indicated	29	511	540
	Total	218	626	844



In addition to listing items of furniture and appliances, some orders pertaining to household contents specified more unusual items such as food, livestock, building materials, a gearbox and a panga. Nine orders covered vehicles.

**TABLE 170**

<b>Requests for orders for specific items to be left in the joint residence for complainant's use</b>		
<b>Items named</b> (multiple responses possible)	<b>Number of responses</b>	<b>Percent of total responses</b>
All the property in the house	194	66.2%
Furniture (beds, chairs, dining room suites, wall units, room dividers etc)	97	27.2%
Basic appliances (stoves, fridges/freezers, washing machine etc)	48	13.5%
All the property excluding respondents belongings	45	12.6%
Entertainment (television, stereo, hi-fi, satellite dish etc)	35	9.8%
Kitchenware and linens (cutlery, kitchenware and bedding)	16	4.5%
Other items (telephone, gas cylinder, food, water container, panga, gearbox)	10	2.8%
Vehicles (cars, trailers, caravans, bicycles)	9	2.5%
Building materials (zinc plates / corrugated iron sheets, steel/wooden poles, bricks)	8	2.2%
All property owned by the complainant	7	2.0%
Personal items (cosmetics and clothes)	5	1.4%
Joint property	4	1.1%
Livestock (cattle, goats, all livestock)	3	0.8%
Security items (house/car keys)	2	0.6%
Computers	2	0.6%
Documents (ID documents)	1	0.3%
<b>Total</b>	<b>356</b>	<b>100.0%</b>

**The orders pertaining to contents of a joint residence and to police assistance with removing a respondent from a joint residence or accompanying the respondent to collect personal belongings were conceptualised in the law as being ancillary to orders for exclusive occupation of a joint residence, but these “ancillary orders” were often included in interim protection orders which did *not* include an order for exclusive occupation of a joint residence.** As Table 171 on the following page shows, roughly 20% of the orders for police protection in respect of a respondent's visit to a joint residence to collect property, and police assistance to remove a respondent from a joint residence, were made *in the absence* of an order for exclusive occupation of a joint residence. These could have applied in situations where the joint residence was owned by the complainant, meaning that there may have been no need for an order giving a right of exclusive occupation, especially if the parties were unmarried.

Some 10% of orders pertaining to some or all of the contents of a joint residence were also made *in the absence* of an order for exclusive occupation of a joint residence.

It may be that the drafters of the Act underestimated the situations where a previous joint residence has given rise to complex property arrangements, or the fluidity of some living arrangements. It may also be that the complexity of the forms caused confusion, and that the property referred to was not actually tied to a joint residence, or that concerns about the need for police protection arose in cases where there was no joint residence. **This points to the need to provide statutory authority for more flexible terms in protection orders, as well as simpler forms.**

**TABLE 171**

<b>Ancillary orders given in absence of order for exclusive occupation of joint residence</b>			
		<b>Number</b>	<b>Percent</b>
<b>Complainant is NOT given exclusive right to occupy the joint residence</b>		484	100.0%
	<b>Total</b>	<b>484</b>	<b>100.0%</b>
<b>BUT all contents of joint residence must be left for complainant's use</b>	Yes	50	10.3%
	Not indicated	434	89.7%
	<b>Total</b>	<b>484</b>	<b>100.0%</b>
<b>BUT specified items must be left at joint residence for complainant's use</b>	Yes	47	9.7%
	Not indicated	437	90.3%
	<b>Total</b>	<b>484</b>	<b>100.0%</b>
<b>BUT police officer must remove respondent from joint residence</b>	Yes	112	23.1%
	Not indicated	372	76.9%
	<b>Total</b>	<b>484</b>	<b>100.0%</b>
<b>BUT police officer must accompany respondent to collect personal belongings from joint residence</b>	Yes	100	20.7%
	Not indicated	384	79.3%
	<b>Total</b>	<b>484</b>	<b>100.0%</b>

Of the 360 case files where the interim protection order included any term relating to exclusive occupation, 339 of them have sufficient information for us to analyse requests for such terms as compared to the inclusion of such terms in interim protection orders. This data, which is presented below in Table 172, shows that **ancillary orders were relatively frequently added to the order at the behest of the magistrate, rather than being in response to a request from the complainant.** Roughly 20-30% of the ancillary orders of this nature were apparently included at the court's own initiative. **This is a very positive finding, as it indicates that magistrates are alive to the practical problems and dangers which may be present in a violent situation; it indicates that courts are being proactive in their attempts to provide meaningful protection to victims of domestic violence.**

**TABLE 172**

<b>Ancillary orders combined with exclusive occupation of joint residence – overview</b>			
<b>Overview of all requests and outcomes</b>		<b>Number</b>	<b>Percent</b>
<b>Orders for exclusive occupation of residence</b>	Granted at complainant's request	270	79.6%
	Granted at court's initiative	69	20.4%
	<b>Total</b>	<b>339</b>	<b>100.0%</b>
<b>PLUS all contents of joint residence must be left for complainant's use</b>	Requested and granted	175	51.6%
	Requested, but not granted	27	8.0%
	Not requested, but granted	67	19.8%
	Neither requested nor granted	70	20.6%
	<b>Total</b>	<b>339</b>	<b>100.0%</b>
<b>PLUS specific items must be left at joint residence for complainant's use</b>	Requested and granted	80	23.6%
	Requested, but not granted	26	7.7%
	Not requested, but granted	81	23.9%
	Neither requested nor granted	152	44.8%
	<b>Total</b>	<b>339</b>	<b>100.0%</b>
<b>PLUS police officer must remove respondent from joint residence</b>	Requested and granted	167	49.3%
	Requested, but not granted	18	5.3%
	Not requested, but granted	92	27.1%
	Neither requested nor granted	62	18.3%
	<b>Total</b>	<b>339</b>	<b>100.0%</b>
<b>PLUS police officer must accompany respondent to collect personal belongings from joint residence</b>	Requested and granted	130	38.3%
	Requested, but not granted	25	7.4%
	Not requested, but granted	103	30.4%
	Neither requested nor granted	81	23.9%
	<b>Total</b>	<b>339</b>	<b>100.0%</b>

This table is based only on the 339 cases where the interim protection order included an order for exclusive occupation of the joint residence, to explore the ancillary orders which often accompanied an order for exclusive occupation.

The duration of ancillary orders concerning the contents of the joint residence followed essentially the same pattern as that of the underlying orders for exclusive occupation of the joint residence, which is predictable given that they most often occur in combination with each other. A few such orders limited their applicability to such time when property division is determined by a divorce order.

**TABLE 173**

<b>Duration of orders for EXCLUSIVE OCCUPATION of joint residence in interim protection orders</b>		
<b>Duration</b>	<b>Number</b>	<b>Percent</b>
> 30 days before return date	1	0.3%
1-30 days before return date	4	1.2%
Until return date	253	74.9%
For 30 days	2	0.6%
Until date of enquiry	3	0.9%
Until final order	51	15.1%
1-30 days after return date	9	2.7%
Until expiry date	1	0.3%
30 days-12 months after return date	2	0.6%
> 12 months after return date	2	0.6%
Until further notice	10	3.0%
<b>Total</b>	<b>338</b>	<b>100.0%</b>

Cases with missing data excluded.

**TABLE 174**

<b>Duration of orders for ALL CONTENTS of joint residence to remain for complainant's use in interim protection orders</b>		
<b>Duration</b>	<b>Number</b>	<b>Percent</b>
> 30 days before return date	2	0.7%
1-30 days before return date	5	1.8%
Until return date	214	75.6%
Until date of enquiry	4	1.4%
Until final order	28	9.9%
1-30 days after return date	4	1.4%
30 days-12 months after return date	4	1.4%
> 12 months after return date	1	0.4%
At all times	1	0.4%
Until further notice	13	4.6%
Until divorce is finalised	4	1.4%
Until matter is solved	1	0.4%
Until the order is varied/ altered	1	0.4%
As decided by court	1	0.4%
<b>Total</b>	<b>283</b>	<b>100.0%</b>

Cases with missing data excluded.

**TABLE 175**

<b>Duration of orders for SPECIFIC CONTENTS of joint residence to remain for complainant's use in interim protection orders</b>		
<b>Duration</b>	<b>Number</b>	<b>Percent</b>
> 30 days before return date	1	0.7%
1-30 days before return date	3	2.1%
Until return date	98	70.0%
Until date of enquiry	1	0.7%
Until final order	21	15.0%
1-30 days after return date	2	1.4%
30 days-12 months after return date	4	2.9%
> 12 months after return date	1	0.7%
Until further notice	4	2.9%
Until divorce is finalised	4	2.9%
As decided by court	1	0.7%
<b>Total</b>	<b>140</b>	<b>100.0%</b>

Cases with missing data excluded.

*She abused me emotionally and physically which I cannot handle anymore [so I] instituted a divorce case which is in progress. We stay at the house in separate rooms. The day she received the divorce letter from the deputy sheriff, she made a threat that she will stab me to death where I am sleeping. I decided to change the locks. After changing the room lock, I just stay in the locked room when I am at home for my safety. I put away all sharp objects like knives and forks that I cannot be stabbed or harmed grievously.*

26-year-old male complainant applying for a protection order against his 24-year-old wife

## 5.13.10 Alternative accommodation

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

### ALTERNATIVE ACCOMMODATION

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

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

monthly rental: ..... until date: .....

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

.....

Orders for alternative accommodation are available as a substitute for orders for exclusive occupation of a joint residence in two forms: an order to pay rent for alternative accommodation, or an order to make some other suitable arrangement. Such orders were rare, which is predictable since they were seldom requested. **Only about 6% of the interim protection orders in the sample contained any order pertaining to alternative accommodation.**

**In 41 of these 50 orders, respondents were ordered to pay rent ranging from N\$200 to N\$3000 per month, and typically being about N\$650 to N\$925/month.** The other cases in question contained orders for the following alternative arrangements:

- Three respondents were ordered to pay monthly bills (such as municipal accounts) pertaining to the complainant's accommodation; one was additionally ordered to pay for food, although this probably should have characterised as temporary maintenance rather than as an aspect of accommodation.
- One respondent was ordered to pay N\$400 for transport for the complainant and her children to return to her previous home.
- One respondent was ordered to allow the complainant's dependents to return to the residence in question, and to return property which the respondent had sold.
- One order cryptically said that the couple would make their own arrangements.

The specific arrangements ordered could not be ascertained from the other orders which fell into this category.

No particularly strong patterns emerged regarding whether orders in this category were granted at the request of the complainant or at the initiative of the court.

**CHART 85: Alternative accommodation**

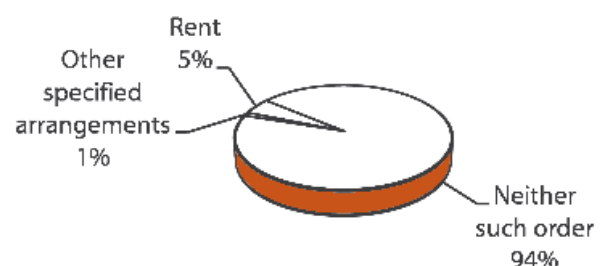


TABLE 176

Orders relating to alternative accommodation		
Order	Number	Percent
The respondent must pay RENT for suitable alternative accommodation for the complainant and dependants	41	4.9%
The respondent must make OTHER SPECIFIED ARRANGEMENTS for suitable alternative accommodation for the complainant and dependants	9	1.1%
Neither such order	794	94.1%
<b>Total</b>	<b>844</b>	<b>100.0%</b>

TABLE 177

Orders for rent for alternative accommodation		
<b>Monthly rental ordered (N\$)</b>	Number	36
	Mean	N\$923
	Median	N\$650
	Minimum	N\$200
	Maximum	N\$3000

TABLE 178

Alternative accommodation – success of requests by complainants			
Outcome of complainant requests		Number	Percent
<b>The respondent must pay RENT for suitable alternative accommodation for the complainant and dependants</b>	Requested and granted	23	53.5%
	Requested, but not granted	20	46.5%
	<b>Total</b>	<b>43</b>	<b>100.0%</b>
<b>The respondent must make other SPECIFIED ARRANGEMENTS for suitable alternative accommodation for the complainant and dependants</b>	Requested and granted	5	29.4%
	Requested, but not granted	12	70.6%
	<b>Total</b>	<b>17</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request for a provision on alternative accommodation.

TABLE 179

Alternative accommodation – basis for interim protection order outcomes where orders contained such provisions			
Source of term in protection order		Number	Percent
<b>The respondent must pay RENT for suitable alternative accommodation for the complainant and dependants</b>	Requested and granted	23	62.2%
	Not requested, but granted	14	37.8%
	<b>Total</b>	<b>37</b>	<b>100.0%</b>
<b>The respondent must make other SPECIFIED ARRANGEMENTS for suitable alternative accommodation for the complainant and dependants</b>	Requested and granted	5	55.6%
	Not requested, but granted	4	44.4%
	<b>Total</b>	<b>9</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included a provision on alternative accommodation.

TABLE 180

Alternative accommodation – overview			
Overview of all requests and outcomes		Number	Percent
<b>The respondent must pay RENT for suitable alternative accommodation for the complainant and dependants</b>	Requested and granted	23	3.0%
	Requested, but not granted	20	2.6%
	Not requested, but granted	14	1.8%
	Neither requested nor granted	722	92.7%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>The respondent must make OTHER SPECIFIED ARRANGEMENTS for suitable alternative accommodation for the complainant and dependants</b>	Requested and granted	5	0.6%
	Requested, but not granted	12	1.5%
	Not requested, but granted	4	0.5%
	Neither requested nor granted	758	97.3%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant's requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

Orders for arrangements for alternative accommodation are available only where the respondent is legally liable to maintain the complainant. This limitation is necessary to ensure that complainants do not use domestic violence as a pretext for obtaining financial support to which they would not otherwise be entitled – which might encourage false reports of violence.

An examination of the relationships between the parties in the few cases involving orders for rent or alternative accommodation indicates that this limitation is being followed in most cases, as most such orders concerned spouses (who have a legal duty to maintain each other) or ex-spouses (who may have a duty of maintenance under the terms of the divorce order). However, there were two cases whether the parties were unmarried intimate partners – a situation which does not give rise to any legal liability to maintain. A third case involved a respondent who was the brother of the complainant, which could in some circumstances give rise to such a legal liability. It may be that in these few cases, the order in question was a compromise of some sort which was accepted by both parties.

As with orders for exclusive occupation of the joint residence, most of these orders for alternative accommodation were effective only as long as the interim protection order was effective, with a few suggesting that they would remain in force until a pending divorce was finalised. One set a date of 4.5 months after the return date (which could have been enforced only if the interim order was finalised to that effect). The same considerations regarding duration apply here as discussed above with reference to orders for exclusive occupation of a joint residence.

## 5.13.11 Securing complainant’s property

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

**PROPERTY**

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

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

**ADDITIONAL ORDERS**

It is further ordered as follows:

\*\*\*

5.5 A police officer from the ..... police station must accompany the complainant to collect personal belongings from the joint residence.

Protection orders can include orders aimed at securing and protecting property of the complainant in cases where the complainant does not remain in the joint residence. There could also be situations where such an order might be appropriate even if the parties had never shared a common household.

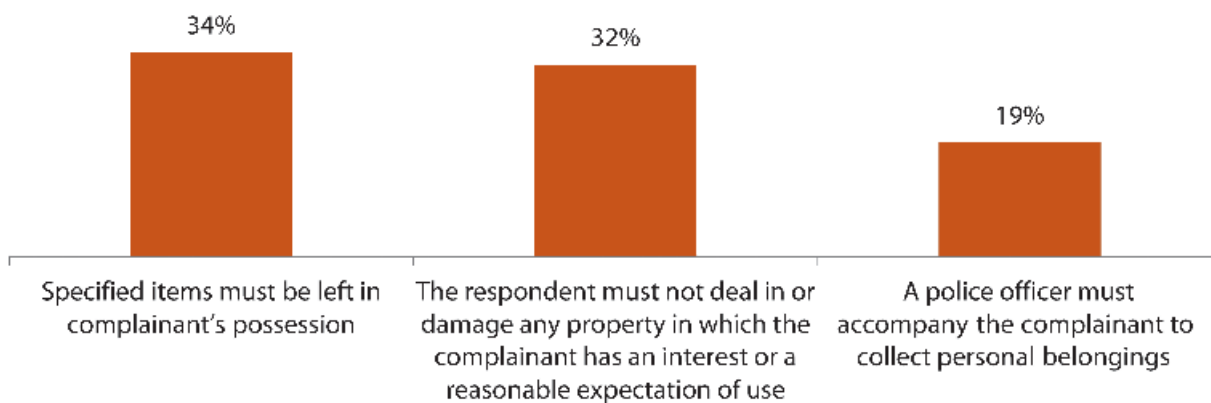
**Orders stating that specified items must be left in the possession of the complainant were made in about one-third of the interim protection orders in the sample (34%).**

**Similarly, orders prohibiting the respondent from dealing in any property in which the complainant had an interest or a reasonable expectation of use were granted in about one-third of the interim protection orders in the sample (32%).**

**About one-fifth of the cases (19%) had an additional order stating that a police officer must assist the complainant to collect personal belongings from the joint residence in safety.**

There was quite a large overlap between the first two categories, with 66% of the orders about leaving specified items with the complainant being combined with orders forbidding the respondent to deal in specified property.

**CHART 86: Safeguarding complainant’s property interests**



**TABLE 181**

Safeguarding complainant’s property interests		
Order	Number	Percent
Specified items must be left in complainant’s possession	286	33.9%
No such order	558	66.1%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
The respondent must not deal in or damage any property in which the complainant has an interest or a reasonable expectation of use	271	32.1%
No such order	573	67.9%
<b>Total</b>	<b>844</b>	<b>100.0%</b>
A police officer must accompany the complainant to collect personal belongings	160	19.0%
No such order	683	81.0%
<b>Total</b>	<b>843</b>	<b>100.0%</b>

**TABLE 182**

Overlap between orders for specific items to be left in complainant’s possession and orders forbidding respondent to deal in specific property				
Cross-tabulation		Respondent must not deal in specified property		
		Yes	Not indicated	Total
Specific items must be left in complainant’s possession	Yes	190	96	286
	Not indicated	81	477	558
	<b>Total</b>	<b>271</b>	<b>573</b>	<b>844</b>

These options are conceptualised in the law as being most appropriate for situations where the complainant is *not* given a right to exclusive occupation of the joint residence, as there is specific provision on the forms for other ancillary orders about property in cases where the complainant is granted a right of exclusive occupation of the joint residence. However, as Tables 183 and 184 indicate, in many cases these orders were also given in combination with orders for exclusive occupation of the joint residence. As discussed previously, **the conceptualisation in the law may be confusing, or too restrictive for the messy property arrangements which occur in real life.**

**TABLE 183**

Overlap between orders for exclusive occupation of joint residence and orders for specific items to be left in complainant's possession				
Cross-tabulation		Specific items must be left in complainant's possession		
		Yes	Not indicated	Total
Complainant granted right of exclusive occupation of joint residence	Yes	187	173	360
	Not indicated	99	385	484
	<b>Total</b>	<b>286</b>	<b>558</b>	<b>844</b>

**TABLE 184**

Overlap between orders for exclusive occupation of joint residence and orders forbidding respondent to deal in specific property				
Cross-tabulation		Respondent must not deal in specified property		
		Yes	Not indicated	Total
Complainant granted right of exclusive occupation of joint residence	Yes	168	192	360
	Not indicated	103	381	484
	<b>Total</b>	<b>271</b>	<b>573</b>	<b>844</b>

Most of the orders made on this part of the form in respect of securing specific property of the complainant were made in cases where the parties had previously or currently shared a joint residence – which is the situation which would most often give rise to mingled property.

**TABLE 185**

Overlap between shared residence and orders for specific items to be left in complainant's possession					
Cross-tabulation		Victim and respondent share residence?			
		Yes	No	Missing	Total
Specific items must be left in complainant's possession	Yes	219	46	21	<b>286</b>
	Not indicated	258	259	41	<b>558</b>
	<b>Total</b>	<b>477</b>	<b>305</b>	<b>62</b>	<b>844</b>

**TABLE 186**

Overlap between shared residence and order forbidding respondent to deal in specific property					
Cross-tabulation		Victim and respondent share residence?			
		Yes	No	Missing	Total
Respondent must not deal in specified property	Yes	198	55	18	<b>271</b>
	Not indicated	279	250	44	<b>573</b>
	<b>Total</b>	<b>477</b>	<b>305</b>	<b>62</b>	<b>844</b>

Courts seemed fairly sympathetic to complainants' assessments of the situation on this score, granting requests for orders pertaining to the complainant's property 55-65% of the time. On the other hand, provisions in this category were imposed at the court's initiative in roughly 40-50% of the cases.



TABLE 187

Safeguarding complainant's property interests – success of requests by complainants			
Outcome of complainant requests		Number	Percent
A police officer must accompany the complainant to collect personal belongings	Requested and granted	69	54.8%
	Requested, but not granted	57	45.2%
	<b>Total</b>	<b>126</b>	<b>100.0%</b>
Specified items must be left in the complainant's possession	Requested and granted	108	64.3%
	Requested, but not granted	60	35.7%
	<b>Total</b>	<b>168</b>	<b>100.0%</b>
The respondent must not deal in or damage any property in which the complainant has an interest or a reasonable expectation of use	Requested and granted	132	64.1%
	Requested, but not granted	74	35.9%
	<b>Total</b>	<b>206</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request pertaining to the complainant's property interests.

TABLE 188

Safeguarding complainant's property interests – basis for interim protection order outcomes where orders contained such provisions			
Source of term in protection order		Number	Percent
Specified items must be left in the complainant's possession	Requested and granted	108	40.1%
	Not requested, but granted	161	59.9%
	<b>Total</b>	<b>269</b>	<b>100.0%</b>
The respondent must not deal in or damage any property in which the complainant has an interest or a reasonable expectation of use	Requested and granted	132	52.2%
	Not requested, but granted	121	47.8%
	<b>Total</b>	<b>253</b>	<b>100.0%</b>
A police officer must accompany the complainant to collect personal belongings	Requested and granted	69	46.9%
	Not requested, but granted	78	53.1%
	<b>Total</b>	<b>147</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included a provision pertaining to the complainant's property interests.

TABLE 189

Safeguarding complainant's property interests – overview			
Overview of all requests and outcomes		Number	Percent
Specified items must be left in the complainant's possession	Requested and granted	108	13.9%
	Requested, but not granted	60	7.7%
	Not requested, but granted	161	20.7%
	Neither requested nor granted	450	57.8%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
The respondent must not deal in or damage any property in which the complainant has an interest or a reasonable expectation of use	Requested and granted	132	16.9%
	Requested, but not granted	74	9.5%
	Not requested, but granted	121	15.5%
	Neither requested nor granted	452	58.0%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
A police officer must accompany the complainant to collect personal belongings	Requested and granted	69	8.9%
	Requested, but not granted	57	7.3%
	Not requested, but granted	78	10.0%
	Neither requested nor granted	574	73.7%
	Missing data	1	0.1%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant's requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

The items covered fell into much the same categories as items specified under other property provisions: household furnishings, vehicles and livestock. A few complainants were concerned to retain items relating to income-generation (such as business equipment, farming implements and a liquor licence), and several were worried about access to documents (such as ID documents, marriage certificates or death certificates). A few wanted to retain things like house keys, chequebooks, debit cards or specific amounts of cash (such as proceeds of the sale from a particular property). There were also mentions of some more sentimental items, such as a trousseau and a wedding cake.

With respect to fears of the respondent dealing unfairly with property in which the complainant has a legitimate interest, houses and cars were near the top of the list, along with key household assets (such as beds, stoves, fridges and televisions). One complainant wanted the respondent to be restrained from deleting material on a computer, and another was concerned about the savings account of a deceased parent. There were also concerns about business property and investments such as unit trusts and treasury bills. Again the items covered fell into much the same categories as items specified under other property provisions.

**TABLE 190**

<b>Specific items to be left in complainant's possession</b>		
<b>Items</b> (multiple responses possible)	<b>Number of responses</b>	<b>Percent of total responses</b>
All the property in the house	102	16.1%
All the property excluding respondents belongings	43	6.8%
All property owned by the complainant	4	0.6%
Furniture (beds, chairs, dining room suites, wall units, room dividers etc)	150	23.7%
Basic appliances (stoves, fridges/freezers, washing machine etc)	71	11.2%
Kitchenware and linens (cutlery, kitchenware, bedding and curtains)	61	9.6%
Entertainment (television, stereo, hi-fi, satellite dish etc)	51	8.0%
Personal items (cosmetics and clothes)	42	6.6%
Vehicles (cars, bicycle)	27	4.3%
Livestock (cattle, goats, pigs, all livestock)	10	1.6%
Joint property	9	1.4%
Business property/items (including liquor licence)	7	1.1%
Documents (marriage and death certificates, ID documents, medical aid card, school reports)	7	1.1%
Money (cash, cheque book, bob card, proceeds from sale of house)	6	0.9%
Building materials (zinc plates / corrugated iron sheets)	2	0.3%
Security items (house/car keys, remote, safe keys)	3	0.5%
Computers	2	0.3%
Books	1	0.2%
Other items (including sewing machine, telephone, suitcase, mats, wedding cake and braai rooster)	36	5.7%
<b>Total</b>	<b>634</b>	<b>100.0%</b>

There was a substantial amount of repetition, but this is not necessarily problematic or contradictory. **It is logical that property which was important to the complainant would feature in multiple requests and protection order terms – such to be left in the joint residence for the complainant's use, to be left in the complainant's possession and not to be disposed of or destroyed by the respondent. However, the degree of repetition encountered is another indication that there is a need to simplify the format of the application form and the protection order forms.**

**TABLE 191**

<b>Specific property respondent may not deal in or damage</b>		
<b>Property</b> (multiple responses possible)	<b>Number of responses</b>	<b>Percent of total responses</b>
All the property in the house	98	17.1%
All the property excluding respondents belongings	21	3.7%
All property owned by the complainant	2	0.3%
Furniture (beds, chairs, dining room suites, wall units, room dividers etc)	126	22.0%
Basic appliances (stoves, fridges/freezers, washing machine etc)	66	11.5%
Kitchenware and linens (cutlery, kitchenware, bedding etc)	42	7.3%
Entertainment (television, stereo, hi-fi, satellite dish etc)	42	7.3%
Personal items (clothes)	23	4.0%
Vehicles (cars)	26	4.5%
Livestock (cattle, goats, pigs, sheep, small livestock)	17	3.0%
Joint property	10	1.7%
Business property/items (including liquor licence and accounting system)	6	1.0%
Documents (ID documents)	3	0.5%
Money (cash, cheque book, bob card, proceeds from sale of house, shares, treasury bills and assets)	9	1.6%
Building materials (zinc plates / corrugated iron sheets and steel/wooden poles)	3	0.5%
Security items (safe keys)	1	0.2%
Computers	5	0.9%
Books	2	0.3%
Other items (including sewing machine, telephone, suitcase and mats)	71	12.4%
<b>Total</b>	<b>573</b>	<b>100.0%</b>

## 5.13.12 Temporary maintenance orders

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

**MAINTENANCE**

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

name: .....  
monthly amount: ..... until date: .....

name: .....  
monthly amount: ..... until date: .....

name: .....  
monthly amount: ..... until date: .....

name: .....  
monthly amount: ..... until date: .....

name: .....  
monthly amount: ..... until date: .....

The Combating of Domestic Violence Act authorises a provision for temporary maintenance for the complainant or 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”.<sup>128</sup> Form 5, however provides a space only for child maintenance – an error which should be corrected if the forms are revised. Fortunately, this error has not prevented courts from including provisions for the maintenance of complainants in interim protection orders.

Temporary monthly maintenance was granted in 34% of cases – with three-fourths (76%) of these being maintenance for children, 15% for the complainant and children together, and 9% for the complainant alone. The 261 orders which included maintenance for children covered a total of 528 children, with most orders covering either one or two children.

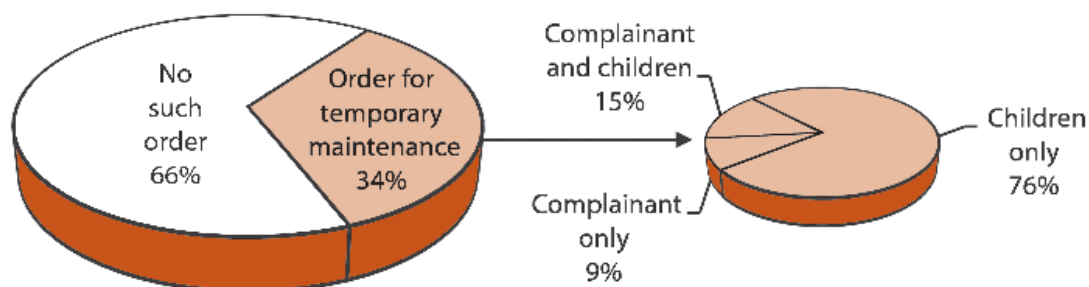
**TABLE 192**

Temporary maintenance in interim protection orders		
Order	Number	Percent
The respondent must pay temporary monthly maintenance	287	34.0%
No such order	557	66.0%
<b>Total</b>	<b>844</b>	<b>100.0%</b>

**TABLE 193**

Beneficiaries of orders for temporary maintenance		
Beneficiary	Number	Percent
Children only	219	76.3%
Complainant and children	42	14.6%
Complainant only	26	9.1%
<b>Total</b>	<b>287</b>	<b>100.0%</b>

**CHART 87: Temporary maintenance in interim protection orders**



**TABLE 194**

Number of children covered by temporary maintenance provisions			
Number of children	Number of cases	Percent of cases	Total number of children covered
One	104	39.8%	104
Two	84	32.2%	168
Three	45	17.2%	135
Four	19	7.3%	76
Five	9	3.4%	45
<b>Total</b>	<b>261</b>	<b>100.0%</b>	<b>528</b>

Mirroring requests almost exactly, the amounts of maintenance granted ranged from N\$100 to N\$10000 per month for complainants, and from N\$50 to N\$8000 per month per child, and were typically N\$600 per month for the complainant and N\$300 per month per child.

<sup>128</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(h).

The total amount any single respondent was ordered to pay for all beneficiaries together ranged from N\$150 per month to N\$12 500 per month. This wide divergence emphasises the fact that domestic violence cuts across social and economic classes. The amounts of maintenance ordered were consistent with the pattern of requested amounts, with minors over the age of 18 receiving slightly higher amounts than younger children (perhaps because they were in tertiary education).

**TABLE 195**

Amount of temporary maintenance granted in interim protection orders					
Beneficiary	Number	Mean	Median	Minimum	Maximum
For complainant	66	N\$1357	N\$600	N\$100	N\$10000
For all children	254	N\$897	N\$600	N\$200	N\$8000
Per child	511	N\$446	N\$300	N\$50	N\$8000
<b>Total request for complainant (if any) and children (if any)</b>	<b>279</b>	<b>N\$1136</b>	<b>N\$600</b>	<b>N\$150</b>	<b>N\$12500</b>

**TABLE 196**

Amount of maintenance requested per child by age group of child					
Age	Number	Mean	Median	Minimum	Maximum
0-5	160	N\$393	N\$393	N\$100	N\$2500
6-14	243	N\$447	N\$300	N\$50	N\$8000
15-18	67	N\$591	N\$300	N\$50	N\$3000
19 or older	12	N\$588	N\$400	N\$50	N\$3000

**TABLE 197**

Amount of maintenance requested per child by age group of child					
Age	Number	Mean	Median	Minimum	Maximum
0-5	233	N\$413	N\$300	N\$50	N\$3000
6-14	330	N\$426	N\$300	N\$50	N\$8000
15-18	93	N\$563	N\$300	N\$100	N\$3000
19 or older	13	N\$654	N\$500	N\$150	N\$3000

Most requests for maintenance (81%) were granted, but it was unusual for maintenance to be ordered where it had not been requested (only 7% of the cases where maintenance was ordered).

**TABLE 198**

Temporary maintenance in interim protection orders – success of requests by complainants		
Outcome of complainant requests	Number	Percent
Requested and granted	250	80.9%
Requested, but not granted	59	19.1%
<b>Total</b>	<b>309</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made a request for a provision restricting communication with third parties.

**TABLE 199**

Temporary maintenance in interim protection orders – basis for interim protection order outcomes where orders contained such provisions			
Source of term in protection order		N	%
The respondent must pay temporary monthly maintenance (for the complainant or specified children)	Requested and granted	250	92.6%
	Not requested, but granted	20	7.4%
	<b>Total</b>	<b>270</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included a provision on temporary maintenance.

**TABLE 200**

Temporary maintenance in interim protection orders – overview			
Overview of all requests and outcomes		N	%
The respondent must pay temporary monthly maintenance (for the complainant or specified children)	Requested and granted	250	32.1%
	Requested, but not granted	59	7.6%
	Not requested, but granted	20	2.6%
	Neither requested nor granted	450	57.8%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant’s requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

Most maintenance payments for children pertained to sons and daughters of both complainant and respondent. (The sons and daughters whose parents were not specified probably fell into this category as well.) Some were described as sons and daughters of the complainant, but could have been the children of the respondent as well; if not, then the respondent would be unlikely to have had any legal liability to pay maintenance from them.<sup>129</sup> However, two maintenance orders covered children of the complainant’s current spouse or partner – persons whom the respondent is extremely unlikely to have had a legal liability to maintain.<sup>130</sup> One grandchild was covered by a maintenance order, which seems reasonable as responsibility for maintenance passes to grandparents if parents are unable to maintain their children. Astonishingly, one maintenance order covered a pet – which should more properly have been incorporated into the household expenses covered by maintenance to the complainant. **Because there were a few cases where the provisions on temporary maintenance seem to have been misapplied by the courts, future training needs to emphasise the fact that this option is available only where the respondent has a legal liability to maintain the person in question.**

Maintenance orders usually stop at age 18, although they can be extended for children who are still completing their education.<sup>131</sup> This could explain the fact that 19 children between the ages of 18 and 21 were covered by temporary maintenance orders. More worrying is the inclusion of five adults over the age of 21 – although these could have been persons with disabilities or illnesses or some other characteristic which made them unable to become self-supporting.

The child beneficiaries were roughly half male and half female.

**IF THERE'S  
VIOLENCE  
IN THE  
HOME,  
THE  
KIDS  
GET THE  
PICTURE!**



Source: www.examiner.com

<sup>129</sup> There is no legal duty to provide maintenance for a stepchild except where it arises indirectly because the child’s biological parent and the child’s stepparent are married in community of property so that the maintenance must come out of the joint estate.

<sup>130</sup> It is difficult to imagine a legal theory whereby a respondent ex-spouse of the complainant would have legal liability to maintain a child of a complainant’s new spouse or partner, which appears to be the situation described.

<sup>131</sup> Maintenance Act 9 of 2003, section 26(1)(d).

TABLE 201

Demographic characteristics of all children covered by temporary maintenance orders			
Characteristic		Number	Percent
Relationship to complainant	Son/daughter (not specified)	28	5.3%
	Son/daughter of both	488	92.4%
	Son/daughter of complainant	8	1.5%
	Son/daughter of spouse/ partner	2	0.4%
	Grandchild of complainant	1	0.2%
	Animals/pets of respondent	1	0.2%
	<b>Total</b>	<b>528</b>	<b>100.0%</b>
Sex	Male	223	42.2%
	Female	262	49.6%
	Unknown	43	8.1%
	<b>Total</b>	<b>528</b>	<b>100.0%</b>
Age group	0-4	132	27.0%
	5-9	144	29.4%
	10-14	133	27.2%
	15-19	71	14.5%
	20-24	9	1.8%
	Age unknown	39	7.4%
	<b>Total</b>	<b>528</b>	<b>100.0%</b>
Age categories	Children (<18)	465	88.1%
	Minors age 18-20	19	3.6%
	Adults (>=21)	5	0.9%
	Age unknown	39	7.4%
	<b>Total</b>	<b>528</b>	<b>100.0%</b>

The same confusion regarding duration of orders is encountered here as elsewhere in the interim protection orders. A provision on temporary maintenance may remain in force “for any period set by the court up to a maximum of six months”.<sup>132</sup> However, most (but not all) interim protection orders understandably focused on the duration of the interim order itself. As in the case of other matters covered by interim protection orders, we propose that the form should allow for a statement which will put the respondent on notice as to the duration of the order for maintenance which will be contemplated if the respondent raises no objections.

A particular problem here is that, where the court focused on the ultimate duration of the temporary maintenance order, the six-month maximum period set by the Act was ignored in a substantial number of cases – with some courts contemplating orders with the same sorts of durations as ordinary maintenance orders issued in terms of the Maintenance Act (such as until the child turns 18, or becomes self-supporting). This appears to be the case in about 13% of the cases for which the intended duration of the maintenance order can be ascertained. The temporary maintenance orders were never meant to be a substitute for the procedure outlined in the Maintenance Act, but were rather meant to be *emergency measures only*, to prevent a complainant who has suffered violence from having to initiate multiple court procedures at once.

**Issuing temporary maintenance orders as an adjunct to protection orders seems to be an area which has caused some confusion amongst magistrates and should be emphasised in future training.**

<sup>132</sup> Combating of Domestic Violence Act 4 of 2003, section 15(e).

**TABLE 202**

Duration of temporary maintenance for COMPLAINANT		
Duration	Number	Percent
Until return date	31	59.6%
Until final order	9	17.3%
Between date 1-4 months after return date	7	13.5%
Until further notice	5	9.6%
<b>Total</b>	<b>52</b>	<b>100.0%</b>

**TABLE 203**

Duration of temporary maintenance for CHILD		
Duration	Number	Percent
Between 3 weeks - 6.5 months <i>before</i> return date	5	1.3%
Until return date	198	52.0%
Until interim protection order discharged / date of enquiry/ final order issued/ case is finalised	92	24.1%
Between 3 days - 6 months after return date	35	9.2%
For 6 months	2	0.5%
> 6 months after return date	1	0.3%
Until 18 years of age	6	1.6%
Until child is 21 or out of school	1	0.3%
Until child completes school	6	1.6%
Until child independent/ self sufficient/ self-employed	3	0.8%
Until age of maturity	3	0.8%
Until divorce is finalised	6	1.6%
Until further notice	16	4.2%
Until order is varied/ altered	3	0.8%
Until matter is solved	4	1.0%
<b>Total</b>	<b>381</b>	<b>100.0%</b>

**Eat your vegetables.**

**Don't play with matches**

**Finish your homework.**

**Respect women.**



Source: [http://opdv.ny.gov/public\\_awareness/campaigns/coachboys\\_campaign](http://opdv.ny.gov/public_awareness/campaigns/coachboys_campaign)



## 5.13.13 Temporary orders for custody and access

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

**4.2 Temporary custody of the following children is granted to the complainant.**  
names: .....

**4.3 Temporary custody of the following children is granted to .....**  
names: .....

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

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

name: .....  
visiting arrangement: .....  
other conditions: .....

name: .....  
visiting arrangement: .....  
other conditions: .....

name: .....  
visiting arrangement: .....  
other conditions: .....

Like temporary maintenance orders, temporary custody and access orders made as part of protection orders are meant to be emergency measures only and not substitutes for the ordinary channels for addressing child custody and access. However, no limits on duration are set by the Act, because child custody orders cannot by their nature simply “expire” without the risk of placing the child in a vacuum; therefore, even though the form and the Act both refer to “*temporary*” custody and access orders, the Act provides that “*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*”<sup>133</sup> – meaning that they may in reality not be “temporary” at all.

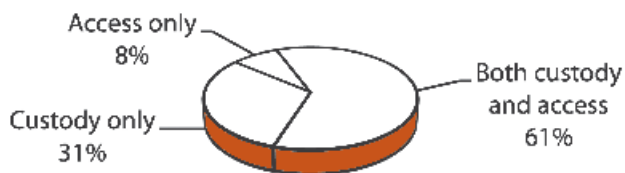
**The problematic lack of harmony between the Combating of Domestic Violence Act and the Children’s Status Act, which also provides for emergency denials of access on an *ex parte* basis, has already been discussed in section 5.11.7.**

**This concern is intensified by the fact that provisions for custody and access are common features of interim protection orders affecting large numbers of children. Approximately**

<sup>133</sup> *Id.*, section 15(d).

49% of the interim protection orders in our sample included orders for custody (47% gave custody of children to the complainant and another 2% gave custody of children to a third party), and 38% included orders pertaining to access (13% denied access and another 25% placed restrictions on access). To give an indication of the magnitude of the issue, the interim protection orders in our sample of 1122 applications against 1131 respondents addressed custody issues in respect of 820 children and access issues in respect of 614 children – because there is substantial overlap between the children who were subject to custody and access orders, these two issues involved a total of 892 children in the 1122 files we examined.

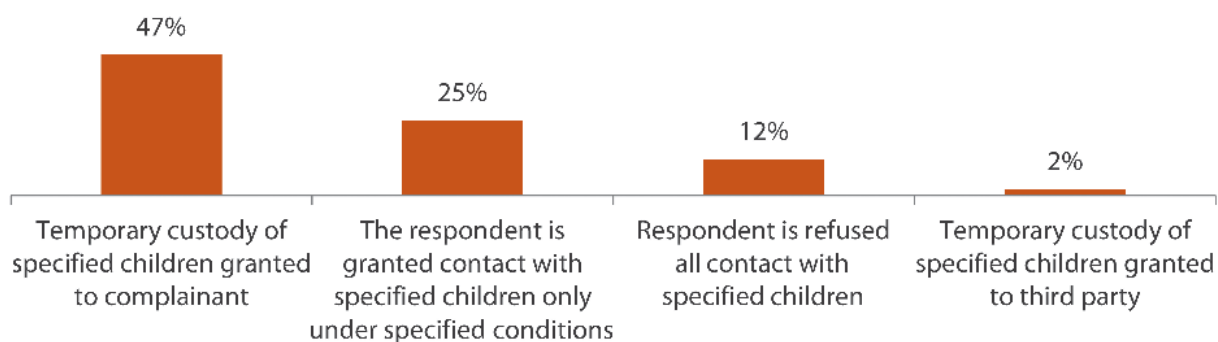
**CHART 88: Temporary child custody and access in interim protection orders**



**TABLE 204**

Temporary child custody and access in interim protection orders		Number of cases	Percent of cases	Total # of children affected
<b>Custody to complainant</b>	Temporary custody of specified children granted to complainant	397	47.0%	
	No such order	447	53.0%	
	<b>Total</b>	<b>844</b>	<b>100.0%</b>	
<b>Number of children covered by order</b>	One	149	37.5%	149
	Two	146	36.8%	292
	Three	59	14.9%	177
	Four	30	7.6%	120
	Five	13	3.3%	65
	<b>Total</b>	<b>397</b>	<b>100.0%</b>	<b>803</b>
<b>Custody to third party</b>	Temporary custody of specified children granted to third party	16	1.9%	
	No such order	828	98.1%	
	<b>Total</b>	<b>844</b>	<b>100.0%</b>	
<b>Number of children covered by order</b>	One	10	71.4%	10
	Two	2	14.3%	4
	Three	2	14.3%	14
	<b>Total</b>	<b>14</b>	<b>100.0%</b>	<b>28</b>
<b>Respondent refused all contact</b>	Respondent is refused all contact with specified children	103	12.2%	
	No such order	741	87.8%	
	<b>Total</b>	<b>844</b>	<b>100.0%</b>	
<b>Number of children covered by order</b>	One	38	37.6%	38
	Two	36	35.6%	72
	Three	15	14.9%	45
	Four	8	7.9%	32
	Five	4	4.0%	20
	<b>Total</b>	<b>101</b>	<b>100.0%</b>	<b>207</b>
<b>Respondent allowed conditional contact</b>	The respondent is granted contact with specified children only under specified conditions	210	24.9%	
	No such order	634	75.1%	
	<b>Total</b>	<b>844</b>	<b>100.0%</b>	
<b>Number of children covered by order</b>	One	79	37.8%	79
	Two	72	34.4%	144
	Three	36	17.2%	108
	Four	16	7.7%	64
	Five	6	2.9%	30
	<b>Total</b>	<b>209</b>	<b>100.0%</b>	<b>425</b>

**CHART 89: Temporary child custody and access in interim protection orders**



**In cases involving parents, it was overwhelmingly complainant mothers acting against respondent fathers who were seeking temporary custody of the minor children.** One of the more unusual cases involved a woman who sought a protection order against her brother including custody of her brother’s child (her niece). There were also a few cases where complainant fathers succeeded against respondent mothers in obtaining custody or restricting access.

**In a handful of cases (26), temporary custody was granted to the complainant in a situation where this seems to make no legal sense.** This group of children included children of the complainant with someone other than the respondent, children of the complainant’s spouse or partner, grandchildren, siblings of the complainant or other relatives. However, it would be only in rare cases that the respondent would have had legal custody of a child other than his own biological child in the first place. **This may be a sign that legal custody is being confused with physical custody – particularly since the Combating of Domestic Violence Act does not define what is meant by “custody”.**

It is perhaps not unusual that complainants *requested* temporary custody in such circumstances, since they may not know or understand who has legal custody of a child who lives in the household of the respondent, but it seems unusual that the courts *granted* these requests rather than perhaps explaining to the complainant that the respondent had no legal rights to control these children. This could be a reflection of the fact that custody and guardianship have until very recently been the province of the High Court alone, with magistrates having only recently become involved with these matters with the advent of the Children’s Status Act.<sup>134</sup>

**Some of the orders restricting access seem similarly problematic, as the respondent would normally have no legal rights of access to children other than his or her own biological children in the first place. However, it seems that some cases confused the parental right of access with the more general concept of contact and communication.**

**It is also inexplicable that interim protection orders granted custody rights to 10 adult offspring over the age of 21 and denied or restricted access to 12 adult offspring.** Rulings on custody or access in respect of adult offspring do not make legal sense except perhaps in the case of an incapacitated adult who must be under the responsibility of a custodian. Otherwise, courts are erroneous in subjecting an adult ‘child’ to the custody and access provisions of a protection order.

<sup>134</sup> The Children’s Status Act 6 of 2006 gave magistrates’ courts power to make decisions on custody, guardianship and access for the first time, in respect of children born outside marriage, children of divorced parents, and children whose parents or guardians are deceased. The Act came into force on 3 November 2008 (Government Notice 266 of 3 November 2008, Government Gazette 4154).

The apparent confusion surrounding temporary custody and access orders suggests that this aspect of the law should be targeted for emphasis in future training. The Act should also clarify what is meant by “custody” and “access”. The orders requested and granted in this category further suggest that there may be a need to provide for terms in protection orders directing a respondent *not to interfere* with the complainant’s lawful exercise of custody rights.

**TABLE 205**

<b>Temporary custody</b>			
<b>Demographic characteristics of children where custody is granted to COMPLAINANT</b>		<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Son/daughter (not specified)	49	6.1%
	Son/daughter of both	705	87.8%
	Son/daughter of complainant	31	3.9%
	Son/daughter of spouse/partner	2	0.2%
	Grandchild of both	2	0.2%
	Grandchild of complainant	8	1.0%
	Other relative (specify)	5	0.6%
	Relationship not clear	1	0.1%
	<b>Total</b>	<b>803</b>	<b>100.0%</b>
<b>Sex</b>	Male	352	47.2%
	Female	394	52.8%
	<b>Total</b>	<b>746</b>	<b>100.0%</b>
<b>Age group</b>	0-4	175	24.5%
	5-9	210	29.5%
	10-14	196	27.5%
	15-17	80	11.2%
	18-20	42	5.9%
	21-24	9	1.3%
	35-39	1	0.1%
	<b>Total</b>	<b>713</b>	<b>100.0%</b>
<b>Demographic characteristics of children where custody is granted to THIRD PARTY</b>		<b>Number</b>	<b>Percent</b>
<b>Relationship to complainant</b>	Son/daughter (not specified)	2	10.0%
	Son/daughter of both	11	55.0%
	Son/daughter of complainant	1	5.0%
	Son/daughter of spouse/partner	2	10.0%
	Grandchild of complainant	3	15.0%
	Other relative (specify)	1	5.0%
	<b>Total</b>	<b>20</b>	<b>100.0%</b>
<b>Sex</b>	Male	6	31.6%
	Female	13	68.4%
	<b>Total</b>	<b>19</b>	<b>100.0%</b>
<b>Age group</b>	0-4	4	23.5%
	5-9	6	35.3%
	10-14	5	29.4%
	15-17	1	5.9%
	18-20	1	5.9%
	<b>Total</b>	<b>17</b>	<b>100.0%</b>

TABLE 206

Temporary access			
Demographic characteristics of children where respondent was REFUSED ACCESS		Number	Percent
Relationship to complainant	Son/daughter (not specified)	17	8.2%
	Son/daughter of both	159	76.4%
	Son/daughter of complainant	14	6.7%
	Grandchild of both	1	0.5%
	Grandchild of complainant	9	4.3%
	Brother/sister of complainant	1	0.5%
	Other relative (specify)	7	3.4%
	<b>Total</b>	<b>208</b>	<b>100.0%</b>
Sex	Male	94	48.0%
	Female	102	52.0%
	<b>Total</b>	<b>196</b>	<b>100.0%</b>
Age group	0-4	44	23.9%
	5-9	46	25.0%
	10-14	46	25.0%
	15-17	25	13.6%
	18-20	11	6.0%
	21-24	6	3.3%
	25-29	4	2.2%
	30-34	1	0.5%
	35-39	1	0.5%
<b>Total</b>	<b>184</b>	<b>100.0%</b>	
Demographic characteristics of children where respondent was given CONDITIONAL ACCESS		Number	Percent
Relationship to complainant	Son/daughter (not specified)	26	6.1%
	Son/daughter of both	378	88.9%
	Son/daughter of complainant	14	3.3%
	Grandchild of complainant	4	0.9%
	Other relative (specify)	3	0.7%
	<b>Total</b>	<b>425</b>	<b>100.0%</b>
Sex	Male	197	49.7%
	Female	199	50.3%
	<b>Total</b>	<b>396</b>	<b>100.0%</b>
Age group	0-4	95	25.1%
	5-9	125	33.1%
	10-14	105	27.8%
	15-17	35	9.3%
	18-20	18	4.8%
	<b>Total</b>	<b>378</b>	<b>100.0%</b>

The court has authority to allow the respondent to have access rights to a child of the complainant only under conditions “*designed to ensure the safety of the complainant, any child who may be affected, and any other family members*”. The court is also specifically authorised to forbid all contact between the respondent and a child of the complainant “*unless in the presence and under the supervision of a social worker or a family member designated by the court for this purpose*”. The paramount factor is what is “*reasonably necessary for the safety of the child in question*”.<sup>135</sup> The form for interim protection orders provides space for both “*visiting arrangements*” and “*other conditions*”, although “*conditions*” were mixed amongst both places on the forms.

<sup>135</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(j).

The majority of restrictions on visits to children were broad, with the two most common being only by appointment or permission, or only on specified weekends and/or holidays (each contained in about 29% of the orders containing visiting arrangements). Other common requests were for a specified amount of visits, such as one per week or month (8%). A similar proportion (6%) allowed for visits any time, which does not seem to be a restriction. Only a small proportion of the orders (a little over 1%) stated that there could be no physical contact with the children at all. A more common situation was to request that arrangements be made through relatives or friends (5.5%).

**TABLE 207**

Visiting arrangements		
Arrangement	Number	Percent
Specified weekends and/or holidays (timing during the weekend restricted in some cases, such as 8h00-19h00)	113	29.5%
Contact by appointment/permission (including permission from court/psychologist/doctor)	112	29.2%
Contact restricted on a time basis (such as one hour/day per month, once per week)	33	8.6%
Other (at school, while the respondent is working, only if the child is sick or help needed, specific times such as afternoons or during the day)	28	7.3%
Any time	24	6.3%
Contact only through or if supervised by a police officer, lawyer or social worker or the court	22	5.7%
Arrangement to be made through relatives/friends or to visit at the house of a relative or in the presence of a relative/friend	21	5.5%
Depending on the children (children will visit respondent, if the child is sick, if the respondent is buying something for the child, if there is a party)	8	2.1%
Child to be collected by someone else	5	1.3%
No physical contact; contact by phone only	5	1.3%
Respondent must be sober / not violent during visit	5	1.3%
Weekdays	4	1.0%
Visit must be at respondent's residence	3	0.8%
Holidays	1	0.3%
<b>Total</b>	<b>383</b>	<b>100.0%</b>

In a total of 168 protection orders, the interim protection order included additional conditions regarding contact. Many of the specified conditions were similar to the details included under visiting arrangements. For example, protection orders used both of these provisions to provide that respondent must be sober or not under the influence of drugs, or that the visit must be in the presence of a protective party such as a police officer, social worker, pastor, relative or friend.

**TABLE 208**

Specified conditions of contact		
Condition	Number	Percent
Must be sober / not taking drugs / not violent	54	32.1%
In the presence of a police officer / social worker / pastor	34	20.2%
In the presence of a relative/friend	26	15.5%
Must arrange in advance, usually by telephone	14	8.3%
Child must not leave town, must be returned on time	14	8.3%
Someone else must collect/take the child	10	6.0%
Other	7	4.2%
In presence of complainant / under supervision of complainant	6	3.6%
Contact to be determined by complainant	3	1.8%
<b>Total</b>	<b>168</b>	<b>100.0%</b>

Custody requests by complainants were frequently granted, about 83% of the time. Requests for restricted access were also often successful, about 68% of the time. Requests for denial of all access to children by the respondent were less common, and successful only about half of the time (55%). Requests that custody be granted to third parties were infrequently made, and about 58% of these were granted. It was, not surprisingly, relatively unusual for courts to include custody and access provisions in interim protection orders where these had not been requested by the complainant, with roughly 70-80% of the orders for custody to the complainant and restricted access by the respondent being in response to requests put forward by the complainant. Custody to third parties was ordered at the court's initiative about half the time (in 4 cases), as was complete denial of access (in 42 cases). However, in considering this finding, it must be remembered that the information contained in the application form may have been supplemented by submissions made in person to the magistrate before the interim protection order was issued.

**TABLE 209**

<b>Temporary child custody and access in interim protection orders – success of requests by complainants</b>			
<b>Outcome of complainant requests</b>		<b>Number</b>	<b>Percent</b>
<b>Temporary custody of specified children is granted to the complainant</b>	Requested and granted	320	82.7%
	Requested, but not granted	67	17.3%
	<b>Total</b>	<b>387</b>	<b>100.0%</b>
<b>Temporary custody of specified children is granted to a third party</b>	Requested and granted	11	57.9%
	Requested, but not granted	8	42.1%
	<b>Total</b>	<b>19</b>	<b>100.0%</b>
<b>The respondent is refused all contact with specified children</b>	Requested and granted	53	55.2%
	Requested, but not granted	43	44.8%
	<b>Total</b>	<b>96</b>	<b>100.0%</b>
<b>The respondent is granted contact with specified children only under specified conditions</b>	Requested and granted	149	68.3%
	Requested, but not granted	69	31.7%
	<b>Total</b>	<b>218</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant made requests pertaining to custody or access.

**TABLE 210**

<b>Temporary child custody and access in interim protection orders – basis for interim protection order outcomes where orders contained such provisions</b>			
<b>Source of term in protection order</b>		<b>Number</b>	<b>Percent</b>
<b>Temporary custody of specified children is granted to the complainant</b>	Requested and granted	320	85.1%
	Not requested, but granted	56	14.9%
	<b>Total</b>	<b>376</b>	<b>100.0%</b>
<b>Temporary custody of specified children is granted to a third party</b>	Requested and granted	11	73.3%
	Not requested, but granted	4	26.7%
	<b>Total</b>	<b>15</b>	<b>100.0%</b>
<b>The respondent is refused all contact with specified children</b>	Requested and granted	53	55.8%
	Not requested, but granted	42	44.2%
	<b>Total</b>	<b>95</b>	<b>100.0%</b>
<b>The respondent is granted contact with specified children only under specified conditions</b>	Requested and granted	149	74.5%
	Not requested, but granted	51	25.5%
	<b>Total</b>	<b>200</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the orders from that group which included provisions pertaining to custody or access.

**TABLE 211**

<b>Temporary child custody and access in interim protection orders – overview</b>			
<b>Overview of all requests and outcomes</b>		<b>Number</b>	<b>Percent</b>
<b>Temporary custody of specified children is granted to the complainant</b>	Requested and granted	320	41.1%
	Requested, but not granted	67	8.6%
	Not requested, but granted	56	7.2%
	Neither requested nor granted	336	43.1%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>Temporary custody of specified children is granted to a third party</b>	Requested and granted	11	1.4%
	Requested, but not granted	8	1.0%
	Not requested, but granted	4	0.5%
	Neither requested nor granted	756	97.0%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>The respondent is refused all contact with specified children</b>	Requested and granted	53	6.8%
	Requested, but not granted	43	5.5%
	Not requested, but granted	42	5.4%
	Neither requested nor granted	641	82.3%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>
<b>The respondent is granted contact with specified children only under specified conditions</b>	Requested and granted	149	19.1%
	Requested, but not granted	69	8.9%
	Not requested, but granted	51	6.5%
	Neither requested nor granted	510	65.5%
	<b>Total</b>	<b>779</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant’s requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

## 5.13.14 Additional orders

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

**ADDITIONAL ORDERS**

**5. It is further ordered as follows:**

**5.1 The clerk of court must forward a copy of this protection order to the Station Commander of the ..... police station, who must cause police protection, to the extent reasonably necessary and possible, to be provided to the complainant or any person in the care of the complainant who is at risk until such time as the interim protection order is made final and served on the respondent or discharged.**

**5.2 A police officer from the ..... police station must seize the following weapons from the respondent: .....**

**5.3 A police officer from the ..... police station must remove the respondent from the joint residence.**



- 5.4 A police officer from the ..... police station must accompany the respondent to collect personal belongings from the joint residence.
  - 5.5 A police officer from the ..... police station must accompany the complainant to collect personal belongings from the joint residence.
  - 5.6 The complainant’s physical address must not be revealed to the respondent.**
  - 5.7 The clerk of the court must send a copy of this order to the Permanent Secretary of the Ministry responsible for child welfare, for consideration of appropriate action as provided for in legislation relating to the care and protection of children.**
- 6. It is further ordered as follows:**
- .....
- .....
- .....
- .....

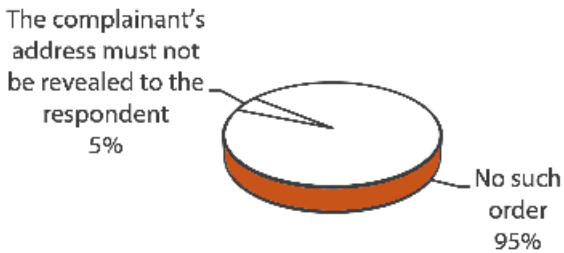
Many of the potential “additional orders” have already been discussed, since the orders for specific kinds of police assistance are logical adjuncts to other orders. The ones not yet discussed (those indicated in boldface in the box above) are addressed in this section.

**(a) Order to keep complainant’s physical address confidential**

Orders to keep the complainant’s physical address confidential were seldom included in interim protection orders, being found in less than 5% of the orders in our sample. Only about one-quarter of the requests for confidentiality were granted, but only half of the orders for confidentiality resulted from requests for this provision.

The need to protect the confidentiality of the whereabouts of the complainant can be important in protecting the victim from further incidents of domestic violence or other forms of violence such as stalking or criminal harassment. Also, given the escalating nature of violence, it can be important to keep a violent respondent away from a complainant in order to ensure the complainant’s safety. However, in areas of Namibia where communities are very small, it may be impractical to implement an order preventing the disclosure of the complainant’s address. Furthermore, 43% of the orders in the sample included a provision giving the complainant the right of exclusive occupation of the joint residence of the parties, and it would obviously be impossible in those cases to hide the complainant’s location. Given these factors, it is not surprising that the number of interim protection orders including this provision was very low.

**CHART 90: Confidentiality of complainant’s physical address**



**TABLE 212**

Confidentiality of complainant’s physical address		
Order	Number	Percent
The complainant’s address must not be revealed to the respondent	40	4.7%
No such order	803	95.3%
<b>Total</b>	<b>843</b>	<b>100.0%</b>

TABLE 213

Confidentiality of complainant's physical address – success of requests by complainants			
Outcome of complainant requests		Number	Percent
The complainant's physical address must not be revealed to the respondent.	Requested and granted	19	25.7%
	Requested, but not granted	55	74.3 %
	<b>Total</b>	<b>74</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the complainant requested that his or her physical address remain confidential.

TABLE 214

Confidentiality of complainant's physical address – basis for interim protection order outcomes where orders contained such provisions			
Source of term in protection order		Number	Percent
The complainant's physical address must not be revealed to the respondent.	Requested and granted	19	50.0%
	Not requested, but granted	19	50.0%
	<b>Total</b>	<b>38</b>	<b>100.0%</b>

This table is based on the 779 cases where the complainant's requests can be compared to the interim protection order outcomes, looking only at the cases where the order contained a provision requiring that the complainant's physical address remain confidential.

TABLE 215

Confidentiality of complainant's physical address – overview			
Overview of all requests and outcomes		Number	Percent
The complainant's physical address must not be revealed to the respondent.	Requested and granted	19	2.4%
	Requested, but not granted	55	7.1%
	Not requested, but granted	19	2.4%
	Neither requested nor granted	685	88.0%
	<b>Total</b>	<b>778</b>	<b>100.0%</b>

This table is based on all 779 cases where the complainant's requests can be compared to the interim protection order outcomes, to give a more comprehensive picture of interim protection order outcomes on this point.

## (b) Notice of order to relevant police station

The Combating of Domestic Violence Act requires that all interim protection orders must be sent to the station commander of the police station named in the application, who must arrange appropriate police protection for the complainant until the interim order is made final and served on the complainant:

- (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.*<sup>136</sup>

The idea behind the provision is that complainants may be at particular risk during this time of transition.

The clerk's duty does not depend on any provision in the protection order itself, since it is provided for in respect of every interim protection order by the Act. **Provision 5.1 of Form 5 is intended to be a standard provision where the magistrate simply adds the name of the appropriate police station. However, this provision was completed in only 78% of the interim**

<sup>136</sup> Combating of Domestic Violence Act 4 of 2003, section 8(6) (emphasis added).

protection orders in the sample. This is not definitive, of course, but it raises suspicions that the intended communication between court and police may not be taking place. The provision on this point in Form 5 should be clarified, so as not to give the erroneous impression that the duty is dependent on the court’s discretion instead of being mandatory.

**TABLE 216**

Notice of interim protection order to station commander of relevant police station		
Order	Number	Percent
The protection order must be forwarded to the specified police station	655	77.7%
This provision on the form was not completed	188	22.3%
<b>Total</b>	<b>843</b>	<b>100.0%</b>

### **(c) Notice of children potentially at risk to ministry responsible for child welfare**

A second duty placed by the Act on clerks of court is to notify the Ministry of Gender Equality and Child Welfare if the interim protection order involves children, on the theory that children in a violent situation might require monitoring by a social worker to see if other protective action is needed (such as removal from the home environment in terms of the Children’s Act 33 of 1960):

*(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.<sup>137</sup>*

This duty is again not dependent on the court order, but arises from the statute itself and is conditional only on the fact that the “interim protection order involves children”. It may not be clear what is meant by this: is the duty invoked only if the order pertains to a child complainant or includes a provision pertaining to contact with a child or to child maintenance, custody or access? Or is it sufficient that information from the complainant indicated that children were exposed to the violence or otherwise affected by it? **It would probably be helpful if the provision in the Act on this point were clarified, by using clearer language or by providing criteria for determining that an interim protection order “involves” children.**

A very large number of interim protection orders in the sample included orders pertaining to children or evidence that children had been exposed to the domestic violence, in addition to the seven interim protection orders where the complainants themselves were under 18. But only 7-8% of the interim protection orders selected the provision about this duty on Form 5 by circling it or ticking it, to indicate that the interim order in question satisfies the condition and invokes the statutory duty. **We suggest that the provision on Form 5 on the clerk of court’s duty to communicate with the Ministry should be clarified, so as not to give the erroneous impression that the duty is dependent on the court’s discretion instead of on a determination that the condition is satisfied.**

Finally, the communication channel between the court and the Ministry of Gender Equality and Child Welfare needs to be clarified. As several magistrates pointed out, there should be a form for the communication to the Permanent Secretary about children who are at risk.

<sup>137</sup> *Id.*, section 8(7) (emphasis added).

**TABLE 217**

Notice to ministry responsible for child welfare of children at risk		
Order	Number	Percent
Selection or emphasis on provision saying that clerk of the court must send a copy of this order to the Ministry responsible for child welfare	64	7.6%
Not marked	779	92.4%
<b>Total</b>	<b>843</b>	<b>100.0%</b>

### (d) Further orders

The space for “further orders” was utilised by the court to add detail or emphasis in about 27% of the interim protection orders in the sample.

The courts’ use of the section on “further orders” is confusing because there seems to be a substantial overlap between the orders written in this section and the standard terms. In some cases, the “further orders” re-stated other provisions of the interim protection order, such as “further orders” to “cease abuse” or “stay away” or “leave home”. In other cases, although there are standard provisions for items such as no-contact provisions, custody, access and maintenance in the interim protection order form, some magistrates ignored the standard provisions and covered such topics under “further orders” instead.

Some of the “further orders” supplemented the standard provisions by providing additional detail. For example, one provided that the respondent must “*refrain from instructing private investigators to follow the complainant*”, another ordered the respondent not to instigate the complainant’s wife to tamper with the couple’s joint estate and several cautioned respondents not to direct their friends to contact the complainant. Two orders included the respondent’s new partner as an additional respondent and ordered this partner to stay away from the complainant. These seem to be orientated around the provision of the Act which says that “*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*”;<sup>138</sup> they appear to anticipate specific forms of third party interference which might be likely in the circumstances.

In other examples of augmentation of the standard provisions, some emphasised unusual forms of harassment – such as one that ordered the respondent not to film the complainant, another that ordered the respondent not to “*interfere with the family affairs of the complainant’s husband*”, and a third that ordered the respondent not to instigate fights between the complainant’s children and the complainant’s new wife. Two elaborated on problems of economic abuse by ordering respondents not to deprive complainants of food.

A few of the “further orders” seemed to be creative alternatives to orders for exclusive occupation of a joint residence – such as one which ordered the parties to sleep in separate rooms at the joint residence, one which directed the *complainant* to stay at her aunt’s

<sup>138</sup> *Id.*, section 16(3).

**TABLE 218**

Further orders	Number	Percent
Further orders	224	26.6%
No further orders	619	73.4%
<b>Total</b>	<b>843</b>	<b>100.0%</b>

**TABLE 219**

Topics covered by further orders	Number	Percent
Cease domestic violence	41	15.4%
No contact /stay away from complainant and/ or others	78	29.3%
Leave common residence	29	10.9%
Property	28	10.5%
Maintenance	16	6.0%
Custody / access	12	4.5%
Combination of orders	19	7.1%
Other	43	16.2%
<b>Total</b>	<b>266</b>	<b>100.0%</b>

house until the protection order was finalised and one which directed the respondent not to “chase the complainant out of the joint bedroom”.

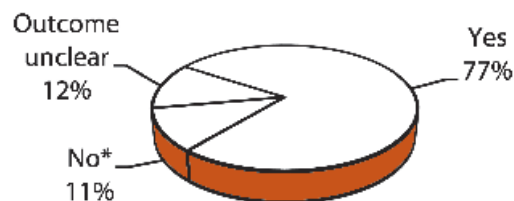
Others gave specific instructions related to maintenance. For example, one ordered the respondent to register his two children on his medical aid scheme, and another ordered the respondent to put the complainant back on his medical aid until the pending divorce was final.

**Some further orders included provisions which were perhaps practical and helpful, but seemed to go beyond what the Act technically allows.** For example, one ordered the respondent to leave the magisterial district altogether. One ordered the respondent (the complainant’s ex-girlfriend) not to “dump the baby” at the complainant’s house. Another ordered the respondent (the complainant’s sister) not to “give orders” in the complainant’s house. The Act authorises court to include “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”;<sup>139</sup> however it is arguable whether some of the cited examples fit under this umbrella.

## 5.13.15 Summary of interim protection order outcomes

Looking more closely at the subset of interim protection orders for which there is full documentation, every provision requested in the application was granted in the interim protection order in only about one-quarter of cases (23%); the interim protection order mirrored the application exactly in only 8% of the orders issued, while the remaining 15% involved complainants who were granted all they had requested, along with some additional provisions they had not requested.

**CHART 91: Did the application for a protection order result in an interim protection order?**



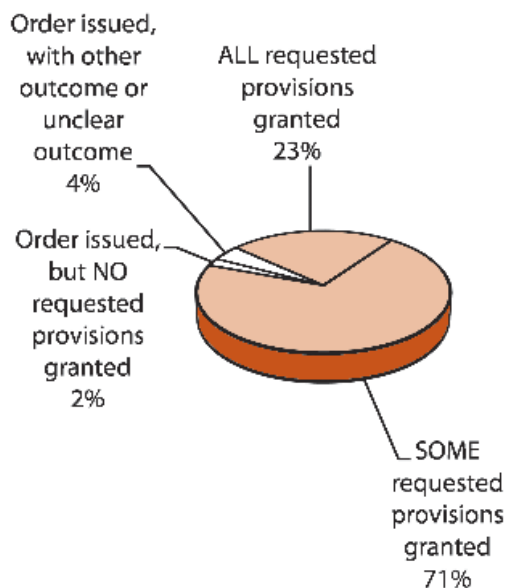
\* This includes 4 cases where a final protection order was issued without being preceded by an interim protection order.

**Most interim protection orders issued included some but not all of the provisions originally requested (70%).** In 51% of the interim protection orders, the court granted some of the complainants’ requests and also added some provisions not requested by the complainant; the remaining 19% of this group comprise protection orders where some but not all of the requested terms were included without any additions from the court.

**Overall, it is clear that magistrates are exercising discretion in their decisions on interim protection order provisions, since two-thirds of the interim protection orders granted (67%) included terms which had not been requested by the applicants, while another 25% included some but not all of the requests put to the court.**

<sup>139</sup> *Id.*, section 14(2)(k).

**CHART 92: Terms of interim protection orders issued compared to complainants' requests**  
(for the 779 interim protection orders with sufficient information for comparison to application)

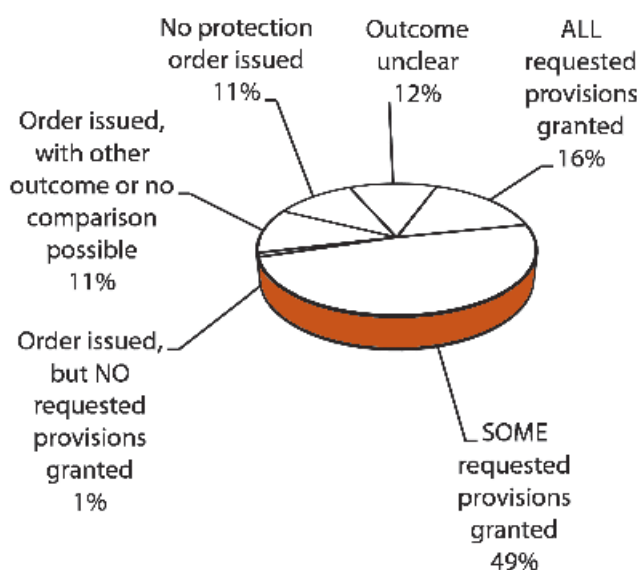


**TABLE 220**  
**Comparison between terms requested by complainants and terms included in interim protection orders**  
(for the 779 interim protection orders with sufficient information for comparison to application)

Outcome	Number	Percent
Got ALL provisions requested plus some additional ones that had not been requested	120	15.4%
Got ALL provisions requested, but no additional ones	60	7.7%
Got FEWER provisions than requested, but got additional ones that had not been requested	399	51.2%
Got FEWER provisions than requested and no additional ones	150	19.3%
Got NONE of the provisions requested, but instead some that had not been requested	17	2.2%
Other*	33	4.2%
<b>Total</b>	<b>779</b>	<b>100.0%</b>

\* This category includes cases where Form 5 was signed but empty, where the interim protection order contained no terms other than a general prohibition on domestic violence with certain types of abuse emphasised, or where there were hand-written orders without any of the standard terms of protection orders.

**CHART 93: Terms of interim protection orders issued compared to complainants' requests**  
(based on all 1131 applications for protection orders)



**TABLE 221**  
**Interim protection orders by complainant request**  
(for all 1131 protection order applications)

Outcome	Number	Percent
Interim protection order issued – every requested provision was granted	180	15.9%
Interim protection order issued – some requested provisions were granted	549	48.5%
Interim protection order issued – completely different provisions from those requested	17	1.5%
Interim protection order issued – other outcome or no comparison possible	120	10.6%
Interim protection order not issued	122	10.8%
Application outcome unclear	143	12.6%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>

We can conclude that about 77% of all the applications for protection orders resulted in an interim protection order, and almost two-thirds of complainants (64%) got some or all of what they asked to have included in the order.

The table on the following page provides a condensed overview of the source of the terms included in interim protection orders.

TABLE 222

<b>Summary of key protection order outcomes</b> (for the 779 interim protection orders with sufficient information for comparison to application)						
<b>Term</b>	<b>Interim protection orders containing this term</b>		<b>Condition requested by complainant and granted</b>		<b>Condition NOT requested by complainant but included</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
<b>Removal of weapons</b>						
Hand over all FIREARMS	54	6.9%	41	5.3%	13	1.7%
Hand over OTHER SPECIFIC WEAPONS	90	11.6%	51	6.5%	39	5.0%
Respondent's FIREARM LICENSE MUST BE SUSPENDED	12	1.5%	2	0.3%	10	1.3%
<b>No-contact provisions</b>						
Respondent must not come near COMPLAINANT	586	75.2%	560	71.9%	26	3.3%
Respondent must not enter or come near complainant's RESIDENCE	664	85.2%	625	80.2%	39	5.0%
Respondent must not enter or come near complainant's WORKPLACE	452	58.0%	389	49.9%	63	8.1%
Respondent must not enter or come near the following other SPECIFIC ADDRESS	194	24.9%	140	18.0%	54	6.9%
<b>Exclusive occupation</b>						
Exclusive occupation of joint residence	493	63.3%	270	34.7%	69	8.9%
<b>Alternative accommodation</b>						
Alternative accommodation	78	10.0%	28	3.6%	18	2.3%
<b>Temporary maintenance</b>						
Temporary maintenance	329	42.2%	250	32.1%	20	2.6%
<b>Temporary orders for custody and access</b>						
Temporary custody of specified children is granted to the COMPLAINANT	376	48.3%	320	41.1%	56	7.2%
Temporary custody of specified children is granted to a THIRD PARTY	15	1.9%	11	1.4%	4	0.5%
The respondent is REFUSED ALL CONTACT with specified children	95	12.2%	53	6.8%	42	5.4%
The respondent is granted CONTACT with specified children ONLY UNDER SPECIFIED CONDITIONS	200	25.7%	149	19.1%	51	6.5%

# 5.14 SERVICE OF INTERIM PROTECTION ORDERS

## COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003

### *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. [This should refer to section 16, which makes it a criminal offence to violate a protection order.]*

## REGULATIONS

### *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 [which deals with police duties in respect of domestic violence].*

(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.<sup>140</sup>*

Service of interim protection orders is covered by section 9 of the Combating of Domestic Violence Act (reproduced in the box above). This provision is supplemented by Regulation 5 (also reproduced above), which makes it a duty of members of the Namibian Police to serve documents under the Act, and requires that police make "*reasonable efforts*" to serve the documents within 5 days of receiving them from the clerk of court. No special method of service by the police is specified, meaning that the method to be used is the same for any other service of court process.<sup>141</sup> If the documents cannot be served by the police, the regulation requires that the clerk of the court arrange service "*without delay*", by giving the document directly to the respondent (if he or she is at court), sending it by registered post, or arranging for service by the messenger of the court (at state expense). The messenger of the court is to effect one of several specified forms of service: personal service or service at the respondent's residence, place of business or place of employment.

**The interim protection order has no effect until it is served on the respondent; but once it is served, it becomes effective and fully enforceable. Therefore service of the interim protection order is of urgent importance because the order is otherwise impotent.** In fact, many key informants reported that a common question they receive from complainants is how long it will take for the protection order to be in place.

<sup>140</sup> Regulation 5. The error in the numbering of the subsections (two subsections numbered (3)) appears in the original document.

<sup>141</sup> Regulation 5(5).

**The regulations do not include a specific form on which to record returns of service.** In contrast, the regulations issued under the Maintenance Act 9 of 2003 include a form which the maintenance investigator or messenger of the court is to complete, certifying that service has taken place and reporting the manner of service which was employed.<sup>142</sup> **Providing a form for return of service in the regulations under the Combating of Domestic Violence Act would be very helpful.** This was an improvement strongly recommended by many of the magistrates consulted.

In the sample of 1122 files, there were documents specifically labelled as returns of service in only 10 files, while at least 33 additional files had sworn declarations or other information from police confirming that service had taken place.<sup>143</sup> One file noted that the interim protection order was extended for 2 weeks because no return of service had been received by the initial expiry date, and one contained a note from police stating that service had *not* taken place. In one case, the court directed a letter to the station commander asking that the service of the order be treated as an urgent matter because of death threats against the complainant.

The presence or absence of information on service is not indicative of the overall situation as the case files examined seemed incomplete in many respects; there may have been returns of service which are missing from the files in some cases.<sup>144</sup> **The absence of sufficient information about service of the interim protection orders made it impossible for this research to produce reliable statistics on the timeframes for service of interim protection orders, although several of the key informants interviewed cited concerns about this issue.**

However, respondents are supposed to sign and date the notice of opposition which accompanies the interim protection order they are served with before sending it back to the court. Although we do not have returns of service for most of the interim protection orders, the date of signature on the notice of opposition provides some indication of when the respondent received the interim protection order – although respondents may of course have received the documents and then delayed some days before signing them. **If respondents tended to sign the notice to oppose within a day or two of receiving it, then the evidence would indicate that interim protection orders are, on average, being served on respondents within 13 to 15 days.** This would not be an unreasonable time period in other contexts, but it is not swift enough to protect complainants who are at great risk of harm from domestic violence.

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<sup>142</sup> Maintenance Act 9 of 2003; regulations contained in Government Notice 233 of 17 November 2003 (Government Gazette 3093), Form C1, Part C. One magistrate referred to the problem of getting respondents to sign a confirmation that they have received the interim protection order. However, it is not clear how this problem arises since neither the forms nor the regulations appear to require this.

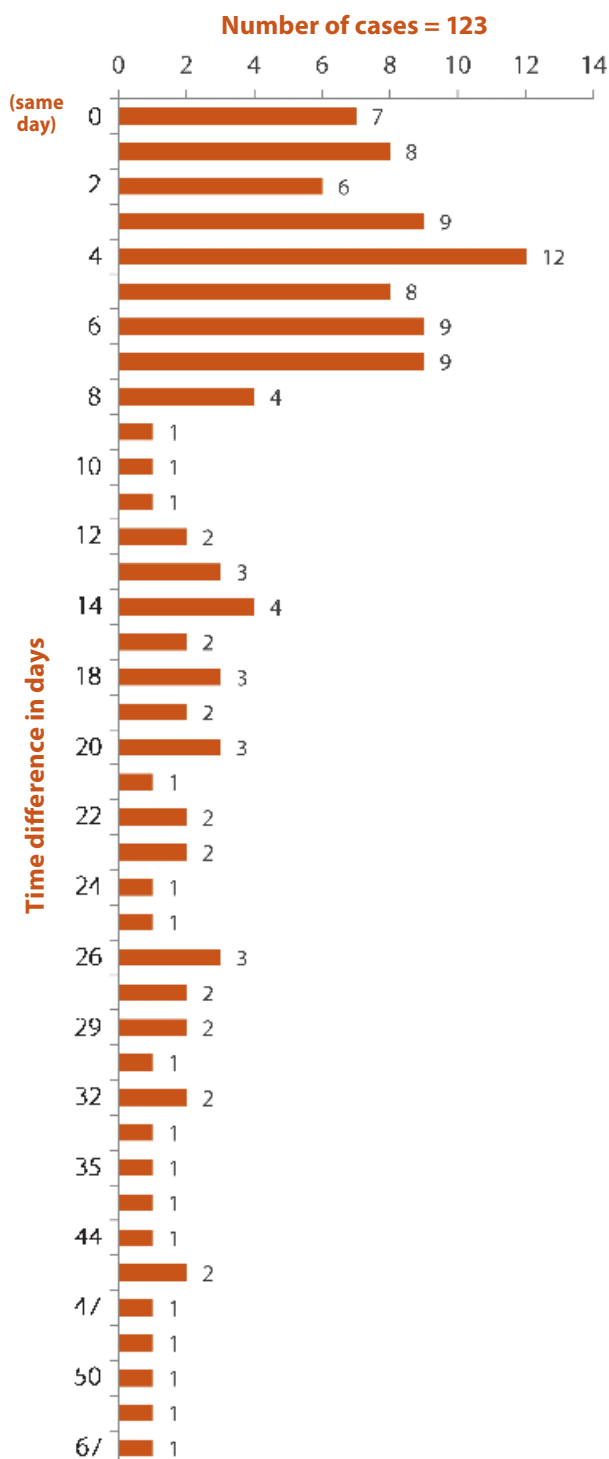
<sup>143</sup> As discussed in the next section (section 5.15), some of the returns of service may relate to notification to the respondent of a changed date of enquiry rather than to service of the interim protection order. It is also possible that some of these returns of service relate to the *complainant*. Section 9(2) of the Act requires that a copy of the interim protection order be served on the complainant upon receipt of a return of service in respect of the respondent – so that the complainant will know that the interim protection order has come into force.

9. (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.*

<sup>144</sup> There were 353 notices of opposition to the interim protection orders from the 1131 respondents in our sample, so interim protection orders *must* have been served on all of these respondents. There must also have been service on respondents where the interim protection orders were confirmed on the grounds that the respondent did not oppose them. But none of these grounds for assuming service tell us anything about the promptness of service.

This average also masks the wide variation in service dates. It appears that many interim protection orders are not served promptly, with 40% apparently being served 10 days or more after being issued, 24% apparently being served 20 days or more later, 11% apparently being served only one month later, and a few apparently being served more than *two months* after being issued.

**CHART 94: Service of interim protection orders: time lapse in days between date on interim protection order and date of respondent's signature on notice of intention to oppose confirmation of order (which approximates date of service) (missing data excluded)**



**TABLE 223**

Indicators of timeframe of return of service (time difference between date interim protection order was granted and date of respondent's signature on notice of intention to oppose)			
Number of days	Number of cases	Percent of cases	Cumulative Percent
0	7	5.7%	5.7%
1	8	6.5%	12.2%
2	6	4.9%	17.1%
3	9	7.3%	24.4%
4	12	9.8%	34.1%
5	8	6.5%	40.7%
6	9	7.3%	48.0%
7	9	7.3%	55.3%
8	4	3.3%	58.5%
9	1	0.8%	59.3%
10	1	0.8%	60.2%
11	1	0.8%	61.0%
12	2	1.6%	62.6%
13	3	2.4%	65.0%
14	4	3.3%	68.3%
15	2	1.6%	69.9%
18	3	2.4%	72.4%
19	2	1.6%	74.0%
20	3	2.4%	76.4%
21	1	0.8%	77.2%
22	2	1.6%	78.9%
23	2	1.6%	80.5%
24	1	0.8%	81.3%
25	1	0.8%	82.1%
26	3	2.4%	84.6%
27	2	1.6%	86.2%
29	2	1.6%	87.8%
30	1	0.8%	88.6%
32	2	1.6%	90.2%
33	1	0.8%	91.1%
35	1	0.8%	91.9%
39	1	0.8%	92.7%
44	1	0.8%	93.5%
45	2	1.6%	95.1%
47	1	0.8%	95.9%
48	1	0.8%	96.7%
50	1	0.8%	97.6%
66	1	0.8%	98.4%
67	1	0.8%	99.2%
74	1	0.8%	100.0%
<b>Total</b>	<b>123</b>	<b>100.0%</b>	

Missing data excluded.

**TABLE 224**

Indicators of timeframe of return of service	
Time difference (in days) between date interim protection order was granted and date of respondent’s signature on notice of intention to oppose	
Number (cases where both dates were in the file)	123
Mean	13.43
Median	7.00
Minimum	0
Maximum	74

Delays in service are problematic, because there is no protection for the complainant in the time between the date of issue of the interim protection order and the date of service on the respondent.<sup>145</sup> Efforts by the court and police must be coordinated to serve interim protection orders more promptly so that they become enforceable.

Even if a magistrate complies with the requirements of the Act to grant an interim protection order “as soon as is reasonably possible”,<sup>146</sup> delays in serving the interim protection order on the respondent undermine interim protection orders that are timeously made. A prosecutor reports that delays in serving interim protection orders sometimes have the effect that “all the dates lapse before the interim protection orders are served on the respondent”.

One clerk of court complained about the lack of co-operation from Woman and Child Protection Units (WCPU) personnel in serving the interim protection orders: “We have an arrangement with the WCPU to serve orders on the respondents but this is sometimes a problem. WCPU will say it is not their work, and will not give it priority... They feel like they are doing us a favour and therefore do it reluctantly, taking their time... We need people in police to be appointed to help with this.” Other key informants made similar statements. For example, a clerk in Keetmanshoop reported that “most forms are never served to the complainant or the respondent by the police and this is a huge problem”.

One magistrate noted that “police say that they are short on personnel, vehicles, and petrol”, meaning that it can take “months” to get the protection order served on respondents. A clerk reported police failure to serve seven interim protection orders in a single month, which led to complaints from the court. Another clerk complained that “sometimes police don’t act because of their acquaintance with the respondent” – although police who were consulted denied that this is the case. A clerk of court from Katutura stated the WCPU works “too slowly” to serve respondents with interim protection orders. This clerk cited the lack of police vehicles, the absence of a sense of urgency on the part of WCPU personnel and some instances where the complainant was asked to deliver the protection order personally.

It could be extremely dangerous for a complainant to serve an interim protection order on a respondent in person, especially given the recurring nature of domestic violence and the likelihood that the respondent will be angered because an interim protection order has been granted against him or her. If a complainant were abused during the process of delivering a protection order to a respondent, this could potentially give rise to a civil claim against police for the damages suffered. Furthermore, there is a potential conflict of interest here, as it is inappropriate for the court to rely on one party in a case to serve process on an opposing party. A scheming complainant could in theory forego

<sup>145</sup> Section 8(6) of the Combating of Domestic Violence Act 4 of 2003 directs the clerk of the court to send a copy of the interim protection order to the station commander of the relevant police station, who “must cause police protection, to the extent reasonably necessary and possible, to be provided to the complainant or any person in the care of the complainant who is at risk until such time as the interim protection order is made final and served on the respondent or discharged.” However, this approach is unlikely to be as effective as prompt service, given all the competing demands for police attention.

<sup>146</sup> Combating of Domestic Violence Act 4 of 2003, section 8(1).

the protection of an interim order, falsely report that it was delivered to the respondent and provide a faked return of service, and then wait to see it made final when no notice of opposition is received from the respondent.<sup>147</sup>

Police thought that it was unlikely that a complainant would ever be asked to serve a protection order, but said that a complainant might be asked to accompany police to help locate or identify a respondent. A court clerk in Windhoek reported in 2011 that complainants who are frustrated by delays in service sometimes use their own vehicles or pay for transport to pick up police officers and drive them to the respondents' homes in order to effect service – noting that clerks sometimes even suggest this option. Even where complainants are accompanied by police, this practice could produce additional trauma or discourage some complainants from continuing with protection order applications.

**Official directives should make it clear that complainants should never be asked to take responsibility for serving a protection order on the respondent, or to accompany police during this task against their will.** (In practice complainants might be asked to assist in locating or identifying a respondent. This would not necessarily be problematic if the complainant were willing to assist.)

*Sometimes the respondents get angry when they are served and they beat the applicants. Some women are afraid they will be beaten MORE if they file protection order applications.*

clerk of court, Tsumeb

Police who were consulted conceded that it is difficult to juggle their many duties and suggested that service would be more likely to receive priority if specific personnel at each police station were designated to take responsibility for this task. This suggestion was supported by a social worker, who reported that there is some confusion about which unit of the police is supposed to be responsible for service.

We were not able to ascertain how often orders are served by messengers of the court rather than police. However, key informants indicated that the messenger of court is seldom utilised for this purpose – and expressed concerns that messengers of court in some regions are, like police, already overextended.

**Most people interviewed pointed to service of protection orders as the weakest part of the process.** For example, one magistrate identified this as an area where reform is needed: “*Serving interim orders quickly is a challenge. There is need for the law on protection orders to look into the issue of how service can be made faster.*” One clerk of court said, “*The law needs to make it clear who is supposed to serve the interim protection order.*” Another suggested that there should be a special administration division which deals only with domestic violence. One field researcher who visited nine courts made the following observation:

*In most areas there seems to be a disconnect between the court and the WCPU or police station. In Walvis Bay, for example, the clerk would hand deliver an interim protection order to the WCPU, where it could sit for upwards of two months before*

<sup>147</sup> Note that such behaviour by a complainant would probably constitute an offence in terms of section 16(5) of the Combating of Domestic Violence Act 4 of 2003.

*being served. While we were there the clerk was investigating one situation where an interim protection order had been issued, the court date passed with neither party present, and the case was dismissed. Upon further investigation the clerk found that the interim protection order was still with the WCPU.<sup>148</sup>*

Six clerks were questioned about service in 2011 follow-up interviews, with only three of them – in Rundu, Tsumeb, and Windhoek – reporting problems due to delays in service. According to the clerks’ responses, however, delays in service are currently common only in Windhoek. The Rundu court clerk offered a single example of a delay in service, while the Tsumeb clerk said the problem is “*not so big*” and that “*it’s only a few*”. The Windhoek clerk, however, reported serious problems with interim protection orders lapsing before service due to shortages of vehicles and personnel. The Tsumeb clerk stated that he “*didn’t know*” what causes delays, but speculated that there were probably not enough police officers.

**Successful service is a fundamental practical aspect of the protection order procedure and therefore in need of urgent attention.**



<sup>148</sup> Field notes of Erin Valentine, 2007.

# 5.15 RESPONDENT'S RESPONSE TO INTERIM PROTECTION ORDER

excerpt from  
**Form 5**  
**INTERIM PROTECTION ORDER**

**NOTICE TO THE RESPONDENT:**

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

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

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

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

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

Every interim protection order includes the pre-printed information shown in the box above. After an interim protection order is served on the respondent, any respondent who wants to oppose the interim protection order is supposed to complete an enclosed form labelled "Form 6" and return this form to the court on or before the return date specified on the form. The first part of this form is reproduced on the following page.

excerpt from  
**Form 6**  
**NOTICE OF INTENTION TO OPPOSE**  
**CONFIRMATION OF PROTECTION ORDER**

**NOTICE TO RESPONDENT:**

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

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

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

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

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

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

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

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

2. Choose one:

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

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

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

*[followed by a table where the respondent can fill in the potential witness's name, "best contact address" and "what information this witness can give the court"]*



The respondent is expected to complete the “Notice of Intention to Oppose Confirmation of Protection Order” which is appended to Form 6 before the “return date”, which is normally 30 days from the date of the interim protection order. The return date must be extended if it ends up being less than 10 days after the date the interim protection order was served on the respondent, to ensure that the respondent has fair notice of the enquiry – in which case the protection order will remain in force until the extended return date.<sup>149</sup>

The clerk of court is required to set a date for the enquiry within 30 days of receiving the respondent’s notice of opposition. The interim protection order remains in force until this enquiry is complete.

If the respondent does not oppose the interim protection order before the return date, it will become final. (This procedure is discussed in section 5.16.)

## COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003

### Section 11

#### *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.*

The respondent may accept the standard enquiry date and indicate that he or she will appear in person at the enquiry. Alternatively, the respondent may accelerate the enquiry process by requesting an earlier date of enquiry in the notice of opposition. The possibility of accelerated scheduling was intended to minimise any potential unfairness to the respondent by allowing for *ex parte* interim protection orders.

The Act and the form are not a good fit on this point. In an effort to minimise service, Form 6 allows for *a date for the enquiry to be set in advance* and indicated on the notice which is delivered to the respondent (see form excerpt on the following page – first line of coloured text); if the respondent wants to accelerate the process, the form *allows the*

<sup>149</sup> Combating of Domestic Violence Act 4 of 2003, section 8(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 the end of the extended return date.*”

respondent to choose an alternative date (see form excerpt below – second line of coloured text). The theory was that this approach would eliminate the need for further service on the respondent to notify him or her of the date of the enquiry. Although it might seem impractical to set a provisional date in this way, before the court even knows if an enquiry will be necessary, none of the court personnel interviewed raised this as a problem.

excerpt from  
**Form 6**  
**NOTICE OF INTENTION TO OPPOSE  
CONFIRMATION OF PROTECTION ORDER**

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

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

2. Choose one:

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

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

Section 11 of the Act, on the other hand, contemplates that the clerk of court, *after* receiving a notice of opposition, will set a date for the enquiry which is within 30 days of receiving the notice of opposition from the respondent. The Act allows the respondent to request an expedited enquiry, but the clerk of court is directed to comply with this request by setting an earlier date only “*where possible*”. The regulations do not provide any further directions on the general issue of scheduling, or on responding to respondents’ requests for accelerated scheduling.

In any event, as will be discussed below, what happens in practice does not actually tend to follow either of these routes.

## 5.15.1 Notice of intention to oppose interim protection orders

It is difficult to draw conclusions from the files on the responses from respondents. **Based on the use of Form 6 to indicate opposition to the interim protection order, about 41% of such orders were opposed by respondents – although almost half (45%) of these forms were incomplete and (as explained below) some confusingly seemed to indicate that the respondent was *not* opposing the order.**

A few additional files contained blank copies of Form 6, while the majority of files contained no Form 6.

The information in the files does not seem to accord with the information from key informants, who reported in almost every location that most interim protection orders are opposed by the respondents.

A few key informants felt that opposition was rare. A magistrate in Keetmanshoop was of the opinion that respondents often fail to oppose interim protection orders because “they have nothing to say; the allegations against them are strong”, while a magistrate in Oshakati said that most respondents in her experience “simply agree” and “refuse to even come and attend the enquiry”. In follow-up interviews with a selection of court clerks, four clerks stated that few if any respondents oppose protection orders. For example, the clerk from Karibib stated, “I haven’t had any respondent who refused to any of these things.”

However, some key informants offered a different explanation for the paucity of information on respondents’ opposition in the files. One magistrate said: “They don’t normally file an affidavit. They oppose verbally, at the hearing in chambers.” A clerk of court in Tsumeb agreed: “They don’t file the papers to oppose, they just oppose at the hearing.” A clerk in Rehoboth said, “Mostly they do not want to oppose the application, but want to explain to the magistrate their side of the story. It is only when they are removed from the house that the respondents come to oppose the application because they want to go back into the house.”

**In the cases where there was a fully-completed Form 6 in the file, the details filled in by the respondents indicate that respondents may not understand the form they are supposed to complete and return.**

*They oppose, but when they come to court, they have no grounds for opposing.*

clerk of court, Tsumeb

**TABLE 225**

Opposition to interim protection orders by respondents		
Is Form 6 in the file?	Number	Percent
Yes	193	22.3%
Yes, but incomplete	160	18.5%
Yes, but empty	35	4.0%
No	478	55.2%
<b>Total</b>	<b>866</b>	<b>100.0%</b>

This table is based on the 866 cases where interim protection orders were granted, as there would be no need for the respondent to file a notice to oppose if the interim protection order was not granted.

Form 6 has two sides. The front side is supposed to be completed by the clerk of the court to provide the respondent with necessary information – the name of the complainant, the return date, the date of the enquiry, the location of the magistrate’s court that will hear the enquiry and the postal address to which the notice should be returned. The reverse side of Form 6 is essentially a pre-drafted statement where the respondent can indicate that he or she wishes to oppose the order. (A respondent who does not wish to oppose the order would simply not return the form at all.) The respondent is expected to fill in only two items on the form – (1) the respondent can indicate either that he or she will come to court on the pre-set date for the enquiry or alternatively that he or she would like to accelerate the enquiry to an earlier date; and (2) the respondent is expected to list persons whom he or she would like to have come to court to give evidence, so that they can be summoned if necessary (but without any place for indicating if a summons will be needed).<sup>150</sup> The respondent must then sign and date the form and post or hand-deliver it back to the court.

<sup>150</sup> Section 12(3) of the Combating of Domestic Violence Act 4 of 2003 states: “Any party to an enquiry may call any witness to support his or her case.” Regulation 4(11) indicates that the court can be requested to summon relevant witnesses for either party:

(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.

**Form 6 – front side**

**FORM 6**  
(Regulation 7)  
**NOTICE OF INTENTION TO OPPOSE CONFIRMATION OF PROTECTION ORDER**  
Section 11 of the Combating of Domestic Violence Act, 2003  
(Note: this form must be included with the interim protection order sent to the respondent, with the boxed portions of the form already completed by the clerk of court.)

APPLICATION NUMBER .....

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF .....

HELD AT .....

In the matter between

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

AND

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

---

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

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

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

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

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

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

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

**Form 6 – back side**

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

2. Choose one:  
 ..... I will come to court on the date for the enquiry listed above.  
 ..... I ask that the Clerk of the Court to hold the enquiry sooner, at 08h30 on the following date: ..... I will come to court on this date. (This date must be a weekday which is less than 30 days from the date you received the interim protection order.)

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

NAME	BEST CONTACT ADDRESS	WHAT INFORMATION THIS WITNESS CAN GIVE THE COURT

.....  
SIGNATURE

.....  
DATE

However, it is clear that this form is not well-understood by respondents. The purpose of Form 6 is to oppose the finalisation of the interim protection order. Therefore it contains a statement which says: *“I ask the court NOT to confirm the interim protection order which has been made against me.”* The idea is that a respondent who does not want to oppose the order would simply not return the form; the form states: *“If you do NOT return this form to the Clerk of Court by this date, then the interim protection order against you will be made final.”*

A few respondents unnecessarily ‘selected’ the statement saying that they ask the court not to confirm the order – which was unnecessary but did not do any harm. More confusing is the fact that more than one-third of respondents (36%) indicated that they *disagreed* with the statement – which could mean that they were not actually opposing the interim protection order, or that they intended to oppose the order but misunderstood the statement. Or perhaps some of these respondents intended the marks in question to indicate agreement with the statement.

At least 18% of the respondents who completed Form 6 failed to sign it, and 35 respondents apparently returned a Form 6 which was completely blank.

In follow-up interviews with a few clerks in different locations in 2011, we tried to get clarity on the courts’ response to receiving blank or confusingly-marked forms. All six clerks who gave follow-up information on this topic agreed that a respondent’s reply that he disagrees with the statement, *“I ask the court NOT to confirm the interim protection order which has been made against me”* actually means that the respondent wishes to oppose the order. The Karasburg and Windhoek courts apparently treat this response like any other objection to the interim protection order. The Rundu clerk similarly said that if respondents *“fill in that part, then they are coming on the date of the enquiry”*, regardless of the substance of their response.

With respect to the return of a blank copy of Form 6, the Rundu and Windhoek clerks stated that a blank form means that the respondent does not object to the protection order, but will still come to court on the enquiry date. Similarly, the Tsumeb court clerk indicated that the respondent who returns a blank Form 6 will nonetheless come to court. The clerk in Karasburg said it was up to the magistrate to decide what to do in such a case, and the clerk in Aranos had not encountered any blank forms.

The respondent is at something of a disadvantage in the procedure. The complainant will normally approach the clerk of the court for assistance with the application form. The respondent will receive the forms he or she should complete at home, without a specific person to approach for help. In practice, it appears that police usually explain the forms when they serve them on the respondent. However, key informants report that respondents often come in person to the court for further explanation.<sup>151</sup>

**Because the forms are clearly causing confusion and because respondents often come to court for more information and often attend the enquiry even if they are not clearly opposing the order, we suggest that this aspect of the process should be simplified. The respondent should be served with the interim protection order and simply instructed to come to court on the return date if he or she wishes to oppose the order.** (This suggestion is elaborated in section 5.15.4.)

## 5.15.2 Timeframes

The return date and the date of enquiry are both supposed to be filled in on the form by the clerk of court.

The “return date” is supposed to be 30 days from the date of the interim protection order, unless it is extended.<sup>152</sup> The date of the enquiry is supposed to be within 30 days of the date of receipt of the respondent’s notice by the court.<sup>153</sup> The statute further provides that the interim protection order shall remain in force until the court makes a decision on whether or not to confirm it.<sup>154</sup>

In other words, the respondent must return the notice of opposition by the return date at the latest, and the enquiry must be within 30 days of the receipt of the notice of opposition, so any enquiry date set more than 30 days after the return date would clearly fall outside the time frames set in the statute.

At the same time, as already noted, Form 6 requires clerks of court to fill in a date for the enquiry *before* the form is served on the respondent – meaning that this date cannot possibly have reference to the date on which the notice is received back from the respondent. The form responds to this difficulty by indicating that the notice should be returned to the court one week before the date of enquiry, which would keep the process within the letter of the law.

**So, in other words, if the law and the directions on the form are both followed precisely, the return date would be set at 30 days from the date that the interim protection order is issued, and the pre-set date for the enquiry would normally be 30 days plus 7 more days.**

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<sup>151</sup> This is discussed in more detail in section 5.15.4.

<sup>152</sup> Combating of Domestic Violence Act 4 of 2003, section 8(5).

<sup>153</sup> *Id*, section 11(1).

<sup>154</sup> *Id*, section 11(3).

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

\*\*\*

**The enquiry to consider the protection order is scheduled for the following date:**

.....  
 (date indicated on the front page of the interim protection order)

## (a) Date between issue of interim protection order and return date

It appears that return dates have been set at *less than 30 days* in almost two-thirds (64%) of the cases which contain date information, thus accelerating the entire process – which, while not technically in line with the law, is probably not problematic as long as the respondent is not prejudiced in respect of preparing to present his or her side of the story. In fact, the typical case in the sample had a return date that was 25 or 26 days after the date of the interim protection order.

On the other hand, just over one-third of the cases with information about dates had a return date which was *more than 30 days* after the date of the interim protection order. This could be seen as prejudicing the respondent by allowing the interim order to remain in place for longer than 30 days, or it could be a longer timeframe set by magistrates to allow for possible delays in service. This is in line with what the Act allows, as section 8(2) states that although the return date “*is 30 days from the date of the interim protection order*”, “*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*”. The interim protection order must remain in force until the extended date.

A return date *exactly 30 days* after the issue of the interim protection order – the precise time frame contemplated by the law – was the exception rather than the rule.

The shortest time period for a return date was on the same day that the interim protection order was issued, which is hard to understand unless the respondent was somehow also present at the court at the time. The longest time period was 146 days (or almost 5 months).

**TABLE 226**

Time difference between date when interim protection order was signed and return date (in days)			
Timeframe	Number	Percent	Cumulative percent
< 30 days	177	64.4%	64.4%
30 days	4	1.5%	65.8%
> 30 days	94	34.2%	100.0%
<b>Total</b>	<b>275</b>	<b>100.0%</b>	

Excluding one case where the difference was negative (-6 days).

**TABLE 227**

Time difference between date when interim protection order was signed and return date (In days)	
<b>Number</b>	275
<b>Mean</b>	26.48
<b>Median</b>	25.00
<b>Minimum</b>	0
<b>Maximum</b>	146

## (b) Date between return date and pre-set enquiry date

About half of the courts followed the implicit direction to make the pre-set enquiry date 7 days after the return date. Looking at the completed forms which were in the files in our sample, 51% had an enquiry date which was exactly 7 days after the date named as being the latest date on which the notice could be returned to the court, and 60% named an enquiry date which was either 7 days or less than 7 days after this date. The vast majority (84%) set an enquiry date that was within 14 days after the return date, with only 16% setting a date more than 14 days later. Some forms set the date of enquiry on the return date.

All of these options would be likely to fall within with the law’s directive to hold the enquiry within 30 days of the time that the court actually received the respondent’s returned notice (keeping in mind that a respondent might return the notice to the court before the actual return date).

A few of the pre-set dates of enquiry clearly fell outside the maximum time limits set by the legislation, but only slightly, with the latest time set for the enquiry being 36 days after the return date.

TABLE 228

Time difference between return date and proposed date of enquiry on Form 6			
Timeframe	Number	Percent	Cumulative percent
Less than 7 days	27	9.0%	9.0%
7 days	153	51.2%	60.2%
>7 and <= 14 days	70	23.4%	83.6%
> 14 days	49	16.4%	100.0%
	<b>299</b>	<b>100.0%</b>	

TABLE 229

Time difference between return date and proposed date of enquiry (in days)	
Number	299
Mean	9.7
Median	7.0
Minimum	0
Maximum	36

## (c) Date between service of interim protection order on respondent and return date

Form 6 does not indicate the date of service of the interim protection order on the respondent. The date of service is essential to determine whether the return date (the latest date on which Form 6 must reach the court) complies with the statutory requirement that the return date be ten or more days *after* the service of the interim order.<sup>155</sup>

The respondent’s notice of opposition must reach the court on or before the return date; if it does not, the court is required to confirm the interim protection order without holding an enquiry (provided that the court is satisfied that the interim order was properly served on the respondent).<sup>156</sup> Thirteen respondents signed and dated Form 6 *after* the return date had passed (accounting for 13% of the forms where the date of signature could be ascertained) – which could mean that the timeline was not clearly understood by the respondents, or that service of the interim protection order was delayed until after the return date had already passed, leaving respondents no option but to file their notice of opposition late as well.

<sup>155</sup> *Id.*, section 8(5).

<sup>156</sup> *Id.*, section 10.

Sixteen respondents signed the notice of opposition *more than 30 days before* the return date (16% of the forms where the date of signature could be ascertained) – indicating that the Act’s requirement of setting the return date 30 days after the issue of the interim protection order is not being universally followed. If the return date was in fact set as being 30 days after the issue of the interim protection order as the Act requires, it would not be possible for the respondent to have received the interim protection order and signed a notice of opposition to it *more than 30 days before* the return date. (These cases could also involve errors by respondents in recording the correct date.)

However, **respondents typically signed the notice to oppose 15 to 17 days before the return date. This indicates that the Act’s minimum period of 10 days between service on the respondent and the return date is being respected in the typical case.** The goal of the law must be to set a balance between giving the respondent a reasonable amount of time to prepare a defence, and limiting the period that an *ex parte* order against the respondent can remain in force. In the typical case, respondents received the interim protection order two weeks or more before the return date, which would in the typical case be one week before the date of the enquiry – thus giving the average respondent about three weeks to prepare for the enquiry. Thus, the present system seems to accomplish the desired objective, despite the lack of clarity in the provisions concerning dates.

**TABLE 230**

Time difference between return date and signature of respondent on notice of opposition		
Timeframe	Number	Percent
Six weeks or more before the return date	6	5.9%
> 4 and <= 5 weeks before the return date	10	9.8%
> 3 and <= 4 weeks before the return date	9	8.8%
> 2 and <= 3 weeks before the return date	21	20.6%
> 1 and <= 2 weeks before the return date	20	19.6%
Within one week before the return date	23	22.5%
Form 6 signed after return date	13	12.7%
<b>Total</b>	<b>102</b>	<b>100.0%</b>

**TABLE 231**

Time difference between return date and signature of respondent on notice of opposition (in days)	
<b>Number</b>	89
<b>Mean</b>	16.7
<b>Median</b>	15.0
<b>Minimum</b>	0
<b>Maximum</b>	55

## (d) Accelerations of enquiry date

The Act allows the respondent to request an acceleration of the date of the enquiry, so long as the complainant receives 24 hours notice of the change of date. **Looking at the small group of respondents who chose any option regarding timing (only 129 out of 1131), 62% (80 respondents) indicated on Form 6 that they would appear in court on the day of the enquiry, while 38% (49 respondents) requested that the enquiry be held sooner than scheduled.** It is not clear what the many respondents who failed to choose either option understood about the timing of the enquiry (64 out of the 193 completed forms in our sample of files did not indicate either timing option).

**Several clerks reported that respondents often ask for earlier enquiry dates.** One clerk reported that most respondents in her area want an accelerated court date, but that this “*will depend on the court diary*”.

If the court sets a new date for the enquiry after receiving a notice to oppose from the respondent, the clerk is supposed to notify the complainant and the respondent of the



new date by sending them a copy of Form 4.<sup>157</sup> (The complainant would presumably have been notified of the date indicated on the notice to the respondent at the time the interim protection order was granted, and so would need additional notice only if this original date was changed.)

In the sample of 866 files where interim protection orders were issued, we found copies of Form 4 addressed to complainants in 32 cases (4%), copies of Form 4 addressed to respondents in 89 cases (10%) and copies of Form 4 addressed to witnesses in only 5 cases. There may have been files which should have contained these forms but were incomplete. The notices to some of the respondents may have been necessitated in cases where respondents did not show up on the originally-scheduled date. So it is difficult to be sure how many of these notices involved re-scheduling of the original enquiry, or steps taken because one or both of the parties did not appear on the scheduled date – making it impossible to draw firm conclusions on these procedural issues.

Six clerks were asked in 2011 follow-up interviews about the procedure they followed if the respondent requested an alternate date for the enquiry. Clerks in Windhoek, Aranos, and Outjo said that respondents are served a second time with a new enquiry date. In Karibib, the clerk telephones the respondent to confirm the new date. The Rundu clerk stated that it is not necessary to inform the respondent because he is the one who suggested the alternative date – although this practice seems problematic because a respondent who requests a particular date will not know if his request to change the court date has been granted or if the particular alternate date requested is available on the court roll (unless the respondent brings the return of service in person to the court and discusses the date with the clerk at this time). The court clerk in Karasburg claimed that respondents do not have the right to ask for an alternative date, even though the Act (and Form 6) clearly provide for the possibility of an accelerated court date.

Courts generally use the same methods to contact complainants and respondents about changed dates. However, in Rundu, the court clerk who held the view that there is no need to confirm the alternative date with the respondent who requested it, does contact the complainant to inform him or her of the new date selected by the respondent.

None of the clerks reported that the practice of permitting respondents to request alternative dates creates problems for the court calendar.

### 5.15.3 Witnesses for respondents

**Of the 353 notices of opposition (Form 6) which were complete or partially completed in our sample of 1131 respondents, only 43 such notices (12%) listed any witnesses proposed by respondents to give evidence on their behalf at the enquiry.** Where the sex of the proposed witness could be ascertained, men and women were roughly evenly represented. Like complainants, respondents typically mentioned one to two witnesses. The forms seldom indicated the relationship or age of the witness, but where they did, relatives featured frequently – including a few children of the respondent and the complainant, children of

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<sup>157</sup> Combating of Domestic Violence Act 4 of 2003, section 11(1) read together with Regulation 3. Note that Form 4 has an incorrect sub-heading which says “*CONSENT TO BE COVERED BY A NO-CONTACT PROVISION*”, beneath the main heading “*NOTICE TO ATTEND ENQUIRY*”. Form 3 bears only the heading “*CONSENT TO BE COVERED BY A NO-CONTACT PROVISION*” and is actually the form which deals with consent to be covered by a no-contact provision.

the complainant or children of the respondent's current spouse or partner. Some proposed witnesses were professionals such as medical practitioners, social workers, lawyers and police or WCPU officers.

**TABLE 232**

Number of witnesses requested by respondent		
Number of witnesses	Number of responses	Percent
One	19	44.2%
Two	12	27.9%
Three	8	18.6%
Four	2	4.7%
Five	2	4.7%
<b>Total</b>	<b>43</b>	<b>100.0%</b>

**TABLE 233**

Demographic characteristics of proposed witnesses for respondent			
Characteristic		Number	Percent
<b>Relationship to complainant</b>	Partner of respondent (ex-husband; ex-boyfriend)	1	1.2%
	Son/daughter of both	6	7.1%
	Son/daughter of complainant	3	3.5%
	Son/daughter of spouse/ partner	2	2.4%
	Parent of spouse/partner	1	1.2%
	Other relative	8	9.4%
	Lawyer/counsel	2	2.4%
	Medical practitioners / social worker	5	5.9%
	Police officer / WCPU officer	3	3.5%
	Other witness (unspecified)	54	63.5%
<b>Total</b>		<b>85</b>	<b>100.0%</b>
<b>Sex</b>	Male	39	56.5%
	Female	30	43.5%
	<b>Total</b>	<b>69</b>	<b>100.0%</b>
<b>Age group</b>	5-9	1	11.1%
	10-14	5	55.6%
	15-19	2	22.2%
	20-24	1	11.1%
	<b>Total</b>	<b>9</b>	<b>100.0%</b>

Although the ages of proposed witnesses were not requested by the form and were seldom provided, six proposed witnesses were under the age of 14, and eight were under age 18. **Both respondents and complainants mentioned children as potential witnesses. The significance of such a situation cannot be ignored; the impact of a child witnessing a parent or both parents in a situation of domestic violence is likely to have negative impacts on the child's emotional and behavioural well-being, and providing testimony recalling the acts of domestic violence could 'retraumatise' a child witness.** Testifying in court could be especially intimidating and difficult for a young witness who may already be distressed by the unfamiliar setting of a courtroom and the formalities of the enquiry.

**Also, being called as a witness for the respondent could be challenging and upsetting for a child of the complainant or a child of the complainant and respondent together if the child has conflicted feelings of loyalty.** The situation might be even more traumatic where the same child was being suggested as a witness by *both* parties in an effort to prove that the incident complained of either did or did not constitute domestic violence.

Many respondents who indicated the type of information to be provided by witnesses indicated that the witness in question could refute the complainant's allegations, or that the witness saw the recent alleged incident of abuse. Six witnesses could reportedly give evidence of abuse *against the respondent by the complainant*.

## 5.15.4 Fairness to respondents

Many key informants stated that respondents do not understand the procedure for opposing protection orders. A prosecutor who works with protection orders reported that most respondents in his jurisdiction oppose interim orders, and generally show up at enquiries to give their side of the story. He reported that respondents who do not understand the papers they receive will come to the court to find out more: *"The respondents also come to us and we explain it to them. They come some time after receiving the interim protection order. They ask, 'What is it?' and 'What does it mean?'"*. Several other key informants similarly said that respondents do not understand the papers they have received and usually come to court for an explanation. For example, a clerk of court in Katutura reported that respondents tend to come to the court to find out the meaning of the papers they have received, where they will be assisted in completing the notice to oppose. (However, one clerk reported that respondents who know the clerk personally will come to the court and try to persuade him to use his influence in their favour.) A magistrate said that respondents sometimes telephone the court to find out what to do, and are then advised to come to see the clerk for assistance with the forms.

Several clerks said that the police who serve the interim protection order on the respondent explain what it means and direct their attention to the form that they should complete. However, another clerk complained that *"police at times do not explain fully to the respondents. So they come here and I explain. Some do not come until after the final order is issued, then they come and say they did not know that they were supposed to come and oppose the application."*

One magistrate explained that respondents sometimes confuse applications with decisions; they think when they receive the interim protection order that the final decision has already taken place and that the outcome has been negative for them. Other respondents reportedly believe that the court is divorcing them from their wives by means of the protection order; they do not understand that the order is aimed at protecting the victim rather than ending the relationship. This magistrate, who was based in a small community, said that she sometimes tries to find respondents, in order to encourage them to attend the enquiry so that the order can be clearly explained to them.

One clerk expressed concern that *"people... do not know what they are supposed to do after being served with an interim protection order"* and suggested that the law should require that the respondent always be summoned to come to court before a final protection order is issued.

***People don't understand about opposing the order.***

clerk of court, Usakos

This suggestion was put to 30 magistrates who deal with protection orders at a training session in 2011. There was unanimous agreement that **the procedure should be simplified as follows:**

- **The interim protection order should be served on the respondent, who must be directed to come to court on the return date named in the order. The "notice of intention to oppose" should be eliminated.** (Where a respondent fails to attend court on the return date, the court can confirm the interim protection order as a final protection order provided that there is a satisfactory return of service.)

- **The complainant should be directed to come back to court on the return date at the time the application for the interim protection order is considered.**

In light of the information which emerged in this study, we agree that this would be a better approach than the current system.

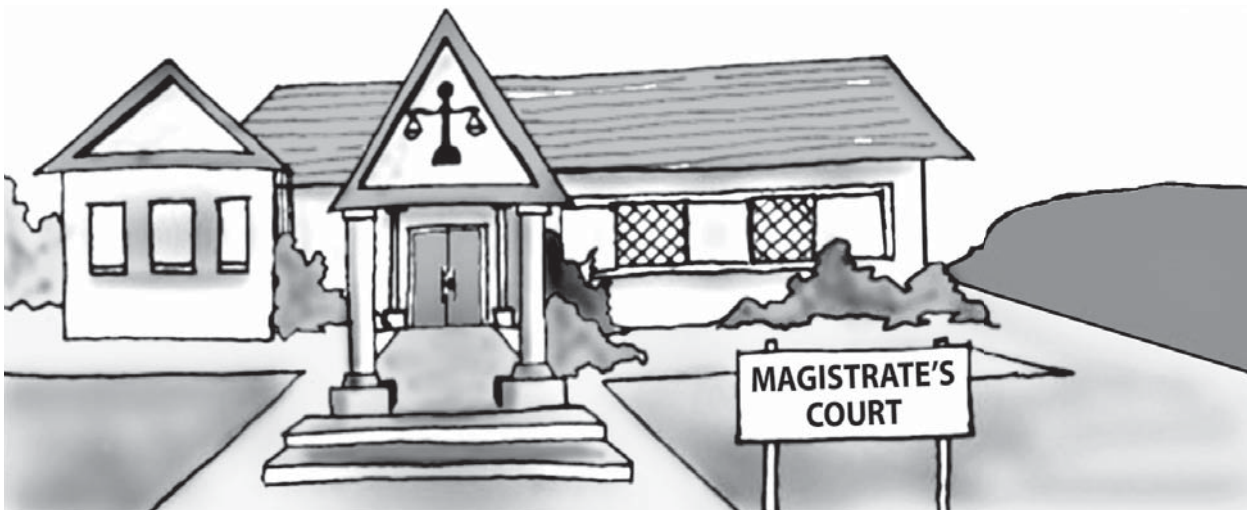
**Under this approach, the respondent could also simply be directed to contact the clerk of the court if he or she wishes to enquire about an accelerated enquiry. Alternatively, the option of an accelerated enquiry could simply be eliminated – since the simplified procedure should make it possible to hold enquiries on the return date and so shorten the time period for *all* protection order proceedings.**

The proposed change in procedure could also benefit complainants. As will be discussed in section 5.16, many interim protection orders are abandoned, withdrawn, or for some other reason never made final. Having a more clear and definite return date could make the process more straightforward for both parties.

## 5.16 ENQUIRIES AND FINAL PROTECTION ORDERS

There are two basic ways in which an interim protection order can be made final: (1) The interim protection order will automatically become final if the respondent does not oppose it, in which case the final protection order would be identical to the interim protection order.<sup>158</sup> (2) After an enquiry at which the respondent has a chance to give his or her side of the story, the magistrate can:

- confirm the interim protection order in part or as a whole as a final protection order;
- amend the interim protection order and make it final as amended;
- discharge the interim protection order and substitute a different final order for the interim order; or
- discharge the interim protection order and issue no final order.<sup>159</sup>



<sup>158</sup> Combating of Domestic Violence Act 4 of 2003, section 10.

<sup>159</sup> *Id.*, section 12(16).

## 5.16.1 Enquiries

### COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003

#### Section 11

##### *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 nonappearance, 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.*

## REGULATIONS

### *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 [a] 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 [sic] 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.*

**Section 12 of the Act and Regulation 4 set forth the procedure which is supposed to be followed at enquiries. There is some confusion between the two on who can be present at the enquiry, however.** Section 12(8) of the Act indicates that “*except with the permission of the court*”, the courtroom is to be closed to all non-essential persons except the two support persons which the complainant and respondent are each entitled to have accompanying them if they wish. In contrast, the regulations posit a different starting point, saying that the court “*may order that the public or press be excluded from a domestic violence enquiry*”, if the court considers this “*appropriate in the interests of the moral welfare or safety of the applicant*”.<sup>160</sup> The Act would take precedence over the regulations, but the discrepancy appears to have caused some confusion.

**Many key informants confirmed that enquiries take place in closed court as the Act directs, but the rule was not universally known or followed.** One magistrate interviewed was under the impression that enquires could not take place in closed court because “*the law does not provide for this*”. Another magistrate similarly said, “*In court it is open for everyone to listen, I don’t impose any restrictions and I don’t think this is written anywhere in the Act.*” A third magistrate said that enquiries must take place in open court because court processes are always open. One clerk reported that the decision on whether or not to close the court is up to the magistrate, who will hear “*serious*” cases in close court. Another clerk said that the previous magistrate at her court used to hear protection order applications in chambers, but not the current magistrate, noting that “*most domestic violence victims do not want to go to open court*”. **The Act and the regulations should be harmonised on this issue to help alleviate the inconsistent practices currently being followed. It would also be useful for the Magistrate’s Commission or the Ministry of Justice to circulate a memorandum clarifying that the court should be closed for protection order enquiries.**

**We know very little about enquires from the case files. In fact, we cannot even determine how many of the cases in the sample involved full enquiries. We know that 272 final**

<sup>160</sup> Note that the Act uses applicant to refer to anyone who has applied for a protection order. See the definitions of “applicant” and “complainant” in section 1 of the Act.



protection orders were issued in respect of our sample of applications against 1131 respondents, compared to 866 interim protection orders, but it is not clear how many of those were issued after enquiries and how many were confirmed automatically because respondents failed to oppose them. We also know that there were at least 55 cases where the court refused to confirm interim protection orders after enquiries were held.

A magistrate in Lüderitz described the enquiry process this way: *“It’s all done privately. The complainant first confirms her story, then the respondent has a chance to tell his side. The violence is usually not disputed, but the man will usually want to explain his reason for the action (such as the fact that the woman is having an affair).”*

**There were at least 21 instances of legal representation: 10 lawyers representing complainants and 11 lawyers representing respondents. There were lawyers on both sides in at least one case, and possibly others.** Four case files included applications for legal aid. One clerk observed that male respondents are more likely to have legal representation than female complainants, explaining that this is because men are the ones who tend to be employed, and therefore tend to have a Legal Shield policy.<sup>161</sup> A magistrate in Walvis Bay reported that parties *“often”* have legal representation. This is probably less likely to be the case outside of urban centres.

**Several clerks of court said that they accompany complainants to court to assist them at the enquiry if they do not have legal representation.** One clerk said that he accompanies complainant if he is not too busy with other work. One magistrate expressed concerns about the difficulties magistrates can experience when clerks are not present: *“Normally both the complainant and the respondent are without lawyers and sometimes the clerk cannot be at the court. The magistrate needs to guide the clients through the whole procedure which takes a lot of time. Moreover the magistrate must be neutral, which is difficult if the magistrate advises both parties.”* On the other hand, other magistrates said that clerks should never attend the enquiries as this is not part of their role. Several clerks similarly said that they never attend the enquiries, with one adding *“that is not our duty”*.

One clerk expressed concerns about the difficulties faced by unrepresented parties: *“There are problems, especially when at the hearing the people don’t know what evidence they must present to the court. The magistrate then has to adjudicate evidence right there on the spot and that is difficult. Then, when the applicant must cross-examine, she doesn’t know how. Maybe it should work like the maintenance procedure: appoint a prosecutor to represent the applicant.”*<sup>162</sup> One magistrate similarly suggested that prosecutors should play a role in assisting complainants so that the magistrate does not have to *“do everything”*.

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<sup>161</sup> Legal Shield is a short-term insurance scheme where clients pay a monthly amount and receive free legal representation should they need it. Legal Shield policies technically cover the policy-holder as well as the policy-holder’s spouse or cohabiting partner and children. However, the policy-holder’s consent is required before family members may utilise it, and where the same set of facts or circumstances gives rise to a cause of action by or against more than one person who is covered by the policy, the coverage applies only to the main member or a family member specified by the main member. Information from standard policy, available at <[www.legalshield.na](http://www.legalshield.na)>.

<sup>162</sup> According to section 7(3) of the Maintenance Act 9 of 2003, *“Any person on whom the Prosecutor-General has delegated authority to conduct criminal proceedings in any magistrate’s court is deemed to have been appointed a maintenance officer for the relevant maintenance court.”* Maintenance officers generally help place the relevant evidence before the court at a maintenance enquiry (see sections 10 and 12 of the Maintenance Act). Section 47 of the Maintenance Act provides that prosecutors can be assigned to represent parties who are either children or caretakers of children in maintenance appeals.

On the other hand, one clerk recalled a case where a complainant without representation faced a respondent who had a lawyer, reporting that she nevertheless “*went through the history of the relationship from the start*” and succeeded in getting an order removing the respondent from the joint residence.

In a 2006 case, a Legal Assistance Centre paralegal attempted to assist a client with a protection order application in Windhoek, but was forbidden to do so by the magistrate, who ruled incorrectly that only a legal practitioner may represent the complainant. This ruling was in obvious contradiction of section 12(7) of the Combating of Domestic Violence Act, which clearly allows an applicant or a respondent to be represented at an enquiry by a legal practitioner or “*by any person duly authorised by such applicant or respondent*”. The ruling was also contrary to the spirit of the Act and the regulations, which call for proceedings to be conducted in an informal manner.<sup>163</sup> In this case, the Legal Assistance Centre obtained a postponement of the case and succeeded in convincing the magistrate to rescind the incorrect ruling on representation so that our paralegal could assist the client in court.

One magistrate said that the parties sometimes reach an amicable settlement during the enquiry, which is then recorded in court. Another magistrate reported that he sometimes adjourns the court for about an hour to see if the parties can reach agreement, then remands the case for review after 30 days; he finds that “*very often there are no more problems after the 30 days*”. A clerk in Rehoboth gave a similar account:

*The magistrate would call couples and talk to them in chambers. People like it that way, especially the women. They just need someone to talk to their husbands or boyfriends to stop subjecting them to the domestic violence. If the parties agree, the magistrate would postpone the protection order application for, say, two months and review it thereafter. If the applicant is still being subjected to domestic violence, then the magistrate would grant the order sought. If the respondent has changed his behaviour, then the complainant withdraws the application and the magistrate records this.*

While it may be very useful and appropriate in some cases to encourage reconciliation, it is necessary to take care to ensure that complainants are not pressured or intimidated into ‘reconciliations’ which they do not really want or which could put them at serious risk of harm.

One magistrate cited the opposite problem, where tensions between the parties are exacerbated during the enquiry: “*The evidence in court often goes off track. It’s hard for magistrates to keep the parties in line, because the parties use the hearing as an opportunity for mudslinging and venting frustrations.*”

**We could not ascertain sufficient information to analyse the use of witnesses in enquiries.**

One magistrate interviewed spoke about efforts to avoid having children testify in such enquiries: “*We deal with children very carefully, considering the best interests of the child. The child usually doesn’t appear in court. Where children are involved, the lawyers try to avoid having the children testify in court. It’s a small community, and the people know which lawyers to go to who deal with children.*”

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<sup>163</sup> See Combating of Domestic Violence Act 4 of 2003, regulations 4(5)-(6).

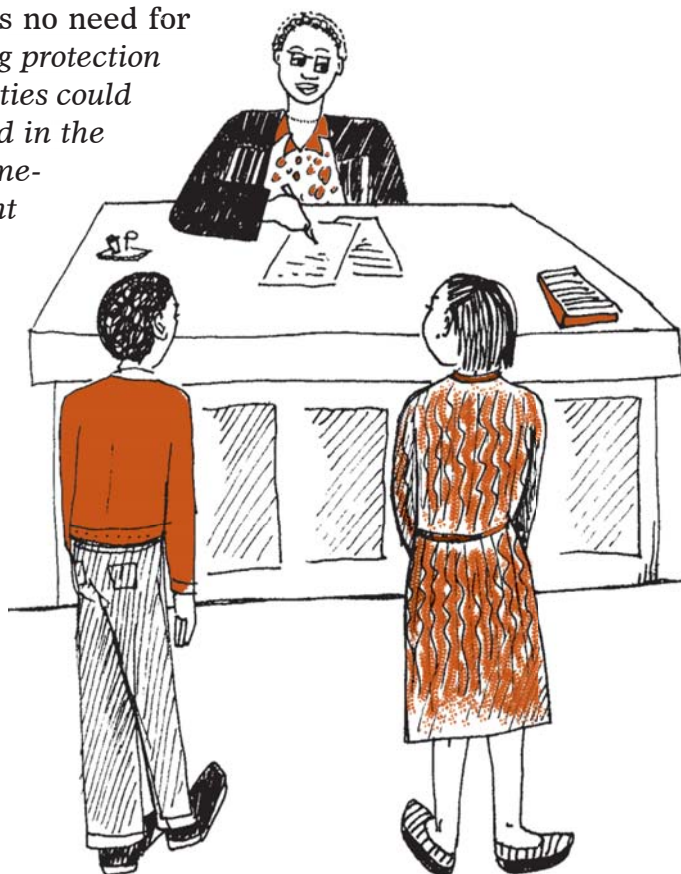
Magistrates questioned about enquiries in the group training session held in 2011 said that both parties usually bring witnesses who are prepared to come to court voluntarily, without the need for a summons, and that children are sometimes (but not frequently) brought along to serve as witnesses.<sup>164</sup>

There was also little information in the files on the frequency and cause of postponements, although 55 case files contained notices that enquiries had been postponed.

In terms of the timing of enquiries, the most extreme situation encountered was in Rundu; as a result of staff shortages, the court was at the time of the interviews (2007) staffed only by a district magistrate who was often required to be elsewhere. As a result, this magistrate set aside one hearing day for enquiries for all interim protection orders issued in the previous six months. The volume of applications in Rundu during that year was not high (20 applications in all), but this method could result in serious delays in some individual cases (and was clearly outside the timeframes set by the law).

In many cases, it was difficult to determine if an enquiry was held, or even to determine the final outcome of the application. Where forms were absent from the file, it was sometimes possible to reconstruct what happened from notes on the file cover or inside the file. However, in some cases, there was no interim protection order or final protection order in the case file, and no additional notes that could be used to infer the result.

One magistrate suggested that there is no need for enquiries: *“The whole process of granting protection orders would be made faster if all the parties could just provide all the information required in the form of a statement under oath. It is time-consuming to have to call the respondent for hearing in court.”* However, most magistrates consulted felt that it was important to have both parties present in person in order to understand the situation clearly.



***By that time my mother came and she grabbed him and told him not to come near me, but he beat my mother on her eye. Then he went. I told him that he is not going to beat my mother again.***

-18-year-old girl bringing an application for a protection order against her 28-year-old ex-boyfriend

<sup>164</sup> As noted in section 5.12, this group suggested that there is no need for the standard forms to provide a listing of witnesses; they suggested that a separate form should be provided which either party can complete in the rare cases where he or she wants to request the court to summon a witness who will not come to court voluntarily (such as a medical practitioner, for instance).

## 5.16.2 Final protection orders granted

### Form 9A FINAL PROTECTION ORDER

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

..... An interim protection order was issued on (date) .....

..... No interim protection order was issued.

#### Court order

1. The Court orders that the attached interim protection order be confirmed and made final.
2. The Court orders that the attached interim protection order be made final, with the following amendments:
3. The Court orders that the attached interim protection order be set aside.
4. The Court orders that the attached interim protection order be discharged and replaced by the attached protection order which is hereby declared final.
5. The Court makes the attached protection order for the first time on this date, and this protection order is hereby declared final.
6. Because the respondent failed to attend the enquiry at which the interim protection order was confirmed, the court orders that this interim protection order is hereby extended until such date as the final protection order is served on the respondent. The interim protection order shall have full force and effect until this date regardless of whether or not the respondent has been notified of the extension.
7. The clerk of court must forward a copy of this protection order to the Station Commander of the ..... police station, who must put all police personnel at that station on notice that the complainant and any other person protected by the order are at particular risk.
8. The clerk of the court must send a copy of this order to the Permanent Secretary of the Ministry responsible for child welfare, for consideration of appropriate action as provided for in legislation relating to the care and protection of children.

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

.....  
MAGISTRATE

.....  
DATE

**Form 9A is used without Form 9B when a final protection order is issued that is the same or nearly the same as the interim protection order.** (There is space to record minor amendments to the interim protection order on Form 9A.) Form 9A also includes an option for setting aside the interim protection order without making a final protection order. Form 9A can be used in conjunction with Form 9B where there was no previous interim protection order, or where the interim and final orders differ substantially.<sup>165</sup>

**Form 9B is used when a final protection order granted at the conclusion of an enquiry is not preceded by an interim protection order, or when the final protection order differs considerably from the interim protection order, making it necessary to discharge the interim protection order and issue a new final protection order.** Form 9B resembles the format of an interim protection order.

The case files revealed that **some magistrates make orders after enquiries in their own formats, without using either of the official forms.**<sup>166</sup>

The data discussed below shows that there were very few final protection orders (272) in comparison to the number of interim protection orders (866). The reasons for this will be explored as the report proceeds. Because of the high rate of attrition, we have not attempted a detailed analysis of the terms of final protection orders.

**TABLE 234**

Information available for analysis	
Form 9A	216*
Form 9B	21
Order written by magistrate	30

\* Includes 17 files which contained both Form 9A and Form 9B.

Note that some Form 9As set aside interim protection orders without replacing them with final protection orders – in other words, with the end result that there was no final protection order. There were also some files which indicated that a final protection order had been issued, but without any forms or details.

## (a) Form 9A

**Form 9A, to reiterate, is used on its own when the interim protection order is either discharged or confirmed in substantially the same form. (It can also accompany Form 9B when the final order is new or different.) There were 216 files containing a Form 9A which was partially or fully completed.** Form 9A lists eight provisions which can be circled by the magistrate to indicate the terms of the final protection order. **Looking at these forms as a group, 58% made the interim protection orders final as they stood, while another 19% made the interim protection orders final with some small amendments and 5% replaced the interim protection orders with a completely different final order.** There were also a few cases (less than 2%) where the court made a final protection order which was not preceded by an interim protection order.<sup>167</sup> In another 4% of these cases, the court

<sup>165</sup> Form 9A contains one option which states: “The Court orders that the attached interim protection order be discharged and replaced by the attached protection order which is hereby declared final.” It contains another option which states: “The Court makes the attached protection order for the first time on this date, and this protection order is hereby declared final.”

<sup>166</sup> Departing from the forms and issuing a typed or handwritten order with provisions mimicking a pro forma protection order appears to be allowed in terms of the Act and regulations. Section 13(1) of the Act states that a final protection order “*must be in the prescribed form*”. Regulation 10 states that a final protection order “*must be in a form substantially corresponding to Form 9A, accompanied by Form 9B where appropriate*”; to be internally consistent, this regulation should have stated that a final protection order “*must be in a form substantially corresponding to Form 9A, accompanied by a form substantially corresponding to Form 9B where appropriate*” (with added words in boldface).

<sup>167</sup> Table 233 shows 8 cases in this category. However, in 5 of these 8 cases, the magistrate circled this provision on Form 9A, but apparently in error as there was a signed interim protection order already on file – showing that the final protection order was in fact preceded by an interim order. Therefore, we have concluded that the final protection orders were not preceded by interim orders in only 3 of these 8 cases. (Another case where no forms were on file contained file notations indicating that a final protection order had been issued without being preceded by an interim protection order, bringing the total of such cases to 4.)

extended the interim protection order because the respondent did not attend the enquiry. **In 11% of the cases, the court set aside the interim protection order completely, without replacing it with a final protection order.**

The last two provisions on Form 9A raise issues of particular concern.

Firstly, **Form 9A includes a provision directing the clerk of the court to forward the final protection order to the indicated police station**, “*who must put all police personnel at that station on notice that the complainant and any other person protected by the order are at particular risk*”. This is based on section 11(3) of the Act:

*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.*  
(emphasis added)

This provision is not discretionary; it requires only that the court indicate which police station is the relevant one. Yet less than half of the forms (48%) indicated a police station in this provision, making it unlikely that the Act’s requirement on this point would be obeyed. **The requirement to forward the protection order to the police station, rather than being listed as item seven on the list in Form 9A, should be clearly incorporated elsewhere to stand out clearly as a mandatory provision for all protection orders.** Redrafting the form in this fashion would help to guarantee that every protection order contains this provision.

Secondly, **Form 9A includes a provision which requires notification of the Ministry of Gender Equality and Child Welfare if children are involved**: “*The clerk of the court must send a copy of this order to the Permanent Secretary of the Ministry responsible for child welfare, for consideration of appropriate action as provided for in legislation relating to the care and protection of children.*” This is based on section 11(4) of the Act:

*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.*  
(emphasis added)

The applications cited huge numbers of children who were exposed to the domestic violence, or were affected by it; there were 7 complainants who were under age 18, and almost 600 children were cited by complainants as witnesses to the most recent incident of violence in the protection order applications. Yet only **one single** Form 9A in the sample indicated that this provision was applicable, in a case where two children were called as witnesses to the incidents and cited as being affected by the violence emotionally and through behavioural problems. This discrepancy suggests that courts are either underestimating the impact of domestic violence on children, or else narrowly interpreting what is meant by the Act’s reference to a protection order “*involving*” children.

**At the same time, there were 190 interim protection orders which explicitly indicated that children had been exposed to the past domestic violence, and at least 892 children were covered by terms pertaining to communication, custody and access. Yet only 64 of the interim protection orders clearly indicated that the Ministry should be notified of children at risk.** One area of possible confusion may be that some of the interim

protection orders may have been confirmed and attached to the final protection order, causing the court to think that it would be unnecessary duplication to mark the same requirement in the final protection order.

In order to be truly helpful to children, any interim or final protection order involving a child as complainant, witness or otherwise affected by the violence should have provided that a copy be sent to the Ministry of Gender Equality and Child Welfare, so that the children in these situations could be monitored and supported. **Further training of magistrates to explain the requirement to send a copy of all final protection orders involving children to the Ministry of Gender Equality and Child Welfare may encourage broader compliance with this requirement of the Act.**

**TABLE 235**

<b>Form 9A: Court orders</b>		
<b>Order</b>	<b>Number</b>	<b>Percent</b>
Interim protection order to be made final	125	57.9%
Not indicated	91	42.1%
<b>Total</b>	<b>216</b>	<b>100.0%</b>
Attached protection order to be made final, with specified amendments:	41	19.0%
Not indicated	175	81.0%
<b>Total</b>	<b>216</b>	<b>100.0%</b>
Attached interim protection order to be set aside; no final protection order made	24	11.1%
Not indicated	192	88.9%
<b>Total</b>	<b>216</b>	<b>100.0%</b>
Attached interim protection order discharged and replaced by the attached protection order which is hereby declared final	10	4.6%
Not indicated	206	95.4%
<b>Total</b>	<b>216</b>	<b>100.0%</b>
The court makes the attached protection order for the first time and declares it final	8*	3.7%
Not indicated	208	96.3%
<b>Total</b>	<b>216</b>	<b>100.0%</b>
Because respondent failed to attend enquiry the court orders that the interim protection order be extended until final protection order is served on respondent	9	4.2%
Not indicated	207	95.8%
<b>Total</b>	<b>216</b>	<b>100.0%</b>
The court must forward the final protection order to the relevant police station	104	48.1%
Not indicated	112	51.9%
<b>Total</b>	<b>216</b>	<b>100.0%</b>
The court must send a copy of the final protection order to the ministry responsible for child welfare	1	0.5%
Not indicated	215	99.5%
<b>Total</b>	<b>216</b>	<b>100.0%</b>

\* In 5 of these 8 cases, the magistrate circled this provision on Form 9A, but apparently in error as there was a signed interim protection order already on file – showing that the final protection order was in fact preceded by an interim order. Therefore, we have concluded that the final protection orders were not preceded by interim orders in only 3 of these 8 cases. (Another case where no forms were on file contained file notations indicating that a final protection order had been issued without being preceded by an interim protection order, bringing the total of such cases to 4.)

## **(b) Form 9B**

**Form 9B, to reiterate, is designed to be used where a final protection order was not preceded by an interim order, or where the final order differs substantially from the interim order. There were only 38 files in the sample which contained a Form 9B, with 17 of them being accompanied by Form 9A. Another 34 orders which were written out**

without resort to any pro forma functioned as substitutes for Form 9B (with 4 of them being accompanied by Form 9A).

Form 9B (or its equivalent) is clearly called for when there was no previous interim protection order (3 cases), or when the interim protection order was discharged and replaced by a different final protection order (11 cases). This form must have also been used in some cases where there were substantial amendments to the interim protection orders.

We attempted a comparison between the final protection orders contained on Form 9B and the interim protection orders they replaced where possible. It is, however, difficult to discern any informative patterns in the types of changes made, as these were spread across a range of categories. Examples of some of the miscellaneous changes between interim protection orders and final protection orders on Form 9B include orders related to payment of water and electricity, and orders to seek marital counselling from village elders or religious leaders.

### (c) Final orders written by magistrates without using pre-printed forms

There were 34 files containing final orders written out by magistrates without the use of any pre-printed forms (with 4 of these being accompanied by Form 9A) – constituting about 3% of the case files in total.

Again, where these orders replaced interim protection orders, it is difficult to see any specific patterns in the changes made. However it seems that such orders sometimes dealt with matters not contemplated on the forms – such as procedural issues, counselling, complex orders regarding living arrangements or how the protection order will fit in with an impending divorce.

The use of such written orders separate from the forms provided may indicate that magistrates find the forms difficult to execute or unhelpful, or that the pre-prepared forms do not cover all relevant issues. The practice could also result from a shortage of some of the forms at particular courts at the time when the case was heard. In one instance, a magistrate's order stated that a settlement agreement between the complainant and respondent reached privately would serve as a final protection order and replace the interim protection order.

## 5.16.3 Who received final protection orders?

Who ultimately got final protection orders? As in the case of interim protection orders, the distribution by sex follows the same basic pattern as the pool of applications.

**CHART 95:** Sex of complainants who applied for and received protection orders

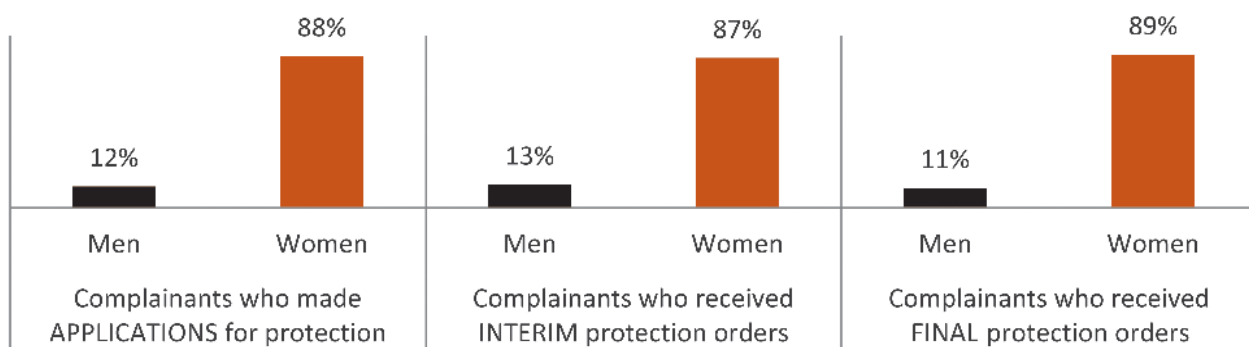




TABLE 236

Demographic characteristics of complainants who received final protection orders			
Characteristic		Number	Percent
Relationship between complainant and respondent	Wife	150	55.1%
	Husband	13	4.8%
	Ex-wife	9	3.3%
	Ex-husband	1	0.4%
	Girlfriend	20	7.4%
	Boyfriend	4	1.5%
	Ex-girlfriend	41	15.1%
	Ex-boyfriend	3	1.1%
	Mother	8	2.9%
	Father	2	0.7%
	Sister	1	0.4%
	Brother	3	1.1%
	Daughter	3	1.1%
	Grandmother	1	0.4%
	Other	9	3.3%
	Missing	4	1.5%
<b>Total</b>	<b>272</b>	<b>100.0%</b>	
Sex	Male	30	11.0%
	Female	242	89.0%
	<b>Total</b>	<b>272</b>	<b>100.0%</b>
Age group	17 years or less	3	1.1%
	18-24	11	4.0%
	25-29	32	11.8%
	30-34	47	17.3%
	35-39	61	22.4%
	40-44	51	18.8%
	45-49	27	9.9%
	50-54	13	4.8%
	55 years or older	21	7.7%
	Missing	6	2.2%
<b>Total</b>	<b>272</b>	<b>100.0%</b>	

It is difficult to identify any meaningful patterns in the ages of complainants who received final protection orders, as compared to those who made applications or received interim orders.

TABLE 237

Age group	Age of complainant					
	Applications		Interim protection orders		Final protection orders	
	Number	Percent	Number	Percent	Number	Percent
Under 18	7	0.6%	6	0.7%	3	1.1%
18-24	63	5.6%	35	4.1%	11	4.0%
25-29	148	13.2%	114	13.5%	32	11.8%
30-34	218	19.4%	162	19.2%	47	17.3%
35-39	226	20.1%	169	20.0%	61	22.4%
40-44	186	16.6%	143	16.9%	51	18.8%
45-49	127	11.3%	94	11.1%	27	9.9%
50-54	49	4.4%	37	4.4%	13	4.8%
55 years or older	69	6.1%	56	6.6%	21	7.7%
Not recorded	29	2.6%	28	3.3%	6	2.2%
<b>Total</b>	<b>1122</b>	<b>100.0%</b>	<b>844</b>	<b>100.0%</b>	<b>272</b>	<b>100.0%</b>

However, the domestic relationships of those who were granted final protection orders also follows the pattern of relationships in the pool of applications and the universe of interim protection orders.

**TABLE 238**

	Relationship of complainant to respondent					
	Applications		Interim protection orders		Final protection orders	
	Number	Percent	Number	Percent	Number	Percent
Wife	600	53.1%	463	54.9%	150	55.1%
Husband	59	5.2%	41	4.9%	13	4.8%
Ex-wife	43	3.8%	34	4.0%	9	3.3%
Ex-husband	6	0.5%	4	0.5%	1	0.4%
Girlfriend	101	8.9%	76	9.0%	20	7.4%
Boyfriend	11	1.0%	9	1.1%	4	1.5%
Ex-girlfriend	133	11.8%	88	10.4%	41	15.1%
Ex-boyfriend	22	1.9%	16	1.9%	3	1.1%
Mother	28	2.5%	23	2.7%	8	2.9%
Father	13	1.1%	7	0.8%	2	0.7%
Sister	12	1.1%	8	0.9%	1	0.4%
Brother	6	0.5%	6	0.7%	3	1.1%
Daughter	5	0.4%	45	5.3%	3	1.1%
Son	1	0.1%	4	0.5%	0	0.0
Grandmother	4	0.4%	2	0.2%	1	0.4%
Other	87	7.7%	18	2.1%	9	3.3%
Missing	0	0.0%	0	0.0%	4	1.5%
<b>Total</b>	<b>1131</b>	<b>100.0%</b>	<b>844</b>	<b>100.0%</b>	<b>272</b>	<b>100.0%</b>

In any event, because so many complainants chose not to return to court to pursue a final order after receiving an interim order, the group which received a final order is in a sense “self-selected” – meaning that the demographic profile does not necessarily indicate what kind of complainant was most likely to succeed in court.

## 5.16.4 How long does it take to obtain a final protection order?

### (a) Return date related to date of final protection order

**TABLE 239**

Time difference between return date and date of signature of final protection order (in weeks)		
Timeframes	Number	Percent
Before return date	26	12.0%
On return date	91	41.9%
Within one week after return date	23	10.6%
> 1 and <= 2 weeks after the return date	16	7.4%
> 2 and <= 4 weeks after the return date	19	8.8%
> 4 and <= 8 weeks after the return date	18	8.3%
More than 8 weeks after the return date	24	11.1%
<b>Total</b>	<b>217</b>	<b>100.0%</b>

This table is based on the date of signature shown on Form 9A, Form 9B and final orders written by magistrates without the use of pro forms. Missing data has been excluded.

We were not able to ascertain the actual date of the enquiry from the files. The calculations in Table 239 have been based on the return date. In the procedures set forth by the Act, the return date is normally 30 days after the issue of the interim protection order and the enquiry pre-scheduled for 7 days after the return date.<sup>168</sup> It would be logical for the final protection order to be signed on the date when the enquiry was actually held, but we cannot be sure that this was always the case.

**A little over 12% of final protection orders were signed by the magistrate *before* the return date** – which would seem to be possible only (a) if the respondent informed the court before that date that he or she did not oppose the interim protection order or (b) if the original enquiry date was moved forward at the request of the respondent. Error by the magistrate in recording the date on which the order was signed, or error by the field researchers in recording the date, are other possible explanations.

**Final protection orders were signed by the magistrate *on* the return date in just under half of the instances where they were granted (42%). Another 11% of the final protection orders were granted *within a week* after the return date, and about 7% more *within two weeks* afterwards.** This group probably represents the ‘normal’ situation where the process moves forward without acceleration or postponement.

**It is worrying that more than 28% of final protection orders were granted *more than two weeks* after the return date – including 24 final protection orders (11%) which were granted *more than eight weeks* later.** As already noted, such long time periods could be a result of rescheduling of the enquiry, postponements, or delays in issuing the final protection order after the enquiry.<sup>169</sup> This would seem to undermine the law’s purpose of providing a quick and simplified procedure for obtaining protection orders, and could result in uncertainty and unfairness to both complainant and respondent. However, the majority of cases which resulted in final protection orders were apparently resolved reasonably promptly.

There is only *one case* where the file clearly indicates that the interim protection was extended until the final protection order was served because the respondent failed to attend the scheduled enquiry – although similar extensions may have taken place in other instances.

## **(b) Date of interim protection order related to date of final protection order**

Another method for examining timeframes is to compare the date when the interim protection order was issued to the date when the final protection order was issued. One would expect the difference between these two dates to be 37 days in the usual case, since the return date is normally 30 days after the issue of the interim protection order and the enquiry normally pre-scheduled for 7 days after the return date.

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<sup>168</sup> See section 5.15.2.

<sup>169</sup> If there were delays in issuing the final order, this would be particularly problematic as it would require separate service on the complainant and respondent as opposed to giving them the final order in person at the conclusion of the enquiry; section 13(1) of the Act states that a final protection order granted “*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*”. The regulations contain a general provision on service, but do not prescribe any timeframe for the service of final protection orders. See regulation 5.

**TABLE 240**

Time difference between date of signature of interim protection order and date of signature of final protection order (in days)		
Timeframes	Number	Percent
Before date when interim protection order was signed*	1	0.5%
Within 30 days after date when interim protection order was signed	62	29.2%
> 30 days and <= 45 days after the date when interim protection order was signed	70	33.0%
> 45 days and <= 60 days after the date when interim protection order was signed	27	12.7%
> 2 months and <= 3 months after the date when interim protection order was signed	20	9.4%
More than 3 months after the date when interim protection order was signed	32	15.1%
<b>Total</b>	<b>212</b>	<b>100.0%</b>

\* This must be the result of an error by the court or the researchers. This table is based on the date of signature shown on Form 9A, Form 9B and final orders written by magistrates without the use of pro formas. Missing data has been excluded.

However, **almost one-third of the final protection orders (62 orders, or 29%) were signed *within 30 days or less of the date when the interim protection order was issued.*** There are three possible explanations for this.

Firstly, it is possible that the court did not receive any notice to oppose from the respondent, and so converted the interim protection order into a final protection order on the return date – which, as we have already seen, was actually somewhat less than 30 days in the typical case.

Secondly, since return dates were set at less than 30 days in many cases, it is possible that the return date and the subsequent enquiry all took place within 30 days.

Thirdly, this would also be possible where respondents requested an accelerated enquiry. There were 49 respondents in our sample who definitely requested that the enquiry be held sooner than scheduled, keeping in mind that there were only a small number of cases where we could ascertain this information. (Note that a request to accelerate the enquiry would not affect the return date initially recorded on the notice served on the respondent.)

**Another third of the final protection orders (33%) were signed between 30 days and 45 days of the date when the interim protection order was issued. This would seem to represent the expected scenario. The typical case produced a final protection order 38 days after the interim protection order was issued.<sup>170</sup>**

**The fact that almost two-thirds of final protection orders (63%) were issued within 45 days after the interim protection order was granted indicates that the goal of providing a speedy resolution of such matters is being realised in the majority of cases.**

**Lengthy delays were fairly unusual, with only 15% of final protection orders being signed more than three months after the date on which the interim protection order was granted. However, the longest period between the granting of the interim protection order and the final protection order was over over *two years* (764 days).**

<sup>170</sup> The very high maximum value probably makes the mean value somewhat atypical here. The median is thus more representative of the typical case.

**TABLE 241**

Time difference between date of signature of interim protection order and date of signature of final protection order (in days)				
Number	Mean	Median	Minimum	Maximum
211	56.0	38.0	0	764

Missing cases and a single case with a clearly erroneous value (final protection order signed before date when interim protection order was signed) have been excluded from this table. This table is based on the date of signature shown on Form 9A, Form 9B and final orders written by magistrates without the use of pro formas.

## 5.16.5 Terms of final protection orders compared to terms of interim protection orders

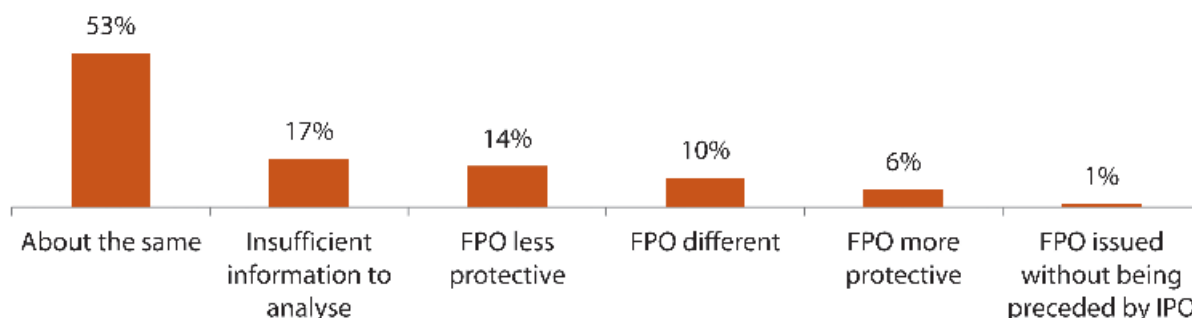
Looking only at the applications which resulted in final protection orders, a bit more than half (53%) essentially mirror the interim protection orders which preceded them. Some 14% had fewer protective provisions than the interim protection order, while 6% had more protective provisions. About 10% differed from the interim orders without clearly being more or less protective overall, and some 17% could not be analysed in this way.

This balance suggests that interim protection orders are generally reasonable, even though they are made *ex parte* (without hearing the respondent’s side of the story), but that the process of transforming interim orders into final orders is not mere rubber-stamping.

**TABLE 242**

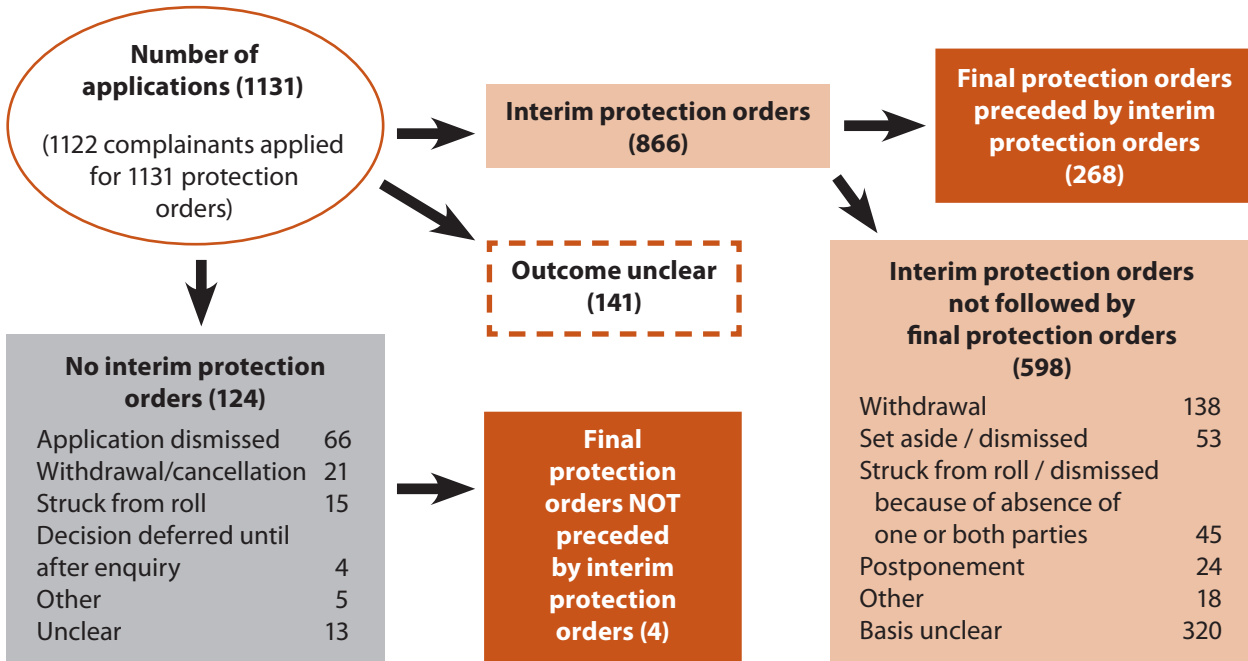
Final protection orders compared to interim protection orders (FPO = final protection order / IPO = interim protection order)	Number	Percent
<b>Same</b>		
FPO provisions essentially the same as IPO	144	52.9%
<b>More protective</b>		
FPO has more protective provisions than IPO	17	6.3%
<b>Less protective</b>		
FPO has fewer protective provisions than IPO	38	14.0%
<b>Different</b>		
FPO has fewer provisions than IPO, but also some requested provisions not contained in IPO	8	2.9%
FPO has fewer provisions than IPO, but also some provisions not requested by complainant	5	1.8%
FPO has essentially different provisions from IPO	11	4.0%
FPO issued without being preceded by IPO	4	1.5%
<b>Insufficient information to analyse</b>		
FPO apparently issued, but no details available	45	16.5%
<b>Total</b>	<b>272</b>	<b>100.0%</b>

**CHART 96: Final protection order (FPO) compared to interim protection order (IPO)**



# 5.17 OVERALL CASE OUTCOMES

**CHART 97: Case outcomes**



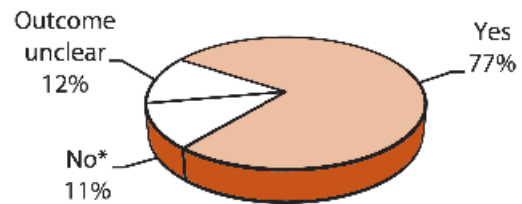
This section will now summarise the outcomes of the sample. To re-cap the starting point, our research covered applications by 1122 complainants for protection orders against 1131 respondents, constituting, in effect, applications for 1131 protection orders.

## 5.17.1 Interim protection orders

It appears that over three-quarters of protection order applications resulted in interim protection orders (77%, or 866 out of 1131<sup>171</sup>), with almost two-thirds of complainants (64%) getting some or all of what they asked to have included in the order at this stage.

Although some case outcomes are unclear, it is possible that as many as 261 complainants (23%) received no protection orders of any variety in response to their applications. In at least 20 applications (less than 2%), it is clear that the magistrate dismissed the application for an interim protection order for reasons such as insufficient grounds. It is clear from file notations that complainants in at least 21 cases (2%) decided not to proceed with the application for a protection order before any interim or final order was issued. In another 15 cases (just over 1%), the court appears to have deferred making any decision on the application until after an enquiry where both parties could be heard, then struck the matter from the roll because both parties were absent on the date of the enquiry.

**CHART 98: Did the application for a protection order result in an interim protection order?**



\* This includes four cases where a final protection order was issued without being preceded by an interim protection order.

<sup>171</sup> Only four complainants ultimately got final protection orders without first being granted interim protection orders.

We cannot ascertain what happened in the remainder of the applications which were not clearly successful.

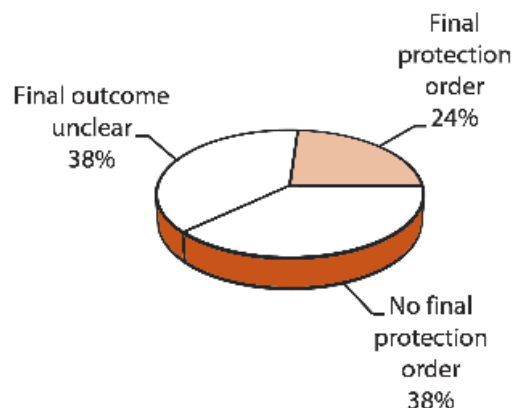
## 5.17.2 Final protection orders

Out of the 1131 applications for protection orders by 1122 complainants in our sample, only about one-quarter (272, or 24% of the total applications) resulted in final protection orders. There were four final protection orders which were not preceded by interim protection orders, meaning that only 268 of the 866 interim protection orders in the sample were definitely made final (a bit less than one-third, or about 31%).

However, the actual number of final protection orders could be higher because the final outcome of the application was unclear in 38% of the files.

There was neither an interim protection order nor a final protection order in these files, but also no indication that the application was dismissed or otherwise concluded. The numerous incomplete files suggest that magistrates' courts need to improve their file management of protection order applications, in order to keep track of the progress of cases – to be prepared for possible appeals, and for record keeping and statistical purposes.

**CHART 99: Final outcome of protection order applications**



## 5.17.3 Interim protection orders not followed by final protection orders

Out of the total of 866 cases where an interim protection order was granted, 598 (69%) apparently did *not* result in a final protection order. This includes 320 files (37%) where an interim protection order was granted but the final outcome was unclear, because these files did not contain a final protection order.

### (a) Case withdrawals

Looking at the 866 cases where interim protection orders were issued, almost 16% of the complainants (138 persons) withdrew their applications between the interim and final stages.

Interim protection orders not followed by final protection orders (598 out of 866)		
Withdrawal	138	16%
Set aside / dismissed	53	6%
Struck from roll / dismissed because of absence of one or both parties	45	5%
Postponement	24	3%
Other	18	2%
Basis unclear	320	37%

This is probably an underestimate, as there were also 45 cases which were struck from the roll or dismissed because the complainant or both parties did not appear at the enquiry. Furthermore, 4 cases of indefinite postponements and at least 5 of the cases for which the ultimate outcome is unclear involved non-appearance by the complainant or both parties. It is likely that some complainants may have chosen to informally 'withdraw' their applications by simply failing to appear at the enquiry rather than by filing a formal withdrawal statement

**with the court.** A clerk of court in Otjiwarongo noted that applying to the court formally to withdraw a protection order application is time-consuming and could be especially problematic for complainants who live a great distance from the magistrate's court, or for those who have child-care or work obligations or no access to transportation. Other clerks and magistrates made similar comments about informal 'case withdrawals', such as one who noted that when couples "*make up and get back together*", they "*do not see the need to come back to court to ask for withdrawal of the protection order.*" **If all the non-appearances in the sample resulted from complainants' decisions not to pursue their matters, there could be case withdrawals in as many as 22% of the cases (192 cases) where interim protection orders were issued but no final order was made.**

The high level of case withdrawals is not surprising. **Complainants may have reconciled with their intimate partners or family members, as many of the files indicate.** Some included statements saying that the complainant has forgiven the respondent or decided to give the respondent another chance. One said that the reason for the withdrawal is that "*he is the father of my children*".

One prosecutor who assists complainants with application forms said that withdrawals are frequent because of reconciliations: "*They come and ask to get rid of the interim protection order. They say, 'don't let him see the thing it will spoil everything – he brought me flowers.'*" A number of other key informants in various locations spoke of the frequency of reconciliations between the parties. For example, a clerk of court in Mariental said that most complainants "*withdraw or ask to put the case on hold*". A clerk in Rehoboth said that the complainants "*come and say that the respondents have promised to stop drinking, stop beating them and have promised to go back to work. They say that the respondents have changed and are no longer subjecting them to domestic violence.*"

Three social workers indicated that complainants tend to abandon protection orders when respondents contact them to beg forgiveness – presumably sometimes in violation of no-contact provisions in the interim protection order: "*In domestic violence relationships, the men always come back to ask for forgiveness and promise that things will change in the future.*" Complainants and their families then "*think that the situation will change*", and that there is no need to obtain a final protection order. Complainants believe respondents because they "*don't want the relationship to end*" and because they are often financially dependent on the abuser. A person "*cannot break the cycle of violence*" in a context of such financial dependence. It was also noted that although complainants "*are in haste to apply for a protection order when they are in anger*", after the respondent apologises the couple enters the "*honeymoon phase*" and the complainant does not return to either police or social workers. One social worker further cited "*love for the perpetrator*" as a reason that complainants do not seek to finalise interim protection orders: "*There's a love-hate kind of situation . . . an interim protection order seems like a . . . temporary sort of solution, but because they love this person, they don't want anything harsher than that.*"

Some court officials were somewhat sceptical that such reconciliations would be lasting. One Windhoek magistrate reported that protection orders are often not finalised because the parties reconcile and "*think everything will just disappear*"; the complainant thinks that "*the respondent has been fixed so she is okay*". The Aranos clerk was of the opinion that in most cases the respondent will "*automatically... ask for forgiveness*" after the interim protection order is issued. The Lüderitz clerk's description of such complainants seemed to characterise them as behaving frivolously in seeking protection orders in the first place: "*Sometimes a woman or complainant will come. . . just because she is angry with*



her partner that day, but then the next day . . . they are together in town holding hands.” According to a magistrate in Keetmanshoop, “The perpetrator calms her down, saying ‘I was just drunk.’ She believes him, only to find a few weeks later it starts again.” A clerk of court in Okahandja provided a similar account: “Most applicants refer to past incidences of abuse. Some cite histories of opening cases against the offenders, withdrawing the cases after the offender promises to change but then after some time the assault starts again... after two/three months. Then they have had enough and come in to apply for protection orders.”

**Most protection order applications are withdrawn before they go to court. Once he starts abusing he will never stop. They eventually do come back – and often withdraw again. There is one who has withdrawn two times. Then who is going to believe you? I have other people who need my help. You cannot force a person to take a protection order. I get very angry when they withdraw.**

clerk of court, Swakopmund

While some reconciliations may not last, this does not mean that improvement in the relationship is never possible. This theory is consistent with the experience of a clerk of the court in Katima Mulilo, who explained that the “majority of the applications are withdrawn” because “the couple comes back and states that they now get along and they want to drop the case”. A magistrate in Katima Mulilo similarly explained that women often fail to return to have the interim orders made final because the interim order seems to scare their husbands enough so that they change their behaviour towards their wives. In such cases, the interim protection order may alert the respondent to the fact that the complainant can get official help. A clerk in Windhoek stated that the Windhoek court handles many cases in which a complainant applies for and is granted an interim protection order, and a date is set for the enquiry – but “in between there they make peace”, deciding “it’s okay, let’s not go back to court”.

**In contrast to reconciliation as a basis for withdrawal, it could be that respondents who have been served with an interim protection order use threats or intimidation to ‘persuade’ complainants to withdraw their cases, or to prevent them from returning to court.**

When asked specifically about complainants being threatened or intimidated to drop protection order proceedings, the eight clerks who participated in the 2011 follow-up interviews all said either that they had not had any cases of complainants being intimidated or that they did not know of such cases. In contrast, three of the five social workers interviewed in 2011 stated that complainants are *often* threatened, intimidated or pressured by the respondent or by their own families to abandon applications for protection orders. These social workers noted that complainants may face threats of physical violence by respondents as reprisals for seeking help. A social worker at the PEACE Centre added that women “take the killing threat very, very seriously because it happens all the time around them”. This social worker also noted that some perpetrators may also threaten to take away a complainant’s children if she continues to seek a protection order. One case file we examined included a statement where a complainant reported being pressured to withdraw the case.

Some key informants mentioned pressure by husbands against wives in particular. For instance, a clerk of court in Gobabis said: “Most husbands will convince their wives to withdraw their application. In such an instance, we keep the file open and warn the husband that his wife can still come back.” The magistrate interviewed in Katima Mulilo

mentioned implicit economic pressure, seeing that wives are often dependent on their husbands' income for support and are afraid of losing their marriages if they persist with a protection order application. For example, a magistrate from the Keetmanshoop court said, *"If a poor woman comes to court, the husband will have to walk out. That's her bread and butter that is walking out... the woman feels the pinch and decides it's not worth it."* In Okahandja, the clerk reported that *"In some cases, one can tell that they have been intimidated or given presents in order to withdraw."*

Other key informants focused on extended family involvement in case withdrawals. This can be a positive alternative to legal proceedings; for instance, a clerk in Omaruru said, *"Sometimes they say their parents or elderly people are helping to discuss the issue."* But family intervention may also cross the line into emotional coercion. For example, a magistrate in Katima Mulilo spoke of pressure from extended families who want the parties to reconcile. Several social workers also reported that complainants often face pressure from family members, with a social worker at ChildLine/LifeLine stating that complainants *"tend to get either threatened or coerced or influenced by other family members or the community in general to not pursue the case"*, because it is seen as a matter of family *"honour"* or because the family would prefer *"a discreet solution to the problem"*. The family may permit the interim protection order as a kind of warning or slap on the wrist, but then prevent complainants from pursuing a final protection order because doing so would make the *"shame"* of the situation *"more public"*.

Community and family members may also put cultural pressure on the complainant to withdraw the case, with some women being reluctant to allege domestic violence because *"in my culture, we do not lay cases against our male partners"*. A social worker in Oshakati referred to the cultural belief that family information should not be *"taken to outside people"*. Family members may encourage complainants who have obtained interim protection orders to divert the case from the formal justice sector to traditional authorities, and the traditional leader may then order the respondent to pay compensation – and *"when compensation is paid, this woman never returns to legal procedures."* It was posited that the formal justice sector lacks authority *"when it has to stand against the word of the chief"*.

The pressure by respondents and family members can include financial threats. One social worker noted that, if the respondent is the family breadwinner, then complainants will not want to pursue the matter further for fear that *"if this person is put away, what would happen to the family?"* Knowing this, some respondents will threaten financial deprivation, saying *"If I go away, then you and your children will die of hunger because where will you get the income?"* Although a complainant may apply for maintenance as part of a protection order, it was the opinion of one social worker that maintenance orders *"take so long that it's a risk for the family to even consider them"*.

***Most are withdrawn because he is the breadwinner and she cannot survive without him.***

magistrate, Swakopmund

Even without new threats or pressure, past violence discourages some victims of domestic violence from seeking to finalise protection orders. A social worker at ChildLine/LifeLine stated that she was not sure how often complainants are threatened, but suggested that they might be unlikely to report a violation of the interim protection order to the police

because they are afraid. They have faced threats from respondents in the past and been “*manipulated so much*” that they may fear greater violence if they report violations, or attempt to finalise interim protection orders.

### A case withdrawal in action

While our researcher was interviewing a magistrate in Lüderitz, a police officer entered the magistrate’s office to report that he had a man in custody at the local police cells. This man’s wife had received an interim protection order which was supposed to be finalised that day. But the man had been arrested for assaulting his wife. His wife now felt bad about the situation and was seeking to withdraw the case. The magistrate told the police officer that the man should not be released until the formal process for case withdrawal had been completed, which would require making a withdrawal statement to the prosecutor who would then refer the withdrawal request to the Office of the Prosecutor-General.

Conscious of the potential problem of intimidation, the Act requires that, where a complainant does not appear at an enquiry, “*the court must direct the station commander of the police station named in the application to enquire into the reasons for such nonappearance, 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*”.<sup>172</sup> **However, out of the 42 cases where it is clear that complainants did not appear at enquiries, only 10 files recorded a request from the court to the relevant station commander to investigate the reasons for the complainant’s non-appearance,<sup>173</sup> and only two case files contained station commander replies on the results of this investigation.<sup>174</sup>** This is a worrying gap in the application of the law.

**A gap in the law itself is the lack of any provision for follow-up where the complainant indicates that he or she is withdrawing the case, which is not necessarily a decision made freely in a context of domestic violence.** A prosecutor from the Gobabis court noted that withdrawal of protection orders by a complainant is often followed by a relapse into violence: “*As soon as the case is withdrawn the man is back to his old routine.*” The lack of any follow-up mechanism is particularly troubling, given that domestic violence tends to escalate – as evidenced by complainants who experienced more frequent and more intense forms of abuse over the duration of their relationship with respondents. **One option might be to refer cases involving withdrawals to social workers for ongoing monitoring.**

**Two social workers interviewed in 2011 cited callous treatment by the police as a reason why complainants may abandon interim protection orders.** One stated that, in her opinion, interim protection orders are often not effective because the police responsible for executing the interim order do not “*pitch up or are not taking it seriously*”. Another provided several particularly egregious examples of police mistreating complainants who came to them for help. In one case, a man tried to burn down his girlfriend’s house and threatened her 12-year-old daughter with a knife. The girlfriend reported the case, but the man was released on bail and returned to the neighbourhood where the girl lived. She was terrified, so the social worker accompanied her to the police station to find out what

<sup>172</sup> Combating of Domestic Violence Act 4 of 2003, section 12(15).

<sup>173</sup> Form 8A.

<sup>174</sup> Form 8B.

had happened: “They were telling me in front of her, this is just a domestic dispute, they must go to the other police, they don’t really deal with such small issues here... He made it like such a small thing, that this girl’s trauma was completely diminished.” In another case, a girl was being beaten by her aunt, and the police “were telling her it was her fault . . . why does she provoke it”. Although this social worker felt that such extreme cases are rare, she also felt that police attitudes that they don’t want to be ‘bothered’ with domestic violence issues are “quite common”. She also noted that the high case load and difficult stories that officers in the Woman and Child Protection Unit hear on a daily basis lead to “burn out, apathy, compassion, fatigue, and a sense of ‘I don’t care’”.

One social worker stated that **complainants may not finalise protection orders because they do not trust the system to protect them**, partly because the process is so slow that it may not provide the protection a complainant needs in a timely fashion: “It takes just so long.” A second social worker confirmed that “postponements and delays” discourage complainants, who lose their resolve when they are told to return on a different day, when they must wait in long queues, or when they fail to receive the protection order within 24 hours. Delays can present other practical difficulties, such as forcing complainants to take multiple days off work or spend scarce resources on taxi money for repeated visits to the court. However, this research indicates that long delays arise in only a minority of protection order applications.

A government social worker reported that complainants also fear intimidation in court and lack the support they require to empower them, particularly when the respondent is able to hire an attorney but the complainant is unrepresented.

In 2009 the Legal Assistance Centre (LAC) published a report entitled *Withdrawn: why complainants withdraw rape cases*. The study was a follow up to the 2006 LAC report, *Rape in Namibia*, which found that complainants request withdrawals in more than one-third of all rape cases. The purpose of the follow-up study was to find out why so many complainants seek to withdraw cases. The LAC collected information from six different regions by means of focus group discussions and individual interviews with 123 people. The ten most common reasons for the withdrawal of rape complaints identified through this research were:

- compensation;
- family pressure;
- shame;
- threats of physical harm;
- prosecution of the rape case takes too long;
- fear that there is insufficient evidence to convict the rapist;
- lack of information;
- status of the rapist;
- bribery to withdraw the case; and
- financial distress.<sup>175</sup>

A large proportion of rape complaint withdrawals result from problems and insufficiencies with the legal process and the criminal justice system. In contrast, protection order withdrawals are probably more often influenced by a desire for reconciliation with the respondent. However it is likely that there are some overlaps between the reasons why people withdraw applications for protection orders and rape cases – such as family pressure,

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<sup>175</sup> Legal Assistance Centre (LAC), *Withdrawn: Why complainants withdraw rape cases*, Windhoek: LAC, 2009 at iii.

feelings of shame and financial distress. **The Legal Assistance Centre recommended victim support programmes with components of counselling, information and networking with others in similar positions to address the issue of rape case withdrawals, and similar support services would be likely to assist persons who are hesitating about the way forward in addressing domestic violence.**<sup>176</sup>

One magistrate suggested that case withdrawals should be respected only if they are made in court before the magistrate. Two clerks reported that they force a complainant who wants to withdraw go to the police station and sign a sworn declaration stating that she really wants to withdraw the protection order and that she is not responding to pressure from the abuser. Although the clerks' intentions may be positive, there is no requirement in the law for the complainants to be sent to the police and such a process could add an unnecessary financial and emotional burden for the complainant. Applying an overly-stringent withdrawal process may also prevent people from making applications in the first place.

It should be noted that the pattern of case withdrawals which is evident in protection order applications is reportedly also apparent in respect of the criminal charges which are sometimes pursued simultaneously with protection orders. According to one police constable, *"I can say right now I am handling a pile of dockets that are being withdrawn. The people will report the cases today, and then within a few weeks they withdraw it... [because] sometimes the man is the only breadwinner."*

Clerks and magistrates are understandably frustrated when complainants withdraw cases and then later return to file a new application, feeling that this wastes their time and resources. In an attempt to dissuade complainants from withdrawing, one magistrate interviewed tells them that they will not be allowed to file again if they withdraw. But there is no legal basis for this policy, and it could have a disastrous effect on the complainants in question.

**It should be noted that the high number of withdrawals is not necessarily a sign that court time has been wasted on interim protection orders which are never made final.** Failure to pursue the matter could indicate that some interim protection orders work well, putting the abuser on notice that the complainant will no longer passively endure the violence. **Interim protection orders alone could be reducing the level of violence in the same way that a formal warning from police can sometimes serve an effective substitute for a criminal charge.** A clerk of court in Keetmanshoop thought that complainants initially use interim protection orders to scare violent respondents, and then give them another chance. A clerk in Omaruru had a similar experience: *"A lot of people want to complain, they just come in to talk and hope we can scare people, but they do not want to take it further."* The implication is that complainants want the violence to stop, but are reluctant to invoke the law against a loved one. The hope that an interim order on its own will be sufficient to prevent future violence may be unrealistic, but in at least some cases interim protection orders may sometimes resolve the problem without the need for final orders.

## **(b) Dismissals**

**Of the cases where interim protection orders were not followed by final protection orders, 53 (9%) were dismissed (in cases where the parties were both present). The magistrate's basis for dismissing a case or setting aside an interim protection order was often not indicated in the case file.** A few indicated that no domestic violence had actually been

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<sup>176</sup> *Id* at 139-40.

shown, or that the matter complained of did not fall under the Combating of Domestic Violence Act but was actually a question of something else, such as maintenance. In one case, the court found that both parties were drug abusers who were neglecting their child, and arranged for the child to be removed from the household and put into a place of safety.

Two cases were dismissed because the parties “*settled*” the matter between themselves.

One case was dismissed on the rather questionable grounds that a permanent order would not solve the drinking problems of the respondent which were perceived as the cause of the domestic violence.

Two cases confusingly refused to grant a final protection order but suggested that the complainant should consider laying criminal charges (confusing because a protection order is intended to provide an alternative or an adjunct to criminal charges). In another three cases, the court suggested a formal police warning as an alternative to a final protection order. **These cases suggest that a few magistrates are unaware that it is appropriate in terms of the law to seek a protection order *instead* of laying a criminal charge even where a crime has been committed, or that the two avenues of redress can be pursued *simultaneously*.** However, these cases represent only a small number of the total.

**There were 28 cases in the sample of 1131 potential protection orders where formal police warnings were included in the file, suggesting that in most cases magistrates and court officials are aware that criminal interventions do not preclude protection order applications.** One magistrate interviewed observed that most complainants who approach his court have laid a criminal charge at the same time as seeking a protection order. **Nevertheless, it might be useful to issue instructions to courts clearly stating that protection orders and criminal proceedings can be pursued simultaneously.**

**There were a few cases where the basis for dismissal indicated that the complainant may have been abusing the legal process.** In one case, the complainant was ordered to pay the legal costs of the respondent on the grounds that the complainant had abused the process. In another case, the court found that the complainant had given false information and warned the complainant about the illegality of this.<sup>177</sup> In yet another case, the court found that no domestic violence had been committed and “*this court has nothing to do with love affairs*”. Another case was dismissed because the complainant was “*not behaving properly*” and the court could therefore not determine what the complainant actually wanted. Another case was dismissed on the basis that the complainant was having an emotional response to a divorce proceeding. In one case, the court found that the complainant herself seemed to have filled in the form purporting to be an interim protection order. **But such cases were rare.**

**Another problematic situation was where husbands and wives or boyfriends and girlfriends filed protection order applications against each other at virtually the same time.** Two examples of such situations are described in the case studies on pages 264-265. Even where there were no competing applications, magistrates sometimes acknowledged perceived wrongs on both sides; for example, in one case, the magistrate made a final protection order against the respondent, but attached a note ordering the complainant to refrain from verbal abuse of the respondent.

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<sup>177</sup> Section 6(7) of the Act states that “*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.*”



Source: <http://timesofindia.indiatimes.com>

## CASE STUDY

### Unreasonable case dismissal?

Mary attempted to get a protection order against her husband, but when they went to court on the appointed date, the [magistrate] was absent. The appointment was never rescheduled and after that she moved with the children to another town... The court decided that since she had moved away from Windhoek, she no longer required a protection order. Is it inconceivable then, that the husband could seek her out in the town she is currently living? It is logical to think that it would be easy for Mary's husband to seek her out and harm her if he was determined to do so. It is hard to believe that perpetrators of 'passion killings' would be hindered by distance.

Eleonora Chikuhwa, "Invisible Wounds: A Namibian Case Study of Psychological Abuse", Master's thesis, Centre for Gender Studies, Uppsala University, 2011 at 68

*In recent times the war against domestic violence gained little momentum as more and more women and children lose their lives in the sanctity of their own homes.*

*S v Likuwa (18/2010) [2011] NAHC 30 (2 February 2011)*

## (c) Postponements

Most of the 4% of cases which apparently ended with postponements were instances where the application was postponed indefinitely or until the outcome of some other event, such as a pending divorce or an agreement to seek counselling. In three cases, the postponement resulted from the fact that the respondent could not be traced. In one case, the reason was that the complainant was hospitalised in South Africa. One magistrate postponed the case “to see whether the respondent really changes behaviour”.

## (d) Procedure when complainant, respondent or both parties are absent from enquiry

Courts appear to have differing responses when the complainant or both parties fail to appear at the scheduled enquiry. Most seem to strike the case from the roll or dismiss the application, others postpone the case indefinitely and others extend the interim protection order (if there is one in place) and remand the enquiry for a later date.

For example, one clerk indicated that complainants seldom fail to show up to court without explanation; if the complainant notified the court in advance of a valid reason why he or she must miss court, then the enquiry would be postponed. The Act says in section 12(14):

*(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.*

Section 12(15) makes it clear that the court is supposed to direct the police to investigate the reasons for the complainant’s non-appearance as a safeguard for the safety of the complainant – bearing in mind that the respondent will by this stage already have been put on notice that the complainant has commenced legal proceedings:

*(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 nonappearance, 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.*

One magistrate indicated that the clerk will try to contact the absent complainant, and will turn the case over to the police for investigation only if the application from the complainant alleges serious abuse; this magistrate stated that “it doesn’t really happen that in serious cases the complainant doesn’t come”.



**The possibility that there may have been intimidation would suggest that the best procedure when the complainant has failed to appear would be to remand the enquiry to a later date at which time the station commander’s report can be considered. If the case is struck off the roll or dismissed, there is unlikely to be any further monitoring – which could leave a complainant at risk of reprisals. Police follow-up to complainant non-appearances appears to be rare, and an amendment to the Act to provide more clarity on the procedure in such instances would be useful.**

Several clerks indicated that a respondent’s failure to attend the enquiry would lead the magistrate to finalise the protection order. However, one clerk indicated that such cases would be removed from the roll – a policy that would seem to encourage respondents to skip court hearings. However, this clerk also indicated that it was rare for a respondent to fail to attend unless “*both the parties do not even come to court*” because they had reconciled. Another clerk stated that the consequences of a respondent’s non-appearance would depend on the magistrate who was hearing the case. Yet another said that they “*never had anyone who ignored any of these things*”.

## **(e) Problems with confirmation of unopposed interim protection orders**

**There were at least 165 cases in the file where an interim protection order was issued, with no record of a notice of opposition from the respondent, yet there was no final protection order and no indication of any other action in the case. This category constitutes almost one-fifth (19%) of all the interim protection orders issued.**

One possible explanation is that these files are simply incomplete and do not indicate the final case outcome. However, **this category of cases may point to problems with the procedure for confirming interim protection orders.**

Under section 10 of the Combating of Domestic Violence Act, if the respondent does not give notice of an intention to oppose the confirmation of the protection order on or before the return date 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*”. However, the regulations and the forms do not explain the procedure to finalise a protection order under these circumstances: does the court finalise the unopposed interim protection order on its own initiative, or must the complainant or applicant return to court after the return date to request that the order be finalised?

Looking at the possibilities in more detail, there are several plausible scenarios:

- 1) Clerks believe that the court is obligated to automatically confirm unopposed interim protection orders on their own initiative, but fail to initiate this procedure in practice. They do not put the necessary proof of service before the court or request the court to confirm the interim order.
- 2) Clerks believe that the responsibility lies with the complainant to request that the interim protection order be finalised if it remains unopposed after the return date. Yet complainants may fail to follow-up for several reasons:
  - Complainants *do not know* that they must return to court to ask that the interim protection order be finalised.

- Complainants are *intimidated* into remaining out of court and not asking for the interim protection order to be finalised.
- Complainants are *satisfied* with the relief offered by the interim protection order and do not feel the need to return to court to finalise the order, or the parties have reconciled.

We conducted follow-up interviews in 2011 in an attempt to explore this issue.<sup>178</sup>

**These interviews revealed that most court personnel believe that the complainant must at least attend an enquiry in order for an interim protection order to be finalised.** In some courts, magistrates expect *both* parties to attend an enquiry before a final protection order will be issued, even if there is no indication that the interim order is being opposed. The clerk from Aranos, for example, stated that both parties must be present “*because the order is to be made final in court*”. The Tsumeb clerk stated that the respondent must come to court to say that he does not oppose the order “*so the magistrate can write it in the file. There must be something in the file at the end of the day*”. This procedure appears to contradict the terms of Form 6, which states that if the respondent does NOT return this form to the clerk of court by the indicated date, then the interim protection order against the respondent will be made final and indicates that a respondent need only return the notice if the respondent does not want the interim protection order to become a final order. The procedure which has developed in practice is probably a result of the valid concern that respondents often do not understand the forms or the import of the interim protection order – a concern which is borne out by the data in this study.

**In contrast, some clerks reported that finalisation of an unopposed order happens automatically.** For example, a clerk in Windhoek stated: “*It is the court’s responsibility to automatically inform the complainant (if they can be contacted) that an interim protection order has been made final. It should not be necessary that complainants should have to return to court in order for a protection order to be made final, and in my experience this does not happen.*”

**Still other clerks indicated that the decision to finalise an unopposed protection order remains with the magistrate, despite the express terms of the Act.** For example, the court clerk from Outjo stated that it is “*up to the magistrate to decide whether he is going to grant the protection order*”. The Rundu clerk similarly stated that if the respondent does not oppose the protection order and does not attend the hearing, then the magistrate will decide whether to finalise the interim protection order or to try to serve the interim order on the respondent again. Similarly, the magistrate interviewed in Windhoek confirmed that the respondent does not need to attend the enquiry if he does not oppose the protection order, but stated that the decision on whether to grant the unopposed protection order nonetheless remains with the magistrate. The magistrate requires “*enough evidence*” to confirm the protection order, even though it is unopposed: “*If the magistrate is not satisfied then the protection order will not be confirmed.*”

***If proper attention is given to these initial complaints, lives may be saved.***

*S v Jacob* (CC 06/2011) [2012] NAHC 42 (24 February 2012) (sentence)

<sup>178</sup> See section 5.2.3 at pages 247-248 for more details on the methodology for this follow-up research.

## CASE STUDY

### Confusion about the procedure for confirming unopposed orders

**SMS to Legal Assistance Centre:** I had a protection order [against Mr K] and it has never been finalised because he never came to the court on the date we have been given...

**LAC response:** *Have you been back to the court to ask what is happening? The court can make the protection order final if they are satisfied that [Mr K] received the summons...*

**Client reply:** I did not know about that but I will go back to the court and ask...

Legal Assistance Centre, 2011

There is worrying evidence that some complainants also do not understand the procedure for making interim protection orders final. Clerks and social workers interviewed in 2011 differed significantly in their evaluations of complainants' understanding of protection order procedures. The clerks generally assume that, because they explain the procedures to complainants, the complainants understand them. Indeed, when asked whether complainants understand the procedures, clerks often replied with statements such as *"It's explained to them... We really do try to explain it to them"*. The Windhoek magistrate spoke about complainants' understanding in similar terms: complainants understand because *"it's the job of the clerk of the court to assist them"* and *"before they leave, they are informed about the return date"*. The court clerk in Aranos, however, stated that *"a lot still needs to be done regarding informing the public"* – although this clerk focused on examples relating mostly to the conditions that can justify protection orders and the variety of terms that they can obtain.

In contrast, social workers thought that the majority of complainants do *not* understand the differences between interim and final protection orders or the procedures required to finalise protection orders. One social worker criticised the explanations provided by clerks: *"I think first of all service providers are not doing a good job of explaining to them the difference."* Another social worker cited complainants' *"lack of knowledge"*, specifically the failure to understand that they must return to court. A third social worker identified lack of education as one reason women do not understand the necessary procedures, citing the *"high level of illiterate people"* and the *"various levels of literacy and ability to understand these things, to understand legal procedures"*. In her view, the *"categories of interim or temporary orders will be very difficult to explain"* because the difference is *"not a common concept for people"*. A government social worker agreed, stating that people *"do not understand fully that the initial order is an interim thing, a temporary thing... Some believe that if I have that order... it's a permanent thing. It depends on whether the police who help them with the statement explain all the details of protection orders."* Social workers believe public misunderstandings are exacerbated by lack of training for service providers, lack of specialisation among magistrates, and inconsistent practices in different regions.

Two social workers thought that cultural barriers prevent some women from fully understanding the procedures to finalise protection orders and their rights under the law. According to one, women *"listen within limitations put on them by their culture... They sift."*

*They retain the information that suits their cultural situation... People go for information to court officials and even to social workers and come away still with limited understanding because of their selective hearing.”* In this context, it can be particularly hard for women to comprehend that they can go to court to take an active role in demanding and enforcing their rights, thinking rather that the court and professionals must protect them and ‘look after’ them. A second social worker similarly cited an “*attitude of helplessness*” as a reason why complainants do not pursue final protection orders: “*There isn’t an assertive culture that says these are my rights, I know my rights, I’m going to get them through to the end.*” According to her, if complainants face any challenges in finalising a protection order, they give up quickly.

These different assessments by clerks and social workers raise several concerns. First, the social workers’ opinions plausibly suggest that many complainants do not understand the necessary procedures. Just as significantly, however, the differences suggest that clerks may not have appropriate training to enable them to communicate effectively with complainants, to assess complainants’ understanding of court procedures, or to adjust their explanations to fit the needs of particular complainants.

## **(f) Other reasons why interim protection orders are not made final**

A clerk of court in Keetmanshoop noted that complainants sometimes request that the interim protection order remains in place for six months “*on a trial basis*”. In such cases, many people do not come back at the end of the six months, so no final protection order is put into place. It is not clear if the respondent is required to agree to this, or if this procedure is applied in cases where the respondent did not indicate an intention to oppose the order. The Combating of Domestic Violence Act does not provide any procedure for interim protection orders to be made on a trial basis.

The same clerk also noted that, where a respondent opposes a protection order, it is common for the respondent and the complainant to reach an agreement that will suit the needs of both parties. Such agreements are endorsed by the magistrate, and the agreements then replace the interim protection orders which no longer remain in force.

## **(g) Other outcomes**

This category includes two cases where the complainant died before the case was finalised, three cases where the respondent could not be traced and one case where the complainant moved away (and so perhaps out of reach of the respondent).

# **5.18 APPEALS**

The case files examined contained no indication that any of the decisions pertaining to protection orders were appealed to the High Court in terms of section 18 of the Combating of Domestic Violence Act. One can speculate that not all complainants and respondents are aware of the possibility of appealing the decision of the magistrate.

# 5.19 REQUESTS FOR MODIFICATION OR CANCELLATION OF PROTECTION ORDERS

excerpt from  
**COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003**

*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.*

The Act provides a procedure whereby complainants (with the help of applicants) or respondents may apply to have a protection order modified or cancelled.<sup>179</sup> Analysis of this procedure was outside the scope of our study, but we can report that **our file sample contained 22 requests for modification or cancellation of protection orders** (Form 10A). A few requested cancellation because the parties had reconciled, while others wanted modifications on matters of detail, such as issues pertaining to maintenance or a change of address. **There were 14 files containing indications that the court had modified or cancelled the protection orders in question.** In most of these cases, the information available was insufficient to allow for any meaningful analysis.

One magistrate complained that complainants who receive a final protection order will sometimes “*take the respondent back without getting the protection order officially removed through the court*”, suggesting that this is one factor which weakens respect for the domestic violence law.

## 5.20 BREACH OF PROTECTION ORDERS

excerpt from  
**COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003**

### *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...*

<sup>179</sup> Combating of Domestic Violence Act 4 of 2003, section 17.

## CASE STUDY

### Bail application in a criminal case for violation of a protection order

**This is one of the few cases we have located regarding a breach of a protection order. It provides a good illustration of the messiness of real-life relationships.**

Claims about bigamy, drugs, prostitution, witchcraft, lots of money, guns and domestic violence made for a heady cocktail of evidence in a bail application which continued in the Windhoek Magistrate's Court yesterday.

In the dock before Magistrate Ingrid Unengu is Windhoek resident Karin C (31), who is accused of violating a domestic violence restraining order and assaulting her British husband, Don C (58), in the couple's home in Windhoek's wealthy Ludwigsdorf area on October 15. Having spent almost four weeks in Police custody, Mrs C is asking the court to grant her bail.

Her husband however told the magistrate yesterday that he is concerned about his safety if his wife were to be released. He said his wife has a volatile nature, and he fears she would harass him if she is released.

During the hearing of the bail application the court has heard bizarre claims being made about Mr C's habits and behaviour in the time before the incident when he was allegedly assaulted. Testifying as a witness for the prosecution yesterday, Mr C denied claims that he was consorting with prostitutes, using drugs, or was facing arrest if he were to return to the United Kingdom.

He in turn claimed his wife believed their house was haunted by ghosts, which resulted in her bringing traditional healers to the house. He also told the court his wife had concealed from him the fact that she was already married to a Lebanese man when he married her in March 2008.

He will ask the High Court to annul their marriage, C indicated. He related that he came to Namibia on December 24 2007. Three months later, he married the then Karin N in community of property in a wedding ceremony... in northern Namibia. Mrs C was already a married woman when she and Mr C exchanged marriage vows, though. Mr C told the court that he discovered a copy of her previous marriage certificate by chance on October 13. When he confronted her about that, she collected a pistol from a safe in their house and threatened him with the gun, he claimed. He fled from the house – but first collected and loaded a shotgun – and then proceeded to fire a warning shot outside, he said. On the same day he obtained a restraining order against her.

Mr C said he went out that evening and returned home late at night in the company of a woman friend named "Patty"... who is 20 years old and unemployed, [and] has been acting as a girlfriend to him, Mr C explained.

In response to other direct questions from Wessels, Mr C denied that he had picked up a drug habit, that he had claimed he was in line to be knighted by Queen Elizabeth II, or that he had claimed he was going to become the next Pope.

He said on the morning of October 15 his wife arrived at the house – allegedly in violation of the restraining order – and launched an assault on him. She first started to hit him with an aluminium door handle, and then escalated the assault by attacking him with a golf club, he claimed. Mr C said he was left with injuries to his hands, arms, feet and legs. He was not hospitalised, though. He said he managed to disarm his wife and restrain her.

Mrs C is claiming that she was also assaulted by him. Photographs showing her with bruises and swelling to her forehead and face are part of the evidence before the court.

Mr C told the court that he loved his wife when he married her....

The court has further heard that Mr C's lawyer sent a letter to Wessels on Friday last week to propose that Mr C would pay his wife N\$1 million if she agreed to walk away from their marriage, and that he would cease all pending court proceedings between them if she accepted the offer. By trying to have his wife kept in custody for longer Mr C is trying to put pressure on her to accept that offer, Wessels charged....

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The prosecution, represented by Public Prosecutor Samantha Diergaardt, Opposed Mrs C's request to be granted bail. Diergaardt argued that the first priority should be the continued safety of Ms C's husband and alleged victim, British citizen Don C...

The alleged assault is claimed to have taken place a day after Crowley had obtained a domestic violence protection order against his wife after she had threatened him with a pistol. The confrontation sent him fleeing into their garden armed with a loaded shotgun, which he then fired outside. Crowley also testified that the confrontation occurred after he had discovered a copy of a marriage certificate which showed that his wife had been married to a Lebanese man before she married him...

According to Mrs Crowley, she was attacked first and was trying to defend herself in the incident which led to her being arrested and charged with assault with intent to do grievous bodily harm. She went back to the couple's house in the company of a Police officer when the domestic fracas erupted as she encountered Crowley and his female friend, the court has also heard.

Mr C... explained that he had turned to Penny's embrace because his wife had only granted him full conjugal rights twice in the previous six months. Wessels argued yesterday that Mrs C was defenceless against legal moves being made against her by her husband while she is in Police custody. Her access to her cars and bank accounts has been blocked by Mr C, he said.

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[The next day] Mr C (31)... left the court holding cells on bail of N\$5 000...

In her bail ruling the magistrate noted that a host of accusations had been made by Karin C and her British husband, Don C (58), against each other during the hearing of her bail application. Magistrate Unengu said she would however focus on the facts relevant to Mrs C's request to be released on bail.

While Mr C told the court he was concerned about his safety if his wife, described by him as volatile, were to be released on bail, the presumption of innocence also weighs heavily in Mrs C's favour at this stage, the magistrate said. She noted that two conflicting versions had been placed before the court by Mrs C and her husband.

He claimed she beat him up with a golf club in their house in Windhoek's upmarket Ludwigsdorf area on October 15. He had obtained a domestic violence protection order against her only the previous day.

Mrs C claimed she was acting in self-defence after she had been attacked first. She said that was after she had found her husband and a young female companion together in their house.

Mr C also told the court that his wife had pointed a pistol at him the previous day, after he had discovered a copy of a marriage certificate which showed that she was married to someone else before she got married to him.

In fact, she was still married to her previous husband when she married Mr C, 27 years her senior, in community of property in March 2008, the court was told.

Magistrate Unengu said the court was in no way dismissing or downplaying Mr C's stated fears over his safety. However, she added, she found it rather strange that he did not mention the alleged incident in which he claimed his wife had pointed a firearm at him when he first applied for the domestic violence protection order against her.

Wessels commented during his arguments on Wednesday that in his protection order application Mr C was instead "ranting and raving" about black magic and other wrongs he was accusing his wife of.

The magistrate said in her opinion the fears harboured by Mr C could be addressed by attaching appropriate conditions to Mrs C's release on bail.

The only condition which she attached to the bail is that Mrs C may not interfere with prosecution witnesses in her case – primarily with Mr C – while she is free on bail.

Werner Menges: "Dirty linen washed in bail hearing", *The Namibian*, 15 November 2011; "Jilted and jailed, Brit's bride awaits bail ruling", *The Namibian*, 17 November 2011; "Bail for volatile wife". *The Namibian*, 18 November 2011

**The newspaper account provided full names and even a photograph of the complainant, which is a violation of section 30(1) of the Combating of Domestic Violence Act.<sup>a</sup>**

<sup>a</sup> 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-[protection orders] which reveals or might reveal the identity of an applicant, a complainant or any child or other person involved in such proceedings.



**Breach of a protection order “without lawful justification” is a criminal offence punishable by a fine of up to N\$8000 or imprisonment for up to two years, or both.<sup>180</sup> The case files examined generally contained little information on breaches of protection orders. We attempted to get more information on this issue, but without success.** Clerks of court who were contacted stated that prosecutors should keep records of such breaches since this is a criminal offence. The Office of the Prosecutor General reported that record-keeping on this topic is the responsibility of the Woman and Child Protection Units (WCPUs). The WCPUs we contacted either said that they do not keep such records or that we should contact ordinary police stations. At this point, we abandoned our efforts to obtain statistics on this issue.

**Key informants reported concerns about this aspect of the legal scheme.** Interviews with clerks and magistrates in courts across Namibia indicated that there is a shortage of police to respond to domestic violence complaints. For example, a magistrate from Rundu explained there are times “*when male respondents disobey the final order by subjecting the applicants to physical abuse. The police on many occasions do not react. They are supposed to arrest the respondent for being in breach of a court order but instead they tell the complainants to go and explain to the magistrate.*” A clerk of court in Keetmanshoop made a similar observation, saying that complainants contact police when protection orders are violated, but that “*police are not enforcing the protection orders because they do not take domestic violence seriously*”. This clerk has had cases where desperate complainants come to her personal residence to ask for help in dealing with respondents who have violated protection orders. She feels that many police officers do not take domestic violence very seriously because they are often friends, acquaintances or even relatives of the respondents and so do not want to enforce the orders. A magistrate from another court also reported an instance where a complainant came to her house seeking help for breach of a protection order.

**The Legal Assistance Centre has had several clients who have expressed dissatisfaction with Woman and Child Protection Units, saying that police fail to take any action when respondents breach protection orders.<sup>181</sup>** For example, a woman from a small town in the south had obtained a protection order against her husband of three years ordering him to leave the common home, to leave the furniture behind for her use and to make continued payments in respect of the house. He was in breach of the order, having taken away most of the furniture and stopped making house payments, with the result that the municipality was threatening the wife with eviction. He was furthermore reportedly threatening the wife with physical harm. The wife told the Legal Assistance Centre in 2006 that she had reported the breaches of the protection order to the local Woman and Child Protection Unit, but that no one had taken any action.

As another example, a social worker from a small town in the north contacted the Legal Assistance Centre to seek advice about a case where a specific man has appeared before the court three times for violation of the protection order against him. The social worker said that he had been fined each time, but continued to violate the order; she wondered why he was not sent to prison but instead left free to violate the order repeatedly. This social worker said that she was aware of at least *seven cases* where the same pattern is occurring, with repeated violations of protection orders being ineffectively addressed.

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<sup>180</sup> Combating of Domestic Violence Act 4 of 2003, section 16(1).

<sup>181</sup> We advise clients in such situations to complain to the relevant Station Commander, then if necessary to the Regional Commander or the Nampol Complaints Division at the head office in Windhoek, and we sometimes assist clients to take these steps.

## CASE STUDY

### Ineffective enforcement

In 2009, a young woman approached our offices in Ongwediva on behalf of herself and her six siblings (two of whom were still minors). The client's father had married another woman after the death of the children's mother. After the client's father died in 2000, the stepmother began to mistreat the client and her siblings by threatening to kill them, insulting them and sometimes beating them. Matters worsened after the stepmother married another man in 2007. The stepmother attempted to chase the client and her siblings out of the house, and locked them out on several occasions.

The client was advised to apply for a protection order at the nearest magistrate court, while questions of inheritance were being explored. The client succeeded in obtaining an interim protection order against the stepmother, ordering her to leave the common residence. However, the stepmother's lawyers advised her not to comply with this order on the grounds that she was the rightful owner of the house and deserves to remain there. Our client together with her siblings found themselves locked out of the house the very same day that the interim protection order was issued. They went back to the magistrate to report the incident, and were advised by the magistrate to seek assistance from a private lawyer or the Legal Assistance Centre.

In cases of physical violence, a protection order can order a person to leave a common home regardless of who is the owner. Therefore, if the information we received is correct, the lawyers of the stepmother were wrong in telling her that she did not have to leave. Furthermore, when the stepmother violated the interim protection order, the magistrate should have advised our client to make a complaint to the nearest Woman and Child Protection Unit, which should be aware of the correct procedure on dealing with a breach of a protection order. The Legal Assistance Centre advised the client to take this step, and then offered further assistance on the underlying inheritance dispute.

Ineffective official response to breaches of protection orders seems to be a weak aspect of the current protection order system.

**Police who were interviewed had little experience of breaches.** At the Oshakati Woman and Child Protection Unit, the interviewees recalled one case when an abuser went back to the partner in spite of a no-contact provision, noting that *"the court ordered that a criminal case should be opened"*.

**A related problem is the reluctance of some complainants to lay criminal charges for breach of protection orders.** A clerk of the court from Gobabis related an example: *"There is a time when a respondent broke the conditions of the protection order and he was brought before court and charged with breaching the protection order. The wife came back half way through and withdrew."* According to the clerk, *"This often happens in cases involving married couples and boyfriends and girlfriends."*

**The tendency of some complainants to withdraw protection orders and the criminal cases stemming from the breach of such orders, could contribute to the reluctance of police to vigorously serve and enforce protection orders.** However, these challenges do not excuse police from fulfilling their statutory duties.

The high incidence of case withdrawals on the ground of forgiveness and reconciliation suggests that police may also face situations where a respondent is technically in breach of a protection order even though there is an apparent reconciliation, raising the question of whether or not they should take action. The law attempts to give guidance here by stating that it is a defence to a breach of a protection order if a complainant voluntarily consented to the actions complained of (except in the case of physical abuse);<sup>182</sup> nevertheless, this is supposed to be a question for the courts to decide rather than the police.

**According to some clerks of court, when a complainant approaches the police to allege that a protection order has been breached, the police should send either the complainant's declaration alleging a violation or a copy of the criminal charge against the respondent, or both, to the clerk of the court to be included in the file with the protection order. The exact process, however, varies by court.** A clerk in Tsumeb indicated that after a complainant makes a statement to the police, that statement is put in the case file with the interim protection order and then taken to the magistrate to determine the next step. A clerk in Aranos said that the complainant reports the matter to the police charge office as a criminal case, and that the protection order will be attached to the charge sheet. In Karasburg, a copy of both the charge against the respondent and the sworn statement by the complainant alleging a violation of the protection order become part of the protection order file. In Rundu, the clerk fills in a separate form if the complainant alleges that the respondent violated the protection order and keeps a copy of it in the file, but does not appear to receive and file a copy of the sworn statement from the police. **There appears to be a need for some regulatory guidance on the procedures for prosecuting breachers, for notifying the court which issued the protection order of such breaches, and for recording this information in the case file.**

**An examination of reported cases as well as unreported cases available online<sup>183</sup> turned up no examples of criminal proceedings for breach of protection orders. This is not surprising, since most such cases would be heard in magistrates' courts where no judgement would be normally be prepared unless the outcome of the case were appealed.** We did find one unreported case in which the defendant was accused of rape, abduction, attempted murder and breach of a protection order in terms of section 16(1) of the Combating of Domestic Violence Act; however, the judgement deals with procedural issues pertaining to some of the other charges and discloses no information pertaining to the protection order.<sup>184</sup>

Another unreported case, involving a conviction for the murder of the accused's girlfriend (by stabbing her eight times), suggested that the murder may have been inspired by her attempts to secure a protection order against him. Defence counsel argued that "*it was not a murder that was committed with the intention of robbery or economic sabotage but it was committed under the circumstances where the accused was estranged in a relationship which culminated in the deceased reporting the accused to the police with the request to evict him*"; however, the court found the domestic violence context to be an aggravating factor rather than a mitigating one and sentenced the accused to 30 years' imprisonment. The judge stated: "*I am alive to the alarming increase of violence against women and children in this country which is a sad situation indeed. I believe that these horrendous crimes can be curbed not only by the imposition of stiffer sentences but the men who commit this type of offence need prayers and spiritual guidance, as well.*"<sup>185</sup>

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<sup>182</sup> Combating of Domestic Violence Act 4 of 2003, section 16(4).

<sup>183</sup> Unreported cases were examined online on the website of the Southern African Legal Information Institute (SAFLII), which collects and publishes legal materials from Southern and Eastern Africa: <[www.saflii.org](http://www.saflii.org)>.

<sup>184</sup> *S v Du Preez* (CC 64/07) [2009] NAHC 70 (18 June 2009). No further proceedings in the case could be located.

<sup>185</sup> *S v Mwangua* (CC 24/2008) [2010] NAHC 200 (14 December 2010) (sentencing). Although the domestic violence context was raised, there is no indication that the charge formally cited the Combating of Domestic Violence Act.

## CASE STUDY

### Enforcement problems

*This account is excerpted from a letter provided to the Legal Assistance Centre by a client in 2007 about problems she faced in attempting to lay criminal charges for breach of an interim protection order. (The excerpt has been edited for length and clarity, and several details have been omitted or changed to preserve client confidentiality.)*

I applied for a protection order against my husband "Tom" on 26 March 2007. The interim protection order stated that I have temporary custody over our four children – three sons who are my estranged husband's kids from his previous marriage and the one daughter who was born in our marriage.

When I first went to the magistrate's court to seek a protection order, a certain Mr N handled my case and I was very upset about the way he did it. On my next visit to the court, another official handled my case and I received an interim protection order.

On 4 March I received a telephone call from the court, and was told that the magistrate wanted to see me... When I went to the court the next day as requested, I discovered that it was actually Mr N who wanted to see me. He said that he and my estranged husband are friends and he wanted to help us in solving this problem. I said to him that he did not stay with us in the same house and that he does not have a clue what I was going through. I also said to him that if he went through my file and read all my statements I think that he would get a better perspective on this whole situation. He also wanted to know why we don't rather go and see a counsellor, but I replied that we've been there and it did not work...

Later that evening Tom called me to ask me to go out with him. I said no and that he knows the rules regarding the protection order and that he should obey the order. He then sent me several sms's and called several times. I have never called him, neither did I reply on his sms's.

The next morning (Saturday) our three sons said to me that they are going to watch soccer. I gave them permission to go and shortly after that Tom came to drop them off. I wanted to know from them why their father came to drop them off, and they said that they went to him to ask for money. (This was without my permission.) My little girl saw her father and ran to the car. I went to fetch her from the car. After we had an argument, Tom pulled away, stood on the other side of the road making threats, and then drove off. I went to go drop the kids off at the soccer match... As I drove away from the soccer field, Tom stopped next to me and insisted that I must give him our child. I told him that we are going out and that he should make arrangements before hand. Again I told him to stick to the rules of the protection order, then he got angry and drove after me and also tried to force me off the road. He again pulled up next to me and instructed me to go to the police station. I just ignored him and went to my friend's house. He followed me and also came to stop at my friend's place. He went straight to my car and took my baby out of the car and put her into his car. I took her out of his car and when I turned my back he again went to my car and opened the door and took the jack out of the back seat. I said to him that he knows that he is not allowed to enter my car, and if he needed anything that belongs to him from the car he should just ask me. He took the jack and smashed the windscreen. He said that I can go to the police station and make a case, but he assured me that nothing would come from this case. My friend and her husband witnessed this whole scene.

I went straight to the police station where I laid charges against Tom. Afterwards I went with the police to show them where he is staying and to give them a description of the vehicle that he was driving, but we could not find him. Later the evening on my way home I

noticed Tom's car at the house where he is staying and so I went to the police station and let the police know. I was waiting for about 45 minutes before the investigator of the Woman and Child Protection Unit came. Again I drove with the police to the house, but by the time we got there Tom was gone. The police said that they would go again very early the next morning to see if they can arrest him.

I phoned the police the next morning (Sunday) to find out whether they had arrested Tom. They said no, but said that they will go during the day to see if they can get hold of him. That evening I went to the police station to find out if they made any progress regarding this case, but Tom had still not been arrested. The police told me to go and look for Tom, saying that if I see him I must let them know so that they can arrest him. (Why must I go out and do their work? And why must I put my life in danger to look for Tom, because several times he threatened to kill me and my son?) I also got the cell phone number of the person who is in charge of the road block and I phoned him and gave a description of the vehicle and registration number to look out for.

Two days later (Tuesday) I again went to the Woman and Child Protection Unit, and went again with the police to show them where Tom is working. When we got there his business was closed. I then later found out that Tom was in Windhoek. I left several messages with the police about this, but no one returned my calls. On Thursday I phoned Tom's workplace again, only to find out that he had gone to Windhoek on business. I immediately phoned the police to let them know of Tom's whereabouts, but they never replied to any message. On Friday, I went to Woman and Child Protection Unit to find out what was going on...

On Monday I phoned the Woman and Child Protection Unit to find out about my case. They told me that Tom was at his office early that morning and that they took him to court. I wanted to find out why I was not informed about the case. The WCPU phoned the prosecutor to find out the outcome of the case. The prosecutor said that Tom is the owner of the vehicle which was damaged and that I was the one who had breached the protection order.

Later the same day, Tom went to fetch the two kids at my house without any permission, although the protection order states that he must make prior arrangements to see the kids. Two days later again he came to fetch the eldest of the three to go with him. The eldest (15 years old)... never came home for the weekend and only came home Sunday...

I feel that the protection order does not serve its purpose. Why is it that my husband can turn up at school without making arrangements or turn up outside my house while I am at work and pick up his sons while the protection order states that he must make prior arrangements through a third party to see the kids? Whenever I inform the WCPU they either send me to the magistrate's office or they say that there is nothing they can do about it.

My questions are:

- Why did the police not inform me of the criminal case seeing that I am the complainant?
- What proof did the accused present to the court to state that the vehicle he damaged is his?
- In what way did I ever breach the protection order?
- Why did the court official say that he and my estranged husband are friends? Is it because of this friendship that my husband got free from this case? Is this the reason they did not call me to hear my side of the story?
- This means that Tom can do as he pleases and break the protection order as well. Why did I apply for a protection order in the first place if this is the way that they handle cases?

IS this JUSTICE???????????

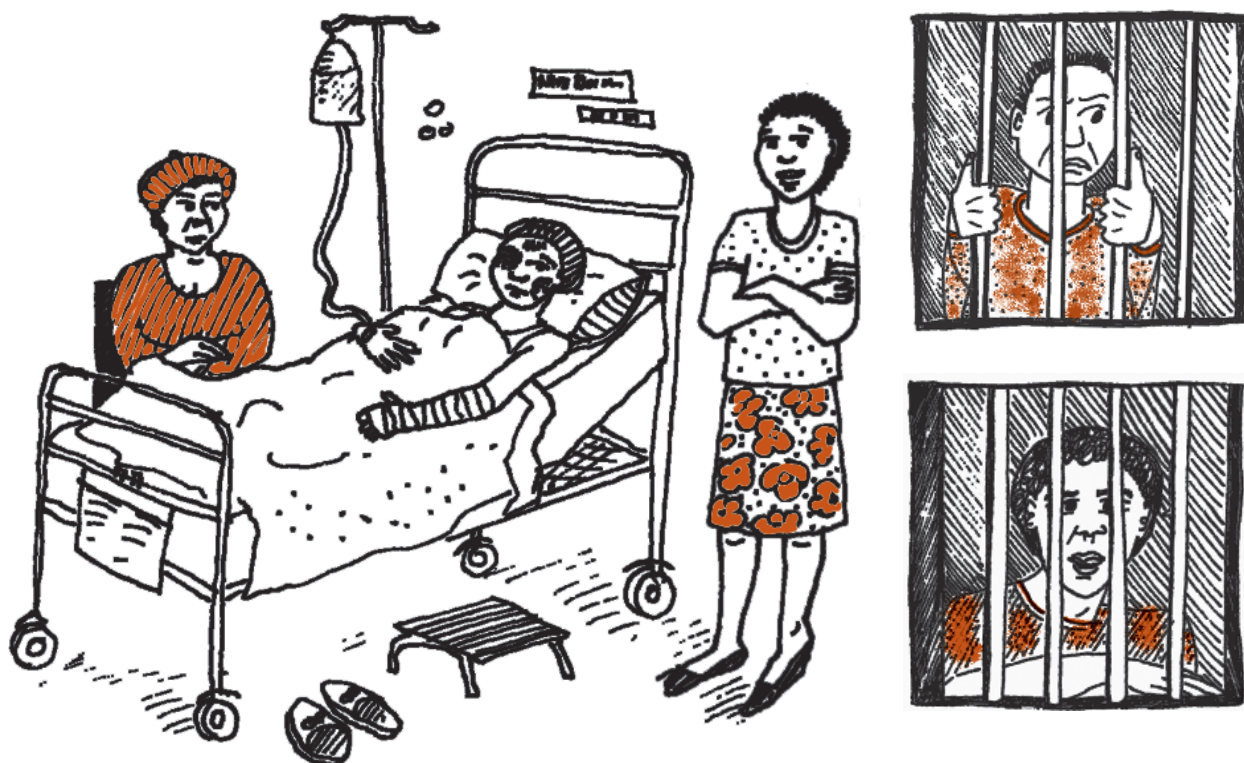
PS: I asked the prosecutor why I have to pay for the damages to the car that my husband caused while he is getting away with it. She said that because we are married in community of property, there is nothing that I can do regarding the windscreen case. I asked her "so that means that I can do the same with his things, will I also be set free?", where she replied YES as long as it is his belongings.

*Note: The Legal Assistance Centre confirmed that an interim protection order had been issued shortly before the events in question, giving the client temporary custody of the four children. The events in question happened prior to the return date for the interim order. This means that the provisions in the interim order were in force and the respondent was violating the provisions in the order. We have included this account at length, as it indicates in worrying detail how even a determined and resourceful complainant can fail to get assistance with enforcement.*

*On the issue of criminal action for the destruction of joint property by one spouse where the couple is married in community of property, see the box on pages 535-537.*

*A man, his wife and their children live in a village called Oshiya. The man always drinks and beats up his wife and children in the house. His wife went to get a protection order but the man kept on beating them. He didn't even buy anything for the house. He was locked up but then he got bail. He went after the woman again and almost beat her to death. This time he was locked up for good and was sentenced to prison.*

learner contribution to OYO Young, latest and cool magazine, vol 9, no 6 (Nov-Dec 2010) at 13



## 5.21 DOMESTIC VIOLENCE OFFENCES

excerpt from  
**COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003**

*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.*

**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.*

The Combating of Domestic Violence Act does not create any new crimes.<sup>186</sup> However, where any of the crimes listed in the Schedule to the Combating of Domestic Violence Act are committed within a domestic relationship as defined by the Act, this is classified as a domestic violence offence.<sup>187</sup> Violating a protection order is also a domestic violence offence.<sup>188</sup>

<sup>186</sup> This was noted in *S v Van Wyk* (CR 46/2010) [2010] NAHC 104 (24 September 2010).

<sup>187</sup> Combating of Domestic Violence Act 4 of 2003, section 21.

<sup>188</sup> *Id.*, section 16(7).

## CASE STUDY

### Shortcomings in police and medical assistance

In 2008, “Rebecca” was beaten up badly at her flat by her ex-boyfriend while she was getting ready for a church service. She phoned her sister to take her to the doctor and to report the incident to the police. Her sister fetched her and decided to first take her to the Woman and Child Protection Unit to see how they could assist. The WCPU was about to close for the day, but an officer there provided a form for the doctor to use to record the injuries, and the telephone number of the Windhoek City Police in case there was a problem with the ex-boyfriend after-hours. This officer also suggested that Rebecca should go to a police station which was still open to lay a charge after having the medical examination. The record of the injuries would be important supporting evidence for a protection order application or a criminal charge.

Rebecca and her sister went to Katutura State Hospital for medical treatment, but there was a long queue of clients there and Rebecca was in severe pain. Her sister decided to take her to a private doctor for faster service. They arrived at a private medical centre with the police form in hand, and were immediately told by the receptionist that their doctors do not complete these forms because the doctors say they do not have time to go to court for these things and that they should try another doctor. The second private medical centre Rebecca approached told her the same thing. Rebecca and her sister then went to a private hospital, where they once again encountered the same reluctance to help. Nevertheless, a nurse agreed to ask the doctor on duty if he would assist. This doctor had previously been connected with the Woman and Child Protection Unit and so agreed to assist. Rebecca shared her story with the Legal Assistance Centre primarily because of her concern about the lack of helpful response from police and medical professionals.

Private doctors have the right to choose the patients they treat and so it is within their rights to refuse to assist a victim of domestic violence. However given the high level of domestic violence in Namibia and the problems with the provision of state health care, the Legal Assistance Centre urges private doctors to assist as many victims of domestic violence as possible until such a time as state services are sufficient to meet the needs of such persons.

It is relevant in this regard for doctors to be aware that they need not necessarily appear in court in person, at least not in criminal cases. Section 212 of the Criminal Procedure Act 51 of 1977 was amended by the Criminal Procedure Amendment Act 24 of 2003 to provide that medical records prepared by a medical practitioner who treated a crime victim may be used in a criminal case as *prima facie* proof of the *fact* 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. The court has the power to subpoena the medical practitioner who prepared the report to appear in court or to submit replies to written interrogatories if necessary. Provisions to the same effect are also contained in the Criminal Procedure Act 25 of 2004, which has been passed by Parliament but is not yet in force. It would be useful to make this evidentiary provision applicable to protection order proceedings as well as criminal cases.



## CASE STUDY

### Unsympathetic police response

... Linda attempted to report a rape by her partner. On that particular occasion, the rape had been quite violent. When she went to report the incident, instead of being assisted and supported, the woman at the WCPU asked her if she was certain that she wanted to go ahead and press charges. Linda was informed that her partner could possibly go to jail for 15 years and she should perhaps rethink the situation. In her vulnerable state, Linda decided not to go ahead with the charges and was given medication to stop her from getting pregnant. The fact that she was given this medication could be viewed as some sort of acknowledgement that a rape had occurred. However, the WCPU official perpetuated the abuse because she did not properly attend to victim's needs. Later on, Linda found out that the official she reported the rape to was related to her partner. It is likely she [the official] wanted to avoid a scandal and was trying to keep her relative out of trouble. So, she was clearly not doing what was in the best interest of the victim but serving her own interests, and in doing so indirectly supporting the perpetrator.

Hanna attempted to make a case against her abuser, but... the first docket was lost so she had to restart the process. She reported him to the police several times and an arrest was made once. When an arrest of this nature takes place, the incarceration is not meant to be for a lengthy period. The objective seems to be to get the abuser away from the victim, and give him a chance to cool off. Sometimes this has an adverse effect on the abuser and can cause him to get more agitated, as in Hanna's case. Besides that, Hanna did not perceive the police to have been helpful. The second time she went to them for help, they told her that she just comes to them to report cases, but then goes back to her boyfriend. They advised her to go back and work on their problems, and in effect to stop wasting their time.

Eleonora Chikuhwa, "Invisible Wounds: A Namibian Case Study of Psychological Abuse", Master's thesis, Centre for Gender Studies, Uppsala University, 2011 at 69

### (a) Formal warnings

One innovation in the law, which was actually suggested by police, is the possibility of issuing a formal warning. Section 23(1) of the Act provides as follows:

*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.*

Failure to comply with such a warning is an offence punishable on conviction by a fine of up to N\$2000 or imprisonment for up to six months.<sup>189</sup>

This research did not attempt to gather information on the use of formal warnings, but we noted that there were 28 cases in the sample of 1131 potential protection orders where formal police warnings were included in the file.

<sup>189</sup> Combating of Domestic Violence Act 4 of 2003, regulation 12(4).

It was worrying to realise that police personnel at a 2011 training session (all of whom were already in service) seemed generally unaware of the provision on warnings – although they were interested to learn of this option and indicated that they would be willing to utilise it. One key informant was very critical of this option: “*It’s stupid because the warning is totally meaningless. There should be a sanction attached to the warning. People just laugh at the warning and all you can do is just issue another warning.*” (As noted above, there is in fact a sanction for violating a formal warning.)

In contrast, police interviewed at the Oshakati Woman and Child Protection Unit noted that many women request police warnings and report that they are helpful: “*Many people only ask for a warning and in many cases the man is changed simply from such a warning. The men here hate when their women get the law involved with the relationship, and when this happens they usually part ways. This is why many women just ask for a warning to ‘scare’ the man, but don’t apply for anything more. Protection orders are usually used more often by the town people.*”

The option of a warning is sometimes attractive to victims of abuse who have not yet reached the point where they are ready to lay a criminal charge. No other interviewees mentioned the warnings, and none of our questions broached this topic.

## CASE STUDY

### Police reluctance to issue formal warnings

*The following is an excerpt from a letter directed to the Station Commanders of the two relevant police stations by the Legal Assistance Centre. (Personal details have been changed or removed to preserve client confidentiality.)*

1 April 2011

\*\*\*\*\*

#### **RE: Formal warnings under the Combating of Domestic Violence Act**

Based on information we have received, “Ms Smith” recently reported a case of emotional and physical abuse by her husband at both the XXX police station and the XXX Woman and Child Protection Unit. Ms Smith informs us that the police officers at both stations refused her request to give a formal warning to her husband, even though this is provided for under the Combating of Domestic Violence Act.

#### **FORMAL WARNINGS**

*Formal warnings are designed for situations where the complainant requests help from the police but does not want an arrest. A formal warning from the police lets the abuser know that the police are aware of the problem and that the victim of the violence has sought help. If a police officer issues a formal warning, the station commander must put a copy of it on file at the police station. The station commander will also send a copy to the Office of the Prosecutor-General, who will keep it on file in a special register. If there is a court case later on, previous formal warnings are likely to make things more serious for the abuser. There is no limit on the number of formal warnings which can be issued. The penalty for failing to comply with a formal warning is a fine of up to N\$2000 or imprisonment for a period of up to 6 months.*

*Section 23(1), Regulation 12 and 4(9)(b) of the Combating of Domestic Violence Act<sup>190</sup>*

<sup>190</sup> The quote comes from Legal Assistance Centre, Guide to the Combating of Domestic Violence Act 4 of 2003, Windhoek: LAC, 2007 at 34.

We would like to request that you investigate the alleged incidence and provide Ms Smith with a different police officer to assist with her request. The Legal Assistance Centre will make contact with Ms Smith for follow up.

\*\*\*\*\*

*The Legal Assistance Centre did not receive a response to this letter and the client did not return to the Centre for further assistance or help. Therefore we are unable to confirm whether the issue was resolved.*

## CASE STUDY

### A police warning in a situation of confusion and desperation

A client named “Juanita” came to the Legal Assistance Centre for advice in 2006. Juanita and her boyfriend were living together and had two children together. Juanita had a part-time job and they shared the rent.

Juanita told us that her boyfriend was beating her and forcing her to have sex with him even though she doesn’t love him any more and doesn’t want him to touch her. They both have drinking problems. Juanita reported that she went to the Woman and Child Protection Unit the previous year for help and a police officer (whose name she supplied) offered to refer her to a shelter, but seemed to think that the real problem was that she didn’t want sex with her boyfriend. According to her, this police officer suggested that she should “*try something else like looking at pornography*”.

Juanita told us that her boyfriend had nearly killed her the previous weekend when he had been drinking, and that the violence was getting worse. He could not remember this incident the next morning, but he told her that she could go and get a police warning (which she had done before). She was at this stage reluctant to approach the Woman and Child Protection Unit after her previous experience there.

When we suggested a protection order, Juanita cited a number of reasons why this option would not work for her and expressed ambivalence about what she wanted. Our paralegal wrote up a record of their conversation immediately afterwards:

**Juanita:** *He said if I leave him he will come and burn the house down where I stay.*

**LAC:** *A protection order would forbid him to come anywhere near you. And you could go and stay at a shelter – he wouldn’t know where you are.*

**Juanita:** *But how would he take the kids to school then?*

**LAC:** *Do you really want him to continuing seeing the kids if that puts you in danger?*

**Juanita:** *Yes, I want him to see the kids. He’ll get too angry if he can’t.*

**LAC:** *The shelter could arrange visitation (away from the shelter) and include an order for maintenance.*

**Juanita:** *I just want him to understand that I have to leave – he wants me to love him again but I can’t because of the beatings.*

**LAC:** *Do you know anyone from your family or a pastor or someone else who could talk to him?*

**Juanita:** *Only my aunt and she just tells me to leave.*

Juanita was clearly desperate. She said at one stage, “I think about taking the children to Goreangab Dam and drowning them because I can’t see a way out.” At another stage, she said, “Sometimes I feel like doing bad things,” and broke down crying. The LAC paralegal asked if she had ever told anyone how she felt and she said no.

Juanita finally agreed that the Legal Assistance Centre could contact the Woman and Child Protection Unit on her behalf to seek a formal written warning. We also arranged for professional counselling for Juanita as a matter of urgency.

## (b) Criminal cases involving domestic violence offences

Our field research did not cover domestic violence offences. However, anecdotal evidence suggests that some police may be unsympathetic to persons wishing to lay charges in respect of domestic violence offences, even at the Woman and Child Protection Units designed to provide a specialised response.

We examined reported and unreported court cases for the period between the enactment of the Combating of Domestic Violence Act in 2003 and March 2012, to collect information on domestic violence offences.<sup>191</sup>

As detailed in Chapter 3, in such cases, the complainant must be informed about the bail hearing and given a chance to put relevant information before the court either directly or through the investigating officer.<sup>192</sup>

If a person accused of a domestic violence offence is released on bail, there must normally be a bail condition which prohibits the accused from having contact with the complainant and a condition prohibiting possession of a firearm or any other specified weapon. Where the accused is legally liable to maintain the complainant or any child or other dependant of the complainant, the court must normally order that the accused continue to support these persons while out on bail at the same level as before the arrest, to make sure that the complainant is not financially punished for asserting his or her rights. These standard conditions can be omitted only if the court “finds special circumstances which would make any or all of these conditions inappropriate”.<sup>193</sup> The court may add other bail conditions if necessary.<sup>194</sup> A complainant who is not present at the bail hearing must be notified that the accused person is out on bail and told of any bail conditions which apply.<sup>195</sup>

There is provision for giving domestic violence offences priority on the court roll, and the court is authorised to remand the accused in custody where a postponement is granted at the request of the accused, even if the accused was previously out on bail, if the court is satisfied that failure to do so may put the complainant at risk.<sup>196</sup>

<sup>191</sup> Unreported cases were examined online on the website of the Southern African Legal Information Institute (SAFLII), which collects and publishes legal materials from Southern and Eastern Africa: <www.saflii.org>.

<sup>192</sup> *Id*, Second Schedule (section 1(a)), amending section 60A of the Criminal Procedure Act 52 of 1977, as amended by section 12 of the Combating of Rape Act 8 of 2000.

<sup>193</sup> *Id*, Second Schedule (section 1(b)), amending section 62 of the Criminal Procedure Act 52 of 1977.

<sup>194</sup> *Ibid*.

<sup>195</sup> *Id*, Second Schedule (section 1(a)), amending section 60A of the Criminal Procedure Act 52 of 1977, as amended by section 12 of the Combating of Rape Act 8 of 2000.

<sup>196</sup> *Id*, regulation 16.

The prosecutor is required to make sure that the victim has all information which might help to lessen the trauma of the criminal trial.<sup>197</sup> Furthermore, the case is supposed to be heard in closed court, and it is an offence to publish any details that might reveal the identity of the complainant.<sup>198</sup>

If the accused is convicted, the complainant is supposed to be given a chance to give input to the court on sentencing, in person or by means of an affidavit.<sup>199</sup>

**We found several criminal cases where the charge sheet or the court noted that the crime should be read in conjunction with the Combating of Domestic Violence Act.** This list of cases also illustrates the severity of domestic violence in Namibia:

- accused charged with murder read together with the Combating of Domestic Violence Act; convicted of **culpable homicide** and sentenced to N\$15 000 plus 3 years imprisonment suspended for 5 years;<sup>200</sup>
- charges of **rape, abduction, attempted murder and breach of a protection order** under the Combating of Domestic Violence Act; final outcome of case could not be located;<sup>201</sup>
- charge of **rape** read together with the Combating of Domestic Violence Act; final outcome of case could not be located;<sup>202</sup>
- accused charged with murder read together with the Combating of Domestic Violence Act; convicted of **culpable homicide** and sentenced to 10 years imprisonment;<sup>203</sup>
- accused convicted of **culpable homicide, murder, attempted murder, obstructing the course of justice, possession of a firearm without a licence and unlawful possession of ammunition** read together with the Combating of Domestic Violence Act; the case involved three victims – the accused’s 6-year-old daughter whom he beat to death, a younger child whom he also killed and his cohabiting partner (referred to during the trial as his ‘wife’) whom he fired a shot at but missed; sentenced to an effective term of 44 years imprisonment;<sup>204</sup>
- bail application in respect of charge of **murder, attempted murder or alternatively negligent discharge or handling of a firearm, and theft of a firearm** in respect of a former romantic relationship falling within the ambit of the Combating of Domestic Violence Act; bail granted; final outcome of case could not be located;<sup>205</sup>
- accused convicted of **murder** read together with the Combating of Domestic Violence Act; victim was his wife of 39 years and mother of his 8 children, whom he killed by throwing petrol on her and setting her alight; sentenced to 35 years imprisonment;<sup>206</sup>

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<sup>197</sup> *Id*, section 24.

<sup>198</sup> *Id*, section 30, Second Schedule (section 1(c)), amending section 153 of the Criminal Procedure Act 52 of 1977, as amended by section 14 of the Combating of Rape Act 8 of 2000.

<sup>199</sup> *Id*, section 25.

<sup>200</sup> *S v Veiko* (CC 42/2008) [2009] NAHC 43 (7 April 2009) (judgement); [2009] NAHC 47 (7 April 2009) (sentence).

<sup>201</sup> *S v Du Preez* (CC 64/07) [2009] NAHC 70 (18 June 2009) (judgement on application for discharge).

<sup>202</sup> *S v Leevi* (38/2008) [2009] NAHC 76 (20 July 2009) (judgement on application for discharge).

<sup>203</sup> *S v Wilbard* (CC 40/2008) [2009] NAHC 77 (27 and 29 July 2009) (judgement); [2009] NAHC 78 (29 July 2009) (sentence).

<sup>204</sup> *S v Nkasi* (CC 02/2010) [2010] NAHC 9 (24 March 2010) (judgement); [2010] NAHC 33 (12 April 2010) (sentence).

<sup>205</sup> *S v Hashiyana* (CC 04/2010) [2010] NAHC 30 (29 March 2010) (judgement in bail application).

<sup>206</sup> *S v Steenkamp* (CC 03/2010) [2010] NAHC 74 (4 June 2010) (sentence).

- accused charged with murder read together with the Combating of Domestic Violence Act, for stabbing his cohabiting partner of four years in the neck; convicted of **culpable homicide**; court noted that there was provocation by the deceased in the form of persistent and public verbal abuse and sentenced accused to 6 years imprisonment, 2 years suspended;<sup>207</sup>
- accused convicted of **murder** read together with the Combating of Domestic Violence Act for killing his wife by inflicting two stab wounds; sentence could not be located;<sup>208</sup>
- accused convicted of **assault of wife with intent to cause grievous bodily harm and assault by threat**, both read together with the Combating of Domestic Violence Act; sentenced to 24 months imprisonment, 6 months suspended;<sup>209</sup>
- charge of murder read together with the Combating of Domestic Violence Act for shooting wife; convicted of **culpable homicide** and **attempting to obstruct the course of justice**; sentenced only to fines totalling N\$27 000 in light of the fact that accused had already been in custody for 2 years; also declared unfit to possess a firearm for 10 years; state's application for leave to appeal the acquittal on the charge of murder and the sentence was denied;<sup>210</sup>
- accused convicted of **assault by threat** read together with the Combating of Domestic Violence Act; sentenced to 6 months imprisonment, wholly suspended;<sup>211</sup>
- accused charged with **murder** read together with the Combating of Domestic Violence Act for stabbing pregnant lover; convicted after admitting that although deceased was the aggressor, his actions exceeded the bounds of reasonable self-defence; sentenced to 30 years imprisonment, 5 years suspended;<sup>212</sup>
- accused convicted of **murder** of 1-year-old son of former girlfriend read together with the Combating of Domestic Violence Act; sentenced to 28 years imprisonment;<sup>213</sup>
- accused convicted of **murder** of his girlfriend (by stabbing her eight times), possibly in response to her attempts to secure a protection order against him; court noted defence counsel's argument that "*it was not a murder that was committed with the intention of robbery or economic sabotage but it was committed under the circumstances where the accused was estranged in a relationship which culminated in the deceased reporting the accused to the police with the request to evict him*"; however, the court found the domestic violence context to be an aggravating factor rather than a mitigating one, noting that "*there is a need to impose a lengthy sentence in order to protect women and other vulnerable members of society*"; sentence of 30 years imprisonment;<sup>214</sup>
- accused convicted of **attempted murder** read together with the Combating of Domestic Violence Act; sentenced to 5 years imprisonment, 2 years suspended; conviction confirmed

<sup>207</sup> *S v Soroseb* (CC 08/2010) [2010] NAHC 41 (18 June 2010) (judgement); [2010] NAHC 41 (18 June 2010) (sentence).

<sup>208</sup> *S v Mushishi* (CC 07/2010) [2010] NAHC 43 (21 June 2010) (judgement).

<sup>209</sup> *Paiya v S* (CA 37/2009) [2010] NAHC 56 (28 July 2010) (judgement in appeal against conviction and sentence).

<sup>210</sup> *S v Shaduka* (CC11/2009) [2010] NAHC 82 (30 August 2010) (sentence); [2011] NAHC 88 (22 March 2011) (state's application for leave to appeal against judgement and sentence denied).

<sup>211</sup> *S v Van Wyk* (CR 46/2010) [2010] NAHC 104 (24 September 2010) (review of sentence).

<sup>212</sup> *S v Uirab* (CC 21/2009) [2010] NAHC 132 (4 October 2010) (judgement); [2010] NAHC 159 (20 October 2010) (sentence).

<sup>213</sup> *S v Gaweseb* (CC 30/2009) [2010] NAHC 177 (29 October 2010) (sentence).

<sup>214</sup> *S v Muvangua* (CC 24/2008) [2010] NAHC 200 (14 December 2010) (sentence).

on review, but reviewing judge thought sentence too lenient; appeal noted, but final outcome of case could not be located;<sup>215</sup>

- accused convicted of **murder** read together with the Combating of the Domestic Violence Act, for stabbing his girlfriend (with whom he had a 4-year-old child) 26 times; sentenced to 28 years imprisonment;<sup>216</sup>
- accused charged with murder read together with the Combating of Domestic Violence Act; convicted of **assault with intent to do grievous bodily harm** and sentenced to 3 years imprisonment, wholly suspended; the accused also paid the family of the deceased N\$9000 compensation in terms of “*custom and tradition*”;<sup>217</sup>
- accused convicted of **culpable homicide** read together with the Combating of Domestic Violence Act; his customary law wife of 11 years, with whom he had five children, died of brain injuries after he beat her with his fists and slapped her in the face, because she publicly divulged his health status and alleged that he was responsible for infecting her with HIV; the court noted that “*although there was some provocation it does not detract from the fact that his conduct was unlawful*”, and stated that “*the accused had no business to assault the woman he professes to love*”; sentence of 7 years imprisonment, 2 years suspended; under customary law, the accused’s family also paid the funeral expenses of the deceased and slaughtered five cattle for the funeral, as well as being ordered to pay compensation of 15 head of cattle to the deceased’s family;<sup>218</sup>
- accused convicted of **murder** read together with the Combating of Domestic Violence Act and **attempting to defeat the course of justice**, after he killed his customary law wife (with whom he had a 14-year-old daughter) and dismembered her body; sentenced to 30 years imprisonment for murder and 10 years for attempting to defeat the course of justice;<sup>219</sup>
- accused convicted of **murder** read together with the Combating of Domestic Violence Act; six months after his former girlfriend rejected him in favour of another man, he hit her on the head with a plank and stones until she died (one witness “*described the spine-chilling and macabre way in which the accused hit the deceased repeatedly on her head with a stone, as he sat on the deceased who lay face-down on the ground, until the deceased drew in her last breath, making a horrifyingly groaning sound, and then gave up the ghost*”); sentenced to 32 years imprisonment;<sup>220</sup>
- young woman suffering from epilepsy and bouts of mental confusion convicted of **murder** read together with the Combating of Domestic Violence Act; she stabbed her 1-year-old son with a knife, and then stabbed herself in an attempt to commit suicide, following a fight with her mother the previous day (when her mother threatened to kill her); although her mental capacity was diminished, the court found that she had the necessary criminal capacity to be held responsible for her actions; the court made the following observations on the family context: “*although [the domestic context] would usually be an aggravating*

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<sup>215</sup> *S v Lameka* (CA 45/2010) [2011] NAHC 10 (28 January 2011) (judgement refusing to condone late application for leave to appeal).

<sup>216</sup> *S v Gabriel* (CC 17/2010) [2011] NAHC 31 (11 February 2011) (judgement); [2011] NAHC 45 (23 February 2011) (sentence).

<sup>217</sup> *S v Amupolo* (CC 09/2010) [2011] NAHC 59 (28 February 2011) (sentence).

<sup>218</sup> *S v Likuwa* (18/2010) [2011] NAHC 30 (2 February 2011) (sentence).

<sup>219</sup> *S v Orina* (CC 12/2010) [2011] NAHC 127 (28 April 2011) (judgement); [2011] NAHC 137 (20 May 2011) (sentence).

<sup>220</sup> *S v Kandjengo* (CC 15/2010) [2011] NAHC 167 (16 June 2011) (judgement); [2011] NAHC 208 (14 July 2011) (sentence).

factor, I am unable to come to such conclusion in the circumstances of this case. There is no history of violent behaviour perpetrated by the accused within her family structure and it seems to me that the opposite is rather true; namely, that she was a victim and as a result of ill-treatment and threats uttered against her by her mother, she lost interest in life and decided to kill her child and herself. I therefore do not consider the accused's killing of her child in the circumstances of this case, to fall within the ambit of the Combating of Domestic Violence Act"; sentence of 12 years imprisonment, 4 years suspended;<sup>221</sup>

- accused convicted of **murder** of his cohabiting partner, with whom he had a child after finding her intoxicated and with another man at their home, by stabbing her, dragging her about and then stoning her to death; also convicted of **assault** for stabbing the man he found with her; the court remarked: "What saddens me most about this case is that people could have come to her rescue but did not. The neighbours obviously witnessed this woman's ordeal but did nothing to stop it. One wonders what kind of society we are becoming!"; with societal interest in addressing domestic violence as an aggravating factor, sentenced to 45 years imprisonment for the murder to run concurrently with 1 year imprisonment for the assault;<sup>222</sup>
- accused kicked open the door of his elderly mother's home, breaking the lock and damaging the door, then swore at her and threatened to burn down her house; convicted of **malicious damage to property, crimen injuria** and **assault by threat**, all read together with the Combating of Domestic Violence Act; initially sentenced to twelve months imprisonment on all the charges taken together; on review, the court acknowledged the domestic context and the need to take such offences seriously, but concluded that the accused's personal circumstances had not been sufficiently considered and that the desired deterrent effect could be achieved by other means, therefore altering the sentence to twelve months imprisonment, eight months suspended;<sup>223</sup>
- accused convicted of **two counts of murder** read together with the Combating of Domestic Violence Act, after tying up his cohabiting partner and stabbing her 26 times, stabbing their seven-month-old child 7 times, and then setting both their bodies alight; accused turned himself in to police and claimed to have been motivated by jealousy; the court, citing the domestic relationship as an aggravating factor, imposed a sentence of 40 years imprisonment on each count, with 20 years to run concurrently, for an effective 60 years imprisonment;<sup>224</sup>
- accused found guilty of a range of crimes resulting from a single incident of domestic violence; **murder of his girlfriend** by stabbing her 21 times after he became suspicious that she might be seeing someone else; **attempted murder** of her sister's cousin, resulting in 10 stab wounds and a miscarriage of her pregnancy of six months, as well as injuries which made it impossible for her to bear any more children; **murder of two children** of his ex-girlfriend's sister, a 3-year-old boy and a 4-month old boy, by burning down the sister's house with them inside; together with the additional crimes of **housebreaking with intent to steal** and **theft** (to obtain petrol from a storeroom with which to set the house light), **arson** and **attempting to defeat or obstruct the course of justice**; in discussing the fact that the crimes were committed in the context of a domestic relationship, the Court noted that "it has in this country become a common phenomenon that partners, usually

<sup>221</sup> *S v Kanguro* (CC 26/2010) [2011] NAHC 187 (1 July 2011) (judgement); [2011] NAHC 196 (7 July 2011) (sentence).

<sup>222</sup> *S v Basson* (CC 23/2010) [2011] NAHC 186 (1 July 2011) (sentence).

<sup>223</sup> *S v Amunyele* (CR 22/2011) [2011] NAHC 224 (27 July 2011) (review of sentence).

<sup>224</sup> *S v Kamudulunge* (CC 20/2010) [2011] NAHC 320 (26 October 2011) (judgement); [2011] NAHC 326 (31 October 2011) (sentence).



women, become victims at the hands of their male partners due to jealousy and that this too often leads to the death of one or both partners. This is completely unnecessary and must be censured in the strongest terms”; the sentence of imprisonment imposed was an effective 87 years;<sup>225</sup>

- accused found guilty of **murder** read together with the Combating of Domestic Violence Act, for stabbing his customary law wife (mother of his six children) in the genitals for reasons unknown; the court, citing the domestic relationship as an aggravating factor, also noted that “*the use of a lethal weapon against a defenceless spouse/partner... bears testimony of disrespect and cowardice on the part of the accused*”; sentence of 23 years imprisonment, 5 years suspended;<sup>226</sup>
- accused convicted of **murder** after stabbing his 17-year-old ex-girlfriend outside her school hostel; court found that the charge should not be read together with Combating of Domestic Violence Act as initially framed, because it was not proved that the past “love relationship” had been “intimate”, as the court understood to be required by section 3(2) of the Act; sentence was not located;<sup>227</sup>
- accused convicted of **murder** read together with the Combating of Domestic Violence Act after killing his common-law wife by chopping her with a panga at least 26 times, after they had separated due to an “*earlier fight*”; the accused pleaded guilty, citing the protection order which his wife had obtained against him as the motive for the murder; sentenced to 35 years imprisonment.<sup>228</sup>

**Only five of these cases made any explicit mention of the special procedural provisions for domestic violence.** In one case, which dealt with a conviction for the murder of the accused’s girlfriend (by stabbing her 26 times), the court noted that the mother of the deceased was called to give evidence on sentencing “*in terms of s25 of the Combating of Domestic Violence Act*”.<sup>229</sup>

In another case, the charge had been murder read together with the Combating of Domestic Violence Act, but the accused was convicted of culpable homicide. The court specifically requested the state to ensure that the next of kin attended the proceedings to give input on sentencing, even though culpable homicide is not one of the offences specified in the schedule of offences listed in the Combating of Domestic Violence Act, “*to inform the court as to the proper sentence to be passed*”.<sup>230</sup>

In a third case involving a charge of murder read together with the Combating of Domestic Violence Act, which resulted in a conviction for assault with intent to do grievous bodily harm, “[*t*]he mother of the deceased was notified by the Court [to give information on sentencing] in terms of s25 of the Combating of Domestic Violence Act, 2003 (Act 4 of 2003) since the accused and the deceased were in a domestic relationship as defined by the Act”.<sup>231</sup>

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<sup>225</sup> *S v Aibeb* (CC 10/2010) [2011] NAHC 338 (21 November 2011) (sentence).

<sup>226</sup> *S v Daniel* (CC 05/2011) [2011] NAHC 351 (25 November 2011) (sentence).

<sup>227</sup> *S v Muruti* (CC 10/2011) [2012] NAHC 8 (27 January 2012) (judgement). An amendment to clarify the wording which covers past relationships in light of this interpretation is proposed in section 6.2.1.

<sup>228</sup> *S v Jacob* (CC 06/2011) [2012] NAHC 42 (24 February 2012) (sentence).

<sup>229</sup> *S v Gabriel* (CC 17/2010) [2011] NAHC 31 (11 February 2011) (judgement); [2011] NAHC 45 (23 February 2011) (sentence).

<sup>230</sup> *S v Soroseb* (CC 08/2010) [2010] NAHC 41 (18 June 2010) (judgement); [2010] NAHC 41 (18 June 2010) (sentence).

<sup>231</sup> *S v Amupolo* (CC 09/2010) [2011] NAHC 59 (28 February 2011) (sentence).

In a fourth case involving sentencing for the murder of an ex-girlfriend, although section 25 of the Combating of Domestic Violence Act was not expressly mentioned, the court discussed the input of the family of the deceased victim in the context of domestic violence – and, after noting the strong societal interest in severe sentences for domestic violence, remarked that the evidence of family members must be given serious consideration as part of this affected society:

*... it goes without saying that it is in the interest of society that such heinous and hard-hearted crimes as the present one should be met with severe punishment.... society is so sick of the rampancy of such abominable and terrible crimes against women that the Parliament passed the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003), as the legislative effort to stem the seemingly unending occurrences of such crimes. In this regard, it must be remembered that the indictment charging the accused takes into account the relevant provisions of that Act. And so one may say that the Legislature has played its role in the fight against domestic violence. The Court must not be seen to be lagging behind in that noble fight. The best way in which the Court may act, in my opinion, is to pass sentences that do not render the legislative effort (under Act No. 4 of 2003) to combat such crimes nugatory. In fact, in the instant matter, as in suchlike cases, there are victims specific besides the general society, namely, the family of the deceased. It is on behalf of the family that [the deceased victim's sister] gave her testimony, as aforesaid. And this Court, in my view must – not should – give her evidence great weight in considering the interests of society as one of the factors to be taken into account in imposing an appropriate sentence; otherwise the family may feel the Court has let the victims specific down.<sup>232</sup>*

A fifth case, involving threats and malicious damage to property read together with the Combating of Domestic Violence Act in respect of actions by an adult son against his elderly mother, explicitly discussed the trial court's failure to follow the appropriate procedures and the reasons that information from the complainant can be particularly important in cases involving persons in domestic relationships:

*I pause here to observe that whereas the accused was convicted of the offences mentioned herein, read with the provisions of the Combating of Domestic Violence Act, the court, in terms of section 25, was obliged to notify the complainant of the time and place of sentencing (subsection 1); and afford her the opportunity “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” (subsection 2).*

*This provision was not complied with and had the complainant, who is the mother to the accused, been given the opportunity to express her views on the crimes committed against her and what punishment she considered to be suitable, then the sentencing court might have come to a different conclusion as to the sentence found to be “fair and justifiable”. A factor that the complainant would have considered is that the accused supported her and a sister and although the extent thereof was not determined, the consequences of a custodial sentence imposed on the accused, in all probability, would have adversely affected the complainant's position. In these circumstances the trial court misdirected itself by not affording the complainant the opportunity to express her views to the court and how the crime impacted on her circumstances. The court would furthermore have been in the position to know*

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<sup>232</sup> *S v Kandjengo* (CC 15/2010) [2011] NAHC 208 (14 July 2011) (sentence).

whether this incident was a once-off incident or something that happened regularly, and what effect it had on the complainant and the family structure they were living in.<sup>233</sup>

There were other criminal cases which dealt with crimes which qualified as domestic violence offences, without making any mention of the concept of domestic violence offences under the Combating of Domestic Violence Act. It is possible that the special procedural provisions of the Act were applied without being mentioned in the court judgements, but it seems more likely that police, prosecutors and presiding officers are not all fully aware of the Act's ramifications in criminal cases involving domestic relationships.

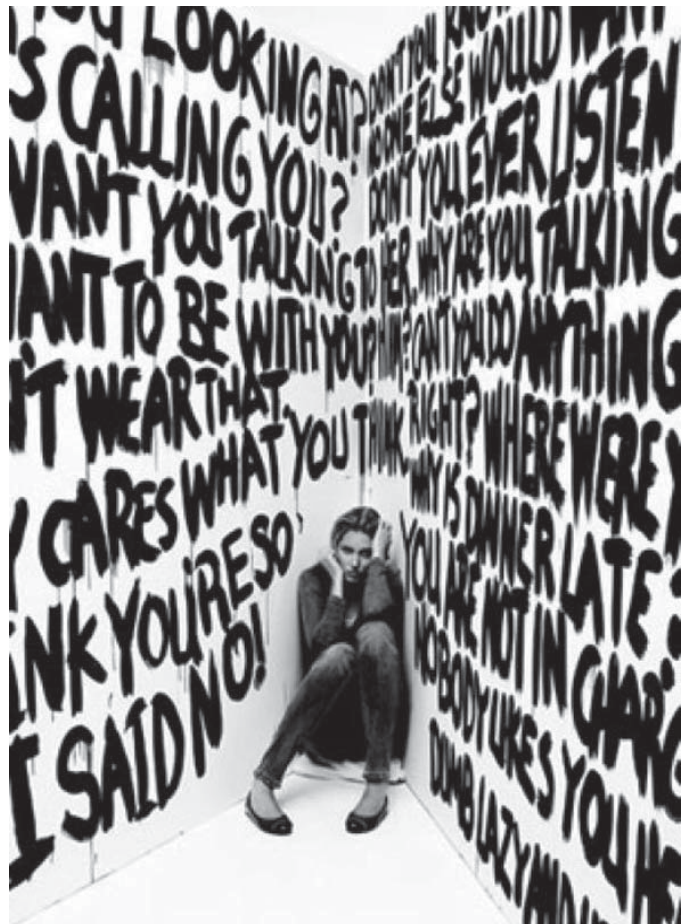
Regardless of whether the Act was explicitly mentioned or not, many cases which involved forms of domestic violence treated the domestic relationship as an aggravating factor. The box on the following pages contains some examples of judicial pronouncements on this issue – with all of these cases imposing stiff sentences. The courts have generally taken note of societal interest in connection with the punishment for domestic violence, while remaining mindful of the need to consider the circumstances of each individual accused.

**... the accused had no business to assault the woman he professes to love.**

*S v Likuwa* (18/2010) [2011]  
NAHC 30 (2 February 2011)

**I am alive to the alarming increase of violence against women and children in this country which is a sad situation indeed. I believe that these horrendous crimes can be curbed not only by the imposition of stiffer sentences but the men who commit this type of offence need prayers and spiritual guidance, as well.**

*S v Muvangua* (CC 24/2008) [2010]  
NAHC 200 (14 December 2010)



<sup>233</sup> *S v Amunyela* (CR 22/2011) [2011] NAHC 224 (27 July 2011) (review of sentence) at paragraphs 4-5. In several other cases, relatives of deceased victims testified in respect of sentence, which is consistent with the Combating of Domestic Violence Act, but without any mention of the Act's requirement on this point; it would be expected that the deceased's family would give input pertaining to sentence in such cases regardless of the domestic violence context. See, for example, *S v Wilbard* (CC 40/2008) [2009] NAHC 78 (29 July 2009); *S v Kandjengo* (CC 15/2010) [2011] NAHC 208 (14 July 2011).

## Examples of domestic violence context as an aggravating factor in sentencing

### Assault

*“Marriage, whether blessed in a church or concluded before a magistrate or concluded and blessed according to tribal custom or simply a de facto living together of a couple as husband and wife, creates a special relationship. The parties fend for each other, look after each other and protect each other. Assaults, beatings (and we add irrespective of whether weapons or bare hands are used), killings and abuse should have absolutely no place in such a relationship. Our legislature recognised this fact and thus enacted the Combating of Domestic Violence Act, 2003.” (conviction for assault with intent to cause grievous bodily harm, and assault by threatening to kill wife; sentence: 24 months, 6 months suspended; upheld)<sup>a</sup>*

### Culpable homicide

*“In this case, the culpable homicide arose from the violent assaulting of the deceased in a domestic context. The Regional Magistrate pointed out that crimes of that nature are on the increase in the district in question. She also referred to the public outcry against crimes involving domestic violence. It is indeed a notorious fact and one which I can take judicial notice of, that domestic violence and in particular violence against women, is widespread throughout Namibia... This important factor, in my view, gives cause for appropriate deterrent sentencing. The prevalence of and the social problems connected with domestic violence have given rise to specific legislation passed by Parliament in 2003 in the form of the Combating of Domestic Violence Act, Act 4 of 2003... It would seem to me that the learned Regional Magistrate misdirected herself by not sufficiently or adequately taking into account the aggravating factors of the crime itself and its context being one of domestic violence, even though these factors are referred to in her judgement. Given the seriousness of the crime committed by the appellant and its domestic context, I find that the sentence imposed is wholly inadequate and warrants interference... The prevalence of domestic violence and the compelling interest of society to combat it, evidenced by the recent legislation to that effect, require that domestic violence should be regarded as an aggravating factor when it comes to imposing punishment. Sentences imposed in this context, while taking into account the personal circumstances of the accused and the crime, should also take into account the important need of society to root out the evil of domestic violence and violence against women. In doing so, these sentences should reflect the determination of courts in Namibia to give effect to and protect the constitutional values of the inviolability of human dignity and equality between men and women. The clear and unequivocal message which should resonate from the courts in Namibia is that crimes involving domestic violence will not be tolerated and that sentences will be appropriately severe.” (conviction of culpable homicide for assaulting long-term intimate partner and causing her death; sentence: increased from 5 years, 1 year suspended to 8 years, 2 years suspended)<sup>b</sup>*

*“Cases of violence against women and children are on the increase, especially domestic violence committed against defenceless women... Domestic violence is viewed in a serious light in Namibia; this is confirmed by the enactment of the Combating of Domestic Violence Act, Act 4 of 2003. Therefore these types of crimes warrant deterrent sentences. ... The prevalence of violence against women in domestic context and the interests of society outweigh the personal circumstances of the accused. Therefore, a deterrent sentence is called for, not only to deter the accused but would-be offenders as well.” (conviction of culpable homicide for stabbing*

sick customary law wife with a walking stick because she failed to prepare food for him; sentence: 10 years)<sup>c</sup>

*“When it comes to consider the interest of society, I can only re-iterate what was stated in S v Bohitile 2007 (1) NR 137 (HC). In that case the court held that the prevalence of domestic violence and the compelling interest of society to combat it, evidenced by the legislation to that effect, required that domestic violence should be regarded as an aggravating factor when it came to imposing punishment. Sentences imposed in this context, the court held, while taking into account the personal circumstances of the accused and the crime, should also take into account the important need of society to root out the evil of domestic violence and violence against women. In doing so, these sentences should reflect the determination of courts in Namibia to give effect to and protect the constitutional values of the inviolability of human dignity and equality between men and women. The court further held that the clear and unequivocal message which should resonate from the courts in Namibia was that crimes involving domestic violence would not be tolerated and that sentences would be appropriately severe.”* However, the Court also stated that it was mindful *“that one cannot lose sight of the individualised nature of the sentencing process and that it is irregular to sacrifice the accused on the altar of deterrence”*. (conviction for culpable homicide for stabbing cohabiting partner of four years in neck; sentence: 6 years imprisonment, of which 2 years suspended)<sup>d</sup>

*“All too often disputes within a domestic relationship are resolved by resorting to violence. This situation has become untenable and there is a growing concern in society that violent crimes against women and children are on the increase... A consistent message should be that it is safe for victims of domestic violence to speak up and that they would be heard. It is the function of this Court to ensure that the interest of society is protected by reacting appropriately when confronted with the punishment of crime that threatens its safety. A clear message must be sent to all persons who perpetrate violence against their partners that their conduct will not be tolerated. In recent times the war against domestic violence gained little momentum as more and more women and children lose their lives in the sanctity of their own homes. While taking into account the personal circumstances of the accused and the crime, this Court also has to take into account the need of society to root out the evil of domestic violence and violence against women.”* (conviction for culpable homicide for beating and slapping customary wife of 11 years, who died of her injuries; sentence: 7 years, 2 years suspended, after accused already in custody for 2 years and 9 months)<sup>e</sup>

## Rape

*“In this case it is indeed an aggravating factor that these crimes were committed by a member of the complainant’s household and thus, in a position of trust. Accused clearly misused the trust bestowed on him and instead of being her protector, he abused her in the safety of her own home.”* (conviction for rape of 10-year-old cousin on two occasions; effective sentence: 24 years)<sup>f</sup>

*“He stood in a domestic relationship with the one he assaulted and tried to commit sexual acts with – the wife of his father, whom he was supposed to respect and treat with dignity. He furthermore stood in a relationship of trust towards his stepmother – something she was entitled to rely on when he accompanied her home and which trust he sadly betrayed.”* (conviction for assault with intent to cause grievous bodily harm, indecent assault, rape,

**attempted rape and abduction in connection with attempted rape of stepmother and rape of stepmother's 3-month-old baby (accused's half-sister) which resulted in severe injury to baby; effective sentence: 50 years)<sup>g</sup>**

## **Murder**

*"This brings me to the interest of the society. It has frequently been said by our Courts that offences where men resort to dangerous weapons to dissolve household disputes are not to be tolerated by society and that society demands that such offenders be severely punished by the Courts... The Court will discharge its responsibilities and in this particular case this Court again says such conduct will not be tolerated and I shall neglect my duty if I do not impose a severe sentence on this accused."* (conviction for murder of girlfriend with panga; sentence: 30 years)<sup>h</sup>

*"On that fateful night the accused had turned a firearm on his own wife, someone who was unarmed and defenceless against him. This happened in the safety of their home, where he as pater familias, was supposed to protect his family and not subject them to domestic violence and put their lives at risk... In my view the circumstances surrounding the death of the deceased in this case bear testimony to the extent of the violence and abuse perpetrated against women and children in the family structure in this country and which, I am ashamed to say, we have now become accustomed to... The circumstances under which the accused killed his wife, in my view, are aggravating and weigh heavily against him when it comes to sentencing."* (conviction of policeman for murder of wife with gun; sentence: 20 years)<sup>i</sup>

*Whereas the accused in this case on different occasions acted extremely violently against his "wife" and children who were completely defenceless against him during these attacks, his conduct is regarded as aggravating in sentencing and the Court will fail in its duty if it does not demonstrate its abhorrence and deprecation for the manner in which the accused had treated his own flesh and blood and his wife. Their protector had become their attacker... Parents do not have carte blanche to punish their children in any manner they deem fit simply for the sake of being parents and therefore having the right to chastise their children as they please. There are limits to these rights and they are not absolute... Unlike what many parents may think, children, even of tender age, also have rights which need to be respected. Here young children lost the most valuable right of all, namely, the right to life. When regard is had to the facts in casu the sentences to be imposed should not only serve as deterrence to the accused, but also to the public in general."* (conviction for culpable homicide, murder and attempted murder along with other minor offences; case involved three victims – the accused's 6-year-old daughter whom he beat to death, a younger child whom he also killed and his cohabiting partner whom he fired a shot at but missed; sentence: 44 years imprisonment)<sup>j</sup>

*"Domestic violence has a devastating domino effect on families, their communities and society at large... This Court has already expressed itself on a number of occasions that robust sentences should be imposed to stem the tide of deaths as a result of domestic violence... The nature and the manner in which the crime was committed and the interest of society compels this Court to impose a sentence which would deter other would-be offenders from resolving emotional disputes with violence and which would satisfy the retributive objective."* (conviction for murder of girlfriend, with whom he had a 4-year-old child, by stabbing her 26 times; sentence: 28 years imprisonment)<sup>k</sup>

*"[This murder] is but a chapter in the narrative of domestic violence and violence against, especially, women and children in Namibia. It is a sad commentary that as judges we come to court, mete out heavy sentences for violent crimes and move on to hear other cases involving violence against women and children. Yet, in spite of the heavy sentences we impose, those who perpetrate these heinous crimes seem to devise ways of raising the bar of brutality. There seems to be no end in sight. These crimes truly evoke a sense of collective helplessness in the national psyche: On the one hand it seems the severe sentences the courts impose have no deterrent effect, while on the other hand a relaxation in the severe-penalty regime raises the real risk of loss of the public's confidence in the court's resolve to protect society from violent criminals. Just as it is a judge's duty to show mercy to a convicted prisoner, it is an equally important duty of judges to protect society from the scourge of violence... In my view, in order to maintain a balance between the high incidence of violence against the vulnerable, especially women and children, and society's demand for justice, very long terms of imprisonment for such crimes must be the norm – only to be deviated from in exceptional circumstances. If that were not the case, there is, I apprehend, a real risk of vigilantism and lynch-justice if one listens to the chorus of public despair at the incidence of violent crime in Namibia."* (conviction for murder of cohabiting partner; sentence: 45 years imprisonment)<sup>l</sup>

*"This court, in various judgments, has said that it views crime committed in a domestic relationship in a serious light and would increasingly impose heavier sentences in order to try and bring an end thereto. Unfortunately this trend in society seems to continue unabated... would-be offenders, who simply disregard the rights of others and who treat their spouses or partners like property belonging to them, must get the message loud and clear: That the Court will not shy from its duty to impose severe punishment in deserving cases, and will not hesitate to remove from society, for considerable periods of time, those persons making themselves guilty of committing heinous crimes against others – more so when these offences are committed within the family structure or what is considered to be a domestic relationship."* (conviction for murder of customary wife, mother of his six children; sentence: 23 years imprisonment, 5 years suspended)<sup>m</sup>

- <sup>a</sup> *Paiya v S* (CA 37/2009) [2010] NAHC 56 (28 July 2010). The Court remarked: "The sentence imposed by the magistrate is certainly robust but bearing in mind that: the appellant and the complainant were in a special relationship; the assaults on the complainant caused her a swollen and blue eye, damaged the nerve at the end of the complainant's right eye; the assault on the complainant will require her to undergo an operation; the assault on the complainant caused her bruises on the inside and outside of her right thigh and that her right hand is painful; the assault was perpetrated in the presence of the complainant's minor daughter of 4 years, and the assault took the form of strangulation, we can find no reason to interfere with the sentence imposed by the Court a quo."
- <sup>b</sup> *S v Bohitile* 2007 (1) NR 137 (HC).
- <sup>c</sup> *S v Wilbard* (CC 40/2008) [2009] NAHC 78 (29 July 2009).
- <sup>d</sup> *S v Soroseb* (CC 08/2010) [2010] NAHC 41 (18 June 2010).
- <sup>e</sup> *S v Likuwu* (18/2010) [2011] NAHC 30 (2 February 2011).
- <sup>f</sup> *S v Shigwedha* (CC 12/2008) [2009] NAHC 33 (13 March 2009).
- <sup>g</sup> *S v Kashidule* (CC 03/2010) [2010] NAHC 106 (24 September 2010).
- <sup>h</sup> *S v Nepando* (CC12/2007) [2007] NAHC 37 (10 May 2007).
- <sup>i</sup> *S v Kashamba* (CC 05/2008) [2009] NAHC 44 (8 April 2009).
- <sup>j</sup> *S v Nkasi* (CC 02/2010) [2010] NAHC 33 (12 April 2010).
- <sup>k</sup> *S v Gabriel* (CC 17/2010) [2011] NAHC 45 (23 February 2011).
- <sup>l</sup> *S v Basson* (CC 23/2010) [2011] NAHC 186 (1 July 2011).
- <sup>m</sup> *S v Daniel* (CC 05/2011) [2011] NAHC 351 (25 November 2011).

**There are a few cases which have departed from this general pattern.** In one case, the Court cited concerns about the impact of domestic violence on society, but treated the convicted abuser extremely leniently. The accused in this case was charged with murder after an assault on his wife resulted in her death: *“The accused assaulted his wife by kicking her twice, indiscriminately, not caring where the blows fell and by pushing her off the bed. The deceased sustained blunt force injuries to her head; [and] mouth and abrasions to her back and arm.”* The accused was convicted of assault with intent to do grievous bodily harm. The Court began its consideration of sentence by noting the need for deterrent sentences to combat domestic violence: *“This crime was committed within the privacy of a household where members of that household should feel safe, loved and protected... Domestic violence has become an everyday occurrence before the Courts and also arouses strong indignation from society. One way our Courts have dealt with this issue was to impose deterrent sentences to send a message that it will impose harsher sentences.”*<sup>234</sup> But then the Court went on to state, *“The fact that cases involving domestic violence have aroused the indignation of the society does not necessarily mean that the person of the accused must be ignored. In the final analysis the punishment must fit the crime and the offender.”*

This is in principle a similar approach to that taken in most domestic violence offences, but here the Court cited a number of factors which persuaded it to give a lenient sentence: it noted that accused was lying down when he assaulted the deceased, and that he was trying to ward her off. It found that there was no reliable evidence of previous incidents of domestic violence by the accused against his wife, and that the incident was an isolated one which was *“provoked”* by the deceased’s behaviour towards the accused during the course of the day and a squabble involving the breaking of cellphones. It noted that there was no evidence that the accused was currently in another domestic relationship. It also took into account *“the nature of the assault and the circumstances under which it was committed; the injuries inflicted; the interest of society and the personal circumstances of the accused”*, and the fact that the accused would lose his long-standing employment if he were imprisoned. The Court concluded that *“the accused, who has been and still is a productive member of society does not fall in the category of offenders who, although he is deserving of punishment, should be removed from society”*, and imposed a wholly suspended sentence of three years.<sup>235</sup>

A more extreme departure from the general approach of treating domestic violence seriously was evident in a case involving a murder where the deceased was shot five times in the head. The magistrate’s court apparently considered it a *mitigating* factor *“that the appellant apparently acted in a rage under the influence of alcohol and was involved in a relationship with the deceased”*, as against the aggravating factor that it is *“the duty of the Court to curb violence by imposing severe sentences”*. Without commenting on the lower court’s treatment of the domestic relationship between the parties, the High Court upheld the sentence of 20 years on appeal. This sentence is not a light one, but the approach to the domestic relationship seems inappropriate nonetheless.<sup>236</sup>

A third case which departs from the general pattern involved a conviction for marital rape, which appears to have involved an incident that took place before the enactment of the Combating of Domestic Violence Act. Here the Court seems to have treated the fact that the complainant and accused were married (although estranged) as a *mitigating*

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<sup>234</sup> *S v Amupolo* (CC 09/2010) [2011] NAHC 59 (28 February 2011).

<sup>235</sup> *Ibid.*

<sup>236</sup> *S v Jansen* (Case No. CA 21/2005) [2008] NAHC 86 (1 August 2008).



factor rather than an aggravating one, and as grounds for a departure from the minimum sentence prescribed under the Combating of Rape Act.<sup>237</sup>

**Aside from the few anomalies cited, there were some cases which did not seem to give any particular weight to the existence of a domestic violence context one way or another. But the general trend in recent years appears to be for the courts to take a stern stand against crimes of domestic violence.**

### **No need for a specific complainant**

In a case which involved the murder of the brother of the accused's girlfriend, the court noted that a **criminal prosecution can proceed without a specific complainant** – something which is often more relevant in domestic violence than in other contexts, given the fact that persons in relationships with abusers may be reluctant to lay criminal charges:

*Criminal conduct, in whatever form it presents itself, strikes at the individual or collective rights or values of society and therefore, the State, being the public body which society has chosen to organise and regulate themselves, is charged with the duty to protect society and its members against such conduct by investigating, prosecuting and punishing those who do what is forbidden by law. The discharge of that duty is normally assisted by, but not dependent on, a complainant to set the law in motion.*

*S v Katari* (CA124/04) [2005] NAHC 13 (16 June 2005)

### **Criminal action in respect of theft or damage to joint property**

Selling or damaging property which belongs to the applicant, or which forms part of the community of property shared by the couple, can be a threat or a means of attempting to control the behaviour of the applicant. For example, one case brought to the attention of the Legal Assistance Centre involved a man who severely intimidated his wife by destroying a motor vehicle (which was part of the couple's joint marital property) with a hammer while she watched from inside the house. Another client approached us to complain that his spouse had unilaterally removed all of the jointly-owned property from the couple's matrimonial home. A recent case raised a similar issue, involving a client whose husband used a car-jack to smash the windscreen of a car which was part of their joint estate.

**Where spouses are married in community of property, can one spouse lay a charge against the other for theft or malicious damage to property? The answer is yes, although there may be some evidentiary difficulties until the Criminal Procedure Act is revised on the question of spousal evidence.** Malicious damage to property in the context of a domestic relationship is a "domestic violence offence".

It was held in Namibia in 2001 that a husband can be convicted of the **common law crime of theft in respect of theft of joint property where the marriage is in community of property**. Previously a husband could not be convicted of theft of property of the joint estate because of the operation of marital power, which gave him full power to administer the estate as he saw fit. But the Court held that there is no impediment to such a charge of theft now that marital power no longer exists in Namibia.<sup>a</sup>

<sup>237</sup> *S v Lopez* 2003 NR 162 (HC).

Similarly, the High Court in Zimbabwe held in 2004 that a spouse can be charged with malicious damage to property in respect of the couple's jointly-owned property. In this case, after the wife obtained a peace order including a no-contact provision (similar to a protection order), the husband came to the home they owned jointly and smashed the bedroom, kitchen and dining room window panes. **The Court found that where a husband's marital power is not part of the matrimonial law, a spouse who damages jointly-owned matrimonial property can be guilty of malicious injury to property just like any other joint-owner in a partnership.**<sup>b</sup>

However, a barrier to effective action in this situation still exists under section 195 of the Criminal Procedure Act 51 of 1977. In terms of this section, spouses are not generally competent to give evidence against each other in criminal proceedings, and the list of exceptions to the general rule does not encompass a charge of theft or malicious damage to property.<sup>c</sup>

However, the new Criminal Procedure Act 25 of 2004 (which has been passed by Parliament but has not yet come into force) appears to have revised the provisions on spousal evidence in a way which removes this problem.<sup>d</sup>

<sup>a</sup> *S v Gariseb* 2001 NR 62 (HC). Contrast the South African case of *S v Swiegelaar* 1979 (2) SA 238 (C), where the wife was unable to bring a criminal action against her husband, to whom she was married "in community of property", after he had cut up her clothes. The reasons given were that the clothes were not the separate property of the wife, even though she had purchased them out of her own earnings, and that as a spouse she was not competent to give evidence against her husband. See also, for example, *S v Mgidi* 1989 (3) SA 520 (Tk).

<sup>b</sup> *S v Munjoma and Another* (HC 816/04) [2004] ZWHHC 91; HH 91-2004 (7 April 2004).

<sup>c</sup> Section 195 of the Criminal Procedure Act 51 of 1977 states:

**195. Evidence for prosecution by husband or wife of accused**

(1) *The wife or husband of an accused shall not be competent to give evidence for the prosecution in criminal proceedings, but shall be competent and compellable to give evidence for the prosecution at such proceedings where the accused is charged with –*

- (a) *any offence committed against the person of either of them or of a child of either of them;*
- (b) *any offence under Chapter III of the Children's Act, 1960 (Act 33 of 1960), committed in respect of any child of either of them;*
- (c) *any contravention of any provision of section 11(1) of the Maintenance Act, 1963 (Act 23 of 1963), or of such provision as applied by any other law;*
- (d) *bigamy;*
- (e) *incest;*
- (f) *abduction;*
- (g) *any contravention of any provision of section 2, 8, 9, 10, 11, 12, 12A, 13, 17 or 20 of the Immorality Act, 1957 (Act 23 of 1957), or, in the case of the territory, of any provision of section 3 or 4 of the Girls' and Mentally Defective Women's Protection Proclamation, 1921 (Proclamation 28 of 1921), or of section 3 of the Immorality Proclamation, 1934 (Proclamation 19 of 1934);*
- (h) *perjury committed in connection with or for the purpose of any judicial proceedings instituted or to be instituted or contemplated by the one of them against the other, or in connection with or for the purpose of criminal proceedings in respect of any offence included in this subsection;*
- (i) *the statutory offence of making a false statement in any affidavit or any affirmed, solemn or attested declaration if it is made in connection with or for the purpose of any such proceedings as are mentioned in paragraph (h),*

*and shall be **competent but not compellable** to give evidence for the prosecution in criminal proceedings where the accused is charged with any offence against the **separate property** of the wife or of the husband of the accused or with any offence under section 16 of the said Immorality Act, 1957, or, in the case of the territory, section 1 or 2 of the said Immorality Proclamation, 1934.*

(2) *Anything to the contrary in this Act or any other law notwithstanding, any person married in accordance with Bantu law or custom shall, notwithstanding the registration or other recognition under any law of such a union as a valid and binding marriage for the purposes of the law of evidence in criminal proceedings, be deemed to be an unmarried person. [emphasis added]*

In the *Gariseb* case, the limitation on testimony by the wife imposed by the Criminal Procedure Act did not affect the outcome of the case. The husband pleaded guilty and was convicted of theft.

<sup>d</sup> Criminal Procedure Act 25 of 2004, sections 219-224. Section 219 states that the spouse of an accused "is competent but not compellable to give evidence for the prosecution in criminal proceedings".

## 5.22 DO PROTECTION ORDERS WORK?

### 5.22.1 Use and abuse of protection orders

Most of the court personnel and police interviewed felt that complainants who seek protection orders generally do so for good reasons, with some saying that failure to provide protection orders could put lives at risk. Several mentioned that complainants often have visible bruises or other injuries when they approach courts to make their applications. For example, one clerk said that most of the complainants he sees show visible signs of abuse, either in the form of injuries such as bruises or black eyes, or in that they are emotionally distressed when they arrive at his office. Another clerk estimated that 90% of the applications she receives are well-founded.

Several magistrates stated that a protection order application, for most women, is a measure of last resort. One clerk of court similarly stated that the complainants who approach the court “*are in desperate need of help*”, reporting that they don’t come after just one incident, but only if there is a pattern of violence. A court clerk in Oshakati mentioned that she commonly has applications relating to HIV status, with “*the man abusing the lady after being tested positive for HIV*”.

However, several informants suggested that a few complainants misuse protection orders as a way to settle disputes about property division and custody of children when a relationship breaks down – either as an alternative to less-accessible divorce procedures, or in cases where the parties were not formally married and therefore have no alternative legal procedures available to them. Protection order applications are reportedly sometimes made while divorces are pending, as a strategy in the battle for custody of the children. Alternatively, one clerk referred to protection orders as “*the poor man’s divorce*” for those who can’t pay the legal fees for “*a proper divorce*”; a magistrate at another court used the same phrase. In fact, one clerk reported that complainants sometimes ask if a protection order can actually divorce them.

#### CASE STUDY

##### Possible misuse of protection order

In 2009, the Legal Assistance Centre was approached by a male client. His wife had moved out of the joint residence with the couple’s children three years previously, and a divorce was pending. Nevertheless, one of the provisions in the protection order required the respondent (our client) to vacate the joint residence, which was in his name, although the couple were married in community of property. If the information from the client was accurate, this provision of the protection order was misplaced and could have been an attempt by the complainant to strengthen her negotiating position in the divorce proceeding.

Protection orders can also be misused as a strategy in relation to maintenance. For example, one clerk of court described a man who reported that he was being abused by his wife, but it transpired that the wife had just taken action against him for failure to pay maintenance. The clerk concluded that the man was lying, particularly because he did not want to proceed with any formal action against the ‘abusive’ wife.

One magistrate expressed concern that persons in a relationship may race each other to court in an effort to evict each other from the common residence, saying: “*Because an interim order is taken out unopposed – the court MUST issue the order and the respondent*

*must wait 30 days for the hearing – there is room for abuse of the Act. The court sometimes has to throw the respondent out of the house. This often means that the first person to come to court gets to kick the other one out.”* However, this concern is already addressed by safeguards in the law. Section 7(1) of the Act states that a court must issue a protection order only “*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*”. Furthermore, an order for exclusive occupation of a joint residence is available only if there is credible evidence that “*an act of physical violence has been committed*”.<sup>238</sup> So, even though the interim protection order is normally based on only the complainant’s version of events, there is still a *prima facie* burden of evidence which must be met. The possibility for unfairness to the respondent is also mitigated by the possibility for accelerating the enquiry date.<sup>239</sup>

**Some key informants also mentioned complainants who turn to protection orders inappropriately when their spouses are unfaithful.** For example, one clerk of court said that jealousy can be involved: “*Sometimes the complainant does not want her partner but when he goes on with his own life and has a new girlfriend, she makes out she is harassed or that their child is not maintained properly.*” One magistrate felt that seeking a protection order in such circumstances can be a form of revenge. A clerk reported that she is approached by both women and men who want to know if they can get a protection order which will force their spouses “*not to sleep around*”; a magistrate with the same experience noted that some complainants hope that they can use such protection orders “*to save their marriages*”. On the other hand, this same clerk said that some complainants are married women “*who think protection orders will allow them to have affairs with other men since their spouses have been ordered out of the house*”. However, one clerk noted that infidelity can result in violent confrontations or forced sex – which would be valid grounds for a protection order.

A further twist on this issue involves the cultural belief that beating is justifiable in cases of infidelity; one clerk cited, as an example of ‘abuse’ of the protection order system, cases where married women who have engaged in extramarital affairs are beaten by their husbands: “*There are cases where the applicant (mostly women) is having an affair and the respondent (mostly men) beats her. She will obtain a protection order. Then the man comes to court and explains.*” Without condoning extramarital affairs, we note that the message of the law is that violence is not a justifiable response to any undesirable behaviour, except in the case of self-defence.

One clerk noted that “*sometimes there is a third party influencing the complainant... their families also push them to say untruthful things*”. One clerk felt that complainants sometimes use protection orders as forms of threat or blackmail, and some clerks felt that “*they are just the result of small altercations*” or “*petty personal issues*”.

In contrast, one clerk said, “*Normally the applicants are very scared for their lives when they come in to apply for an interim order and most want to know how soon the court can intervene and thereafter how soon a final protection order can be issued.*” It should be noted that most key informants reported that physical abuse is the most common basis for protection order applications – which is also the kind of abuse most likely to produce concrete evidence. The statistical findings of this study confirm this common perception as being accurate.

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<sup>238</sup> Combating of Domestic Violence Act 4 of 2003, section 14(2)(c).

<sup>239</sup> See section 5.15.

**Clerks were more likely to report attempts to abuse protection order applications than magistrates – perhaps because the clerks help to weed out inappropriate applications before they ever reach the magistrates.** One magistrate could recall two instances where a woman tried to abuse the protection order system to get a man out of the house, but noted that such misuse is rare and easy to spot – meaning that protection orders in such circumstances will not be granted. Police at the Oshakati Woman and Child Protection Units similarly indicated that misuse of the protection order system is uncommon and that false reports are weeded out during investigation: *“When we talk to children and domestic workers who say they have seen no abuse, the allegations might be false. It could simply turn out that the woman does not want the man anymore. Where we do see abuse [of the protection order system], we tell the court of clerk and then the magistrate will address this in the court enquiry.”*

**No key informants suggested that the law needs to be fundamentally changed or amended to respond to these occasional abuses.** One magistrate noted that the law already addresses abuse of the protection order process by making it a criminal offence to give false information in an application for a protection order,<sup>240</sup> but felt that it would be unwise to proceed with prosecutions in such instances *“because it’s important to keep the confidence of the public that they can come in and apply for these orders without fear”*.

## 5.22.2 Effectiveness of protection orders

**Most key informants interviewed felt that protection orders are effective in providing protection for victims of domestic violence.**

**A magistrate in Gobabis praised the scheme for being fast, low-cost and effective; “rich or poor can afford it”.** A magistrate in Keetmaschoop similarly said that the system is *“good because it’s cheap, easily accessible and swift”*.

***Violation of a protection order is a criminal offence and this makes people respect it.***

magistrate, Rehoboth

**Several key informants felt that the threat of criminal action was useful.** According to a clerk of court in Rehoboth, *“Protection orders are effective because of the fact that if the respondent disobeys the terms and conditions of the protection order they stand the risk of serving a jail sentence for disobeying a court order. The police explain all this to the respondents.”* One magistrate similarly commented that the current system is effective because *“respondents fear police or jail sentences if they should disobey the protection order”*, while another said *“violation of a protection order is a criminal offence and this makes people respect it”*. Yet another magistrate made this assessment:

*Handing down the interim protection order in the absence of the other party is problematic. But, it’s better to have the Act than not. The Act overdoes it, but gives effective protection for those who really need it. I have had cases where my orders have been defied and then those people went to jail and their attitudes were better after that!*

<sup>240</sup> Combating of Domestic Violence Act 4 of 2003, section 6(7).

*Prior to the introduction of the Act, there was a lot of silent suffering. Now, men have to respect their wives. There is less domestic violence in the area today.*

clerk of court, Katima Mulilo

Several key informants felt that a protection order application can produce fundamental change in relationships. One clerk of court said, “Prior to the introduction of the Act, there was a lot of silent suffering. Now, men have to respect their wives. There is less domestic violence in the area today.” The same clerk felt that reconciliations which come about after protection orders are issued can be very positive: “Couples who went through the protection order process when it was first introduced now have a stronger marriage as a result of it. Some of the applicants later came back to thank us, saying ‘we are a happy family now’.” A magistrate from the same court had a similarly positive view, saying that the protection order process increases respect for women in the community, and causes men to realise that they are not omnipotent when women exercise their rights to get maintenance and protection orders.

*Some of the applicants later came back to thank us, saying “we are a happy family now”.*

clerk of court, Katima Mulilo

A Katutura magistrate emphasised the impact of protection orders on male respondents in particular: “They learn a lot. When they appear before court, they cry, they realise what their wives mean to them. Sometimes they haven’t seen their children for a time, they are upset that women do not wash their clothes anymore or that they couldn’t speak to their wives for 3 or 4 months [referring to the period in which a no-contact order might be in force pending the enquiry]. Then they invite their wives for dinner or ask their wives to join them at their work places.” This magistrate noted that there is often a reconciliation after the interim order as a result of such changed attitudes. A magistrate in Gobabis made a similar observation: “Protection orders are very effective. A consequence of protection orders is that the respondents normally rehabilitate themselves. They come saying they have changed.” However, a clerk of court from Tsumeb sounded a note of caution, saying that such changes of behaviour may be only temporary: “It’s hard to change a person, hard to change behaviour. They only change for a week.”

One clerk of court thought that protection orders can be very effective if the complainant pushes to have the order served promptly on the respondent. This is a worrying observation, as it should not be up to the complainant to see that government personnel do their jobs – and as a practical matter this is far too much to ask of vulnerable complainants who have already suffered abuse.

A magistrate from Lüderitz felt that the ambivalence of complainants or the attitudes of children sometimes undermine the effectiveness of the protection orders:

*When people are filing, it is against other people who know each other: they share a home or have some kind of relationship. Some people will see the protection order and respect it. Then it is effective in getting the violent person out. However, there are a lot of withdrawals. Especially when jail or serious trouble for the man is*

*involved, the woman feels bad and withdraws. Two weeks later, the women come in again, filing the same report. It's a cycle. These people don't respect the protection orders. Also, when it comes to families, a protection order can worsen the problem, not correct it. The children see that the father is living away from the house and the children become involved.*

Another clerk thought that *“The law is good sometimes... it serves the purpose and domestic violence issues are solved, but some get worse when applications are made”*. This clerk explained his observation by noting that after the protection order application the couple may end up divorcing – which is, in our view, not necessarily a bad thing if the relationship was characterised by violence. In contrast, one clerk thought that protection orders were not effective because the parties frequently reconcile and reunite – however, if the violence has stopped, this outcome is also not necessarily a negative one or an indication that protection orders are ineffective. **The test should not be the fate of the relationship, but rather the safety of the complainant.**

Another misperception was expressed by a magistrate who cited as an example of misuse the fact that some complainants *“use this procedure to keep their husbands away from them instead of laying a criminal charge of assault at the police station”*; in fact, protection orders were intended partially to provide just such an alternative, precisely because so many people are reluctant to lay charges against spouses or family members.

**Several key informants spoke about the positive impact of the law on the community.** A magistrate in Keetmanshoop stated: *“The Domestic Violence Act is sending the correct message in the community. Men are thinking twice before they create problems.”* Police at the Oshakati Woman and Child Protection Unit said: *“The new law is working very well. People are now stepping forward. We even have pastors stepping forward and talking to us about cases in their community. The new law is bringing the community up to standard.”* According to a police constable in Gobabis, *“The new law is very straightforward and is working very well in the community... it is bringing very positive changes and lessening the violence in the community.”*

***My mother and I feel much safer since the protection order is in place and my kids have the advantages of having a more relaxed atmosphere at home.***

excerpt from an email to Legal Assistance Centre by a satisfied client, 2004

***All crime has harsh effects on society. What distinguishes domestic violence is its hidden, repetitive character and its immeasurable ripple effects on our society and, in particular, on family life. It cuts across class, race, culture and geography, and is all the more pernicious because it is so often concealed and so frequently goes unpunished.***

*S v Baloyi* 2000 (1) SACR 81 (CC) at 86 -87A-C, quoted with approval in *S v Likuwa* (18/2010) [2011] NAHC 30 (2 February 2011) at paragraph 15

## CASE STUDY

### Domestic violence ends with death and dismemberment

Domestic violence was the precursor to one infamous Namibian case involving dismembered body parts which were found on the streets of Grootfontein in September 2007. In total 10 body parts were found: a head, two forearms, two upper arms, two lower legs, two upper legs and a torso.

The deceased was Rose Chepkemoi Kiplangat, the customary law wife of Kenneth Orina, who was employed as a nurse in Grootfontein. She had been stabbed in the chest and her throat was slit. Orina was found guilty of murder read together with the Combating of Domestic Violence Act, and attempting to defeat the course of justice. The court summarised a lengthy statement that Orina made to the magistrate as follows:

*He described an incident which was recorded verbatim, that happened on 14 September 2007 in the nurses' home where he and his wife resided, and during which she uttered "bitter words and unusual questions" to him while saying that he on that day would die. Despite all his attempts to calm her down and his pleading with her, she continued acting strangely, while throwing documents and household items out of their flat. He took her threats serious[ly] and begged her to let him live; but when she started looking for a knife, he made a dash for the bedroom in order to find a spare key to the flat as she had locked him in. She followed him into the bedroom carrying a knife and when he tried to wrestle it away from her; she was accidentally cut on the neck. Despite her bleeding and being fatally injured, she continued saying that she had to kill the accused that day. He was overwhelmed for what he has done to his wife and begged her forgiveness. Her condition deteriorated to the point that she died while he sat with her, holding her for some hours. He realised that he had killed her "innocently" and did not know what to do. He went up to the police twice, but courage failed him every time to report the incident. He returned home and held the body until the morning, not knowing what to do. He later that morning attended a funeral and upon his return did not know how he would manage to carry the body to the mortuary. It was then that he decided to cut it into pieces.*

The evidence presented to the court showed a history of domestic violence as the relationship became troubled. In July 2007, Orina reportedly approached the police to complain that his wife was acting violently against him. Orina also reported that she had tried to commit suicide. Rose at the same time arrived at the police station with bare feet, dirty and disorientated, and laid charges against Orina. The High Court judgment stated:

*A complaint under the Domestic Violence Act was registered that would have been heard by the local magistrate the following day. According to the accused the case was removed from the roll instead.*

In sentencing, the court remarked:

*The crimes committed are undoubtedly serious, more so when considering the circumstances under which the accused murdered his own wife for reasons only known to him; thereafter attempting to dispose of the body in the most gruesome way by dismembering it in ten pieces and discarding these in and around Grootfontein.*



*The deceased was the accused's wife who died at the hands of the one who was supposed to comfort and protect her; and in the absence of any explanation for killing the deceased, it can only be described as a senseless murder where no respect for the sanctity of life was shown.*

The context of domestic violence was also treated as an aggravating factor:

*Evidence has shown that the marital relationship between the accused and the deceased was unstable at the time and that there was a history of domestic violence. Against this backdrop it seems likely that the deceased's death came as a result thereof. Despite several judgments in which it was said that this Court views crime committed in a domestic relationship in a serious light and would increasingly impose heavier sentences in order to try to bring an end thereto, this unfortunate trend in society seems to continue unabated... the fact that the crimes took place against the background of a domestic relationship is an aggravating factor; where not only the life of a young mother was ended, but also left a fourteen year old girl to grow up without the love and support of her biological mother. One can only wonder how the accused one day would explain to his daughter what he has done to his wife – the mother of his child – when he again meets with her. What justification could there possibly be for a husband to kill his wife; what type of person would thereafter dismember the body into pieces, wrap it, dispose of it and then continue with his own life as if nothing has happened? These evil deeds certainly adversely reflect on the character of the accused and it seems to me that judging from the absence of motive and the accused's abominable conduct subsequent thereto; that it could be inferred that the accused is a real danger to society who deserves protection against him.*

Orina was sentenced to 30 years imprisonment for the murder and 10 years imprisonment for attempting to defeat the course of justice.

*S v Orina* (CC12/2010) [2011] NAHC 127 (28 April 2011) (judgement); [2011] NAHC 137 (20 May 2011)

## CASE STUDY

### A protection order which failed to protect

*Protection orders are not always effective. In 2010, a man who killed his former cohabiting partner cited the protection order she had recently obtained against him as the provocation for the murder. The Court emphasised the point that protection orders cannot be effective unless they are taken seriously.*

The deceased in this case was a Hilaria Frans, a 32-year-old woman who was the mother of six. The couple had been living together for four years and had three children together. According to witnesses, Hilda had ended her relationship with the accused, Oscar Jacobs, sometime in 2009. Oscar then started abusing her, and she had been injured on a previous occasion. One witness (Mr Angula), who was the work supervisor of both Hilaria and Oscar, testified that he had spoken to Oscar in an effort to persuade him to desist from this abuse. But he later overheard Oscar threatening Hilaria, saying that he would teach her a lesson. Two witnesses testified that Hilaria lived in constant fear and had on a number of occasions made complaints to the police about Oscar.

An interim protection order was issued against Oscar on 2 December 2009. It ordered him to refrain from all acts of domestic violence against the deceased, including intimidation, threats, harassment and psychological abuse. It also stated that he must be accompanied by the police to collect his personal belongings from the couple's former joint residences and that he must not come within 100 metres of Hilaria. The return date for the protection order was 19 January 2010, and it was apparently confirmed at some point after this date. After this, Mr Angula arranged for Hilaria to live with his family for a while where she could be better protected. However, she returned to her normal residence at the beginning of March 2010.

On the day of the murder, Oscar encountered Hilaria near the house they had once shared. He was at the time carrying a panga he intended to use to cut wood for his new house. He testified that she was carrying a stick at the time, and that he avoided talking to her because of the protection order. He asserted that she hit him with the stick on his neck, so that he fell to the ground and momentarily blacked out; when he came to, he was so angry that he decided to chop her with the panga.

However, the Court noted that Oscar had previously threatened to kill Hilaria and concluded that the murder was pre-meditated. The Court noted that the deceased wrestled with the accused over a distance of 25 metres, indicating her attempt to flee from the attack.

The Court found that Oscar tried to shift blame away from himself by asserting that the murder would not have happened if Hilaria had not sought the protection order. According to the Court:

*There is undisputed evidence that the accused resented the fact that the deceased no longer loved him and relentlessly tormented the deceased for over a year driving her to the point of seeking a protection order. This action of the deceased deepened the resentment harboured by the accused. He carried this resentment for a period of over two months while the deceased was placed with a family in an environment that afforded her protection against him... The accused failed to heed... the warnings of the police. He showed complete disregard for the court order and shifted blame for his conduct to the deceased who had dared to obtain a court order against him.*

Mr Angula, in his capacity as a member of the community and of NAMAC (Namibia Men Against Crime) prepared a petition addressed to the local magistrate and signed by several members of the community. This petition expressed dismay at the cruel and horrific murder, urging the court to protect the powerless citizens of the country from perpetrators of violent crimes. It also alleged that Oscar had been charged with physically abusing the deceased and threatening to kill her, but had been released on bail of N\$800 shortly before the murder. The Court was not able to consider this allegation on the question of sentencing since it was not substantiated. However, the Court did make the following comments:

*Lip service is paid to the provisions of the Domestic Violence Act, 4 of 2003. Police officers are duty bound to keep a record of all complaints whether or not the complainant decides to press charges or not (see section 27). No such record was provided to this Court which clearly would be relevant under the circumstances. Prosecutors are reminded of their duty to have regard to section 24 and 25 of the Domestic Violence Act, 4 of 2003 when they receive complaints of assault, malicious damage to property and assault by threat, particularly a threat to kill, when perpetrated by a person in a domestic relationship*

*with the complainant. In recent times it has become commonplace that threats made are executed as is the case herein. The judicial officers should be furnished with all the relevant information and these charges should not be treated lightly. If proper attention is given to these initial complaints lives may be saved.*

Oscar, who ultimately pleaded guilty, was sentenced to 35 years imprisonment, and the panga used in the murder, along with a hunting knife, was forfeited to the state. His family contributed toward the funeral expenses and paid N\$7000 and 3 head of cattle to compensate Hilaria's family for their loss.

*S v Jacob* (CC 06/2011) [2012] NAHC 42 (24 February 2012) (sentence)

It is indisputable that protection orders are not always effective. However, most of the feedback from the study indicates that protection orders help more people than they hurt. With improvements in procedure and implementation, the Combating of Domestic Violence Act could become an even more effective tool for protecting those at risk from domestic violence.



# **NO** *Violence* AGAINST **WOMEN!**

*“[S]ociety is so sick of the  
rampancy of such abominable  
and terrible crimes against  
women that the Parliament  
passed the Combating of  
Domestic Violence Act, 2003  
(Act No. 4 of 2003), as the  
legislative effort to stem  
the seemingly unending  
occurrences of such crimes.”*

S v Kandjengo (CC 15/2010) [2011] NAHC 208 (14 July 2011)