

# *Seeking Safety*

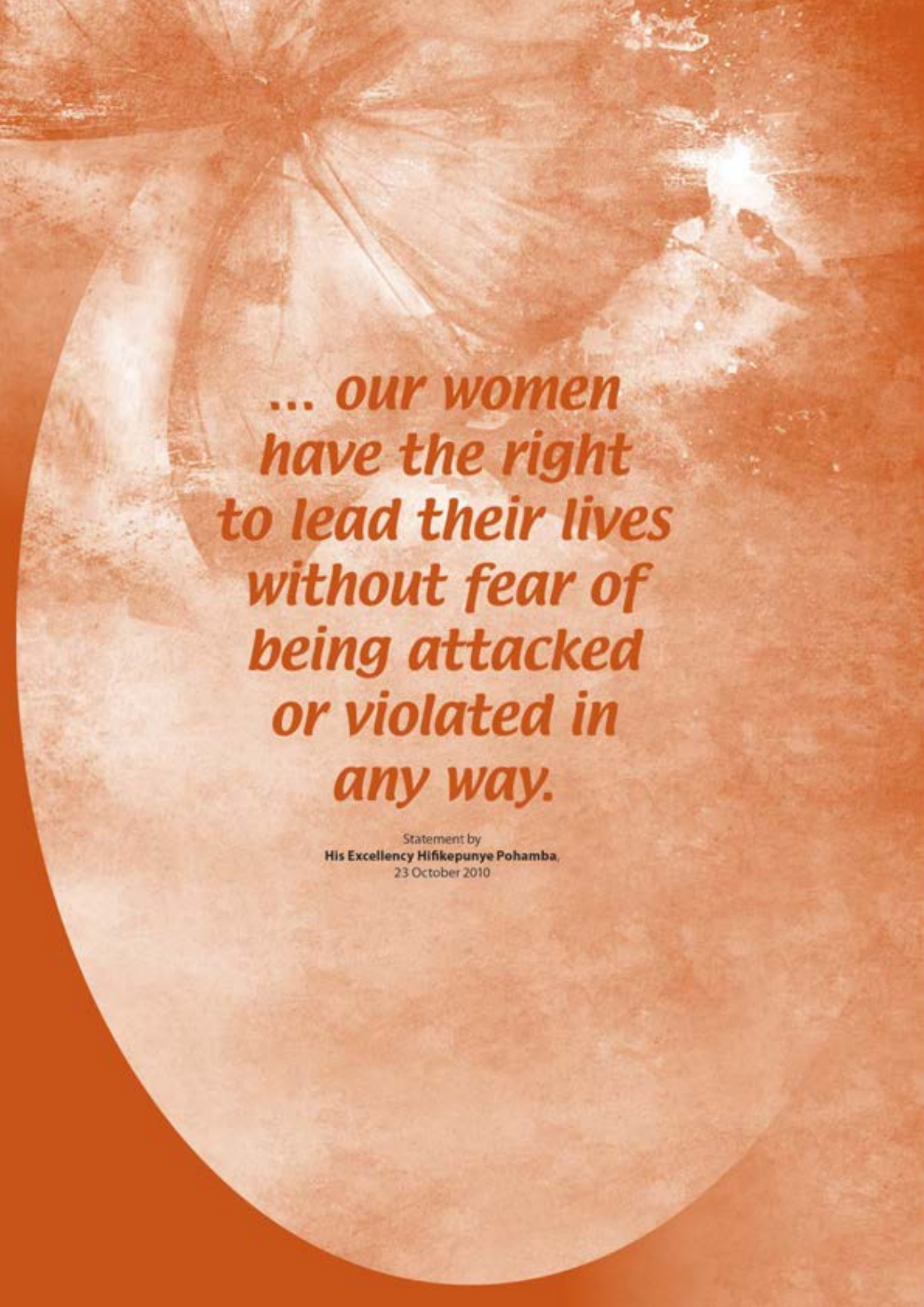
## **Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003**

### **SUMMARY REPORT**



**Gender Research and Advocacy Project  
LEGAL ASSISTANCE CENTRE**

2012



*... our women  
have the right  
to lead their lives  
without fear of  
being attacked  
or violated in  
any way.*

Statement by  
His Excellency Hifikepunye Pohamba,  
23 October 2010

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**STOP**  
*the violence!*

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# Introduction

*“While Namibia has made great strides in achieving formal protection for women against gender-based violence through new laws such as the Combating of Rape Act and the Combating of Domestic Violence Act, effective implementation and consistent enforcement of these laws are lacking.”*

Ministry of Gender Equality and Child Welfare,  
*National Gender Policy (2010-2020)*, 2010

This is a summary of the study *Seeking Safety: Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003*. The full study is available from the Legal Assistance Centre.

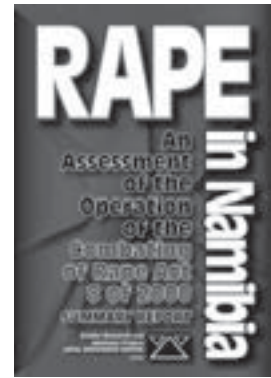
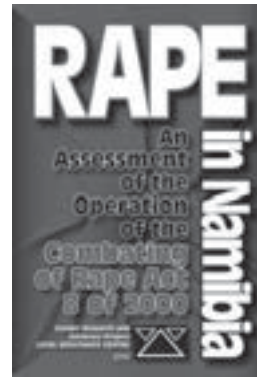
The primary purpose of the study is to assess the application of the Combating of Domestic Violence Act with respect to protection orders, with a view to assessing whether the law is serving its intended purpose effectively.

The study is based on research which included data from:

- the court files of 1122 protection order applications opened during 2004-2006, from 19 of the 31 magistrates' courts in place at the time of the study, located in 12 of Namibia's 13 regions;
- 46 key informant interviews in 19 locations, mainly with magistrates and clerks of court involved in applying the law;
- group discussions with traditional leaders, police and magistrates;
- 14 follow-up interviews with clerks of court, social workers and a magistrate; and
- an examination of reported and unreported court judgements to see how the Combating of Domestic Violence Act features in criminal cases.

This is a companion study to a similar assessment of rape in Namibia and the operation of Namibia's Combating of Rape Act 8 of 2000.

This summary report does not include references. Complete references for all information in the summary can be found in the full report.



*[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)*



# Defining Domestic Violence

*“... family violence is one of the most insidious forms of violence against women.”*

Committee on the Elimination of Discrimination against Women,  
General Recommendation No 19 (eleventh session, 1992):  
Violence against women, UN General Assembly Official Records, 1992.

**D**omestic violence is a form of gender-based violence which arises from the unequal power relations between women and men. It has also been described as a gender-based crime where the majority of abusers are men and the majority of victims are women.

Internationally, domestic violence and other forms of violence against women first began to emerge as human rights issues in the succession of world conferences on women which began over 30 years ago. The World Plan of Action adopted by the **first World Conference on Women in Mexico in 1975** did not refer explicitly to violence, but drew attention to the need for the family to ensure the dignity, equality and security of each of its members. The **1980 World Conference in Copenhagen** referred to violence in the home in its final report and adopted a resolution on “*battered women and violence in the family*”. However, it was only at the **1985 Nairobi World Conference** that violence against women truly emerged as a serious international concern. The Nairobi Forward-Looking Strategies recognised the pervasiveness of violence against women and cited violence as a major obstacle to the achievement of development, equality and peace. The Nairobi document stated that “*legal measures should be formulated to prevent violence and to assist women victims. National machinery should be established in order to deal with the question of violence against women within the family and society. Preventative policies should be elaborated, and institutionalized forms of assistance to women victims provided.*”

In the wake of the Nairobi Conference, the **UN General Assembly passed its first resolution on domestic violence in 1985**. This resolution urged member states to take a range of steps to make their criminal and civil justice systems more effective in their responses to domestic violence.

The next major step forward for women at an international level came in the wake of the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which came into force internationally in 1981. Astonishingly CEDAW makes no explicit reference to violence against women. However, in 1989, the Committee which monitors CEDAW published General Recommendation 12 which made it clear that gender-based violence falls within the meaning of discrimination against women. In 1992, General Recommendation 19 gave detailed consideration to the problem of violence against women, noting that “*family violence is one of the most insidious forms of violence against women*”.

The **1993 Vienna World Conference on Human Rights** proved to be an international turning point on gender-based violence, by recognising this problem as a general human rights issue. Pursuant to this commitment, the **1993 UN Declaration on the Elimination of Violence** defined “*violence against women*” as “*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*”. Article 2 of the Declaration elaborated on this definition and noted that violence against women encompasses “*physical, sexual and psychological violence occurring in the family*”.

***There are important consequences that flow from categorizing violence against women as a matter of human rights. Recognizing violence against women as a violation of human rights clarifies the binding obligations on States to prevent, eradicate and punish such violence and their accountability if they fail to comply with these obligations.***

UN General Assembly,  
*In-depth study on all forms of violence against women: Report of the Secretary-General,*  
6 July 2006

The **1995 Beijing Declaration and Platform for Action agreed upon at the Fourth World Conference for Women** adopted a definition of “*violence against women*” similar to that used in the 1993 UN Declaration. The accompanying Beijing Declaration identified violence against women as one of 12 critical areas of concern requiring urgent action to achieve the goal of gender equality.

In 1998, the Southern African Development Community (“SADC”) adopted an **Addendum to the SADC Protocol on Gender and Development on the Prevention and Eradication of Violence against Women and Children** with a definition of violence which mirrored the previous international definitions. The Addendum notes that violence against women “*reflects the unequal relations of power between women and men, resulting in the domination and discrimination of women by men*” and recommends the adoption of various measures to respond to and prevent violence. This non-binding declaration and addendum were supplemented in 2008 by a new binding **SADC Protocol on Gender and Development** which defines “*gender-based violence*” and devotes an entire chapter to measures for combating various forms of gender-based violence.



### Definition of gender-based violence in SADC Protocol on Gender and Development

*“gender-based violence” means all acts perpetrated against women, men, girls and boys on the basis of their sex which cause or could caused them physical, sexual, psychological, emotional or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed or other forms of conflict.*

The SADC definition is based on the definition of “*violence against women*” in the **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa**, adopted in **2003**, which calls for a range of state measures to address violence which takes place “*in private or public*”.

In **2004**, the **UN Resolution on the Elimination of Domestic Violence against Women** elaborated on domestic violence as a specific form of gender-based violence, recognising:

- (a) *That domestic violence is violence that occurs within the private sphere, generally between individuals who are related through blood or intimacy;*
- (b) *That domestic violence is one of the most common and least visible forms of violence against women and that its consequences affect many areas of the lives of victims;*
- (c) *That domestic violence can take many different forms, including physical, psychological and sexual violence;*
- (d) *That domestic violence is of public concern and requires States to take serious action to protect victims and prevent domestic violence;*
- (e) *That domestic violence can include economic deprivation and isolation and that such conduct may cause imminent harm to the safety, health or well-being of women.*

International and regional understandings of what constitutes gender-based violence are remarkably consistent and inclusive of domestic violence.

This general understanding has been internalised in Namibian law and policy. Namibia's **first National Gender Policy, adopted in 1997**, states that violence against women and children violates Article 8 of the Namibian Constitution, which protects against “*torture*” and “*cruel, inhuman or degrading treatment or punishment*”. It includes a definition of violence against women based on the Beijing Declaration and Platform for Action.

The **National Gender Policy 2010-2020** follows international trends by replacing the term “*violence against women and children*” with the term “*gender-based violence*”. The glossary defines “*gender-based violence*” as “*all acts perpetrated against women, men, girls and boys on the basis of their sex, which causes or could cause them physical, sexual, psychological, emotional or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace-time and during situations of armed or other forms of conflict or in situations of natural disasters, that cause displacement of people.*” The policy includes a section on gender-based violence which says that this term “*refers to all forms of violence that happen to women, girls, men and boys because of the unequal power relations between them*” and notes that the two most common forms of gender-based violence in Namibia are “*rape and domestic violence, both of which disproportionately affect Namibian women more than men*”. It goes on to emphasise the impact of domestic violence on children, noting that “*children in abusive homes are more likely to be abused themselves and children exposed to abusive relationships may be more likely to become abusers themselves later in life*”.

The definition of “*domestic violence*” in Namibia's Combating of Domestic Violence Act is consistent with these international and national definitions of domestic violence, by including broad definitions of physical, sexual, psychological and economic abuse.



# The Combating of Domestic Violence Act

*“Violence, whatever form it takes, particularly against women and children, must today undoubtedly rank as one of Namibia’s most severe human rights problems ...”*

Hon Kaiyamo, National Council, 29 April 2003

Prior to the enactment of the Combating of Domestic Violence Act in 2003, there was no Namibian law aimed specifically at domestic violence. A person experiencing domestic violence would have had the following legal options:

- laying an appropriate **criminal charge** such as assault or trespass
- seeking an **interdict from the High Court**
- seeking a **peace order** in terms of the Criminal Procedure Act 15 of 1977, which is an order from a magistrate’s court to stop violence or threatening action and requires the respondent to deposit a sum of money which will be forfeited to the state if the order is disobeyed;
- a **divorce**
- a **civil action for damages** such as medical costs, loss of wages and pain and suffering stemming from the abuse.

These remedies are all still in place, but they have been supplemented by the Combating of Domestic Violence Act which contains more specifically-targeted remedies for domestic violence.

The Combating of Domestic Violence Act 4 of 2003 was passed by Parliament in March 2003 and came into force on 17 November 2003. The law covers a range of forms of “domestic violence”, including sexual violence, harassment, intimidation, trespass, economic violence and psychological violence. It covers violence in a range of “domestic relationships”, which include relationships between husbands and wives, parents and children, boyfriends and girlfriends, and close family members.

The law provides a simple procedure for getting a protection order from a magistrate’s court. A protection order is a court order directing the abuser to stop the violence. It can also prohibit the abuser from having any contact with the victim and require the surrender of weapons. In cases of physical violence, it can include an order giving the complainant an exclusive right to occupation of the joint residence for a temporary period. Protection orders can also include orders pertaining to the possession of personal property as well as temporary orders for maintenance, child custody and access to children.

No new crimes are created by the law, but existing crimes between persons in a domestic relationship are classified as “domestic violence offences”. These offences are subject to special provisions which encourage input from the victim on bail and sentencing, and protect the victim’s privacy.

The basic approach taken by the Act is to provide choices regarding remedies. In terms of the Namibian law, anyone who has experienced “*domestic violence*” in a “*domestic relationship*” can do the following:

- apply to a magistrate’s court for a protection order which will say that the abuser must stop the violent behaviour;
- if the abuse amounts to a crime, lay a charge with the police or ask the police to give the abuser a formal warning; or
- take both of these courses of action at the same time.

The full report discusses the research and advocacy on domestic violence which led to the passing of the law, the Parliamentary debates on the Bill and a detailed summary and analysis of the various provisions in the law.

The provisions of the Act are summarised in simple language, with illustrations and examples, in the Legal Assistance Centre’s *Guide to the Combating of Domestic Violence Act 4 of 2003*.



## ***“DOMESTIC VIOLENCE”***

### **IN THE COMBATING OF DOMESTIC VIOLENCE ACT**

**Physical abuse** includes:

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

**Sexual abuse** includes:

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

**Economic abuse** includes:

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

**Intimidation** means intentionally inducing fear in the complainant (or a family member or dependant of the complainant) by:

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

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

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

box continues ►

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

**Emotional, verbal or psychological abuse** means a pattern of degrading or humiliating conduct towards a complainant (or a family member or dependant of the complainant) including:

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

**Threats or attempts** to carry out any of these acts also constitute domestic violence.

The Act also provides that **psychological abuse of a child** includes a situation where someone other than a victim of domestic violence:

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

The Act specifies that a single act can amount to domestic violence, also noting that a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

## ***"DOMESTIC RELATIONSHIPS"*** **IN THE COMBATING OF DOMESTIC VIOLENCE ACT**

A *"domestic relationship"* is defined to cover:

- a **civil or customary marriage**, a former marriage or an engagement to be married;
- a **cohabitation relationship**, where two people of different sexes are or were living together as if they were married;
- **parents who have a child together**, or are expecting a child together (regardless of whether they have ever lived together);
- **parent and child**;
- any **family member related by blood, marriage or adoption**, as long as there is some actual connection between them, such as financial dependency or sharing a household (including people who *would* be family members if a cohabiting couple were married);
- any two people of different sexes who are or were in an **intimate or romantic relationship**.

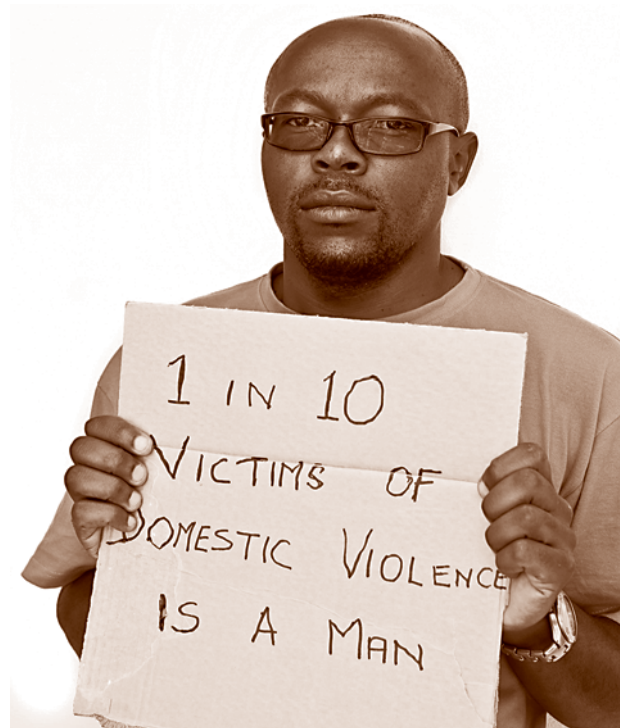
A *"domestic relationship"* for the purpose of the Act extends for one year after the connection between the parties has come to an end (such as by a divorce or a break-up). If two people have a child together, their *"domestic relationship"* continues for the lifetime of the child, or for one year after the child's death. The court has the power to consider the further extension of a *"domestic relationship"* if there are good reasons to do so.

## POSSIBLE TERMS OF PROTECTION ORDERS IN THE COMBATING OF DOMESTIC VIOLENCE ACT

Protection orders can include provisions from the following categories:

- provisions concerning the **surrender of firearms or other weapons**;
- **"no contact" provisions** which prohibit contact or communication with the complainant or by any child or other person in the care of the complainant, or impose conditions on such contact or communication;
- in cases where an act of physical violence has occurred, an order for **exclusive occupation of a joint residence** and use of all the contents of the residence or certain specified items;
- provisions on paying rent or making other arrangements for **alternative accommodation**;
- provisions aimed at **securing personal belongings**;
- **temporary maintenance orders**;
- temporary orders on child custody or access;
- any **other provisions** reasonably necessary to protect the safety of the victim or any other persons affected by the violence.





# 4

## A Profile of Domestic Violence in Namibia

*“At least one out of every three women is likely to be beaten, coerced into sex or otherwise abused in her lifetime... No country, no culture, no woman young or old is immune to this scourge.”*

UN Secretary-General Ban Ki-Moon,  
Remarks to the Commission on the Status of Women, 25 February 2008

Worldwide, one out of every three women will be victims of abuse at some point in their lives. Domestic violence by an intimate partner is the most common form of gender-based violence. While international statistics vary slightly, women are victims of violence in approximately 95% of the cases of domestic violence. Moreover, 40-70% of all female murder victims worldwide are killed by an intimate partner.

International statistics on violence against children are scarce for several reasons:

- there is under-reporting of child abuse in all societies as a result of factors such as social norms pertaining to sexual exploitation of children and corporal punishment; and
- child abuse is often hidden, because of children's powerlessness and because children are often reluctant to speak out in the face of the shame and stigma associated with such abuse.

There have been at least five major empirical studies of domestic violence in Namibia since independence, as well as several small-scale studies and two studies which have looked at perpetrators.

## **MAJOR EMPIRICAL STUDIES OF DOMESTIC VIOLENCE IN NAMIBIA SINCE INDEPENDENCE**

### **LAC-LRDC study (data collected in 1994)**

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

### **Karas spousal abuse study (data collected in 1997)**

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

### **WHO study (data collected in 2001)**

Ministry of Health and Social Services (MoHSS), *An Assessment of the Nature and Consequences of Intimate Male-Partner Violence in Windhoek, Namibia: A sub-study of the WHO multi-Country Study on Women's Health and Domestic Violence*, Windhoek: MoHSS, 2004

### **CIET-Soul City study (data collected in 2002)**

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; available at <[www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2042491](http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2042491)>

### **SIAPAC study (data collected in 2007/2008)**

SIAPAC, *Knowledge, Attitudes and Practices Study on Factors that may Perpetuate or Protect Namibians from Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions*, Windhoek: Ministry of Gender Equality and Child Welfare, 2008

## **STUDIES COLLECTING INFORMATION FROM PERPETRATORS OF DOMESTIC VIOLENCE**

### **Karas spousal abuse study (data collected in 1997)**

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

### **Perpetrator study (data collected in 2006)**

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)

However, there are still some serious gaps in our knowledge of the Namibian situation, due partly to the fact that domestic violence is shrouded in shame and secrecy, or considered to be a private matter and therefore often unreported to police or other authorities. There are also difficulties in collecting statistics, as domestic violence cases have not been historically set apart from non-domestic crimes in police dockets or statistics. Domestic violence against children has never been directly studied in Namibia, and very little is known about domestic violence against men, against the elderly, or within gay and lesbian relationships.

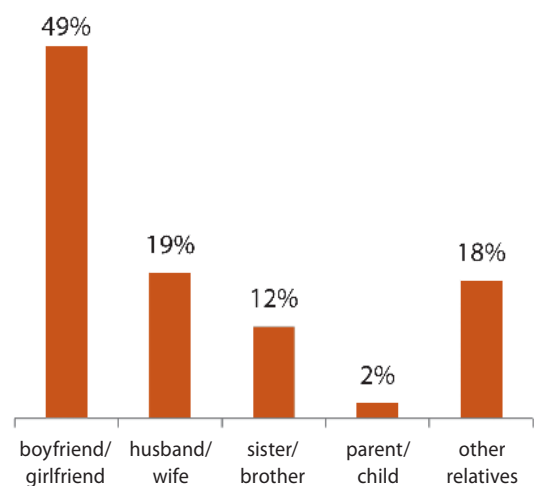
## 4.1 Domestic violence reported to police

One study by the Legal Assistance Centre and the Law Reform & Development Commission (the “LAC-LRDC study”) examined domestic violence cases reported to the Namibian Police in a sample of three months during 1994. This study found that more than one-fifth of all violent crime in Namibia occurs within the context of domestic relationships (with 515 out of 2322 dockets examined involving domestic relationships) and estimated by means of extrapolation that more than 2000 cases of domestic violence are reported to the police annually.

In the domestic violence cases in this sample, the majority of the victims were female (86%) and the majority of the perpetrators were men (93%). In contrast, most of the victims of violent crimes outside domestic relationships were men (60%) – but the perpetrators of other violent crimes were still mostly men (89%).

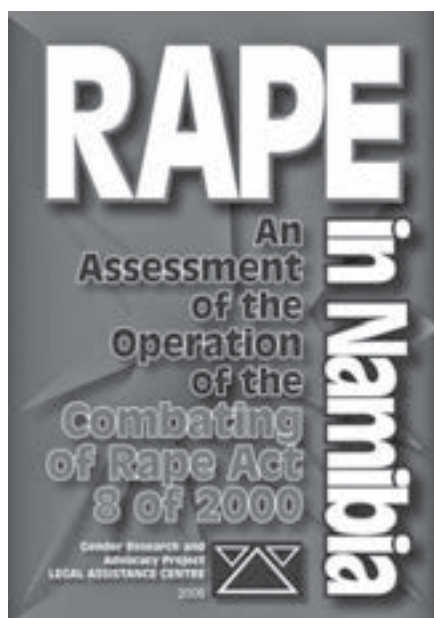
Most of the domestic violence in the survey sample was perpetuated by boyfriends against their girlfriends, either during the course of the relationship or after it had come to an end, followed by domestic violence committed by husbands against their wives. In the majority of cases (more than 60%), the complainant and the accused were living in the same household at the time the violence occurred.

**CHART 1: Domestic relationships involved in cases of physical violence reported to the police, 1994**



Even though slightly more cases were withdrawn by complainants in respect of domestic violence than in respect of other violent crimes, the percentage of convictions was similar for the two categories of cases. This means that the time invested in domestic violence cases by police and prosecutors is just as likely to lead to a meaningful outcome as the time invested in other cases of violent crime. Sentencing patterns were similar in the two categories of cases, with fines being more common than imprisonment in both. The amounts of the fines imposed were slightly lower on average in domestic violence cases. Where sentences of imprisonment were imposed, they were more likely to be suspended in their entirety in domestic violence cases than in other types of cases.

In 2006, the Legal Assistance Centre published a study of reported rape cases based on police dockets opened between 2001 and 2005. Looking at the 304 dockets where the relationship between the victim and the perpetrator could be ascertained, almost *one-third* fell within the definition of “domestic relationship” in the Combating of Domestic Violence Act, with 21 of these cases constituting incest.



**TABLE 1**

<b>Relationship between rape victims and alleged perpetrators – LAC study of sample police docket, 2000-2005</b>		
<b>Victim was... of accused</b>	<b>Number</b>	<b>Percent</b>
Stranger	46	15.1%
Acquaintance	158	52.0%
Wife	3	1.0%
Girlfriend	15	4.9%
Ex-girlfriend	22	7.2%
Daughter	2	0.7%
Stepchild	12	3.9%
Half-sister	4	1.3%
Niece	15	4.9%
Cousin	12	3.9%
Other relative	11	3.6%
Employee	4	1.3%
<b>Total</b>	<b>304</b>	<b>100.0%</b>

## 4.2 Intimate partner violence

A 1997 study of domestic violence by intimate partners collected data from 130 self-identified victims and 27 perpetrators in the Karas region (the “Karas spousal abuse study”). The victims interviewed reported a variety of forms of physical abuse, with more than half of those interviewed saying that they had been threatened with a dangerous weapon and more than one out of five saying that their abuser had tried to murder them. One-quarter of the victims reported being forced to have sexual intercourse. More than half of the victims had been physically abused in public, suggesting that abusers were not worried that that their behaviour would be condemned or stopped. One particularly interesting finding of this study was that economic independence was no guarantee of freedom from abuse. The victims were divided about half and half between breadwinners and unemployed persons; some reported that their partners prevented them from getting jobs, and some who were working reported that their partners took control of their earnings.

Victims tended to endure abuse for a while before reporting the abuse to someone, with three-fourths of the victims enduring abuse for at least four years before speaking out to anyone – with other family members tending to be approached first. Amongst the reasons cited for reluctance to seek help were shame, fear of the abuser’s reaction, fear of testifying in court, and hope that the relationship could be preserved.

Namibia formed part of a ten-country study of intimate partner violence against women by the World Health Organisation, published in 2005. The Namibian portion of this report was based on data collected in 2001 in Windhoek, from 1500 women between the ages of 15 and 49 (the “WHO study”). Almost one-third (31%) of the women in Namibia who had ever had a husband or boyfriend reported having experienced physical violence at the hands of an intimate partner, and 17% reported having experienced sexual violence; looking at the two categories together, more than one out of three women (36%) reported having experienced one or both of these kinds of violence during their lifetimes – with one out of five women (20%) having experienced such violence during the 12 months prior to the survey. About 10% of the Namibian women reported that an intimate partner had either tried to kill them or threatened to kill them.

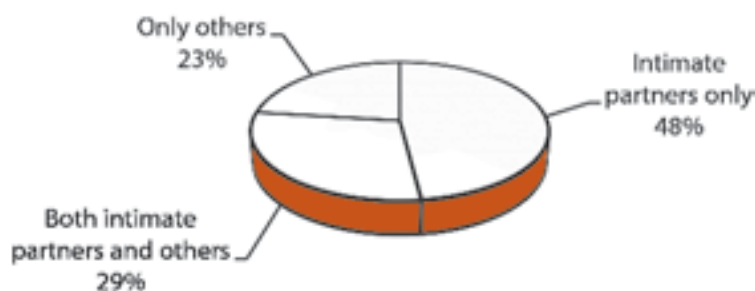
One-third of the women surveyed reported having experienced physical or sexual domestic violence from an intimate partner in their lifetimes, and one-fifth had experienced such violence in the year prior to the survey.

finding of WHO study carried out in Windhoek in 2001

One-third of those who had suffered violence had been injured, with many reporting serious injuries and 20% reported being injured on *more than five* different occasions. Some 23% of the injured women had been knocked unconscious, and 8% had lost consciousness for more than an hour. Two-thirds of the injured women sought medical attention. Of all the women who had ever been pregnant, 6% reported being beaten during the pregnancy – with the abusers usually being the father of the unborn child.

Of the ten countries studied, Namibia was in the middle of the overall range for physical and emotional abuse, but at the lower end of the range in respect of sexual violence. Namibian women reported higher percentages of serious injuries than women in the other countries studied. This study found that that violence against women by intimate partners is more common than violence against women by other persons, in Namibia and in the other countries studied; the fact that intimate partners are the primary source of women's risk of violence makes the consequences of domestic violence distinctly different for women than for men, who are at greater risk of suffering violence from a stranger or acquaintance.

**CHART 2: Perpetrators of physical and sexual violence against women in Windhoek, 2001**



A study of intimate partner violence conducted in eight countries in Southern Africa in 2002 (the “CIET-Soul City study”) included both men and women, but asked only about physical (non-sexual) forms of abuse which had occurred during the 12 months prior to the survey. In Namibia, 15% of the 1167 men and 17% of the 1465 women surveyed reported violent arguments during the previous year where a partner had beaten, kicked or slapped them. The researchers cautioned that the comparison of male and female experiences must be made with caution, since the survey did not measure the severity or frequency of the violence, or who initiated the altercation – meaning that the answers may have encompassed some women who were defending themselves against male-initiated violence. However, it also noted that “*initiatives against sexual violence should look beyond gender stereotypes of victims and villains*”.

Namibia's rate of violence was once again in the middle of the range in the countries studied. The study found few distinctions between urban and rural residents, and no correlations between violence and education levels or overall household income. However, violence was correlated to discrepancies in income between persons *within the same household*, and persons with multiple sexual partners were more likely to have been involved in a violent altercation with an intimate partner. Although the majority of the respondents considered domestic violence to be a serious problem and more than half believed their community had the power to do something about the problem, many respondents had never spoken to anyone about the issue.

TABLE 2

Physical violence by intimate partners during 12 months prior to survey, 2002									
Finding	Botswana	Lesotho	Malawi	Mozambique	Namibia	Swaziland	Zambia	Zimbabwe	Total
% who had, in the last year, had violent arguments where a partner beat, kicked or slapped the respondent, of those who answered	21% men	12% men	6% men	8% men	15% men	21% men	27% men	17% men	<b>16% men</b>
	19% women	16% women	11% women	11% women	17% women	21% women	36% women	17% women	<b>19% women</b>
% who said they had not spoken with anyone about gender violence in the last year	66% men	57% men	64% men	69% men	59% men	65% men	60% men	46% men	<b>60% men</b>
	71% women	52% women	72% women	70% women	55% women	60% women	60% women	48% women	<b>61% women</b>
% who consider violence against women a serious problem in their community	82% men	60% men	69% men	64% men	70% men	65% men	56% men	47% men	<b>64% men</b>
	81% women	62% women	70% women	59% women	73% women	68% women	61% women	53% women	<b>66% women</b>
% who said their community can do something about violence against women	77% men	64% men	58% men	56% men	56% men	59% men	43% men	57% men	<b>58% men</b>
	75% women	63% women	45% women	50% women	58% women	55% women	45% women	52% women	<b>55% women</b>

A 2007/2008 survey of knowledge, attitudes and practices relating to gender-based violence involving 1680 persons in eight Namibian regions (the “SIAPAC study”) used similar criteria for measuring violence as those used in the WHO study (with some methodological differences), but unlike the WHO study included both men and women. This survey found that 34% of all respondents had been subjected to physical or sexual violence from a partner at some point during the previous seven or eight years (41% of the female respondents and 28% of the male respondents). Females were more likely than males to say that the violence in question occurred “often”, and four times more women than men reported injuries from intimate partner violence during the year prior to the survey. Furthermore, the study found that much of women’s violence against men appears to be “women striking back” at a violent partner. This study had similar findings to the WHO study regarding the general prevalence of intimate partner violence against women, but found a much higher level of violence during pregnancy (with 18% of the women who had ever been pregnant reporting physical violence from an intimate partner during the pregnancy).

***Violence against women persists in every country in the world as a pervasive violation of human rights and a major impediment to achieving gender equality... The most common form of violence experienced by women globally is intimate partner violence.***

UN General Assembly,  
In-depth study on all forms of violence against women:  
Report of the Secretary-General, 6 July 2006, A/61/122/Add.1 at paragraphs 1 and 112

TABLE 3

Physical and sexual violence by most recent intimate partner in 7-8 years prior to survey in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions, 2007/2008		
Form of physical / sexual violence by most recent intimate partner between 2000 and 2007/2008 survey	Percent men	Percent women
<b>Physical violence</b>		
Slapped you or threw something at you that could hurt	16%	35%
Pushed you, shook you, or threw something at you	16%	30%
Hit you with fists or with something else that hurt you	11%	24%
Kicked you, dragged you or beat you up	6%	23%
Choked or burned you on purpose	5%	8%
Threatened to use or actually used a gun, knife or other weapon against you	8%	11%
<b>Sexual violence</b>		
Physically forced you to have sex when you did not want to	9%	20%
Threatened you so that you felt you had to have sex or be harmed	9%	15%
Ever forced you to do something sexual against your will that you found degrading or humiliating	9%	14%
<b>Any of these forms of physical or sexual violence</b>	<b>28%</b>	<b>41%</b>

These various studies, despite their differences in methodology, show a broad congruence in the findings about intimate partner violence against women, suggesting that the WHO study's finding that one out of three women in Windhoek have experienced physical violence, sexual violence or both from an intimate partner violence in their lifetime is a valid estimate for the whole country – and probably an underestimate of the national prevalence of intimate partner violence. Similarly, the WHO estimate that somewhat fewer than one out of five women have experienced some form of sexual abuse from an intimate partner is probably an underestimate of the national prevalence of this type of violence.

The fewer figures available regarding intimate partner violence against men show less agreement, pointing to a need for more detailed investigation of domestic violence against men which attempts to distinguish between intimate partner violence initiated by women against their male partners, and situations where women who are “fighting back” against violence that was initiated by the male partner.

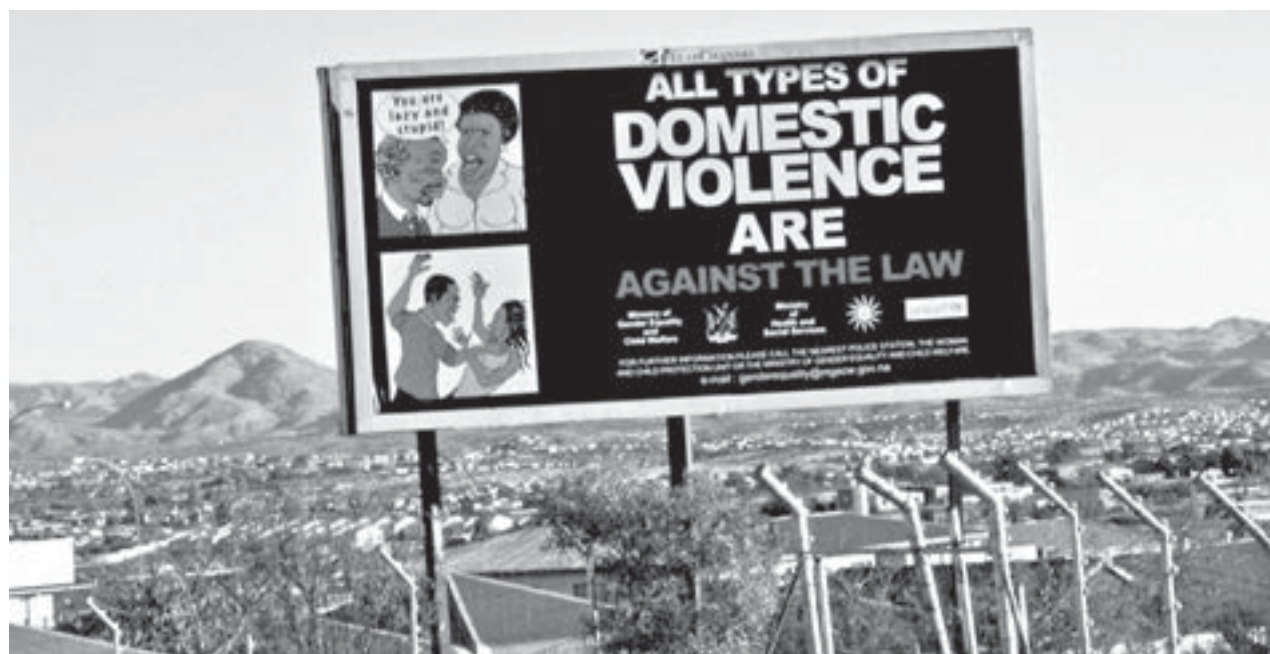


TABLE 4

Comparative findings on specific types of physical and sexual intimate partner violence against women in WHO and SIAPAC studies				
WHO criteria	Percent ever-partnered women in Windhoek – 12 months prior to survey (WHO, 2001)	Percent ever-partnered women in Windhoek – lifetime (WHO, 2001)	SIAPAC criteria	Percent women respondents in eight regions – with reference to most recent intimate partner during 7-8 years prior to survey (SIAPAC 2007/2008)
<b>Physical violence</b>	<b>16%</b>	<b>31%</b>		<b>physical violence not totalled separately</b>
Slapped or threw something at you	12%	24%	Slapped you or threw something at you <b>that could hurt</b>	35%
Pushed <b>or shoved you</b>	10%	17%	Pushed you, <b>shook you, or threw something at you</b>	30%
Hit you with fists or with something else that hurt you	8%	16%	Hit you with fists or with something else that hurt you	24%
Hit with a fist or something else	6%	16%	<i>omitted</i>	<i>omitted</i>
Kicked you, dragged you or beat you	6%	11%	Kicked you, dragged you or beat you <b>up</b>	23%
Choked or burnt you on purpose	2%	4%	Choked or burned you on purpose	8%
Threatened to use or actually used a gun, knife or other weapon against you	3%	7%	Threatened to use or actually used a gun, knife or other weapon against you	11%
<b>Sexual violence</b>	<b>9%</b>	<b>17%</b>		<b>sexual violence not totalled separately</b>
Physically forced to have sex	7%	13%	Physically forced you to have sex <b>when you did not want to</b>	20%
Had sex because afraid of what partner may do	6%	10%	<b>Threatened you</b> so that you felt you had to have sex or be harmed	15%
Forced to perform humiliating or degrading sex act	3%	6%	Ever forced you to do something sexual against your will that you found degrading or humiliating	14%
<b>Any of these forms of physical or sexual violence</b>	<b>20%</b>	<b>36%</b>	<b>Any of these forms of physical or sexual violence</b>	<b>41%</b>
<b>Both physical and sexual violence</b>	<b>not stated</b>	<b>11%</b>	<b>Both physical and sexual violence</b>	<b>not stated</b>

**Note:** The slight differences in the descriptions of the various types of violence are emphasised with boldface type. The SIAPAC study did not ask about the occurrence of specific types of violence during the 12 months prior to the survey.

## 4.3 Domestic violence against children

Domestic violence against children can be difficult to identify because of differing cultural standards and expectations regarding acceptable parenting practices. Domestic violence against children is also likely to go unreported. For example, a small study of child abuse cases reported to the Windhoek Woman and Child Protection Unit found that children are often afraid to report abuse to adults, and may have conflicting emotions when the abuse is perpetrated by someone they love. A sample of 34 medical professionals questioned in a 1996 study commissioned by the Law Reform and Development Commission estimated that almost half of the children they treat may be victims of abuse.

*Families, defined widely, hold the greatest potential for protecting children from all forms of violence. Families can also empower children to protect themselves... But families can be dangerous places for children and in particular for babies and young children. The prevalence of violence against children by parents and other close family members – physical, sexual and psychological violence, as well as deliberate neglect – has only begun to be acknowledged and documented. Challenging violence against children is most difficult in the context of the family in all its forms. There is a reluctance to intervene in what is still perceived in most societies as a ‘private’ sphere. But human rights to full respect for human dignity and physical integrity – children’s and adults’ equal rights – and State obligations to uphold these rights do not stop at the door of the family home.*

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

Children themselves identify violence in general, and domestic violence in particular, as a serious problem in Namibia. Data from Lifeline/ChildLine Namibia collected in 2008 indicated that “*abuse and violence*” was the second most common reason that children approached them for assistance (following general requests for information). Children aged 8 to 17 who took part in focus group discussions held in 2010 in four regions, for a report published by the National Planning Commission, also listed “*domestic violence*” and “*being physically abused*” amongst the top ten most serious problems faced by children in Namibia. These children estimated that more than half of all children in Namibia experience these problems.

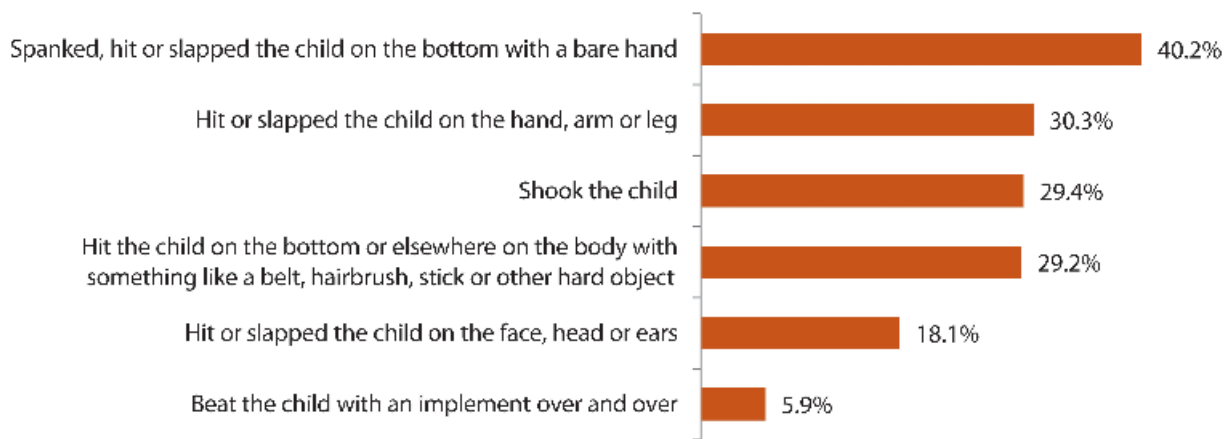
Almost 61% of 1680 respondents in eight Namibian regions surveyed in 2007-2008 felt that it was common in their communities for children to be slapped or caned, and 37% thought that it was common for children to be seriously physically abused. As another indication of the scope of the problem, children’s court statistics show that in Windhoek alone an average of 237 children are removed from their homes annually for their own protection and placed by court order in alternative care.

One of the most frightening indicators of the problems faced by children is a finding about child suicide from the 2004 Namibia School-based Student Health Survey of 6367 Namibian learners in grades 7- 9: 32.2% *had made a plan about how to attempt suicide during the previous year and an astonishing 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 common reason cited for suicidal thoughts was “family problems”.

One conceptual difficulty with assessing the prevalence and incidence of child abuse is separating child ‘discipline’ in the form of corporal punishment from domestic violence against children. Within Namibia, corporal punishment is frequently experienced by children and considered acceptable in many families. A study carried out in 2007- 2008 in eight Namibian regions found that almost half (45%) of the children about whom respondents were questioned had been subjected to some form of physical discipline in the three months prior to the survey, with more than one-third (36%) having been subjected to what the researchers classified as “excessive physical discipline” during this period.

**CHART 3: Use of corporal punishment in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions, 2007/2008**



**Source:** Based on data collected by SIAPAC for the Ministry of Gender Equality and Child Welfare from 1680 persons – 210 (half men and half women) in each region.

Various studies indicate that sexual abuse against children in the home is a serious problem. For example, a 2006 study commissioned by UNICEF and involving 850 children in three Namibian regions (Kavango, Ohangwena and Omaheke) found that one out of four of the 318 10- to 14-year-old respondents (25%) had experienced one or more forms of sexual abuse by a parent or caregiver, along with 15% of the 532 15- to 24-year-old respondents. Such sexual abuse included being sexually touched by a parent or caregiver, being forced to touch a parent or caregiver sexually, or being forced to have sexual intercourse with a parent or caregiver. As another example, a 2007 study conducted by the Legal Assistance Centre in five regions (Caprivi, Karas, Kavango, Khomas and Omusati) reported that 6% of the 250 orphans and vulnerable children interviewed reported being touched in a sexual manner by a household member.

Neglect may be particularly underestimated as a form of domestic violence against children. A small sample of 34 medical personnel in a small 1996 survey of Namibian health care professionals believed neglect to be the most common form of domestic abuse experienced by children, and a more recent Namibian study evaluating school counselling services expressed concern about how child neglect can be self-perpetuating through generations. Focus groups convened in 2002 for a study conducted by the University of Namibia (UNAM) on gender roles and HIV infection reported that stepchildren are a particularly vulnerable group in terms of neglect, also noting that *all* children in a household may be neglected in situations where family resources are spent on alcohol.

***There are an estimated 2 300 children living on the streets in Namibia, of which 800 are in Windhoek. Reports are that these Namibian children come from families with whom they have almost daily contact. The conclusion Unicef has arrived at is that these children are driven to the streets by poverty, alcohol abuse and parental neglect.***

*"African children need greater protection – Unicef", The Namibian, 17 June 2011*

Various studies have found that children are also vulnerable to harmful traditional practices including sexual initiation rites aimed at both girls and boys, stretching of the female anatomy designed to ensure sexual readiness, forced marriage and scarification.

Another form of child abuse involves giving alcohol to young children, which can be harmful to their health and may affect their future alcohol use. A 2006 UNICEF study found that almost one-third of the 318 10 to 14-year-olds surveyed in three Namibian regions (Kavango, Omaheke and Ohangwena) had been given alcohol by a parent or guardian. The 2004 Namibia School-based Student Health Survey of 6367 learners found that almost 4% of the surveyed learners under age 12, almost 6% of those between ages 13 and 15 and over 4% of those age 16 and up had obtained an alcoholic drink at home during the 30 days prior to the survey – and 112 children in the sample (almost 2%) reported that they were 7 years old or younger when they first became very drunk, whilst a total of 8% had been drunk before reaching age 14; a shocking 37% of 380 learners aged 12 or younger said that they had experienced a hangover.

Exposing children to domestic violence between adults is a form of domestic abuse against the child as well. Various Namibian studies have found that domestic violence is frequently witnessed by children in the home. For example, the 2006 three-region UNICEF study mentioned above found that more than 20% of the 318 10- to 14-year-olds surveyed had seen their father beating their mother, about 12% had seen their mother beating their father, and 16% had witnessed a parent being threatened with a gun. The pattern was similar, with only slightly lower percentages, for the 532 15- to 24-year-olds surveyed. This data is supported by the 2007/2008 SIAPAC eight-region study, where 52% of the adults injured by intimate partner violence during the year prior to the survey reported that children had been present at the time. International studies note that the existence of intimate partner violence increases the risk that there will be violence against children in the family, and studies in other countries have found that exposure to domestic violence during childhood has been linked to the use of violence as an adult.

***IF THERE'S  
VIOLENCE  
IN THE  
HOME,  
THE  
KIDS  
GET THE  
PICTURE!***



Source: www.examiner.com

*Children can be psychologically and emotionally damaged by witnessing violence against another family member. Evidence from a range of studies shows that witnessing of this violence over a long period of time can severely affect a child's well-being, personal development and social interactions both in childhood and adulthood; such children may exhibit the same behavioural and psychological disturbances as those who are directly exposed to violence.*

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

Children are also vulnerable to domestic violence from their own boyfriends or girlfriends. A 2002 UNAM/UNFPA survey of 1452 adolescents and youth in seven regions found that almost 14% of the females who reported that they had sexual intercourse during the 12 months prior to the survey said that they had been forced to have intercourse against their will by their sexual partners. In the 2004 Namibia School-based Student Health Survey of over 6000 learners, more than one-quarter (26%) of those who had boyfriends or girlfriends had experienced physical violence in the course of the relationship – 29% of boys with girlfriends and 22% of girls with boyfriends said that they had been hit, slapped or otherwise hurt by a romantic partner. Adolescent girls can be particularly vulnerable to intimate partner violence where they engage in a relationship with a much older man as a route to economic benefits (with such “sugar daddy” relationships being more common than similar “sugar mommy” relationships).

## 4.4 Domestic violence in other family relationships

Adults may be abused by family members other than intimate partners. For example, elderly persons may be targeted for family violence. Focus group discussions held as part of the 2007/2008 SIAPAC eight-region study revealed that there was a concern in all of the regions about family violence by young people against their elders. Elderly women have been identified internationally as a group vulnerable to domestic violence, although no specific studies of domestic violence against the elderly have yet been conducted in Namibia. It should also be noted that several Namibian studies have indicated that widows (regardless of their age) are vulnerable to some specific forms of domestic violence, including property grabbing and “widow inheritance”.

### **SADC Gender Protocol, Article 10(1)**

States Parties shall enact and enforce legislation to ensure that:

(a) widows are not subjected to inhuman, humiliating or degrading treatment

...

(g) a widow shall have protection against all forms of violence and discrimination based on her status.

## 4.5 Impact of domestic violence

*The implications of all forms of home and family violence for future development, behaviour and well-being in adulthood, and for future parenting, are profound. In addition, home is the place where gender-based inequalities are first experienced by children, and where future power-imbalanced relationships are modelled, or challenged. Boys may be encouraged to become aggressive and dominant ('takers' of care), and girls are encouraged to be passive, compliant caregivers. These gender-based stereotypes support the use of violence and coercion that perpetuates gender inequalities.*

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

The physical and emotional trauma resulting from violence is extremely damaging to the well-being of victims of domestic violence, who may not always recognise the damage. The harms of domestic violence ripple out to the entire family, and children who suffer or witness family violence learn to use aggression in interpersonal relationships – thus perpetuating the cycle of violence.

In terms of physical consequences, Namibian studies indicate that the most commonly reported injuries tend to be bruising and cuts, but there are also many reports of more serious injuries such as stab wounds, head injuries, broken bones, burns and eye or ear injuries. The 2005 WHO study (based on 2001 data) which collected data from 1500 women in Windhoek found that 23% of the women who reported injuries had lost consciousness, while two-thirds of the injured women had sought medical attention. The 2008 eight-region SIAPAC study of 1680 men and women similarly found that one-third of the respondents who had been injured by domestic violence reported losing consciousness as a result. More permanent forms of injury include blindness and the loss of body parts – with the definitive outcome being, of course, death.

Both national and international studies show that domestic violence is typically an escalating problem characterised by repeated incidents of increasing severity, increasing the possibility of serious injury or fatality.

Sexual violence may involve physical injury that increases the risk of sexual transmissions of HIV and other sexually-transmitted infections.

*The fear of violence... is a permanent constraint on the mobility of women and girls in Namibia and deprives or limits their access to resources and prevents them from participating in basic activities.*

Department of Women Affairs, Office of the President,  
*National Gender Policy*, Windhoek, November 1997

With regard to psychological consequences, intimate partner violence internationally and in Namibia has been linked to depression and suicide. Control tactics can have a devastating impact on the victim's self-esteem, and the typical oscillation between violence and warmth can leave the victim feeling powerless and worthless. One particularly demoralising control tactic is where the abuser denies that there is abuse or blames it on provocation by the victim.

Domestic violence can have major consequences on children, causing emotional and behaviour problems, even when the children do not experience violence directly. The WHO study of intimate partner violence against women in Windhoek found that the children of abused women are more likely to exhibit problems such as bed wetting, shoplifting, repeating grades at school, timidity, aggression or anxiety (manifested by nightmares and thumb-sucking). As already noted, suicidal tendencies in Namibian children have also been linked to family problems. Children exposed to violence are also likely to learn to use violence as a way of problem-solving and therefore may be at high risk of becoming violent adults.

*The consequences of violence against children include both the immediate personal impacts and the damage that they carry forward into later childhood, adolescence and adult life. The violence that children experience in the context of home and family can lead to lifelong consequences for their health and development. They may lose the trust in other human beings essential to normal human development. Learning to trust from infancy onwards through attachments in the family is an essential task of childhood, and closely related to the capacity for love, empathy and the development of future relationships. At a broader level, violence can stunt the potential for personal development and achievement in life, and present heavy costs to society as a whole.*

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



## 4.6 Responses to domestic violence

Many victims suffer in silence and either never seek help or else wait for years before seeking assistance from anyone. Reasons for the reluctance to speak out include shame and stigma, a belief that family matters should remain private, fear of retribution, financial dependence on the abuser or a perception of domestic violence as being normal and acceptable. Several Namibian studies indicate that victims tend to seek help only when they perceive that their situation is becoming extremely dangerous, such as after serious injury has resulted or after death threats have been introduced.

Victims tend to approach other family members first. Some sought other help with the encouragement of friends or family, highlighting the importance of community support. The findings of some Namibian studies suggest that willingness on the part of victims of domestic violence to involve police and other formal institutions may be increasing, although other recent studies find continued reluctance to take this route. Inconsistent attitudes which have emerged in some studies suggest that views of domestic violence as a private matter may be

undergoing a process of transformation. The 2007/2008 SIAPAC eight-region study found that the majority of respondents felt confident that help would be forthcoming from police, traditional authorities, or community members.

**TABLE 5**

<b>Attitudes about the private nature of domestic violence Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions, 2007/2008</b>		
<b>Statement</b>	<b>Agree or strongly agree</b>	<b>Disagree or strongly disagree</b>
Family problems should only be discussed with people in the family, they should not be brought before even friends.	54%	45%
The thing about some physical violence within a family is that it is a family affair, <i>not</i> something that should be the business of neighbours, friends, or anyone else.	42%	56%
Even if there is some physical violence within a family, it is not something that should be brought to the attention of the police, it must be resolved by the family.	37%	61%
Only in the case where someone might be killed should violence within a family be brought to the attention of the police.	39%	61%

**TABLE 6**

<b>Perceptions of institutional, community and family support in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions, 2007/2008</b>
<b>Institutions</b>
Over 80% of respondents DISAGREED with the following NEGATIVE statements: <ul style="list-style-type: none"> <li>• “Even if a woman is abused, there really isn’t much she can do, because even if she reports it to the <b>police</b>, they would not help.” – ONLY 17% AGREED.</li> <li>• “Even if a woman reported abuse by her husband to the <b>police</b>, the police would be likely to be sympathetic to the husband, not the wife.” – ONLY 14% AGREED.</li> <li>• “Reporting abuse to a <b>traditional authority</b> would not be very helpful, as they would not be sympathetic.” – ONLY 15% AGREED.</li> <li>• “Really, an abused woman in this community <b>does not have any options</b>, this is how life is, and she can’t really change it.” – ONLY 16% AGREED.</li> </ul>
<b>Thus, the vast majority of respondents thought that POLICE AND TRADITIONAL AUTHORITIES WOULD BE SYMPATHETIC AND HELPFUL if domestic violence were reported to them.</b>
<b>Family and community</b>
More than three-quarters of respondents AGREED with the following POSITIVE statements: <ul style="list-style-type: none"> <li>• “If I were abused, my <b>birth family</b> would be sympathetic to me, and would take me in if it came to that.” – 79% AGREED.</li> <li>• “If I were abused, my <b>friends and neighbours</b> would help me.” – 77% AGREED.</li> </ul> Similar percentages DISAGREED with the following NEGATIVE statements: <ul style="list-style-type: none"> <li>• “Even if a woman is beat by her husband, her <b>birth family</b> would <i>not</i> support her, as this is just part of marriage, and must be put up with.” – 76% DISAGREED</li> <li>• “If a woman complains to her mother-in-law that her husband was abusing her, there is <i>little</i> that the <b>husband’s side of the family</b> would do.” – 62% DISAGREED.</li> </ul>
<b>Thus, the majority of respondents thought that EXTENDED FAMILY MEMBERS ON BOTH SIDES OF THE FAMILY, AS WELL AS FRIENDS AND NEIGHBOURS, WOULD ASSIST A WOMAN WHO WAS BEING ABUSED BY HER HUSBAND.</b>
<b>Overall</b>
About 51% of respondents AGREED with the statement: “Overall, in this neighbourhood/community, there are <b>adequate systems</b> to protect women and children from physical harm”.
<b>Thus, half of the respondents thought that there were ADEQUATE SYSTEMS IN PLACE IN THEIR COMMUNITIES TO PROTECT WOMEN AND CHILDREN AGAINST PHYSICAL HARM.</b>

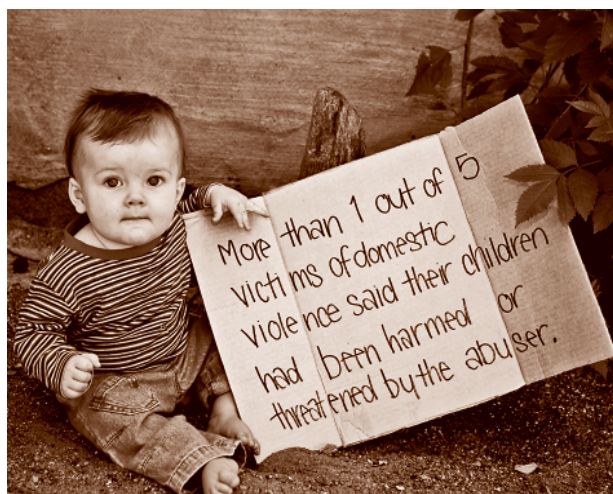
It can be very difficult to break free from abusive intimate relationships. Many women value their relationships and hope that the abusive partner will change. Some victims in the WHO study had left their intimate partner on multiple occasions but returned, explaining that they loved their abuser or forgave them, that the partner asked them to return, or that it was for the sake of family or the sanctity of marriage. A 2009 Food and Agriculture Organisation (FAO) study of communities in Oshana, Ohangwena and Caprivi regions found that lack of economic independence, lack of support from their birth families and cultural disapproval of divorce were factors which made women reluctant to leave violent relationships. Most women who left their relationship stayed with relatives or friends. Only a few reported staying at a shelter for abused women, even in Windhoek where such shelters are available.

**TABLE 7**

**Percent of men and women aged 15+ who think a wife should *not* divorce her husband even if she is severely beaten by him in Ohangwena, Oshana and Caprivi Regions, 2009**

	Men	Women
Okangwena settlement	33.3%	86.7%
Ondobe village	53.3%	80.0%
Tulipamwe settlement	20.0%	66.7%
Oshidute village	50.0%	66.7%
Ouholama settlement	33.3%	36.4%
<b>Overall Ohangwena/Oshana</b>	<b>30.1%</b>	<b>72.6%</b>
Choto informal settlement	43.8%	21.1%
Lusese village	9.1%	31.3%
Sesheke village	18.8%	6.3%
Lizauli village	6.3%	13.3%
Macaravani informal settlement	46.7%	6.7%
<b>Overall Caprivi</b>	<b>34.7%</b>	<b>21.0%</b>

General community awareness of the laws on domestic violence is an area which is less well-researched in Namibia than other aspects of domestic violence. A 2004 study of community perceptions on law reform conducted in Windhoek and rural areas in the north found that most women and men have heard of the laws on violence against women and are aware that domestic violence is illegal, although their understanding of the details of such laws is not always correct. In the 2007/2008 SIAPAC eight-region study, about half of those surveyed could specify a law that might protect against gender-based violence – with the Combating of Domestic Violence Act being the most commonly-cited. The majority of respondents could also identify places that women or children could go to for protection, with Woman and Child Protection Units being named by most. There was some ambivalence as to whether customary laws had relevance; older participants in focus group discussions felt that traditional authorities were important in addressing gender-based violence, but all agreed that younger people were more likely to resort to other sources of assistance. Despite a general view that the new national laws are inconsistent with traditional cultural responses to gender-based violence, there was a general acceptance that social change is needed to address gender roles leading to violence once thought acceptable but no longer tolerated.



**TABLE 8**

Awareness of laws to protect from domestic violence? (2007/2008)									
Response	All eight regions surveyed	Kunene	Ohangwena	Otjozondjupa	Caprivi	Omaheke	Erongo	Karas	Kavango
Yes	48%	43%	21%	30%	37%	43%	81%	52%	73%
No	45%	51%	68%	65%	59%	53%	19%	40%	19%
Do not know / Not certain	6%	6%	11%	5%	4%	4%	1%	8%	9%
<b>If yes, which laws?</b>									
Rape Act	42%	12%	18%	76%	78%	18%	68%	32%	14%
Domestic Violence Act	59%	30%	73%	79%	82%	26%	75%	46%	43%
CEDAW*	6%	6%	7%	10%	0%	0%	7%	6%	7%
Traditional Authorities Act**	25%	11%	5%	2%	0%	37%	17%	2%	63%
Cannot name specific act	12%	51%	5%	0%	5%	27%	12%	25%	4%

\* Convention on the Elimination of All Forms of Discrimination Against Women

\*\* This Act does not address gender-based violence, but respondents probably named it to reflect their sense that customary law is a source of protection against such violence. In follow-up discussions in Kavango, Ohangwena and Caprivi Regions, financial penalties for beating one's wife were identified as an important deterrent to excessive domestic violence.

Even where there is awareness of legal rights, there are often further barriers to accessing such rights. Studies indicate that many victims of domestic violence still experience problems when turning to police, including unsympathetic police attitudes, long response time, failure to provide follow-up, inadequate investigation, persisting police beliefs that domestic violence is a private matter and victim blaming. Other barriers for rural women in particular include a high rate of illiteracy which makes dealing with official forms more difficult, long distances to reach service providers and courts, and a continuing lack of knowledge of legal rights. There is also an inaccurate perception that money is needed for lawyers and court costs.

Several studies indicate that Namibia's Woman and Child Protection Units, intended as specialised police units which can provide sensitive responses to gender-based violence, have not yet fulfilled their full promise – because of training shortcomings, frequent transfer of personnel in and out of the units, lack of adequate transport, some inexperienced or unsympathetic staff, lack of support and supervision for staff, a shortage of social workers, and lack of adequate facilities and equipment.

Although the 2005 Windhoek-based WHO study (based on data collected in 2001) found that few victims approach the police and even fewer seek legal advice, the 2007/2008 SIAPAC eight-region study suggests that confidence in police response and the legal system has increased since the Combating of Domestic Violence Act came into force – although there is a wide gender disparity in opinions on the effectiveness of police and courts, with women being less confident about the effectiveness of these services than men.

**CHART 4: Gender disparity in positive ratings for the effectiveness of police and courts in coping with domestic violence**

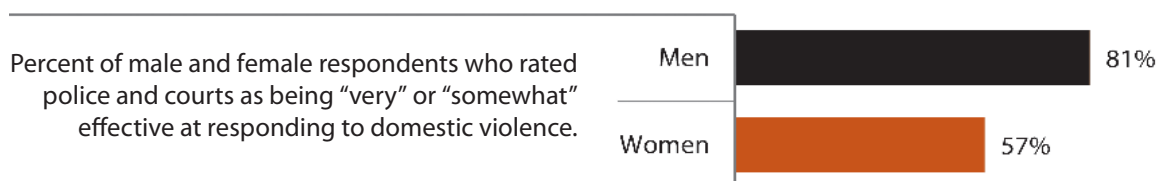


TABLE 9

How effective have police and courts been in coping with domestic violence? (2007/2008)									
Response	All eight regions surveyed	Kunene	Oshana	Oshana	Caprivi	Omaheke	Erongo	Karas	Kavango
Very effective	45%	21%	54%	37%	50%	35%	40%	35%	62%
Somewhat effective	26%	31%	26%	24%	19%	17%	36%	24%	26%
Not very effective	16%	23%	10%	16%	23%	26%	18%	19%	10%
Not at all effective	8%	12%	3%	20%	6%	19%	2%	16%	2%
Do not know / Not certain	5%	12%	8%	2%	1%	3%	4%	7%	0%

Namibian studies have identified various service shortages, including the need for screening and care for victims of domestic violence at health centres, specialised training for teachers on helping children cope with domestic violence, more shelters for abused women and children, rehabilitation centres for victims and education centres for perpetrators.

## 4.7 Causes of domestic violence

*... I urge you all to identify the root causes of domestic violence in our society... with a view to eradicate domestic violence in root and branch.*

President's Speech (presented by Dr Kawana),  
National Conference on Gender-Based Violence, 19 June 2007

### Overview

Internationally, the primary cause of all forms of violence against women is patriarchy, the systemic domination of women by men. However, the roots of domestic violence are probably also interrelated with various social challenges – including unemployment, poverty, alcohol abuse and changing family and community norms.

Traditionally, the head of the Namibian household was male. Some studies report that being beaten by one's husband was traditionally understood to be a sign of love in some Namibian cultures. Another complicating factor is the payment of *lobola* (bride price), which persists in some communities and is sometimes perceived as giving the husband rights of control over the wife.

Gender differentiation in male-dominated pre-colonial communities was intensified during the colonial era, when colonial policy, migrant labour and missionary influences combined to further disempower women. Some interpretations of Christianity also entrenched ideas of male supremacy and have been used by Namibian men to support gender inequality.

The Namibian family order has changed since Independence due to urbanisation, development and modernisation, alongside a conscious re-evaluation and re-definition of Namibian society in light of international norms – but women's social status has not kept pace with improvements

in their legal status. One theory is that the changing dynamic of gender relations provokes violence against women by men who feel threatened by the push for equality. Another theory is that domestic violence has increased because of frustrations related to poverty and unemployment, coupled with alcohol abuse, in the context of a 'culture of violence' stemming from long years of colonialism and apartheid. Others assert that domestic violence has not actually increased since Independence, but has simply come out in the open because increased rights for women have made women feel freer to report cases of domestic violence.

***Gender inequality is embedded in culture, but should gender-based violence be accepted just because it is culture[?].... [S]ome cultural laws and settings violate human rights. The Constitution of Namibia does not tolerate human rights violations. This is the supreme law of the country and will overwrite customary laws if there is a need.***

Female interviewee, quoted in SIAPAC, *Knowledge, Attitudes and Practices Study on Factors that may Perpetuate or Protect Namibians from Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions*, Windhoek: Ministry of Gender Equality and Child Welfare, 2008

## Attitudes about intimate partner violence

A number of post-Independence studies have explored male and female attitudes pertaining to equality and violence. Attitudes about when domestic violence is 'justified', attitudes about the relative sexual autonomy of men and women and attitudes about gender attributes all point to the link between domestic violence and unequal power relations in relationships.

The WHO study of women in Windhoek (data collection in 2001) found that one out of five women believe that a husband is justified in beating his wife for at least one of six suggested reasons: if the wife disobeys her husband, fails to complete housework, has been unfaithful, is suspected of unfaithfulness, refuses sex or asks her husband about other women.

Data on gender roles and HIV infection collected for a 2002 UNAM study from focus group discussions in several locations (Katima Mulilo, Mariental, Oshakati, Rehoboth, Windhoek and Walvis Bay) indicated that many men drew a distinction between domestic violence and "disciplining" their wives for "doing something wrong", such as arguing, coming home drunk, failing to prepare food for their husbands or failing to be available for sexual intercourse on daily basis. Similar attitudinal issues were explored by the same researchers during individual interviews with 328 people in the same locations; about one-third of the men (33%) and more than one-quarter of the women (27%) thought that it was sometimes justifiable for men to hit women, with the most common justification being when women "disobey rules". Similar "justifications" for domestic violence were cited by men in regional UNAM/UNFPA studies on sexual and reproductive health conducted in Karas, Ohangwena and Oshana regions in 2002.

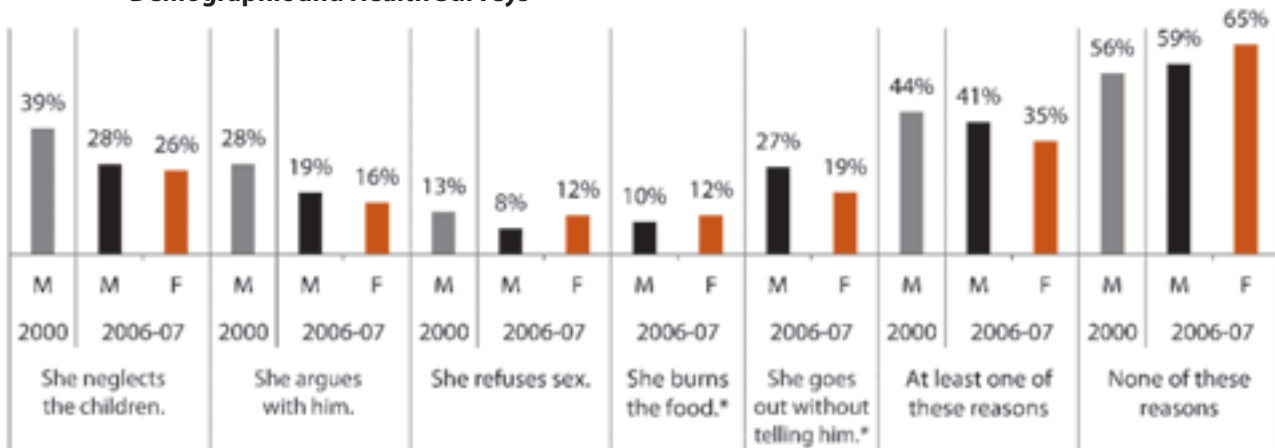
The 2002 CIET-Soul City survey of physical intimate partner violence, which drew on a national sample of Namibian respondents, found that 44% of men and almost 30% of women thought that women sometimes deserve to be beaten – but only 29% of men and 25% of women surveyed thought that intimate partner violence is culturally acceptable. Most of those questioned (73% of the women and 70% of the men) considered violence against women to be a serious problem in their community, and a bit more than half (58% of the women and 56% of the men) thought that their communities could do something about the problem – although most had not spoken to anyone about the issue of gender violence in the last year.

TABLE 10

Attitudes about intimate partner violence, 2002									
	Botswana	Lesotho	Malawi	Mozambique	Namibia	Swaziland	Zambia	Zimbabwe	Total
% who said women sometimes deserve to be beaten	37% men	41% men	30% men	41% men	44% men	51% men	53% men	33% men	<b>41% men</b>
	19% women	30% women	39% women	38% women	29% women	40% women	47% women	24% women	<b>33% women</b>
In my culture it is ACCEPTABLE for a man to beat his wife	27% men	41% men	13% men	33% men	28% men	25% men	38% men	30% men	<b>29% men</b>
	21% women	35% women	15% women	32% women	21% women	17% women	34% women	28% women	<b>25% women</b>

Large national samples of men and women were surveyed about attitudes relating to intimate partner violence and sexual autonomy in the 2000 and 2006-07 *Namibia Demographic and Health Surveys*. In the 2000 *Namibia Demographic and Health Survey*, 44% of men surveyed felt physical violence by a husband against a wife is justified in at least one of three circumstances: because she neglects the children, argues with him or refuses sex. (Women were not asked this question.) The 2006/07 *Namibia Demographic and Health Survey* found that 41% of men and 35% of women believed that it is justifiable for a husband to beat a wife at least one of five circumstances: if she burns food, argues with him, goes out without telling him, neglects the children or refuses to have sexual intercourse with him. Both surveys showed wide regional variation; in 2006/07, a majority of *both* men and women thought that wife-beating was justified in some circumstances in Ohangwena and Caprivi, while a majority of men (but not women) found it acceptable in some instances in Omusati and Oshikoto and a majority of women (but not men) found it acceptable in some instances in Kavango. In the other eight regions, majorities of both men and women rejected *all* of the suggested justifications for wife-beating. Overall, there was not much change in male attitudes between 2000 and 2006/07, with men who agreed with at least one of the suggested justifications for wife-beating declining only slightly, from 44% to 41%. Support for wife-beating was higher amongst *younger* men than older men, and amongst rural men and women as compared to urban-dwellers.

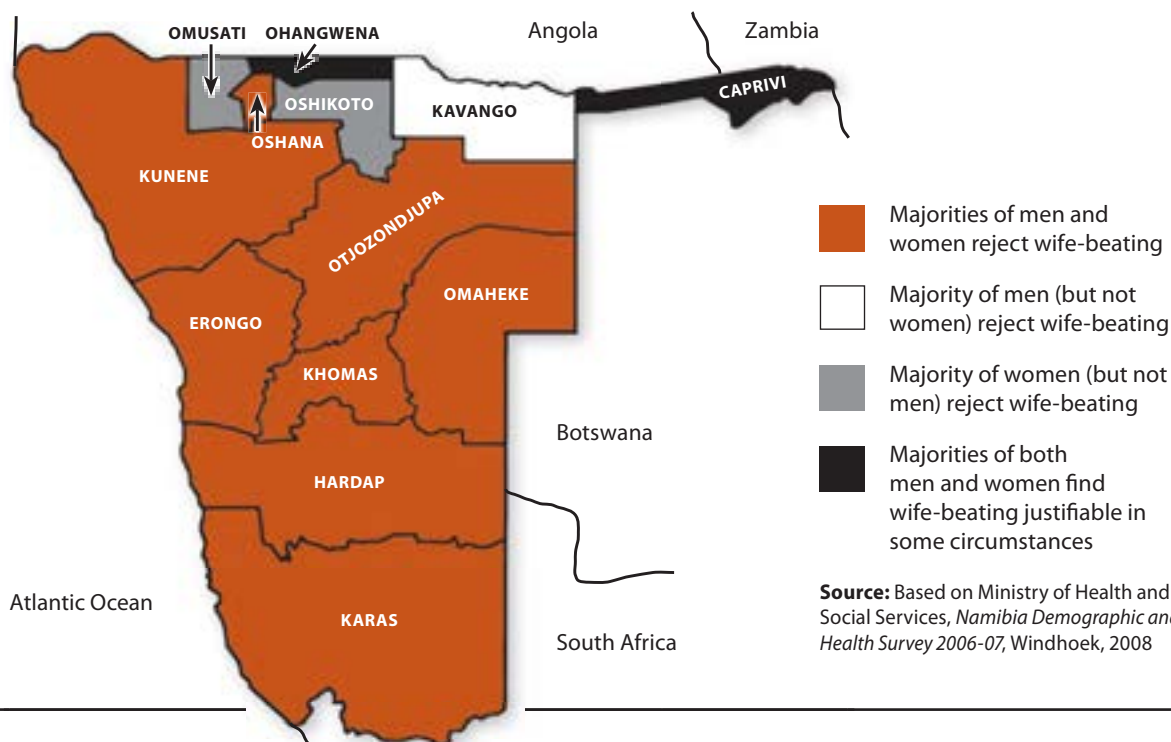
**CHART 5: Reasons which justify a husband beating his wife – overall responses from 2000 and 2006-07 Demographic and Health Surveys**



\* These two reasons were included only in the 2006-07 survey.

**CHART 6: Regional variations in male and female attitudes toward wife-beating – findings from the 2006-07 Demographic and Health Survey**

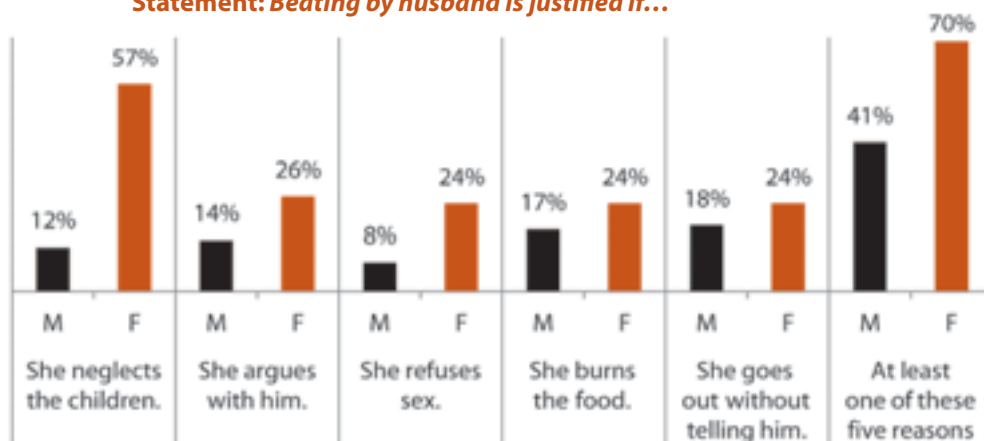
The regions where majorities of both men and women rejected all the reasons offered to justify wife-beating are shaded orange in the map below. In the regions marked in white, a **majority of men but not women rejected** all the possible justifications. In the regions marked in grey, a **majority of women but not men rejected** all the possible justifications. In the regions marked in black, majorities of both **men and women** felt that wife-beating is justifiable for at least one of the proffered reasons. Thus, the regions shaded in black and grey are probably the ones where wives are most at risk of intimate partner violence.



The FAO survey of men and women in 2009 in Oshana, Ohangwena and Caprivi Regions found that women were much more likely than men to agree with all of the suggested ‘justifications’ for wife-beating: if she burns food, argues with him, goes out without telling him, neglects the children or refuses to have sexual intercourse with him. The researchers attributed this to women’s low self-esteem and to the fact that violence has become a normal part of life that women have to endure.

**CHART 7: Attitudes about domestic violence in 10 communities in Oshana, Ohangwena and Caprivi Regions, 2009**

**Statement: Beating by husband is justified if...**



Additional attitudinal data comes from the 2007/2008 SIAPAC eight-region study, which asked individual respondents to respond to a series of statements which placed attitudes about intimate partner violence within the context of broader decision-making autonomy. Only a minority of respondents of either sex agreed with statements about husbands' authority over their wives, or husbands' rights to 'discipline' wives with violence. However, there were still substantial numbers of women and men who found wife-beating justified for a range of suggested 'misbehaviours' by the wife, such as proven unfaithfulness, excessive drinking, misusing money, neglecting the children or even leaving the house without informing her husband. Men tended to support a husband's right to hit his wife *hard* in a wider range of scenarios than those where women felt that hitting hard was justified. Focus group discussions conducted for this study cited a range of cultural practices which condoned physical 'discipline' of wives by their husbands, including abuse of the practice of 'widow inheritance', declining bride prices which were perceived in one region as causing husbands to place less value on their wives, and the decreasing role of extended families, age mates and traditional leaders in marital issues. There were also substantial minority percentages of both men and women who agreed that a wife has a right to hit her husband in a range of circumstances – particularly if he hits her first. These findings generally indicate that many respondents find violence an acceptable channel for addressing problems within intimate relationships. A slight majority of men and women felt that physical 'discipline' of wives by their husbands has become less acceptable now than before Independence, but focus group discussions in three of the eight regions studied felt that marital relationships have worsened over time because new ideas of gender equality have increased marital discord and led to increased violence – yet most of the focus group participants who held this view still acknowledged increased gender equality as a positive change.

**TABLE 11**

<b>Beliefs about justifications for intimate partner violence by men in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa, 2007/2008</b>						
<b>Statement</b>	<b>Agree or strongly agree with RIGHT TO HIT (No scars, bruises or danger to life)</b>			<b>Agree or strongly agree with RIGHT TO HIT HARD (Hard enough to cause bruising or break something)</b>		
	<b>Men</b>	<b>Women</b>	<b>Both sexes</b>	<b>Men</b>	<b>Women</b>	<b>Both sexes</b>
A husband has a right to hit his wife or long-term partner...						
...if he finds out that she has been unfaithful	44%	48%	<b>46%</b>	34%	31%	<b>33%</b>
...if he suspects that she has been unfaithful	24%	23%	<b>23%</b>	19%	21%	<b>20%</b>
...if she cannot have a baby	6%	12%	<b>9%</b>	6%	14%	<b>10%</b>
...if she insists that he use a condom to have sex	14%	15%	<b>14%</b>	14%	15%	<b>14%</b>
...if she refuses him sex without his idea of a valid reason	18%	18%	<b>18%</b>	16%	17%	<b>16%</b>
...if she drinks too much	39%	41%	<b>40%</b>	31%	28%	<b>30%</b>
...if she misuses money	37%	39%	<b>38%</b>	31%	27%	<b>29%</b>
...if he believes she has given him a sexual disease	21%	15%	<b>18%</b>	17%	15%	<b>16%</b>
...if she has male friends	22%	18%	<b>20%</b>	18%	18%	<b>18%</b>
...if she belongs to social groups	7%	9%	<b>8%</b>	6%	11%	<b>8%</b>
...if she cannot cook well	13%	25%	<b>19%</b>	10%	22%	<b>16%</b>
...if he feels that she practices witchcraft	35%	29%	<b>32%</b>	34%	23%	<b>29%</b>
...if she leaves the house without telling him	35%	30%	<b>32%</b>	27%	25%	<b>26%</b>
...if he feels that she is neglecting the children	37%	35%	<b>36%</b>	28%	28%	<b>28%</b>
...if he feels that she is being argumentative	20%	22%	<b>21%</b>	27%	21%	<b>24%</b>

TABLE 12

Beliefs about justifications for intimate partner violence by women in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa, 2007/2008			
Statement	Agree or strongly agree with RIGHT TO HIT		
A wife has a right to hit her husband or long-term partner...	Men	Women	ALL
...if he verbally abuses her	31%	22%	27%
...if she finds out that he has been unfaithful	28%	24%	26%
...if she suspects that he has been unfaithful	17%	11%	14%
...if he tries to force her to have sex when she doesn't want to	24%	21%	22%
...if he does not provide adequately for the household	17%	18%	17%
...if he drinks too much	27%	27%	27%
...if she believes he has given her a sexual disease	17%	12%	15%
...if he hits her	48%	48%	48%
...if he does not help with household chores	19%	13%	16%
...if he misuses money	27%	21%	24%
...if he has female friends (not family members)	19%	12%	15%
...if he sides with his family or is influenced by his family	16%	15%	15%

In general, the various studies indicate that worrying numbers of men and women still find intimate partner violence acceptable in various circumstances, but most of these studies suggest that social acceptance of intimate partner violence is gradually decreasing over time.

TABLE 13

Changes since Independence in beliefs about intimate partner violence by men in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa, 2007/2008						
Cultural acceptability of the following practices	Somewhat less acceptable or much less acceptable now than before Independence in 1990			Currently not at all acceptable or not very acceptable		
	Men	Women	ALL	Men	Women	ALL
A husband disciplining his wife by slapping her	51%	53%	55%	62%	75%	69%
A husband forcing his wife to have sex even if she does not want to	52%	64%	58%	75%	81%	78%
A man having all the power over sexual decision-making in a long-term relationship	51%	60%	56%	69%	78%	73%
A husband having other sexual partners than the wife	48%	41%	44%	63%	66%	64%
A wife not being able to get out of an abusive relationships because she has no options	48%	57%	52%	65%	69%	67%

*Let us commit ourselves to a nation where women's voices are heard, their words are validated, and the necessity for community and freedom become more important than tradition... Norms, traditions and beliefs that fuel gender-based violence in our society should be discouraged and... positive cultural practices should be promoted... I truly hope that some day we will look back on gender-based violence as some strange and misguided evil that accompanied a particularly frustrated period in the development of this country. For only when we can speak of it in the past tense, only then will we be free to tell women and children they are safe in their homes and communities.*

Keynote address by Right Honourable Nahas Angula, Prime Minister of the Republic of Namibia,  
at the launch of the Zero Tolerance Campaign for Gender Based Violence,  
Oshikango Border Post, Ohangwena Region, 31 July 2009

## Sexual autonomy

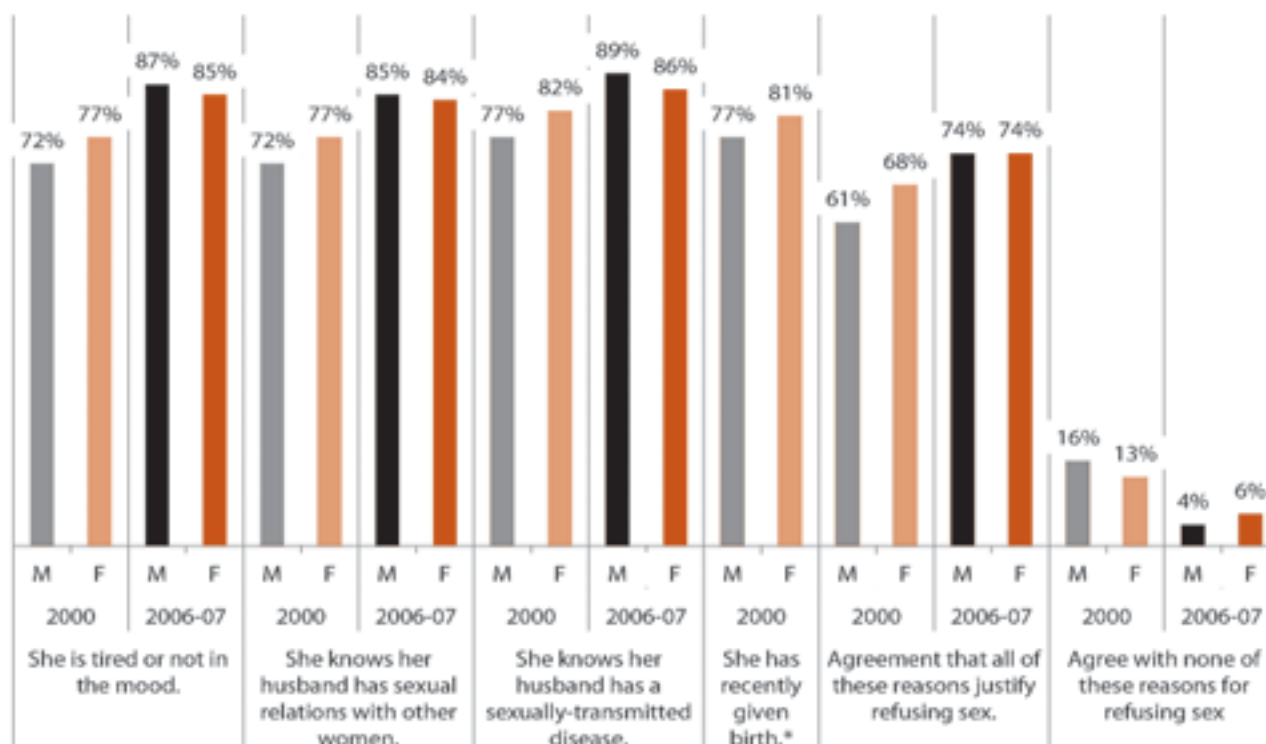
Attitudes about sexual abuse within marriage and other intimate relationships have been more extensively studied than attitudes about other aspects of intimate partner violence because of the linkage with HIV transmission. Various studies over time indicate that substantial numbers of Namibian men and women believe that a wife is not justified in refusing sex with her husband – except perhaps in some limited circumstances where she has a ‘good reason’ for doing so (such as when she is pregnant, ill or menstruating) – and that husbands are entitled to take various forms of ‘disciplinary action’ if their wives unjustifiably deny them sex. Studies have found that some husbands do force wives to have sex against their will – but many people, particularly in rural areas, do not believe that rape can take place between a husband and a wife. Similar attitudes exist in respect of intimate relationships other than marriage, with girlfriends also being forced into sex against their will.

The most comprehensive information on attitudes about women’s sexual autonomy can be found in the periodic *Namibia Demographic and Health Surveys* based on representative national samples of men and women. In the *2000 Namibia Demographic and Health Survey*, both male and female respondents were asked if they think that a wife is justified in refusing to have sex with her husband in four circumstances: if she is tired or not in the mood, if she has recently given birth, if she knows her husband has sexual relations with other women or if she knows her husband has a sexually-transmitted disease. Only 61% of the male respondents and 68% of the female respondents agreed with all four of these reasons, indicating that a large proportion of people of both sexes do not believe that married women have a right to full sexual autonomy. Fewer younger respondents than older respondents, of both sexes, agreed with all four reasons offered for refusing sex within marriage, indicating that the concept of female sexual autonomy is *not* on the increase in younger generations.

Male respondents in this survey were also asked if they felt that a husband was justified in taking any of four actions if his wife refused to have sex with him: to get angry and yell at her, to refuse to give her money or other means of financial support, to force her to have sex with him against her will, or to have sex with another woman. More than 37% of the men surveyed thought that at least one of these responses would be justified – although only 7% said that forced sex would be warranted. Answers to a different question showed that 13% of the men surveyed believe that is justifiable for a husband to beat his wife if she refuses sex.

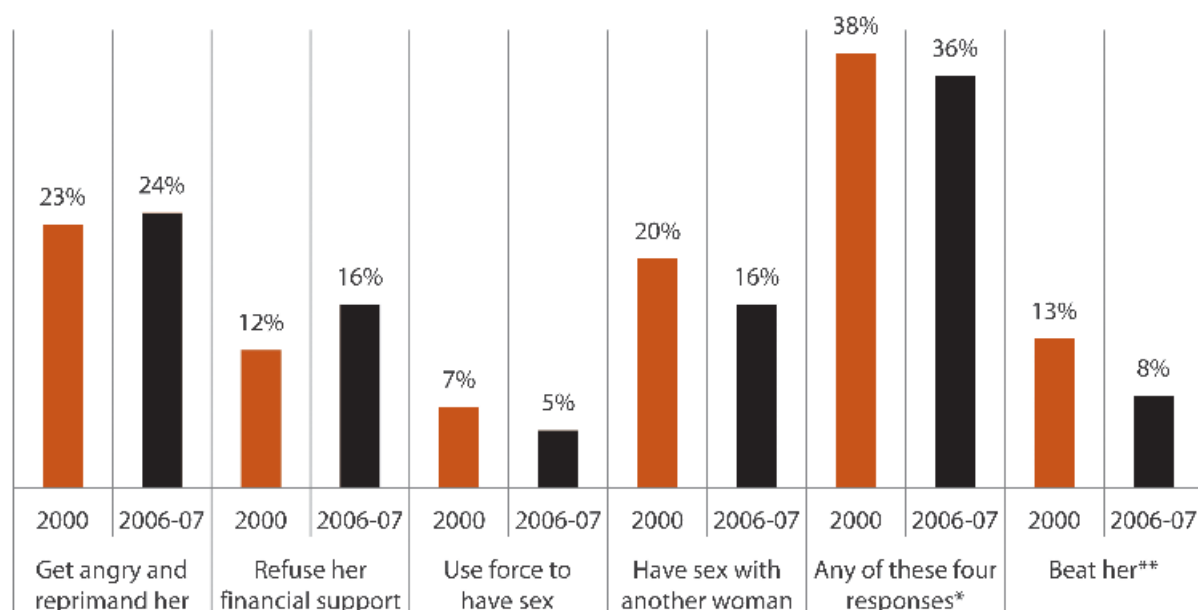
The *2006-07 Namibia Demographic and Health Survey* asked similar questions of male and female respondents, to find out if they think that a wife is justified in refusing to have sex with her husband for any of three reasons: if she is tired or not in the mood, if she knows her husband has sexual relations with other women or if she knows her husband has a sexually-transmitted disease. This time, 74% of both male and female respondents agreed with all three of the specified reasons – a somewhat higher percentage than in the 2000 survey. Male respondents in the 2006-07 survey were asked if they felt that a husband was justified in taking any of four actions if his wife refused to have sex with him: to get angry and reprimand her, to refuse her financial support, to use force to have sex with her or to have sex with another woman. About the same proportion of men as in 2000, 36%, thought that at least one of these responses would be justified, with slightly fewer than before (5%) saying that forced sex would be justified. In addition, responding to a different question, 8% of the men surveyed and 12% of the women surveyed believed that it is justifiable for a husband to beat his wife if she refuses sex.

**CHART 8: Reasons which justify a wife in refusing sex with her husband – 2000 and 2006-07 Demographic and Health Surveys: male (M) and female (F) respondents who agree with the following reasons**



\* Recent birth was included only in the 2000 survey.

**CHART 9: Actions a husband is justified to take if his wife refuses sex – 2000 and 2006-07 Demographic and Health Surveys (male respondents only; national totals)**



\* The 2000 survey provides data on respondents who “agree with **any** selected reason”. However, in the 2006-07 survey the data is given for respondents who “agree with **all** of the specified reasons” or “agree with **none** of the specified reasons”; data on respondents who “agree with **any** selected reason” is not provided. Therefore, for 2006-07, we have calculated the difference between the percentage of respondents who agree with “none of the specified reasons” and 100%, assuming that those who cannot be said to agree with “none” of the specified reasons must agree with at least one reason.

\*\* This question was asked separately.

A higher acceptance of beating as a response to sexual refusal was evidenced in the 2007/2008 SIAPAC eight-region study in, where 18% of men and 18% of women surveyed felt that a husband has a right to hit his wife if she refuses to have sex with him without what he views as a valid reason – with most of these respondents holding the opinion that this would justify the husband in hitting the wife *hard*.

Most recently, the 2009 FAO study conducted in Ohangwena, Oshana and Caprivi Regions found that 8% of the men surveyed and 24% of the women surveyed believed that is justifiable for a husband to beat his wife if she refuses sex.

## Concepts of masculinity and femininity

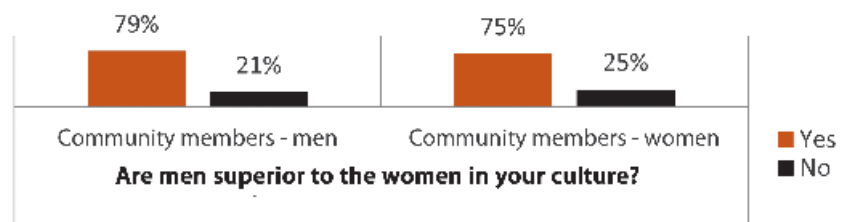
*Namibia's political history, combined with social values and practices within which inequality between men and women are embedded and condoned, have created an environment where violence against women has flourished.*

Ministry of Health and Social Services, WHO Multi-Country Study in Windhoek, 2004

The root of acceptance of physical and sexual abuse in intimate relationships is the lack of meaningful gender equality and equal power relations, which stem from Namibian concepts of masculinity and femininity.

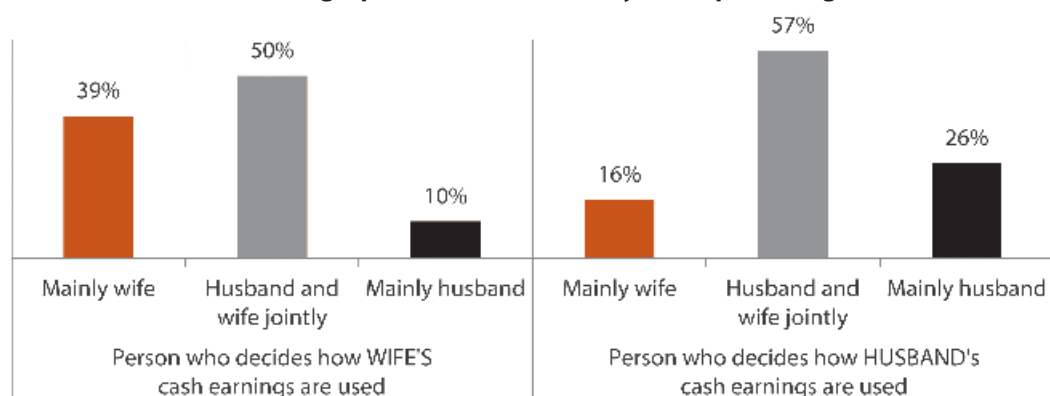
A range of post-Independence studies have found gender-stereotyping across Namibia's cultures, with women being associated with domestic, submissive, reproductive, household roles, and men being viewed as powerful providers, protectors and decision-makers in the family and community. Alcohol use was also associated with manhood in several surveys. These cultural attitudes persist, with the 2002 UNAM study of gender roles and HIV infection, involving respondents between the ages of 15 and 49 in several Namibian locations, finding that 75% of the females and 79% of males perceived men as being generally “superior” to women. Other studies found similar opinions amongst both adults and youth. One small study which explored concepts of masculinity amongst young, urban, Oshiwambo-speaking men in Tsumeb and Windhoek, found that a “violent kind of masculinity is widely accepted and expected of young men”.

**CHART 10: Views on male superiority over women in Katima Mulilo, Oshakati, Walvis Bay, Windhoek, Mariental and Rehoboth, 2002**



The 2006-07 Namibia Demographic and Health Survey included a more detailed examination of male and female attitudes about women's participation in decision-making. Men and women were asked about control over decisions about a wife's earnings and a husband's earnings. Only 10% of married women said that their husbands controlled their earnings, whilst 16% said that they control their husbands' earnings. Joint control of all cash income was typical.

**CHART 11: Married women's views on control over wives' and husbands' cash income – 2006-07 Demographic and Health Survey: Total percentage for all Namibian regions**

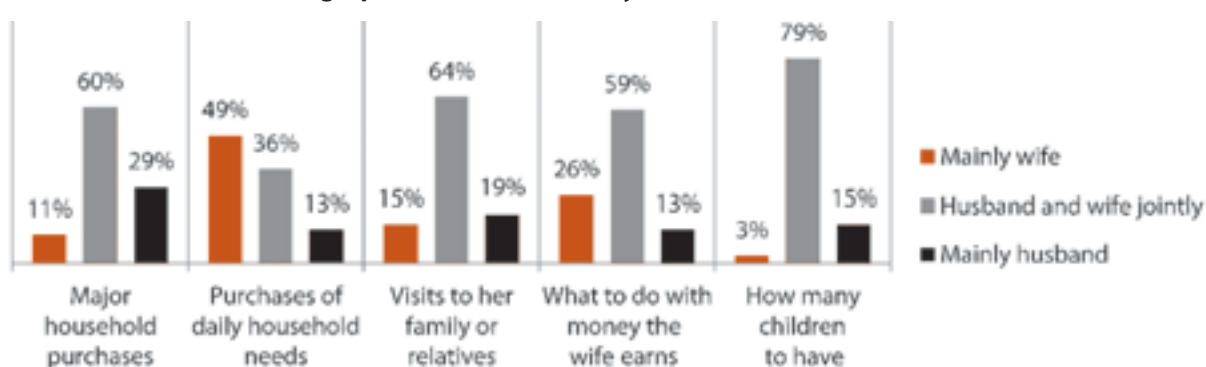


Women were also asked who has decision-making power over four household decisions: decisions about the wife's health care, decisions on purchases for daily household needs, decisions about major household purchases and decisions about visits to the wife's family or relatives. Women again reported joint decision-making to be the norm, with only 15-24% of married women reporting that their husbands were the main decision-makers on *any* of these issues. Men were asked who *should* have decision-making power on these four issues, plus a fifth one: decisions about how many children the couple should have. Only 13-29% of men asserted that husbands should be the main decision-makers on any of these individual decisions, with decisions on major household purchases being the area men most often preferred to reserve to themselves. Yet at the same time, *less than half of the married men surveyed* thought that a wife should participate either alone or jointly with her husband in *all* of these decisions, showing that the ideal of gender equality within relationships is still far from being accepted by men.

**CHART 12: Married women's views on who makes decisions in four key areas – 2006-07 Demographic and Health Survey**



**CHART 13: Married men's views on who SHOULD make decisions in five key areas – 2006-07 Demographic and Health Survey**



These findings seem to contradict many of the other studies which have explored attitudes about male and female decision-making power, although the generally positive views of women's decision-making powers portrayed by this study may have much to do with the choice of decisions about which respondents were questioned. It is noteworthy that women participated least in decisions on major household purchases (75%), as compared to the other decision-making areas asked about, which may have been perceived as either personal to the women in question (health care and family visits) or relatively inconsequential (purchases for daily needs). This view is consistent with the findings of the 2009 FAO study in Ohangwena, Oshana and Caprivi Regions; while most respondents thought that women *should* participate in household economic decisions (including decisions on large purchases), responses to questions about how decisions are *actually made* indicated that women commonly participate in daily purchases, while men dominate decisions about large household purchases in most of the communities surveyed.

The various studies indicate that the relative social status of women and men is complex, with control over various financial resources being only one of many strands in relationship dynamics. The destructive forces of colonialism, industrialisation, migrant labour and apartheid were all disempowering for Namibian men, whilst since Independence women have benefited from social and legal changes. In the context of poverty and helplessness, some men have turned to alcohol abuse, which has further eroded their self-esteem; it has been posited that such factors have inspired some men to turn to sexual abuse and violence as mechanisms to maintain their masculinity. However, such attitudes are not entirely static; some small studies (one based on data collected in 2000-01 in Windhoek and Tsandi in the Omusati Region, and one based on data collected in 2002 in the Ohangwena Region) have found evidence that some adolescent males are receptive to changing ideas about masculinity, and a 2002 survey of teachers in seven regions reported that learners react positively to information about gender equality.

Looking at the various studies overall, the conclusion that concepts of masculinity and femininity are a key cause of domestic violence is inescapable – but there is some hope for change.

## Research involving perpetrators

Two Namibian studies have involved interviews with perpetrators of domestic violence against intimate partners, to seek insights into their behaviour. While both studies found some patterns in respect of perpetrators' backgrounds, neither explored why other Namibians with similar profiles do not resort to violence.

In a 1997 study of 22 men and 5 women convicted of violent crimes against intimate partners, the older men often did not see their aggressive behaviour as abuse, but agreed that it was culturally acceptable, citing the Bible or the male duty of exercising control as the head of the household. Younger men tended to blame the emancipation of women. Some expressed ambivalence, indicating that they felt bad but did not see any other way of handling family situations.

All of the abusers had seen one of their parents use violence against the other parent when growing up, and about half reported that they had been abused when they were children. Most male abusers blamed the victims, citing nagging or some other form of perceived provocation – yet those who had been in previous intimate relationships conceded that they

had also been abusive towards their previous partners. The female abusers asserted that they had fought back against abusive partners. Most of the perpetrators thought that alcohol or drug use contributed to their aggressive behaviour, and several complained about the lack of services aimed at helping abusers learn how to control themselves.

Another study conducted almost ten years later, in 2006, solicited information from 200 male prisoners convicted of violent crimes against women or children (not all of which involved forms of domestic violence). This report noted that many of the prisoners came from unstable family backgrounds, had low levels of education, and worked in unskilled employment. Almost half had observed or experienced parental violence during their childhoods. It was not clear whether the high alcohol consumption levels of the majority of the inmates interviewed served as a contributing factor or an excuse. The partner's 'disobedience' or refusal of sex were both often cited as contributing factors – consistent with other studies pointing to traditional concepts of masculinity and gender roles as being at the root of gender-based violence.

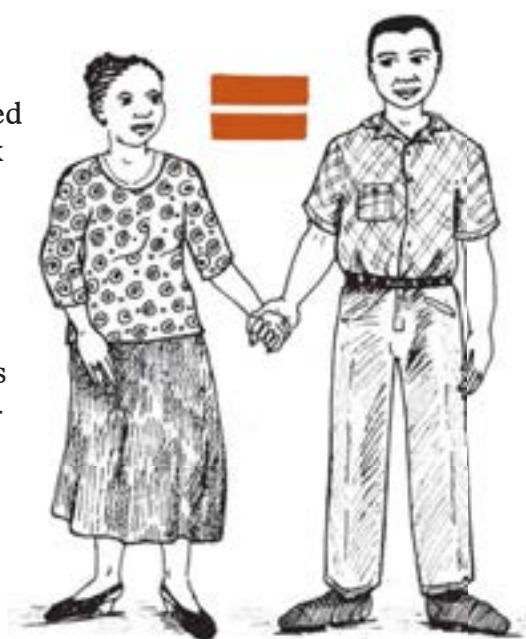
This study pointed to a need for psychological assessment to be taken into account in sentencing, and for psychological treatment to be incorporated into prisoner rehabilitation programmes.

*In my tradition, a woman is expected to respect her husband as the head of the household and to be very submissive. I married a Nama woman who comes from a different cultural background and she does not respect me, and would even challenge me physically. I am not used to that and in my culture such women must be disciplined. One day she wanted to challenge me and was grabbing my private parts very hard. This led me to hit her with a stick, and she died on the spot. It was not my intention to kill her – I was just trying to exert my authority.*

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)

## The significance of equality

A seminal 1989 study of societies worldwide identified the San societies of Southern Africa as one of only six cultures where domestic violence was non-existent or rare. This study found four factors associated with family violence: economic inequality between men and women, the use of physical violence to resolve conflict, male authority and control of decision-making in the household and restrictions on women's access to divorce. However, in traditional hunter-gatherer San societies, men and women contributed essential resources, gender roles were fairly fluid and the work of both sexes valued; communities utilised peaceful methods of conflict resolution; and there was easy access to divorce for both husbands and wives.



Against this backdrop, in 2000, researchers examined three contemporary San societies in Southern Africa to assess the incidence of domestic violence: the Ghanzi district in Botswana, Tsumkwe West in Namibia and Schmidtsdrift in South Africa. The researchers found a strong correlation between patterns of gender-based violence and the underlying degree of gender equality in the three communities with the highest levels of gender-based violence being found in the communities where gender roles had been more strongly influenced by militarisation, patriarchal institutions and formal employment for men but not women.

This research supports the theory that power imbalances between men and women are the primary cause of domestic violence between intimate partners, and suggests that the inculcation of equality and mutual respect are the key remedies.

## **Other contributing factors**

### **ALCOHOL**

WHO statistics also indicate that Namibia has the seventh highest rate of alcohol consumption in Africa, and that drinking is on the increase in Namibia. Many studies cited in this report identify alcohol as a significant factor in the occurrence of domestic violence. For example, the 2007/2008 SIAPAC eight-region study found that abusive partners had been drinking in two-thirds of all cases of intimate partner violence. The link is there, but the nature of this connection may be misunderstood, with alcohol consumption serving as a scapegoat. The connection between alcohol and domestic violence does not make alcohol abuse an explanation by itself, nor does it excuse domestic violence. Although there are many incidents of abuse involving alcohol, there are also many men who drink large quantities of alcohol but do not engage in abusive behaviour.

### **POVERTY AND UNEMPLOYMENT**

Poverty has been cited as another contributing factor to the incidence of domestic violence, as it adds extra stress and affects the self-esteem of men socialised to be family providers. Joblessness and lack of financial success undermine the traditional role of the male provider, which is part of the fundamental concept of Namibian masculinity. Furthermore, women's lower economic status and lack of economic autonomy can create relationships of dependence which make it harder for women to leave abusive relationships.

### **DEPICTIONS OF VIOLENCE AND GENDER STEREOTYPES IN MASS MEDIA**

Internationally, there are studies which suggest linkages between portrayals of violence in the media and violence in real life. A 2002 article by Namibian sociologist Tom Fox hypothesises that the linkage between violence in the media and real violence may be more problematic in a developing country like Namibia. Gender-stereotyped media portrayals may be understood as legitimising rigid gender roles in Namibia, which can contribute to perceptions that male control of women, by means including violence, are acceptable. A survey of male and female students at the University of Namibia for a 2001 report asked, *"Do you think that violent media influences any of the violence in Namibian society?"* More than 68% of the students surveyed thought that it did. This influence could be in the process of becoming more powerful, as the students also reported that popular entertainment and particularly visual media were taking an increasingly central place in the culture of their everyday lives.

## Attitudes about violence against children

Although there are few studies which shed light on the roots of domestic violence against children in Namibia, the available data suggests that domestic violence against children stems from attitudes about children and about parent-child relations.

In many Namibian communities, corporal punishment has been traditionally viewed as the only effective way to teach children how to behave and to ensure that they will respect their elders. For example, the 2007-2008 SIAPAC eight-region study asked respondents about the circumstances in which it is acceptable to hit a child. Three-quarters of the respondents saying that it is acceptable to hit a child for being “disobedient” or “talking back” to the parent, 40%-60% believed that hitting was justified for being reluctant to go to school, bringing shame to the family, running away from home, engaging in sex with someone, bringing home a much older boyfriend or girlfriend, getting body-piercing or tattoos and dressing inappropriately, and about 27% thought that poor school performance justified hitting. For every reason suggested, men were more likely than women to think that a violent response was justifiable. However, despite the many justifications offered for hitting children, more than half of the respondents said that it was NOT necessary to physically punish children as part of their upbringing, and many respondents understood domestic violence as including family violence against children.

**TABLE 14**

Beliefs about justifications for hitting children in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions, 2007/2008			
Statement	Agree or strongly agree with right to hit		
<i>A parent has a right to hit his or her child...</i>	Men	Women	All
...if the child is disobedient	79%	77%	78%
...if the child talks back to the parent	79%	77%	78%
...if he/she does not want to go to school	65%	60%	63%
...if the child brings shame to the family	58%	50%	54%
...if the child runs away from home	54%	47%	51%
...if the child has sex with someone	50%	47%	49%
...if daughter brings home a boyfriend much older than her	54%	41%	47%
...if he/she has body piercing/tattoos	47%	42%	44%
...if he/she dresses inappropriately	44%	42%	43%
...if a son brings home a girlfriend much older than him	48%	37%	43%
...if the child performs poorly in school	30%	24%	27%

The viewpoint of children is very different from that of adults. As part of a national consultation process around the draft Child Care and Protection Act in 2009, direct input was solicited from 188 children and youth. Corporal punishment was deemed unacceptable by the majority of these respondents, with some likening it to child abuse or asserting that it teaches children that abuse and violence are acceptable. Many children suggested that explaining incorrect behaviour or taking away privileges would be better forms of discipline. Similarly, the vast majority of some 2000 children and youth in the Kunene Region consulted by the Ombetja Yehinga Organisation in 2009 on corporal punishment thought that corporal punishment was a negative form of discipline, particularly when combined with the withholding of food – although a minority thought that it cultivated discipline and prepared children to be responsible adults. Some stated that physical forms of punishment made them think about suicide or running away from home.

## Reasons offered by Namibian children for opposing corporal punishment in the home

- *Corporal punishment is like child abuse.*
- *Corporal punishment teaches children that abuse and violence are acceptable and they will use this in the future themselves.*
- *Corporal punishment will not solve the problems and will only make matters worse.*
- *The child will hold a grudge against the abuser.*
- *The child will have low self-esteem.*
- *The child's way of thinking and acting will become disturbed.*
- *The child might become abusive towards others.*
- *It might kill the child.*

Gender Research and Advocacy Project, Legal Assistance Centre (LAC),  
*Corporal Punishment: National and International Perspectives*, Windhoek: LAC, 2010

***Violence is not a good teaching tool, discipline is.***

Rev Maria Kapere,  
Secretary-General of the Council of Churches in Namibia (writing in her personal capacity),  
in Legal Assistance Centre (LAC), *Corporal Punishment: National and International Perspectives*, Windhoek: LAC, 2010

## Attitudes relating to child sexual abuse

Sexual abuse against children seems to stem largely from a sense of entitlement on the part of abusers, who demand sexual satisfaction from children as part of their assertion of power within the family. For example, a Namibian study published in 2003 links child rape within the family to perceptions that a wife and children are the property of male family members, who have the right to 'punish' children in the household with rape or to demand that children satisfy their sexual needs – especially where the wife was refusing sex. In some cases, male family members resorted to threats, bribes, or gifts in order to carry out the sexual abuse.

The socialisation of children to respect their parents and other adults without question was noted as a contributing factor. For instance, a 2006 study of Woman and Child Protection Units commissioned by UNICEF suggests that sexual abuse by fathers and uncles may be related to their social role in the family, quoting one social worker as pointing out that, "*Because children are expected to do what they are told and to be obedient, they also accept acts of sexual abuse perpetrated by a father or uncle. These are the authority figures and are not to be questioned.*"

## Backlash against children's rights

Just as it has been suggested that some domestic violence against women is a product of the fact that men feel threatened by women's increasing empowerment, local studies indicate that some abuse of children may stem from the fact that there are parents in Namibia who feel that their authority is being undermined by 'children's rights'. Many adults feel that the rights acquired by children since Independence have been detrimental to social control, and adolescents may perceive themselves as being more advanced than their parents' generation

and so fail to show an acceptable level of respect to their parents. Parents, afraid that they lack the authority and legitimacy associated with parenthood in the past, may struggle with carving out new methods for exerting authority over their children in appropriate ways. In an attempt to encourage a more balanced connection between children's rights and children's responsibilities, the Child Care and Protection Bill follows the African Charter on the Rights and Welfare of the Child by including explicit provisions on both children's rights and children's responsibilities.

## CHILDREN'S RIGHTS AND RESPONSIBILITIES IN THE DRAFT CHILD CARE AND PROTECTION BILL

### *Children's duties and responsibilities*

*9. In the application of this Act, and in any proceedings, actions and decisions by any organ of state concerning any child, due regard must be had to the duties and responsibilities of a child to –*

- (a) work for the cohesion of the family, respect the rights of his or her family members and assist his or her family members in times of need;*
- (b) serve his or her community, respect the rights of all members of the community and preserve and strengthen the positive cultural values of his or her community in the spirit of tolerance, dialogue and consultation;*
- (c) serve his or her nation, respect the rights of all other persons in Namibia and preserve and strengthen national solidarity; and*
- (d) contribute to the general moral well-being of society, provided that due regard must be given to the age, maturity, stage of development and ability of a child and to such limitations as are contained in this Act.*

Child Care and Protection Bill, as at June 2009, section 9

**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)

## VIOLENCE WHEEL

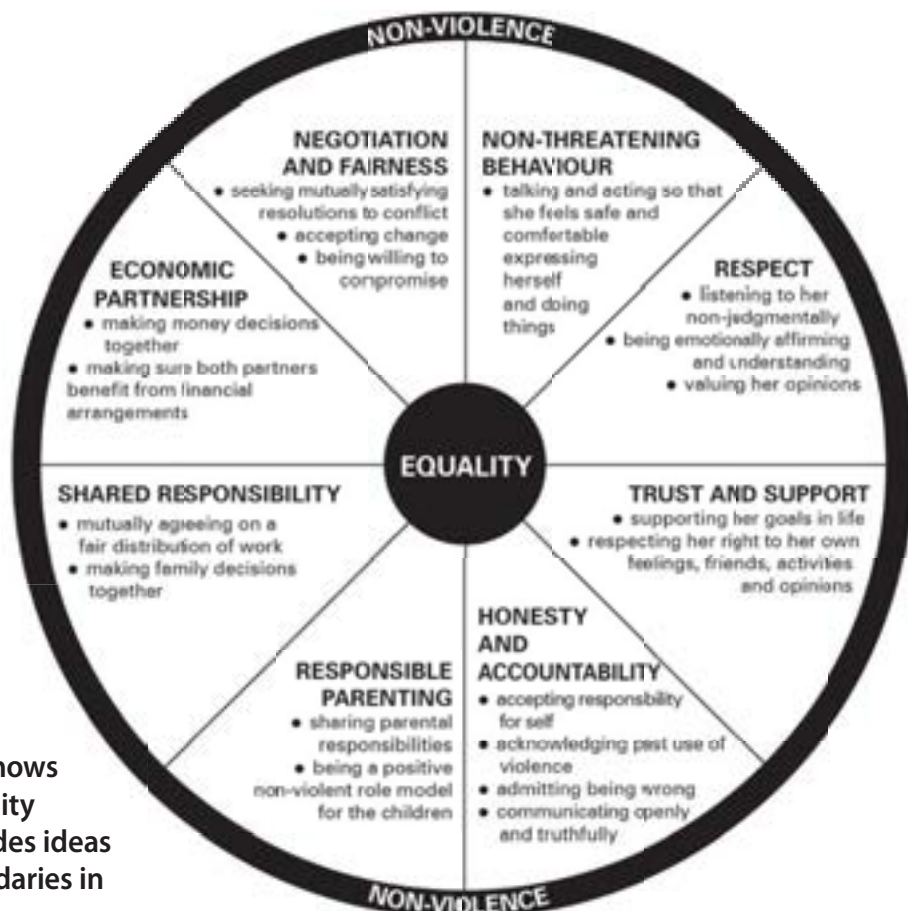
The Violence Wheel shows how physical and sexual abuse are related to other forms of power and control in personal relationships.

The more subtle forms of control may lead to physical violence, or alternate with outbreaks of physical violence.



## NON-VIOLENCE WHEEL

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



# 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. It was designed as a companion piece to the Legal Assistance Centre’s study of the operation of the Combating of Rape Act. The original intention was to collect information on the implementation of both the civil and criminal aspects of the law, but the intended investigation of domestic violence incidents reported to police had to be abandoned because the official form prescribed by the law for police record-keeping was not in routine use at most Woman and Child Protection Units at that stage – and was still not in systematic use when the data collection was finalised in 2011. The statutory requirement that Namibian Police must table annual reports in Parliament which include statistics on domestic violence incidents is also not being observed in practice. As a result, the study focuses on the implementation of protection orders under the Act.

## 5.2 Methodology

Our sample was based on a total universe of 1500 protection order applications made nationwide during 2004-2006; 2004 was chosen as the starting point as the first full year of operation of the Combating of Domestic Violence Act, and 2006 was chosen as the endpoint because our data collection began in 2007. We excluded a few small courts with small numbers of protection orders, because of budgetary considerations. We also adjusted our sample so that information from the Katutura Magistrate's Court, which accounted for 37% of the total universe of protection order applications, would not dominate the survey. The final sample consisted of 1122 protection order applications against 1131 respondents, from 19 of the 31 magistrates' courts in place at the time, including courts in 12 of Namibia's 13 regions.

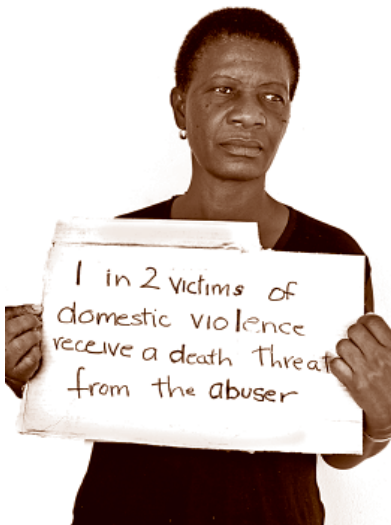
The court file data was supplemented by 46 individual interviews with magistrates and clerks conducted in 2006-07 in 19 locations, as well as a focus group discussion with traditional leaders in 2006 and informal discussions at training sessions for police and magistrates in 2011. We also conducted 14 follow-up interviews in 2011 on specific issues arising from preliminary analysis of the statistical data.

**TABLE 15**

Sources of data		
1122 protection order applications against 1131 respondents filed in 2004-2006	19 out of 31 magistrates' courts	12 regions
46 individual interviews with magistrates, clerks of court, prosecutors, police and social workers, 2006-2007	19 locations	11 regions
3 group discussions with traditional leaders (2006), police (2011) and magistrates (2011)	3 locations	participants from all 13 regions
14 follow-up interviews with clerks of court, social workers and a magistrate (2011)	8 locations	7 regions

In this study, we use certain terms slightly differently from the way they are used in the law, for the sake of simplicity. The study uses the term “applicant” to refer to a person who makes a protection order application on behalf of someone else who is suffering domestic violence, while the victim of the violence is referred to as the “complainant” in every context. The “respondent” is the person against whom the protection order is sought or made.

MEAN	MEDIAN	MODE
The average value	The value in the middle of the list	The value which occurs most frequently
<p>The <i>mean</i> 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 <i>median</i> 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 <i>mode</i> is the value which is occurs 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.</p>		



## 5.3 Protection order applications

### Total protection order applications in Namibia

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 (2004-2006). Protection order applications increased more than threefold during this period, from 211 applications in 2004 to 747 in 2006.

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. 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.

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.

TABLE 16

Total protection order applications at all magistrates' courts, 2004-2008							
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 map displays the regions of Namibia, with the following labels: Kunene, Erongo, Karas, Hardap, Otjozondjupa, Oshana, Oshikoto, Kavango, and Caprivi. Neighboring countries are labeled: Angola, Zambia, Botswana, and South Africa. The Atlantic Ocean is to the west. A legend on the right indicates that the regions are shaded in light orange, except for Oshana which is shaded in light blue.

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

This sample represents about 75% of all the protection orders made in Namibia during the years (2004-2006) covered by the study. The regions and time periods covered in the sample also correspond well to the distribution of the total universe, ensuring that the study findings present an accurate picture of the overall situation. However, as already explained, we intentionally ‘under-sampled’ in the Khomas Region to prevent the data from this region from dominating the results and possibly obscuring the situation in other locations.

September, November, and October were the most common months for protection order applications, while such applications were least common in April, followed by January. Although these differences are statistically significant, we do not have a theory which could explain this timing.

We noted a number of problems with applications. First of all, although clerks of the court are supposed to provide assistance to complainants with applications for protection orders, complainants often still had **difficulties in filling out the forms**. About half of the applications examined for the study comprised both the completed application form, which

is essentially a pro forma affidavit, as well as a separate narrative statement in the form of another affidavit. We suggest that the application form should be simplified with more emphasis on narrative accounts guided by printed questions.

Secondly, because a number of **clerks are unable or unwilling to commission affidavits**, many potential applicants are forced to visit both a magistrate's court and a police station, which slows down the process and creates additional obstacles for complainants. We suggest that a circular should clarify that clerks of court are authorised to act as Commissioners of Oath for protection order applications and outline the correct procedure for making applications.

Thirdly, our interviews revealed that some courts follow **varying procedures** in an attempt to deal more efficiently with protection order applications – but some of the procedural innovations used in practice are inappropriate and carry the risk of discouraging deserving complainants. 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.

Another issue we noted was that some cases used a single application form to request protection orders against **multiple respondents**. We recommend that courts should require a separate application form for each respondent and issue separate protection orders for each respondent to avoid confusion – particularly since some of the terms of such orders may differ.

## After-hours applications

There is currently no uniform system for dealing with after-hours applications. We suggest that the Ministry of Justice should give clear guidelines on appropriate after-hours procedures, including directives for emergency referrals to shelters or other places of safety where appropriate.

## Protection order applications and criminal charges

A protection order is designed to be an alternative to criminal charges where a victim of domestic violence is reluctant to lay charges against a spouse or a family member. On the other hand, it is possible for a victim of domestic violence to simultaneously lay criminal charges and apply for a protection order if he or she wishes, as a protection order might provide additional safety against possible retaliation by an abuser. These various options did not seem clear to all of the key role players. It may be useful to amend the Act to state clearly that the 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

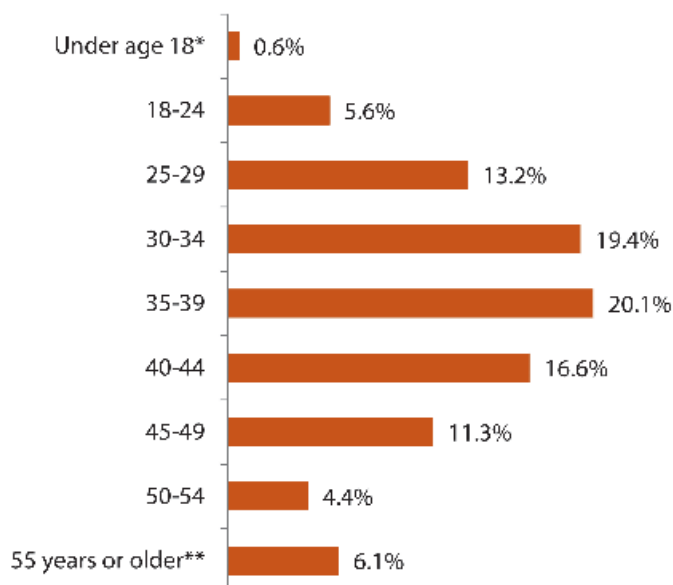
The majority (88%) of complainants were female, while only 12% were men, underscoring the highly-gendered nature of domestic violence. There was some difference of opinion amongst key informants as to whether men feel comfortable approaching Woman Child Care and Protection Units for assistance. In some instances, men and women in intimate relationships have applied for protection orders against each other.

**CHART 14: Sex of complainants**  
(missing values excluded)



The majority of complainants were between the ages of 33-44 at the time of the application. The mean age for complainants was 38, although they ranged in age from 3 to 77. Only seven complainants were children under age 18 (less than 1%) – but this 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.

**CHART 15: Age of complainants**  
(missing values excluded)



\* 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.

The major apparent language groups of complainants, based on the complainants' surnames, were Afrikaans (35%), Oshiwambo (23%) and Damara/Nama (17%). Although this language data must be treated with extreme caution on methodological grounds, the statistics suggest that Oshiwambo speakers may be under-represented and Afrikaans and Damara/Nama speakers over-represented. Apparent Otjiherero speakers (6%) were roughly comparable to their share of the population. The most important point is that all major language groups seem to be represented, indicating that social or cultural barriers are not preventing any Namibian language groups from utilising the new law.

The majority of complainants listed some form of formal employment or self-employment on their applications – with the percentage identifying themselves as employed being higher than national estimates of employment. The complainants in domestic violence cases come from a broad social spectrum. Our sample of complainants included clerks, domestic workers, teachers, farmers, accountants, architects, a doctor, a pastor, a missionary and an ambassador. 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.

The vast majority of protection order applications (92%) came from persons in urban areas, as evidenced by the residential addresses of complainants - probably because of lower public awareness of the law 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 applicants 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 in 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.

## 5.5 Applications made on behalf of domestic violence victims by someone else

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. 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. There were only 22 applicants in our sample of 1122 applications – which accounts for less than 2% of the total. Most applicants were immediate or extended family members of the complainants.

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.

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:

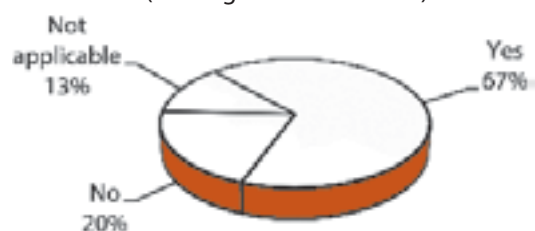
- a minor;
- mentally incapacitated;
- unconscious;
- regularly under the influence of alcohol or drugs; or
- at risk of serious physical harm.

These consent requirements appeared to be correctly applied in the sample.

## 5.6 Relationship between complainant and respondent

“Domestic relationships” under the Act include intimate partners and family members. Most protection order applications (86%) involved intimate partner violence – including married or divorced couples (almost 63%) and couples who are or were in a romantic relationship (almost 24%). Moreover, almost two-thirds of complainants (64%) had children with, or were expecting a child with, the respondent.

**CHART 16: Complainant has or is expecting child with respondent?**  
(missing values excluded)



The 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).

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”, as well as other non-domestic relationships such as business partners, landlord and tenant, and neighbours. 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, and most of these cases were correctly dismissed.

The majority of the cases involved people who had at some point lived in a common household, with 60% of the complainants sharing a residence with the respondent at the time of the application. These were mostly married or cohabiting couples, although the category also included some other family relationships (such as parents and children). Of those currently sharing a residence, 42% had been living in the same residence for more than 10 years, meaning that a substantial proportion of the applications involved long-term relationships. Less than 8% of the complainants had *never* shared a residence with the respondent.

Many complainants seem to have misunderstood the questions about residence, 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. This indicates a need to clarify the application form on this point.

## 5.7 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, at least one other person was mentioned by the complainant as being affected by the domestic violence, with most complainants citing two-five other persons and a few

**TABLE 17**

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>

**TABLE 18**

Residential arrangements between complainant and respondent			
Shared residence		Number	Percent
<b>Currently share a residence?</b>	Yes	630	60.1%
	No	418	39.9%
	<b>Total</b>	<b>1048</b>	<b>100.0%</b>
<b>Length of sharing a residence</b>	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>
<b>Previously shared a residence?*</b>	Yes	314	45.0%
	No	384	55.0%
	<b>Total</b>	<b>698</b>	<b>100.0%</b>
<b>Length of previously sharing a residence</b>	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.

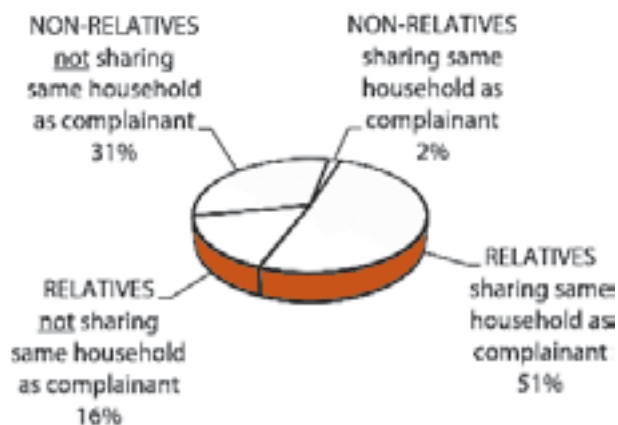
citing as many as 10 to 12 persons. More than 4700 persons were allegedly affected by the domestic violence described in the 1122 applications in the sample – indicating that the impact of protection orders is potentially very broad.

**TABLE 19**

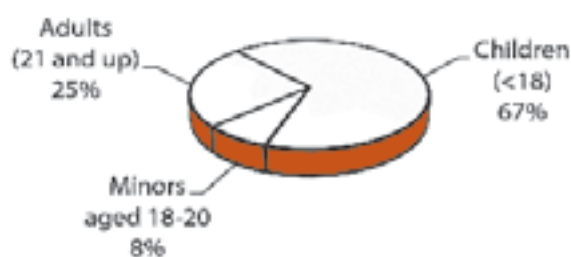
<b>Relationship to complainant of other persons affected by the domestic violence</b>		
<b>Relationship</b>	<b>Number</b>	<b>Percent</b>
<b>Relatives</b>	<b>3173</b>	<b>67.4%</b>
<b>Son or daughter</b>	<b>2082</b>	<b>44.2%</b>
• Son/daughter of complainant and respondent	1427	30.3%
• Son/daughter of 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%
<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>

The majority of persons cited as being affected by the domestic violence were relatives sharing the same household as the complainant, with most being girls or women. The largest category was children of the complainant and the respondent together, which could have included some adult offspring, accounting for almost one-third of other persons affected (30%).

**CHART 17: Relationship to complainant of other persons affected by the domestic violence**



**CHART 18: Age of other persons affected by the domestic violence**  
(missing values excluded)



Children under the age of 18 accounted for 67% of persons affected by the domestic violence, and three-quarters were minors under the age of 21. About 93% of the affected children under age 18 were living in the same household with the complainant, making it likely that they were exposed to acts of domestic violence – which, under the Act, constitutes a form of domestic violence in itself. However, few cases were cited by key service providers as “involving” children. 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.

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. 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.

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

– Clerk of court, Swakopmund

## 5.8 Profile of respondents

The majority (87%) of respondents were male. This is not surprising, given that most complainants were women and that most of the relationship involved were marriages or other intimate relationships. 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, or it could mean that men are

**CHART 19: Sex of respondents**  
(missing values excluded)

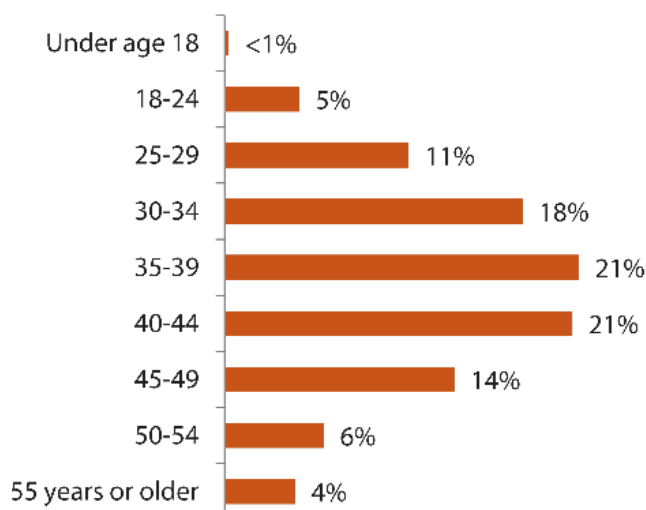


more reluctant to seek assistance when they suffer domestic violence, which could be a result of prevailing norms of masculinity.

Almost half (48%) of respondents were between the ages of 30-44 at the time when the protection order was made, with an age range from 17 to 73. Only two respondents were under the age of 18.

In the cases of intimate relationships, the women were typically one to five years younger than the respondents. About 7% were 10 years younger than their male partners, which could signal a more pronounced power imbalance and possibly 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, with only a single male complainant alleging abuse by a female partner who was more than ten years older and fewer than 2% of women complainants in past or current intimate relationships being more than ten years older than the male partners who allegedly abused them. Among family members in protection order applications, the age gaps between complainants and respondents were consistent with the type of relationship between the parties.

**CHART 20: Age of respondents**  
(missing values excluded)



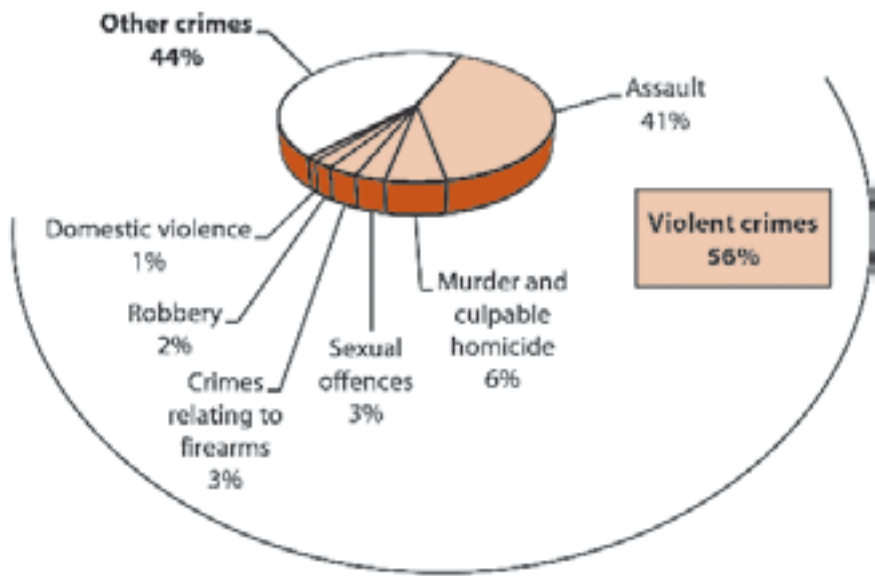
The major apparent language groups of respondents followed the same pattern as those of the complainants, although (as in the case of complainants) this finding must be treated with extreme caution on methodological grounds. About one-third of unmarried intimate partners did *not* appear to have come 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. (Since probably language group was extrapolated from surnames, it was not possible to guess the language group of married women, who usually take their husband’s surnames.)

As in the case of complainants, respondents were mostly employed. The occupations of respondents, like those of complainants, covered a broad spectrum ranging from general labourers to senior government officials, indicating 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.

Almost a quarter of the respondents (24%) had been previously convicted of crimes, with most of this group (56%) having been convicted for violent crimes, suggesting that domestic violence may be part of long-term patterns of violence. 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.

**CHART 21: Crimes committed by respondents with previous convictions (24% of all respondents)**



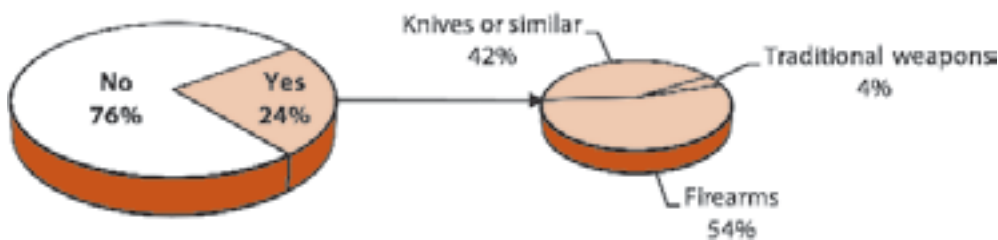
The majority of respondents used intoxicants, with 61% using alcohol, 1% using drugs, and 15% using both alcohol and drugs. While alcohol consumption is often linked to domestic violence, the fact that almost one-quarter of the abusers were *not* reported to use either alcohol or drugs is also noteworthy, as it underlines the fact that it is simplistic to blame alcohol use for the problem of domestic violence in Namibian society. It serves as a triggering factor in removing inhibitions for some respondents, rather than being an actual root cause of domestic violence.

**CHART 22: Respondents' reported use or abuse of alcohol or drugs**  
(information provided in respect of 1021 respondents)



Almost one-fourth of all respondents (24%) were believed by the complainant to own one or more conventional weapons (excluding cases where complainants identified ordinary items such as bottles or belts as weapons), with 13% believed to own firearms.

**CHART 23: Does respondent own a weapon?**



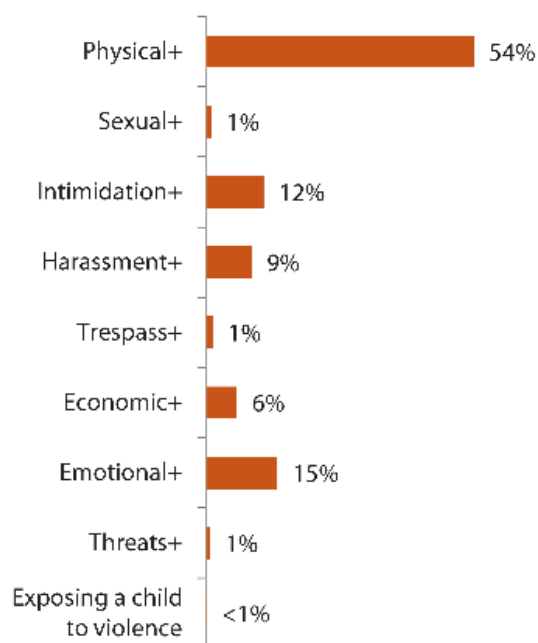
## 5.9 Most recent incident of domestic violence

Applications for protection orders were typically made about four days after the most recent incident of violence. Almost 8% were made on the same day, more than 82% were made within one month and almost all (92%) were made within three months.

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%). Many experienced multiple forms of domestic violence.

When the various types of abuse were ranked in terms of physical danger, this tabulation showed that more than half of the complainants reported physical abuse in the most recent incident of domestic violence. 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. 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, and 78% of the applications alleged that the most recent form of domestic violence had included a definite action aimed at producing physical harm or fear of physical harm (excluding economic abuse, emotional abuse, threats of harm and exposing a child to domestic violence against another person). 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 24: Tabulation per application by most physically dangerous abuse alleged in most recent incident**  
(missing data excluded)



The complainant reported a weapon was used in the most recent incident of domestic violence in almost a quarter of the protection order applications (24%), with the most common type of weapon employed being a knife. Weapons most likely to cause death or serious injury (such as firearms, knives, pangas or axes) were used in 14% of the protection order applications. Everyday objects were also utilised as weapons, featuring in 8% of the total applications. 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 shows that removing conventional weapons from an abuser may be insufficient to protect the victim.

***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...***

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

TABLE 20

Weapons used in most recent incident of abuse, 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>	
• 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>

Victims reported that they were physically injured in about 43% of the most recent incidents of abuse, with the most common types of injuries being bruises (49%). Other common injuries were cuts, lacerations, scratches or open wounds. 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. Male complainants were far less likely to be injured than female complainants, (7% men versus 93% women), even after taking into account the different proportions of male and female complainants (12% versus 88%).

**CHART 25: Was the victim physically injured by the most recent incident of abuse?**  
(missing cases excluded)



**CHART 26: Injuries received by men and women in most recent incident of abuse**  
(missing data excluded)



In the majority of cases where injuries were reported (57%), complainants did not seek medical treatment; 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.

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 another 61% within a week after the incident. The phrasing of the questions about medical treatment on the application form may have caused some confusion and should be clarified. The most common types of treatment received were pain killers and pain tablets. As indications of the seriousness of some of the injuries, 15 complainants received stitches, 11 were X-rayed, 3 were hospitalised and 1 complainant required surgery. All of the complainants who sought medical treatment provided the name of the health facility and almost two-thirds provided the name of the doctor or nurse who assisted them, which tends to support the veracity of the accounts of medical treatment.

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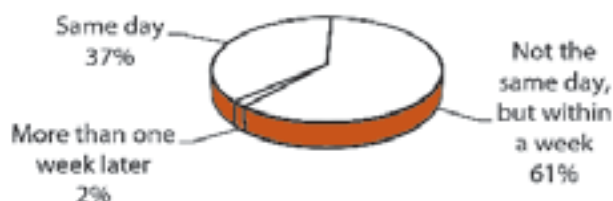
**CHART 27: Did injured complainants seek medical attention after the most recent incident of abuse**  
(missing data excluded)



**CHART 28: Sex of complainants who sought medical treatment for injuries sustained**  
(missing data excluded)



**CHART 29: Time lapse between most recent incident of abuse and complainant seeking medical attention for injuries received**  
(missing data excluded)



*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

There were witnesses to the most recent incident of domestic violence in 69% of the applications, with most of these complainants reporting that there was a single witness. The questions about witnesses resulted in some ambiguity, with some complainants interpreting the question about “children” who witnessed the most recent incident of violence to include adult offspring. After separating the responses to the questions on “witnesses” and “children” by age, we could determine that children under age 21 witnessed the violence in 56% of the cases, with 40% of this group involving multiple children as witnesses. Most of the child witnesses (64%) were between age 5 and 14, and over 60% were children of both the complainant and respondent, witnessing their parents engage in domestic violence as abuser and victim.

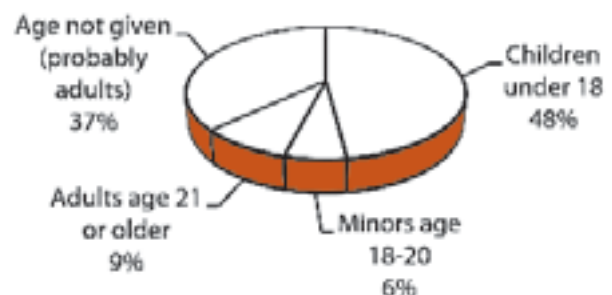
The exposure of children to domestic violence can produce a troubling legacy. Some impressionable youths may model their own behaviour on the example which they observe. Other young people may be traumatised by witnessing violence between parents or other family members. Furthermore, exposing a child 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 and thus multiplies the victims of the domestic violence in question.

There were some 1800 people in total who observed the most recent incident of domestic violence in the 1122 cases examined. Complainants also listed over 4700 persons as being affected by the violence. There is likely to be some overlap between these categories, but 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 as many as 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.

**CHART 30: Were there witnesses to the most recent incident of abuse?**



**CHART 31: 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

## 5.10 History of abuse

At least 97% of the complainants had a history of abuse by the respondent prior to the most recent incident of abuse. In the typical case, the history of abuse stretched back about two years, and about 17% of the complainants reported a history of abuse dating back more than 10 years.

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. 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
- 408 (36%) had sought treatment for their injuries
- 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.

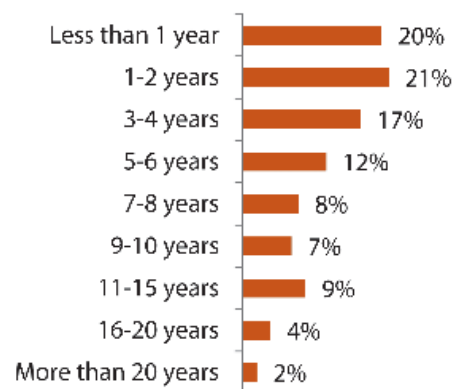
Quite a few complainants had previously turned to legal channels for help with the abuse:

- 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.

**CHART 32: Did complainants report a history of abuse prior to the most recent incident of abuse?**



**CHART 33: Period of previous abuse**

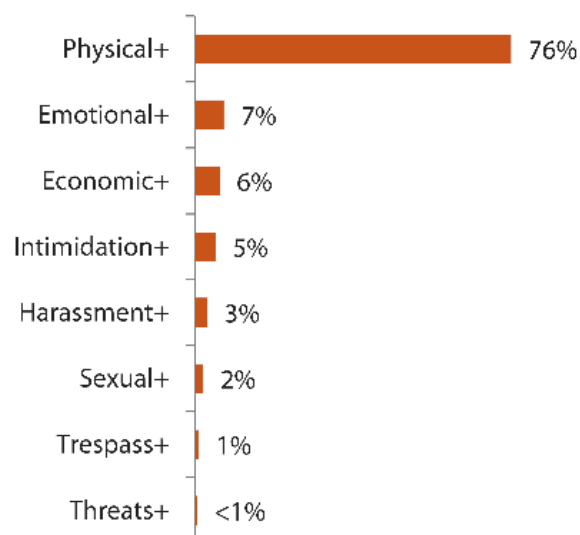


The most common type of past abuse was emotional abuse – but only 7% of the complainants cited a history of abuse consisting of emotional abuse without any accompanying form of physical or economic abuse. In fact, relatively few complainants highlighted past abuse consisting primarily of non-physical forms, with about 78% of complainants having suffered past physical or sexual abuse alone or in combination with other forms of domestic violence.

Most complainants who reported a history of abuse also reported that the abuse had recently worsened, becoming in most cases both more frequent and more severe. 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 of the abuse on children and other family members over time. Some complainants reported that threats of abuse had become actual violence. There were reports that abusers' sexual infidelity had increased, as well as reports of increased allegations by abusers that complainants were being sexually unfaithful. 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.

According to the complainants, over three-fourths of respondents owned a weapon and just over half of the respondents had used a weapon or threatened to use a weapon against the complainant in the past. Men were somewhat more likely than women to make threats involving weapons. Male respondents most commonly threatened to shoot or stab and frequently described their intentions in shocking and gruesome detail, while women respondents most commonly threatened to use a knife and tended to make more generic threats. 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 – which must have made the threats that much more credible and frightening. Some respondents threatened to obtain the weapons they did not already own – for example, one respondent threatened to buy a gun, while another threatened to bring a gun home to kill the complainant with. However, it seems as though almost any household item can be turned

**CHART 34: Tabulation per application by most physically dangerous abuse alleged in past abuse**  
(missing data excluded)



**CHART 35: Change in abuse lately – more often?**  
(missing data excluded)



**CHART 36: Change in abuse lately – more severe?**  
(missing data excluded)



into a weapon. One complainant reported that the respondent threatened to kill her with a golf club, while another complainant was threatened with a car jack. 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.

Almost two thirds of complainants (65%) had experienced injuries from past abuse. The number of complainants who experienced physical injuries in past incidents of abuse was higher than the number of victims who experienced physical injuries in the most recent incidents of abuse, indicating that injury is not necessarily the factor which drives an abused person to take the step of seeking legal help. Bruises were the most common past injury, and there were many head and eye injuries. 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, stab wounds and a gunshot wound. Three complainants had been kicked while pregnant, and four reported miscarriages as a result of the domestic violence.

About half of the complainants who reported suffering injury from past abuse sought medical help. About 40% of injured complainants who sought medical treatment for injuries did so in the same year as the first incident of abuse, with others not seeking medical help, or perhaps not needing to seek medical help, until the abuse had been underway for longer time periods.



**CHART 37: Does respondent own a weapon?**  
(missing data excluded)

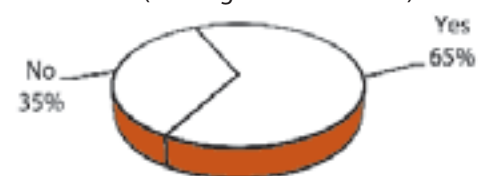


Ordinary items which can be used as weapons (rocks, bottles, belts, sticks, etc) are excluded from these calculations.

**CHART 38: Use of weapon or threat to use weapon against complainant?**  
(missing data excluded)



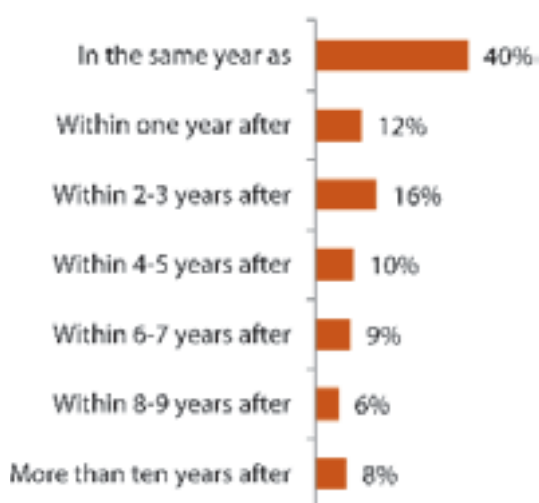
**CHART 39: Has complainant been injured in past abuse?**  
(missing cases excluded)



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



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



## 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.

In 87% of the applications, the applicant reported a history of threats of violent behaviour. 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 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.

There were 250 complainants (22%) who 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 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.*”

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

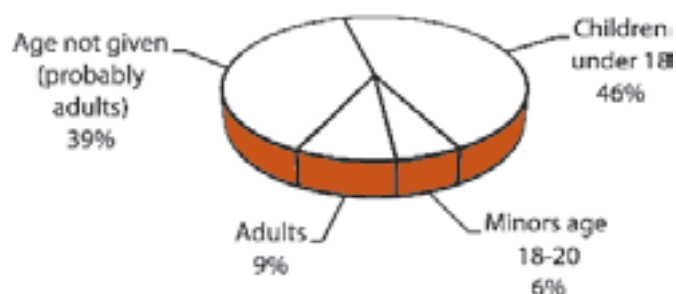


The information about witnesses to past abuse is very similar to the information about witnesses to the most recent incidents of abuse, and it is likely that witnesses to past violence and witnesses to the most recent violence were the same persons in many cases. It appears that many of the children discussed on the application forms were witnesses to repeated violence, which can only intensify the harmful effects of the exposure to violence.

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



**CHART 44: Age groups of persons witnessing past abuse**



The effects of abuse most frequently reported by complainants included emotional or psychological issues, physical health problems, and work-related difficulties. Many experienced financial difficulty, 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 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.

**... the accused had no business to assault the woman he professes to love.**

*S v Likuwa* (18/2010) [2011] NAHC 30 (2 February 2011)

## 5.11 Requests for protection orders

There is no indication that large numbers of complainants are seeking protection order applications for trivial incidents; 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). Adding sexual abuse would raise this total even higher. This suggests that protection orders are not functioning to prevent physical harm before it happens. This may be partly because the law providing for protection orders was 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.

**CHART 45: Did applicant experience physical abuse (in most recent incident, in past abuse or in both)?**  
(excludes sexual abuse)



### Requests for special emphasis on certain types of domestic violence

All protection orders should automatically state that the respondent must not commit any further acts of domestic violence. Section E of the application form allows complainants to list other elements they would like the court to include in the protection order against the respondent.

It is possible for complainants to indicate particular types of domestic violence for “special emphasis”. However, this seems to be a confusing and redundant option; it was ignored by almost half of the complainants, and many magistrates felt it was not a useful exercise. We therefore suggest that this option be eliminated as a way of simplifying the application forms.

### Requests for provisions on weapons

About one-fifth of the complainants requested the removal of some kind of weapon, most frequently blade weapons, such as knives and pangas, and firearms. It is important that obvious weapons should be removed from violent situations – even if they have not been previously used in this context – because of the escalating nature of domestic violence. 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, especially where a weapon remains close at hand.

*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

TABLE 21

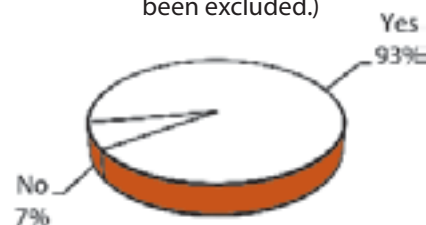
Weapons owned by respondent		Weapons used in most recent incident		Requested terms of protection order: weapons complainant wants respondent to turn over to police	
Weapon	Number	Weapon	Number	Weapon	Number
Firearm	149	Firearm	33	All firearms	125
Knife	79	Knife	111	Knife	53
Panga	26	Panga	17	Panga	18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

## Requests for no-contact provisions

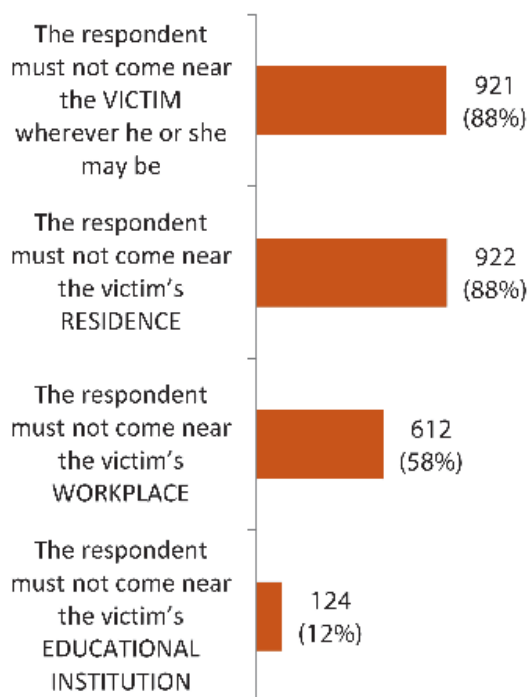
A considerable majority of all applications requested some type of protection order provision prohibiting contact between the respondent and complainant (93%). In 88% of the applications, the complainants requested the general option that the respondent must not come near the victim wherever he or she may be. Many of these applications included requests for additional no-contact provisions relating to the complainant's home, workplace, or educational institution. While these additional provisions may seem essentially redundant, they can provide an extra safeguard and facilitate enforcement.

**CHART 46: Request for no-contact provision?**

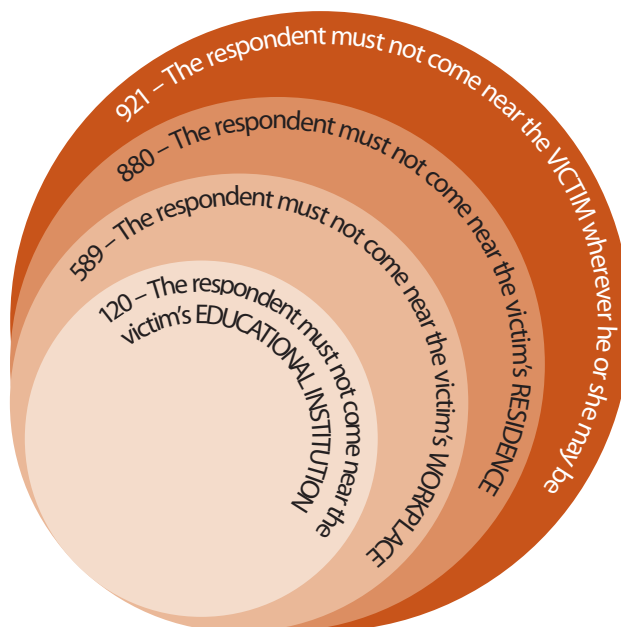
(Applications with missing information have been excluded.)



**CHART 47: Provisions on physical contact requested by all complainants**  
(Applications with missing information have been excluded.)



**CHART 48: 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.

About 39% of the complainants requested that the respondent be prohibited from being present at a specific address other than the complainant's residence, workplace or educational institution. For example, some 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. Other complainants cited addresses of third party who were 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. However, many complainants did not give reasons explaining such requests as intended. An amendment to the form or an explanatory note here may help elicit the information necessary to support no-contact provisions at addresses other than those 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 many such complainants requested orders for exclusive occupation of the common residence, wanting the respondent to be ordered to leave the common home and then to stay away from them.

A majority of the complainants (59%) requested protection order provisions prohibiting or restricting communication between the respondent and the complainant – almost always in combination with requests forbidding physical contact. Looking at only the complainants who were in intimate relationships with the respondent at the time of the application, 61% requested limits on communication with the respondent, indicating that the relationship was breaking down. Almost one-third of the complainants who requested 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 the communication with the complainant was communication only with respect to children. Another commonly-requested option involved communication only via or in the presence of a third party, such as by sending a message through a relative of the complainant or going to the police and contacting the complainant from there. A few complainants suggested exceptions for communications about matters relating to work or finance, or in the case of emergencies.

**CHART 49: Request that respondent be restricted from communication with complainant?**  
(Applications with missing information have been excluded.)



***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

About one-fifth of complainants requested a protection order provision prohibiting the respondent from communicating with specified third parties except under certain conditions. Most of these requests involved children under age 18, usually the children of the complainant and respondent together, or children of the complainant. 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 these requests suggested no exceptions to the prohibition on communication; the remaining third

suggested conditional exceptions such as in the presence of a third party or on arrangement with the complainant.

The possibility of no-contact orders pertaining to third party children raises some interesting questions where the respondent is one of the children's parents, as an order forbidding contact could undermine this parent's right of reasonable access to the child. It is unclear how the Combating of Domestic Violence Act fits together with the Children's Status Act, which provides an automatic right of reasonable access to a non-custodial parent unless a competent court has ordered otherwise. A protection order would appear to fit this description, but the overlap of procedures under the two different laws could encourage complainants to choose one over the other for expediency. 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.

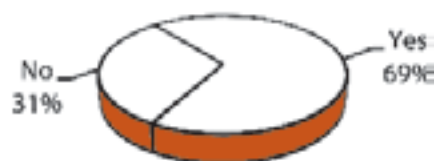
## Requests pertaining to exclusive occupation of joint residence

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*". 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. It would be useful to add a definition of "physical violence" to the Act to remove all doubt.

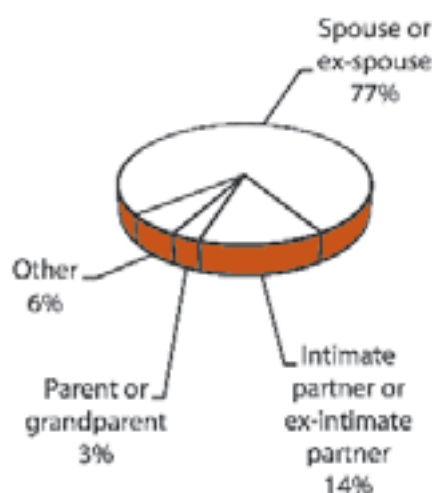
Requests for exclusive occupation of a joint residence were made by 69% of complainants who were living in the same household with the respondent at the time of the application. There were at least 118 cases where the complainant requested an exclusive right to occupy the joint residence, but indicated 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, mistakes in completing the form, or misunderstandings of the purpose of this provision. About 89% of the complainants who requested exclusive occupation of a joint residence were women, compared to 11% men – mirroring almost exactly the proportion of women versus men amongst all the complainants. It was mostly spouses or ex-spouses who made requests for exclusive occupation of a joint residence.

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 two cases involved

**CHART 50: Did complainants sharing a household with the respondent request exclusive occupation of the joint residence?**  
(Applications with missing information have been excluded.)

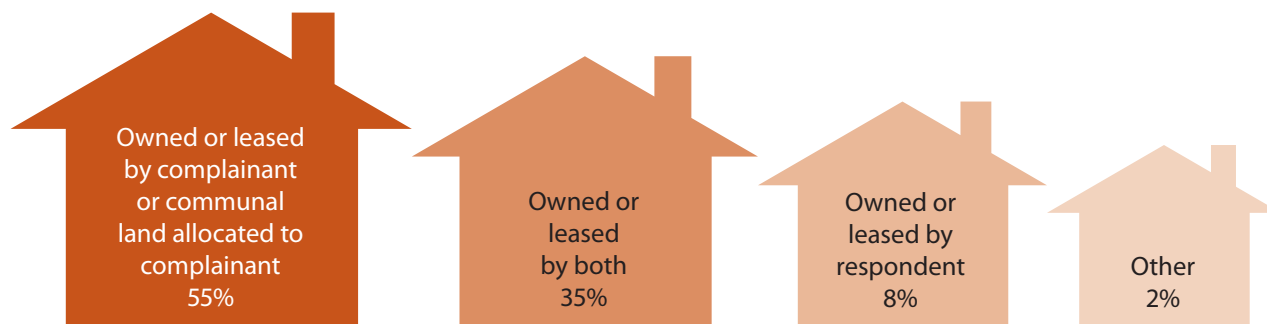


**CHART 51: Relationship of complainant to respondent in requests for exclusive occupation of joint residence**



residences on communal land – with both of these involving communal land allocated to the complainant. 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.

**CHART 52: Ownership of joint residence in requests for exclusive occupation**  
(missing data excluded)



About 60% of complainants requesting 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, while 36% of such complainants identified specific items which he or she wanted to remain at the joint residence for their use. Quite a few complainants requested that all the contents be left behind *and* also requested that some specific contents remain, perhaps reflecting a misunderstanding or perhaps presenting a fall-back position in case the request pertaining to all contents was unsuccessful. Conversely, a substantial number of 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. These inconsistencies suggest that the form should be revised and simplified, perhaps by 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. About half of the complainants who requested exclusive occupation of a joint residence also requested that police remove the respondent from the joint residence and that police accompany the respondent if he or she 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.

***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)

## Requests relating to exclusive occupation of joint residence

Only 7% of complainants who were sharing a household with the respondent requested that the respondent be ordered to pay rent for suitable alternative accommodation for the complainant and any dependents. A small number of complainants (4% of those sharing a joint residence with the respondent) requested that the respondent make other arrangements for alternative accommodation – such as providing building materials so the complainant can construct

informal housing or paying for transport so that the complainant can return to her parents' home. The requests made in this category seemed reasonable, with no indication of attempts to exploit respondents.

## **Requests relating to securing complainant's property**

In about 16% of the cases, complainants requested police to accompany complainants to collect personal items. Although this provision was intended to apply in cases where the complainant would be leaving then common household, some complainants made these requests even though they did not share a residence, or even when they had requested a right of exclusive occupation of the requested joint residence. Such requests could have involved parties who previously shared a joint residence; situations where one person's belongings had found their way to another's residence through visits, sharing or borrowing; a fall-back position in case the request to remain in the joint residence was denied; or fears that the respondent would destroy or hide the complainant's belongings before the respondent was removed pursuant to an order for exclusive occupation.

Only 21% of the complainants specified any items to be left in their possession (as opposed to a request that specified items remain in a joint residence in connection with a request for exclusive occupation). 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 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.

About 27% of the complainants 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. Many of these requests repeated items which complainants had requested to keep in their possession. 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 or small personal items.

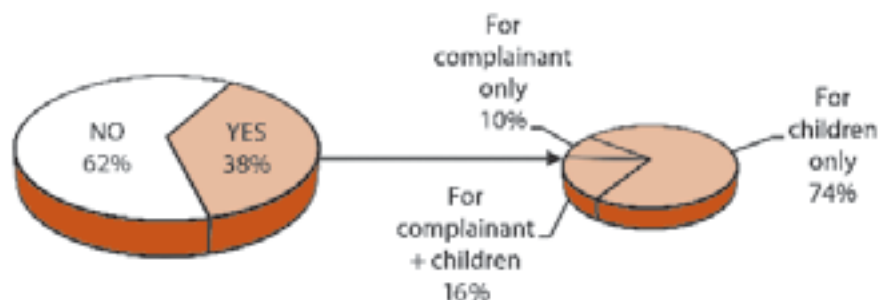
## **Requests for temporary maintenance**

The law allows complainants to request temporary maintenance for the complainant or dependents of the respondent for a maximum period of six months as part of a protection order, 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. Maintenance was requested by some 38% of complainants, typically for

maintenance for one to two children under the age of 15 in care of the complainant, who were in most cases children born to the complainant and the respondent together. The typical request was for N\$300/month per child.

A few applications sought maintenance for children over age 18, which is the age at which maintenance orders normally stop. 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.

**CHART 53: Request for temporary monthly maintenance?**  
(Applications with missing information have been excluded.)



## Requests for temporary orders on custody and access

Complainants may request temporary custody of *any child of the complainant or any child in the care of a complainant*. In contrast, provisions forbidding or restricting access may be requested only in respect of *any child of the complainant*. The purpose of this 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 – and particularly not without giving the custodian of the child, if this is someone other than the complainant or respondent, notice of the proceeding and an opportunity to be heard.

Almost half of the complainants requested custody of the children in question, while another 2% requested that custody of children be granted to some other person. Most of these requests came from mothers. The multitude of applications for temporary custody raises the question of who had custody of these children at the time of the application, as the request would make sense only where the respondent has sole or shared custody of the child at the outset. Indeed, most of the requests for temporary custody involved children of both the complainant and the respondent, although there were a few requests by complainants for temporary custody of grandchildren. A few complainants seem to have misunderstood the concept of custody, and so requested custody of adults over the age of 21.

**CHART 54: Request for temporary custody of children to be given to complainant?**  
(Applications with missing information have been excluded.)



**CHART 55: Request for temporary custody of children to be given to third party?**  
(Applications with missing information have been excluded.)



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. Sometimes this is just confusion on the part of the public, rather than an intentional misuse of the law. The draft Child Care and Protection Bill contains an amendment designed to prevent misuse of the domestic violence law by tightening the requirements for provisions addressing temporary custody, making it possible only where there is “*serious and imminent danger to the child*” and only after an immediate social worker investigation.

In 12% of the applications, the complainant requested that the respondent be refused all access to specific children. In another 27% of applications, the complainant requested that the respondent be allowed access to the children only under certain conditions. On the whole, the proposed conditions seemed reasonable. For example, some proposed conditions suggested visiting schedules similar to those typically found in divorce orders, and some requested that access take place only in the presence of third parties, such as extended family members, or 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.

**CHART 56: Request for respondent to be refused all access to specified children?**  
(Applications with missing information have been excluded.)



**CHART 57: Request for respondent to be allowed only conditional access to specified children?**  
(Applications with missing information have been excluded.)



There appears to have been some confusion and overlap between requests for no-contact provisions applying to third parties, and requests for restrictions on access to children. Some complainants may have understood “children” in the sense of “offspring” rather than children under age 18, and complainants may understandably have been unaware that access has a specific legal definition as an incident of parental rights and responsibilities. This confusion indicates that the application form needs to be simplified and clarified.

## Requests for other orders

The court is authorised to keep the complainant’s physical address confidential if requested to do so, but this makes it impossible for the court to include a provision forbidding the respondent to enter the complainant’s residence. Such requests were not common, which is to be expected considering that most complainants and respondents shared a common residence at the time of the application.

*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)*

## 5.12 Potential witnesses for complainants

The application form asks about witnesses to the most recent incident of abuse and to past abuse, primarily because the complainant is entitled to get assistance from the court in summoning witnesses if necessary. Over 72% of complainants identified potential witnesses who could come to court to give evidence in support of their application, with more than half of these complainants indicating that they could bring multiple witnesses. About 40% of the proposed witnesses were family members. The surprisingly high number of proposed witnesses gives some indication of how domestic violence is not in fact “private”, but a problem spilling over to into the community and affecting large numbers of people. Although ages were provided for only about one-third of the potential witnesses, 12% of those witnesses were children under the age of 18. Being asked to testify about domestic violence involving one or both parents could be extremely distressing for a child, raising conflicting feelings of loyalty.

Magistrates consulted at a training session in 2011 suggested that there is no real need for complainants to list potential witnesses on the application form, since most complainants and respondents rely on witnesses who attend court voluntarily, without the need for a summons. If either party needs court assistance to summon a witness (such as a medical practitioner who treated injuries stemming 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.

## 5.13 Interim protection orders

### Procedure

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 the interim order before having heard the respondent’s side of the story. The interim order is designed to provide temporary protection until a hearing is scheduled to hear both sides of the story. The respondent always has an opportunity to be heard before the interim order is transformed into a final order.

The basic criteria for granting an interim protection order are the same as the criteria for granting a final protection order:

- There must be evidence that the respondent is or was committing domestic violence toward the complainant.
- 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.

The court is obliged to consider any application for a protection order “*as soon as reasonably possible*” after receiving it. 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 to give evidence.

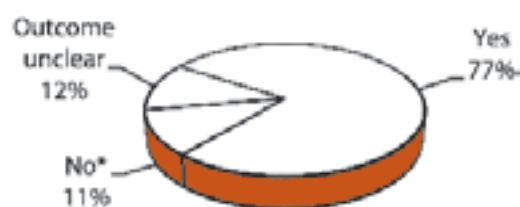
After considering the application, the court has four main options: (1) If the court is satisfied that there is sufficient evidence to show the respondent is or was committing domestic violence toward the complainant, the court *must* issue an interim protection order. (2) The court may refer the matter for further enquiry without making any order “*if the circumstances so require*”. (3) The court may grant part of the requested relief and refer any outstanding issues to a further enquiry. (4) The court may dismiss any application which it considers to have no merit.

There are two routes whereby an interim protection order can be confirmed as a final protection order. If the respondent does not oppose the order by the “return date” set by the interim protection order, the court must confirm it (provided that the court is satisfied that the respondent received notice of the order). If the respondent opposes the order, the court must hold an enquiry where both parties can present their evidence on or after the return date, and then decide whether or not to finalise the order.

## Interim protection orders granted

It appears that over three-quarters of protection order applications (77%) resulted in interim protection orders. No interim protection order was issued in about 11% of applications – including four cases where a final protection order was apparently issued without being preceded by an interim protection order. 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.

**CHART 58: 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.

Most of the cases where the applications were unsuccessful do not give any indication of the reasons why, but the material in the file indicates that the magistrate dismissed a few applications 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.

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.

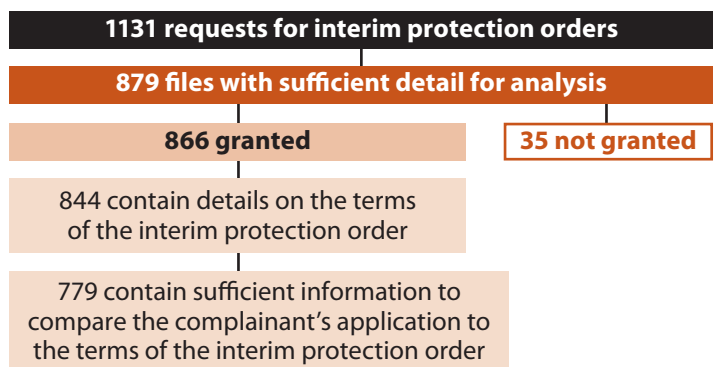


It is not surprising that many complainants have a change of heart, since taking legal action of any sort within a domestic relationship is a step that can understandably be fraught with emotional conflict. However, the number of abandoned applications also raises fears that there could be some complainants who were pressured 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, but no safeguards for situations where 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. We can conclude that courts appear to take it seriously when complainants allege domestic violence, and are willing to order interim protection if a reasonable case is made out by the complainant.

There were 879 files where the files 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 59**



Who received interim protection orders? Men and women were about equally successful, with the proportions of successful male and female complainants being almost identical to the proportions of males and females who made protection order applications. The ages and domestic relationships of successful complainants similarly followed the same patterns as those in the initial pool of applications. Almost all of the applicants who brought applications on behalf of someone else suffering from domestic violence were successful in getting an interim protection order.

## 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.

Decisions on applications for protection orders were typically made on the same day as the application (41% of the cases with sufficient information to analyse the time frame), or on the next day (19% of these cases). This suggests that in most cases, courts are cognizant of the urgent nature of protection order applications and responsive to this need, despite the heavy workload of magistrates' courts in Namibia. However, worrying delays were experienced at some courts. At some locations, courts seemed to attend to protection order only on certain days, and some courts reportedly assign lower priority to protection order applications when staffing is short.

**TABLE 22**

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>	

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. As

will be discussed below, slow service of interim orders seems to be a more serious problem than delays by magistrates in making decisions on the applications.

The magistrate has discretion to determine what terms should be included in an interim protection order, in addition to the mandatory general provision prohibiting the respondent from committing any further acts of domestic violence against the complainant. In deciding on the terms, the court must have regard to the history and nature of the domestic violence, the existence of immediate danger to persons or property, the complainant's perception of the seriousness of the respondent's behaviour, and the need to preserve the health, safety, and well-being of the complainant and any persons in the care of the complainant.

Typically, four to six provisions requested by the complainant would be included, one or two requested provisions would not be granted, and one or two provisions would be included by the court despite not having been requested.

While it 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 the order to know the *contemplated* duration of the various terms in an interim protection 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.

## Special emphasis on certain types of domestic violence

Interim protection orders can direct the respondent to refrain from certain types of domestic violence. The interim protection orders which did so emphasised six different types of violence on average, out of a total of nine possibilities. This degree of multiple emphasis suggests that the exercise is not very helpful, since emphasising virtually everything is tantamount to emphasising nothing in particular. Including emphasis on specific types of violence in the protection order is also not legally relevant, since all protection orders automatically prohibit all domestic violence as defined by the Act. 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.

## Provisions on weapons

About 18% of the interim protection orders granted included a provision ordering removal of all weapons or certain specified weapons, with the most common weapons cited being firearms and knives. 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 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. 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.



**CHART 60: Interim protection order provisions on weapons**

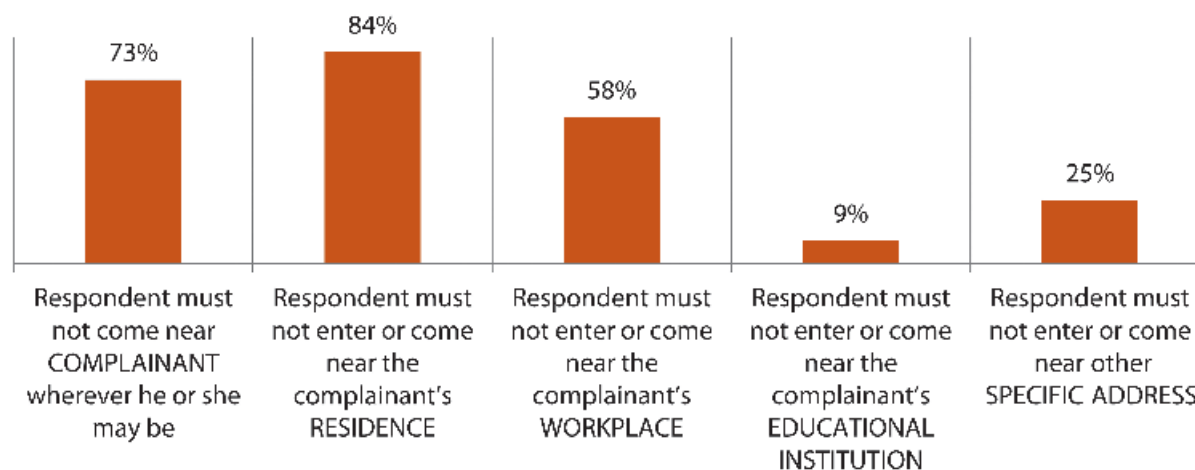


Only a very small number of interim order involved suspension of the respondent's firearm license. Since each firearm licence applies only to a single specific weapon, this extra precaution would not actually be necessary if the firearm were confiscated by police. Courts made orders to suspend all firearm licences at their own initiative in ten cases, compared to only two 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 sense to adjust this potential protection order provision so that a magistrate in appropriate cases can 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.

## No-contact provisions

Two-thirds of the interim protection orders included at least one form of no-contact order, usually orders requiring the respondent to stay away from the complainant's residence or to stay away from the complainant wherever he or she may be. The vast majority of requests for general no-contact provisions or for restrictions from the complainant's residence of 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 relating to the complainant's residence or workplace resulted from complainants' requests, while the court more often proposed restrictions from educational institutions or other specific addresses.

**CHART 61: 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

More than half of all interim protection orders in the sample (57%) contained a prohibition on communication by the respondent with the complainant. Most of these allowed for limited communication under specified conditions, the most common type of condition being only in circumstances relating to the children or only via a third party. There were a few exceptions for emergencies or for financial matters. About 72% of the requests for prohibition 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. A majority of interim protection orders contained provisions specifying no physical contact with the complainant together with provisions prohibiting or restricting communication between the respondent and the complainant.

**CHART 62: Prohibitions on communication with complainants in interim protection orders**



**CHART 63: 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 a third party other than the complainant. Most of these third party provisions covered one to three individuals, mostly 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. About 65% of the restrictions on communication with third parties were absolute, while others set conditions similar to those provided for communication with complainants - most commonly allowing communication only in the presence of a police officer, lawyer or social worker, only if by appointment or with permission from the complainant, or only in the presence of a family member. Courts seem to have been willing to intervene to protect third parties in domestic violence situations, initiating over one-third of these third-party provisions.

## Exclusive occupation of joint residence

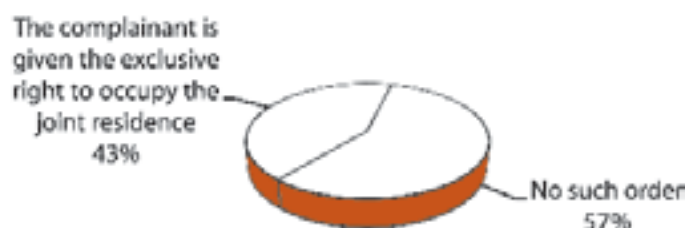
Protection orders can include orders for exclusive occupation of a joint residence, along with ancillary orders about the contents of this residence and police assistance with enforcement and protection during the transition. Such provisions are available only where “physical

violence” has been committed. 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);
- 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.

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.

**CHART 64: Exclusive occupation of joint residence in interim protection orders**



Women fared somewhat better than men in the success rates of requests for a right of exclusive occupation. The vast majority of these orders (at least 88%) involved intimate partners of some sort, most often married spouses. About 4% involved parents of the respondents.

**TABLE 23**

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 24**

Sex of complainants requesting and receiving right to exclusive occupation of joint residence				
Sex	Complainant REQUESTS exclusive occupation of joint residence		Complainant GRANTED occupation of joint residence in interim protection order	
	Number	Percent	Number	Percent
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>

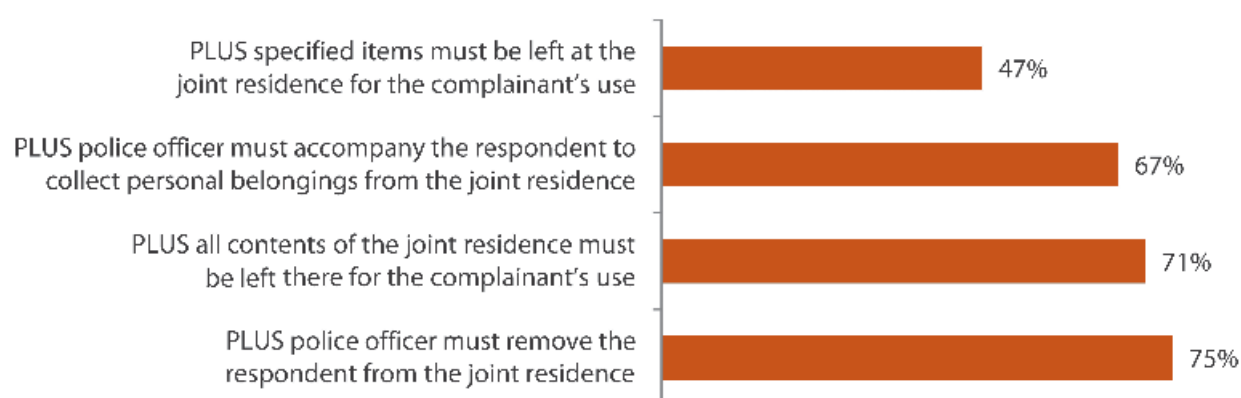
Most of the orders for exclusive occupation involved persons who had been sharing a home for a considerable time period. Where complainants in these cases were currently sharing a joint residence, the mean time period was 10 years and the median time period was 8 years; where they had previously shared a joint residence (but were not currently doing so), the mean time period was 7 years and the median time period was 5 years. Only about 5% of the parties in this group had been sharing a home for less than one year.

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%. 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.

One question is why would a complainant need an order for exclusive occupation of a joint residence which the complainant alone owns or leases? In the context of a married couple, both spouses normally have a right to occupy the matrimonial home, according to common law principles, regardless of who owns the property. For unmarried parties, the complainant could evict the respondent, but in a context of 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 complainant (80%), with about 20% being at the court's initiative.

**CHART 65: Ancillary orders given together with order for exclusive occupation of joint residence**



Three-quarters 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. Similarly, more than two-thirds of these orders 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 which authorised the complainant to have exclusive occupation of a joint residence also ordered that all the contents of that residence must remain in place for the complainant's use. About 48% of these orders included an order stating that specified contents of the joint residence must remain in place for the complainant's use, but there was a big overlap between these two categories. 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.

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 Act as being ancillary to orders for exclusive occupation of a joint residence, but these “ancillary orders” were sometimes included in interim protection orders which did *not* include 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 – pointing to the need to provide statutory authority for more flexible terms in protection orders. It may also be that the complexity of the forms caused confusion – pointing to the need to provide simpler forms.

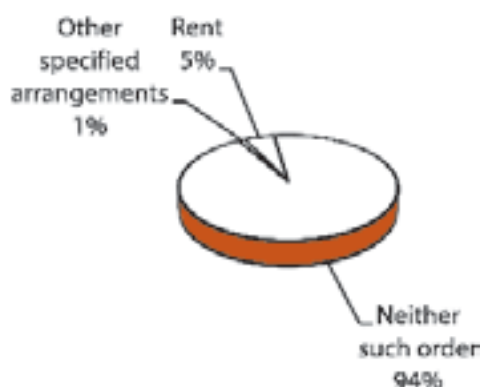
*She abused me emotionally and physically which I cannot handle anymore [so I] instituted a divorce case which is in progress. We stay at the house in separate rooms. The day she received the divorce letter from the deputy sheriff, she made a threat that she will stab me to death where I am sleeping. 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

## Alternative accommodation

Orders for alternative accommodations were rare (6%), as they were seldom requested. These orders are limited to cases where the respondent is legally liable to maintain the complainant, and it would appear that this limitation is being followed in most cases. Most of the 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 is finalised.

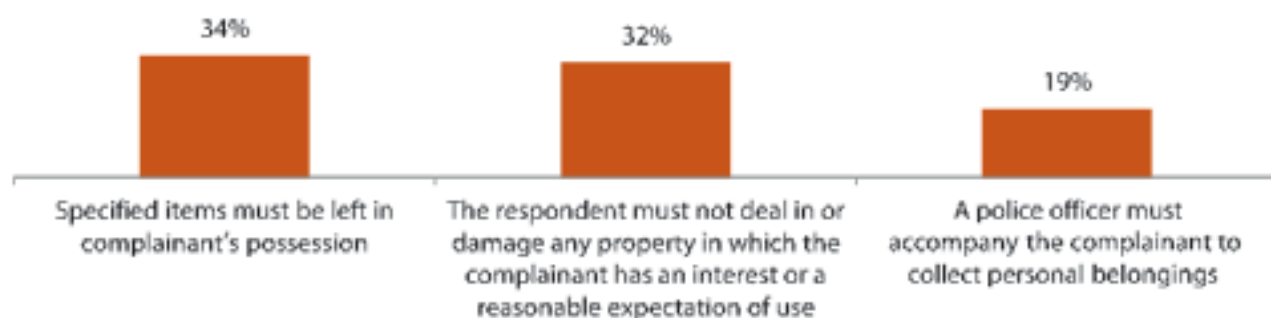
**CHART 66: Alternative accommodation**



## Securing complainant's property

Protection orders stating that specified items must be left in possession of the complainant were made in about one-third of the interim protection orders in the sample. 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. There was quite a bit of overlap between these two categories. About one-fifth of the cases had an additional order stating that a police officer must assist the complainant to collect personal belongings from the joint residence in safety.

**CHART 67: Safeguarding complainant's property interests**



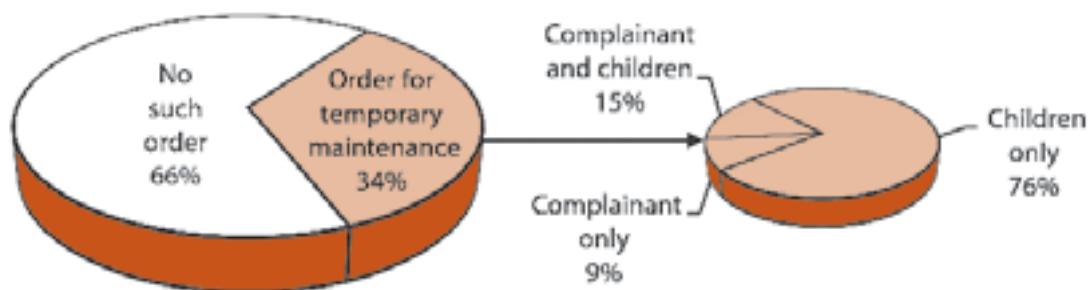
These orders are conceptualised as being most appropriate for situations where the complainant is *not* given a right to exclusive occupation of the joint residence; however, in many cases these orders were given in combination with orders for exclusive occupation of the joint residence. The conceptualisation in the law may be too confusing, or too restrictive for the messy property arrangements which occur in real life. Most of the orders made in respect of securing specific property of the complainant were made in cases where the parties had previously or currently shared a joint residence – the situation that would most often give rise to mingled property. Courts seemed fairly sympathetic to complainant's assessments of the situation on this score, granting these requests 55-65% of the time. These provisions were imposed at the court's initiative in roughly 40-50% of the cases.

## Temporary maintenance

Although the Act authorises temporary maintenance for the complainant or any child of the complainant if the respondent is legally liable to support them, the interim protection order form provides a space only for child maintenance, an error which should be corrected.

Most requests for maintenance were granted, but it was unusual for maintenance to be ordered where it had not been requested. Temporary monthly maintenance was granted in 34% of cases, with the vast majority of these being maintenance only for children (and not for the complainant). There was a wide divergence in the range of amounts of maintenance granted, emphasising the fact that domestic violence cuts across social and economic classes.

**CHART 68: Temporary maintenance in interim protection orders**



**TABLE 25**

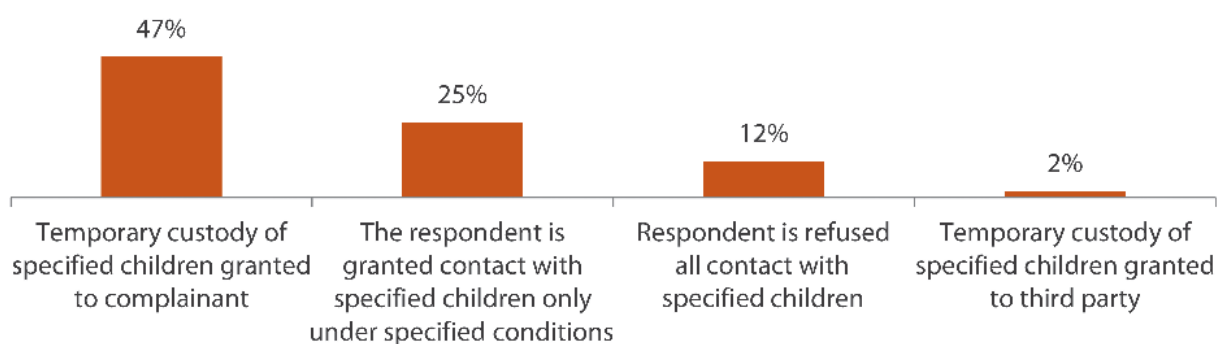
Amount of temporary maintenance granted in interim protection orders					
Beneficiary	Number	Mean	Median	Minimum	Maximum
For complainant	66	N\$1357	N\$600	N\$100	N\$10000
For all children	254	N\$897	N\$600	N\$200	N\$8000
Per child	511	N\$446	N\$300	N\$50	N\$8000
<b>Total request for complainant (if any) and children (if any)</b>	<b>279</b>	<b>N\$1136</b>	<b>N\$600</b>	<b>N\$150</b>	<b>N\$12500</b>

There were a few cases where the provisions on temporary maintenance seem to have been misapplied by the court - such as an order of maintenance for a pet and some orders which ignored the rules in the Act on the maximum duration of temporary maintenance orders. This indicates that future training of magistrates should place emphasis on maintenance provisions in protection orders.

## Temporary custody and access orders

Although temporary custody and access orders in protection orders were meant to be emergency measures only, the Act does not set a limit on duration, which means that they may be not temporary at all in reality. The lack of harmony between the Combating of Domestic Violence Act and the Children's Status Act is intensified by the fact that provisions for custody and access are common features of interim protection orders affecting large numbers of children. Almost 50% of the interim protection orders included orders for custody and 38% included orders pertaining to access. In a handful of cases, temporary custody was granted to the complainant in a situation where this seems to make no legal sense – which 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.

**CHART 69: Temporary child custody and access in interim protection orders**



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. It is also inexplicable that interim protection orders granted custody rights to ten adult offspring over the age of 21 and denied or restricted access to 12 adult offspring. These anomalies indicate that some cases seem to have confused the parental right of access with the more general concept of contact and communication. The apparent confusion suggests that this aspect of the law should also be targeted for emphasis in future training.

The court has authority to allow the respondent access to a child of the complainant only under certain circumstances, considering what is reasonably necessary for the safety of the child. The majority of restrictions on visits to children were broad, with the two most common being by appointment or permission, or only on specified weekends and/or holidays. Only a small proportion (a little over 1%) stated that there could be no physical contact with the children at all.

Custody requests by complainants were frequently granted (about 83% of requests). Requests for restricted contact were also often successful in (about 68% of requests). Requests for denial of all access to children by the respondent were less common, and were successful only about half of the time. Requests that custody be granted to third parties were infrequently made, with about 58% of these requests being granted. It was unusual for courts to include custody and access provisions in interim protection orders where these had not been requested by the complainant.

## Other orders

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. 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 Act requires that all interim protection orders must be sent to the nearest police station. The interim protection order form includes a standard provision where the magistrate adds the name of the appropriate police station to be given notice. However, this provision was only completed in 78% of the interim protection orders, raising the suspicion that the intended notice to police often failed to take place.

Under the Act, the clerks of court must also give notice to the Ministry of Gender Equality and Child Welfare if the interim protection order "involves" children. Although a large number of interim protection orders included orders pertaining to children or evidence that children had been exposed to the domestic violence, only 7-8% of the interim protection order forms marked the provision on this duty.

The court's use of the section of the interim protection order form on further orders is confusing because there seems to be a substantial overlap between the details provided here and the standard terms dealt with elsewhere on the form. For example, although there are standard provisions for items such as no-contact provisions, maintenance, custody and access, some magistrates covered these topics under "further orders" instead. Some of the "further orders" supplemented the standard provisions by providing additional detail. Some included provisions which were possibly practical and helpful, but seemed to go beyond the authority given to the courts by the Act.

Most interim protection orders issued included some but not all of the provisions originally requested (70%). 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 (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. We can conclude that more than three-fourths (77%) of applications for protection orders resulted in an interim protection order, and almost two-thirds of complainants (about 64%) got some or all of what they asked to have included in the order.

*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

**CHART 70: Terms of interim protection orders issued compared to complainants' requests**  
(for the 779 interim protection orders with sufficient information for comparison to application)

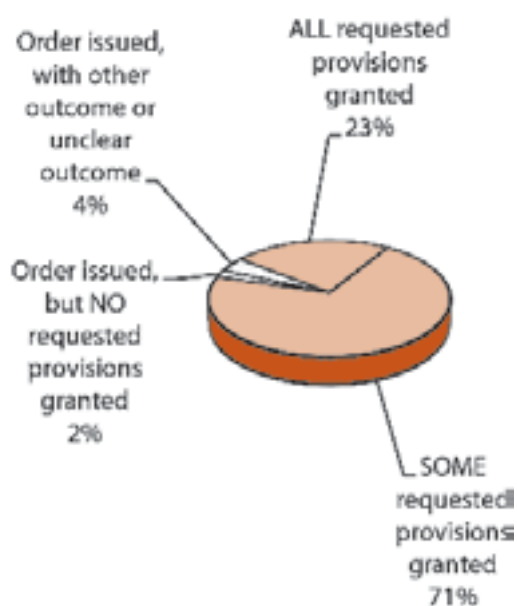


TABLE 26

Summary of key protection order outcomes (for the 779 interim protection orders with sufficient information for comparison to application)						
Term	Interim protection orders containing this term		Condition requested by complainant and granted		Condition NOT requested by complainant but included	
	Number	Percent	Number	Percent	Number	Percent
<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

The interim protection order has no effect until it is served on the respondent, making service of the interim protection order of urgent importance. The regulations make it a duty of the police to make reasonable efforts to serve the order within five days of receiving it from the clerk of court. If the police cannot serve it, the clerk of court must arrange service without delay.

The regulations do not include a specific form on which to record returns of service. 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, pointing to service of protection as the weakest part of the process.

Other indications of timeframe in the case files suggest many interim protection orders are not being served promptly, with 40% apparently being served ten days or more after service being issued, 11% apparently being served one month later, and a few apparently being served more than two months after being issued.

Successful service is a fundamental practical aspect of the protection order procedure and therefore in need of urgent attention. Efforts by the court and police must be better coordinated to serve interim protection orders more promptly so that they become enforceable.

## 5.15 Respondent's response to interim protection order

The respondent is supposed to complete a form enclosed with the interim protection order served on him or her (Form 6), and return it to the court before the specified "return date" – which is normally 30 days from the date that the interim protection order is issued. 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 the end of this enquiry. If the respondent does not oppose the interim protection order before the return date, it will become final. The respondent may also accelerate the enquiry process by requesting an earlier date of enquiry in the notice of opposition.

The Act and the form are not a good fit on this point. Form 6 allows for a date for the enquiry to be set *in advance* and indicated on the notice delivered to the respondent. It is probably

**TABLE 27**

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%
11-20	1	16.1%	76.4%
21-30	1	12.0%	88.6%
31-40	2	4.0%	92.7%
41-60	1	4.8%	97.6%
60+	1	2.4%	100.0%
<b>Total</b>	<b>123</b>	<b>100.0%</b>	

Missing data excluded.

impractical for a provisional date to be set in this way, before the court even knows if an enquiry will be necessary. However, section 11 of the Act contemplates that the clerk of court, *after* receiving a notice of opposition, will set a date for the enquiry within 30 days of the date when the notice from the respondent was received. In any event, what happens in practice does not tend to follow either of these routes.

Based on the use of Form 6 to indicate opposition to the interim protection order, about 41% of such orders were opposed by respondent, although almost half of these forms were incomplete and some confusingly seemed to indicate that the respondent was not opposing the order. However, key informants in almost every location reported that most interim protection orders are opposed by the respondents, noting that respondents oppose verbally, rather than using the form. Even where there was a fully-completed Form 6 in the case file, the details filled in by the respondents indicate that they may not understand the meaning of the form. At least 18% of the respondents who completed Form 6 failed to sign it, and 35 respondents returned a completely blank Form 6. Because the forms are clearly causing confusion, and because respondents often come to court for more information or attend the enquiry even if they are not clearly opposing the order, we suggest that this aspect of the process should be simplified.

***They oppose, but when they come to court, they have no grounds for opposing.***

clerk of court, Tsumeb

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. 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.

About half of the courts followed the implicit direction to make the pre-set enquiry date seven days after the return date.

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.

Of the notices of opposition which were completed or partially completed, only 12% of respondents listed any witnesses whom they proposed to give evidence on their behalf at the enquiry – but, like complainants, respondents who did list potential witnesses sometimes mentioned children. This is worrying as testimony recalling acts of domestic violence could 'retraumatise' a child witness, and give rise to conflicting feelings of loyalty in situations where both the complainant and the respondent are parents of the child.

Many key informants stated that respondents do not understand the procedure for opposing protection orders. There was unanimous agreement from magistrates consulted in 2011 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.
- 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.

***People don't understand about opposing the order.***

clerk of court, Usakos

# 5.16 Enquiries and final protection orders

If the respondent does not oppose the interim protection order, it will automatically become final. If the respondent does oppose it, the respondent can give his or her side of the story at an enquiry, after which the magistrate can

- confirm the interim protection order in part or completely 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.

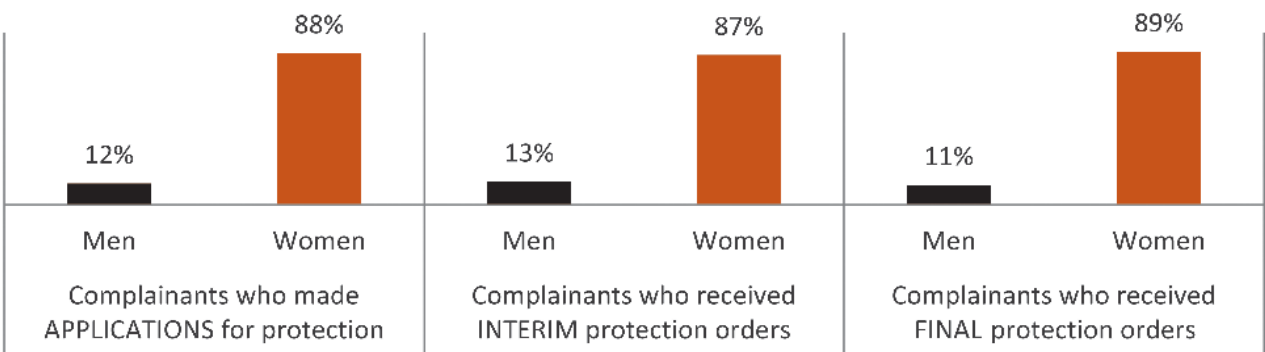
There is some confusion between the Act and the regulations on who can be present at the enquiry, with the Act stating that the courtroom is to be closed to all non-essential persons, whilst the regulations state that the court may order that the public or press be excluded. The Act and the regulations should be harmonised on this issue.

We know very little about enquiries from the case files. In fact, we cannot even determine how many of the cases in the sample involved full enquiries. We could not ascertain sufficient information to analyse the use of witnesses in enquiries, or the frequency and cause of postponements.

The data shows that there were very few final protection orders (272) in comparison to the number of interim protection orders (866) in the case sample.

In trying to determine who received final protection orders, the outcomes for sex and relationship follow the same basic patterns as the pool of applications – as in the case of interim protection orders. Similarly, the domestic relationships of those who were granted final protection orders also follows the patterns of relationships in the pool of applications and in the universe of interim protection orders. It is difficult to determine any meaningful patterns in the age of complainants who received final protection orders, as compared to those who made applications or received interim orders.

**CHART 71: Sex of complainants who applied for and received protection orders**



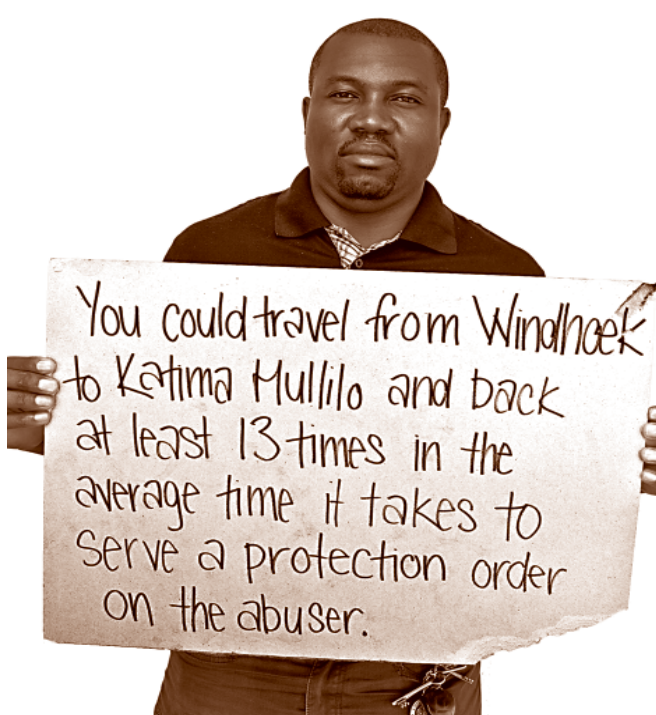
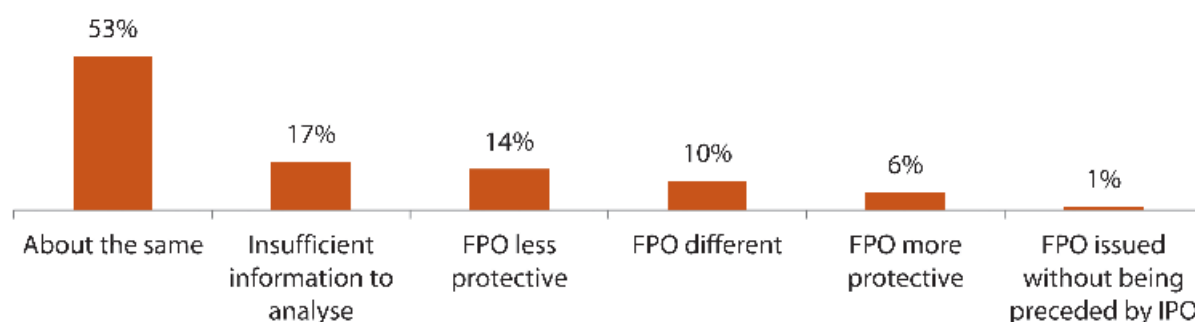
In examining how long it takes to obtain a final protection order, final orders were signed by the magistrate *on* the return date in just under half of the instances where they were granted (42%). Another 11% of the final protection orders were granted within a week of the return date, and another 7% within two weeks. It is worrying that more than 28% of final protection orders were granted more than two weeks after the return date, as this 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.

Looking at this information from another angle, almost one-third of the final protection orders were signed within 30 days or less after the date when the interim protection order was issued. Another third of the final protection orders were signed between 30 and 45 days after the date when the interim protection order was issued, with the typical case producing a final protection order 38 days later. The fact that almost two-thirds of final protection orders 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.

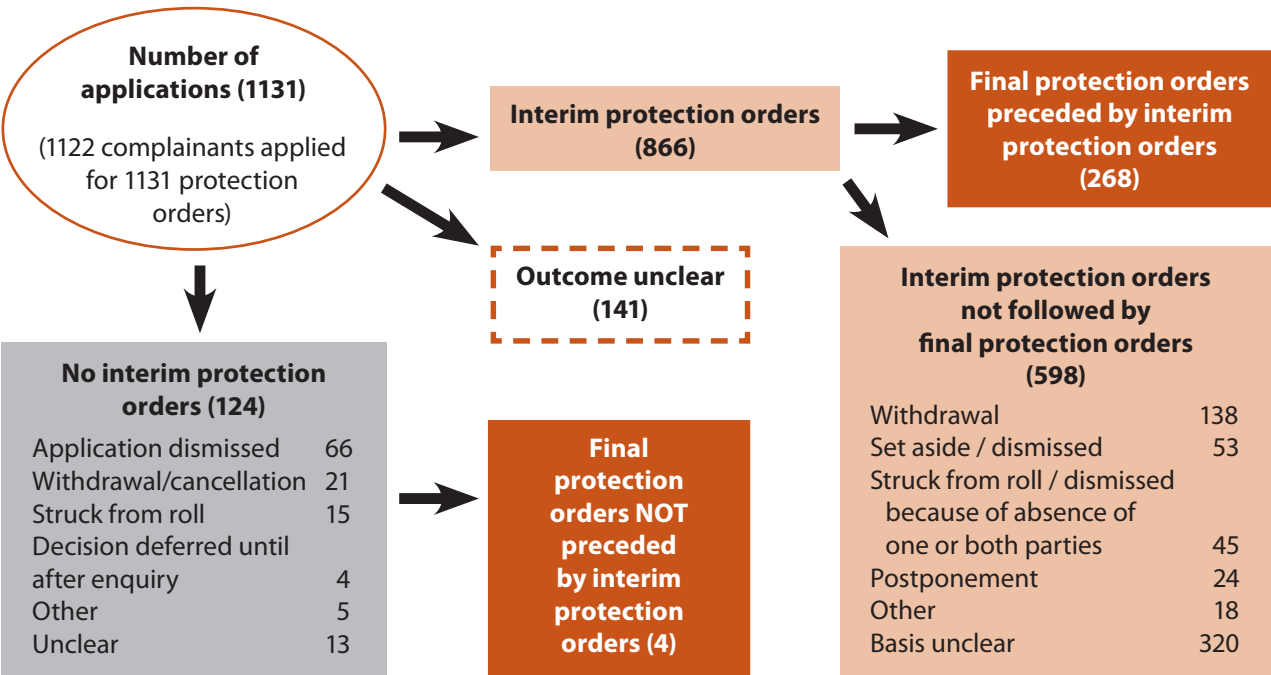
With regards to the terms of the final protection orders compared to terms of interim protection orders, a little more than half essentially mirror the interim protection orders which preceded them. Some 14% had fewer protective provisions, while 6% had more protective provisions. These figures suggest that interim protection orders are generally reasonable, even though they are made *ex parte*, but that the process of finalising interim orders is not mere rubber-stamping.

**CHART 72: Final protection order (FPO) compared to interim protection order (IPO)**



# 5.17 Overall case outcomes

CHART 73: Case outcomes



To recap, our sample of cases covered applications for 1131 protection orders by 1122 complainants. Over three-quarters of these protection order applications resulted in interim protection orders, with almost two-thirds of complainants getting some or all of what they asked to have included in the order at this stage – but only about one-quarter of the applications clearly resulted in final protection orders. However, the actual number of final protection orders could be higher because the final outcome of the application was unclear in 28% of the files. Because such a small proportion of cases resulted in final orders, we explored the various reasons why interim orders were not made final.

CHART 74: Final outcome of protection order applications



## Case withdrawals

Out of the total of 866 cases where an interim protection order was granted, 68% apparently did not result in a final protection order. In about 16% of these cases, complainants withdrew their applications between the interim and final stages. And this is probably an underestimate; if all the non-appearances in resulted from complainants’ decisions not to pursue their applications, there could be case withdrawals in as many as 22% of the cases where interim protection orders were issued but no final order was made.

Case withdrawals can stem from a desire for reconciliation, intimidation by the respondent, pressure from extended family members, financial dependence on the abuser, or attitudes of fear and helplessness resulting from the history of domestic violence.

***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

The Act requires that where a complainant does not appear at an enquiry, the police must enquire into the reasons for such non-appearance to ensure no intimidation has taken place. However, out of the 42 cases where the complainants clearly did not appear at enquiries, only 10 files recorded such a request from the court to the relevant station commander – and only two files contain station commander replies.

***In some cases, one can tell that they have been intimidated or given presents in order to withdraw.***

clerk of court, Okahandja

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, especially if the respondent is the breadwinner. One option might be to refer cases involving withdrawals to social workers for ongoing monitoring.

***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.***

magistrate, Keetmanshoop



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.”

***Most are withdrawn because he is the breadwinner and she cannot survive without him.***

magistrate, Swakopmund

Case withdrawals are similarly common in rape cases, where rapes are often perpetrated by members of the victim's family or community. A study by the Legal Assistance Centre recommended victim support programmes with components of counselling, information and networking with others in similar positions to address rape case withdrawals; similar

support services would be likely to assist persons who are hesitating about the way forward in addressing domestic violence.

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. But 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. For example, 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.

***As soon as the case is withdrawn  
the man is back to his old routine.***

prosecutor, Gobabis

## Dismissals

Of the cases where interim protection orders were not followed by final protection orders, 53 were dismissed. The magistrate's basis for dismissing a case or setting aside an interim protection order was often not indicated in the case file.

## 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.



## Procedure when parties are absent from enquiry

Courts have different 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 and remand the enquiry for a later date. 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 – even if the complainant has asserted a wish not to pursue the matter, since this could be the result of intimidation. 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.

## 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 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 an enquiry. In practice, however, most court personnel interviewed believe that the complainant must at least attend an enquiry in order for an interim protection order to be finalised. In contrast, some clerks reported that finalisation of an unopposed order happens automatically and some clerks indicated that the decision to finalise an unopposed protection order remains with the magistrate, despite the express terms of the Act.

Some complainants also do not understand the difference between interim and final order or procedure for making interim protection orders final – and our interviews 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.

The regulations and forms should articulate the procedure to finalise a protection order in more detail, and this issue should be a focus of future training.

*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)*

## 5.18 Appeals

There was no indication that any of the decisions were appealed to the High Court. It may be 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

The Act provides a procedure whereby complainants or respondents may apply to have a protection order modified or cancelled. There were 22 requests for modification or cancellation of protection orders, and 14 files containing indications that the court had modified or cancelled protection orders. The information available was insufficient to allow for any meaningful analysis.

## 5.20 Breach of protection order

**Breach of a protection order” is a criminal offence punishable by a fine of up to N\$8000 or imprisonment for up to two years, or both.**

The case files generally contained little information on breaches of protection orders. Key informants reported concerns about this aspect of the legal scheme, such as a shortage of police to serve protection orders and to respond to domestic violence complainants. The Legal Assistance Centre has received several reports from clients who have expressed dissatisfaction with the Women and Child Protection Unit because they say that police fail to take any action when respondents breach protection orders. Police who were interviewed had little experience of breaches.

A related problem is the reluctance of some complainants to lay criminal charges for breach of protection orders. 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.

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. There appears to be a need for some regulatory guidance on how the court which issued the protection order should be notified of charges laid with police for breach of the order, and on how this information should be recorded in the file.

*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

*One criminal 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. Noting that “there is a need to impose a lengthy sentence in order to protect women and other vulnerable members of society,” the court 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.”*

S v Muvangua [2010] NAHC 200 (14 December 2010)

## 5.21 Domestic violence offences

The Combating of Domestic Violence Act does not create any new crimes. 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. Violating a protection order is also a domestic violence offence.

*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.*

*S v Soroseb* (CC 08/2010) [2010] NAHC 41 (18 June 2010)

### Formal warnings

One innovation in the law is the possibility of a formal warning from the police. 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. 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.

There were 28 cases in our sample where formal police warnings were included in the file. However, it was worrying to realise that police personnel at a 2011 training session seemed generally unaware of the provision on warnings.

*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.*

*S v Likuwu* (18/2010) [2011] NAHC 30 (2 February 2011)

## Criminal cases involving domestic violence offences

Our field research did not cover domestic violence offences, but anecdotal evidence suggests that police may continue to be unsympathetic to persons wishing to lay charges of domestic violence offences.

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.

Where there is a domestic violence offence, the complainant must be informed about the bail hearings and given a chance to put relevant information before the court. If a person accused of a domestic violence offence is released on bail, there must normally be a bail condition prohibiting the accused from having contact with the complainant. The accused must also continue to support the complainant or other dependents of the complainant at the same level as before the arrest (where there is legal liability to maintain). These standard conditions can be omitted only if the court “*finds special circumstances which would make any or all of these conditions inappropriate*”. The court may add other bail conditions if necessary. 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.



*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.*

*S v Basson (CC 23/2010) [2011] NAHC 186 (1 July 2011)*

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.

The prosecutor is required to make sure the victim has all information that might help to lessen the trauma of the criminal trial. 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. The cases examined illustrate the severity of domestic violence in Namibia, with convictions for a range of grisly forms of arson, culpable homicide and murder in domestic relationships – including murder by repeated stabbings, murder of an intimate partner together with children or other family members and even murder followed by dismemberment of the corpse.

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. There were other criminal cases which dealt with crimes which qualified as domestic violence offences, but without making any mention of the concept of domestic violence offences under the Act. Only five of the cases examined made any explicit mention of the special procedural provisions for domestic violence.

Regardless of whether the Act was explicitly mentioned or not, many cases which involved forms of domestic violence treated the domestic context as an aggravating factor. However, there are a few cases which have departed from this general pattern, where the court cited concerns about the impact of domestic violence on society but treated the convicted abuser extremely leniently. There were also some cases which did not seem to give any particular weight to the existence of a domestic violence context one way or another. However, 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)*

## **5.22 Do protection orders work?**

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 magistrates stated that a protection order application, for most women, is a measure of last resort.

However, several informants suggested that some complainants misuse protection orders in several ways:

- as a “*poor man’s divorce*”, 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;
- as a strategy to increase leverage where there is non-payment of maintenance;
- in a race to evict each other from the common residence;
- as punishment when their spouses are unfaithful;
- as forms of threats or blackmail; or
- for petty issues.

No key informants suggested that the law needs to be fundamentally changed or amended to respond to these occasional abuses. Furthermore, the research conducted indicates that most protection order applications are based on incidents of physical violence often accompanied by serious threats.

Most key informants interviewed felt that protection orders are effective in providing protection for victims of domestic violence. For example, a magistrate in Gobabis praised the scheme for being fast, low-cost and effective; “*rich or poor can afford it*”. A magistrate in Keetmanshoop similarly said that the system is “*good because it’s cheap, easily accessible and swift*”.

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.*”

***Violation of a protection order is a criminal offence and this makes people respect it.***

magistrate, Rehoboth

Several key informants felt that a protection order application can produce fundamental change in relationships. For example, one magistrate felt that the protection order process increases respect for women in the community, and causes men to realise that they are not omnipotent.

***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

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 so 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 can sometimes undermine the effectiveness of the protection orders:

One clerk worried that protection orders can end in divorce – while another thought that protection orders were not effective because the parties frequently reconcile and reunite. However, the test should not be the fate of the relationship, but rather the safety of the complainant.

***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.***

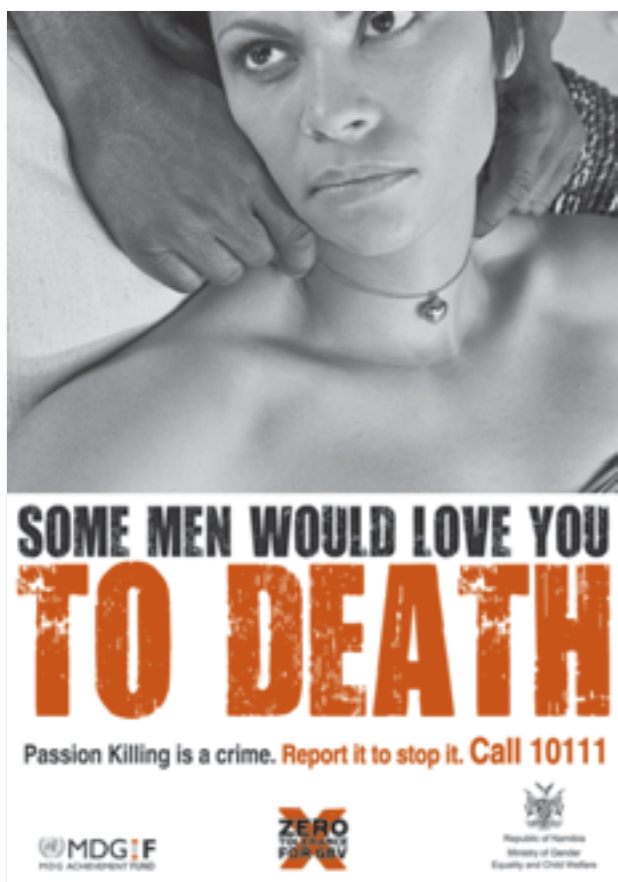
excerpt from an email to Legal Assistance Centre by a satisfied client, 2004

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.”*

***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

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.



Posters from Namibia's "Zero Tolerance Campaign for Gender-based Violence" conducted in 2009/10.

# Conclusions and Recommendations

*“Sometimes as a leader,  
I wonder what kind of society I  
am living in; one where women no  
longer fear snakes or murdering  
dogs, but murdering men.”*

His Excellency Hifikepunya Pohamba, President of the Republic of Namibia,  
speech at launch of National Gender Policy, 8 March 2012

## 6.1 Overview of research findings

The research indicates that, on the whole, protection orders are being used as intended, and are proving to be useful interventions in many cases.

Both men and women are using the procedure successfully, although women (as the more prevalent victims of domestic violence in society) logically use the law more frequently.

Complainants tend to approach the court for serious domestic violence of multiple types, and not for small or trivial matters or single incidents of domestic violence. Most complainants who seek protection orders are successful in obtaining at least an interim order, containing many of the terms which they requested. Courts apparently scrutinise the requested terms and in most cases add or subtract provisions before issuing the order – indicating that magistrates are recognising instances where a complainant at risk needs more protection than he or she may realise, or asks for protection that is not justified by the evidence presented.

Both requests and orders for exclusive occupation of the joint residence are common, but these are primarily requested and granted in situations where the joint home is owned or leased solely by the *complainant*, or jointly by both parties. The belief in some quarters that the protection order mechanism is frequently abused to deprive ‘innocent’ respondents of their homes is clearly a myth.

One of the chief complaints encountered is that the application form needs to be simplified, without of course sacrificing the detail which magistrates need in order to grant an urgent *ex parte* order. We have identified several ways in which the forms and procedures set forth in the law could be simplified and streamlined.

The other chief complaint concerns the capacity of government personnel to assist complainants with protection order applications. Clerks, police and magistrates all claimed that this work overburdens them, and complainants generally have to approach both a clerk of court and a police station in order to complete an application form. While simplification of the forms and procedures will be of some assistance with this problem, the growing number of protection order applications is pointing to a need for specialised and dedicated personnel at courts and police stations – at least in Namibia’s larger centres.

A related problem concerns service of protection orders, which is probably the weakest area of the law’s implementation. New approaches to service of legal documents should be explored, but in the meantime police need to be encouraged to make time for this task as an important aspect of crime prevention.

Some intentional and unintentional misuse of protection orders was identified by key informants – particularly as “the poor man or women’s divorce” – but the research indicates that this is the exception and not the rule.

Although many people complain about delays in the procedures, the typical case was not actually very protracted and most interim protection orders were granted promptly after application, although not usually achieving the ideal of being granted on the day of application.

One of the most worrying findings was the enormous attrition between interim protection orders and final protection orders – which seems to stem from a mixture of reconciliation between parties, abandonment of cases and confusion on the part of both courts and complainants over how interim orders are converted into final orders. Such case disappearances may involve intimidation of complainants which the system is not picking up.

The research also worryingly suggests that domestic violence being directed against children is not being picked up or addressed; the vast majority of the cases involved adult complainants, with children featuring only incidentally.

Although the research provided little information on breaches of protection orders, anecdotal evidence, combined with the lack of cases on breaches, suggest that violations of protection orders may not be taken as seriously as they should be by police and sometimes even by complainants themselves.

*Some of the applicants later came back to thank us, saying “we are a happy family now”.*

clerk of court, Katima Mulilo

## High Court review of an interim protection order, 2011

While the Legal Assistance Centre was concluding this research report, the first High Court review of a protection order was conducted. This review points to some problems and issues which are instructive.

The parties in this case were an 89-year-old father and his 33-year-old son. The father had sought and obtained an interim protection order against the son on the basis that he had committed economic abuse. Threats of assault were alleged, but there was no allegation of actual acts of physical violence. The conflict seemed to be part of a family dispute which saw some extended family members siding with the son and some with his estranged wife. Father and son were residing on adjacent farms, and there were a range of underlying disputes between them about livestock ownership and alleged livestock theft, marked by the laying of various criminal charges. The key findings of the case were as follows:

- 1. Basis for urgent review:** Even though the Combating of Domestic Violence Act provides for appeals in respect of both interim and final protection orders, the High court is authorised by the High Court Act 16 of 1990 to review the proceedings of any lower court on various grounds, including where there is a *"gross irregularity in the proceedings"*. A review is permissible in such circumstances despite the fact that the order in question was an interim order rather than a final order, and despite the fact that there were other options for redress including appeal or anticipation of the return date to accelerate a final decision on the matter.
- 2. Domestic relationship:** One of forms of domestic relationship covered by the Combating of Domestic Violence Act is *"parent and biological or adoptive child"*. However, since the definition of a child in the Act is a person under the age of 18 years, this provision could not be the basis of a domestic relationship between the parties to this case. However, they had a domestic relationship in terms of the provision of the Act which covers *"family members related by consanguinity, affinity or adoption" who have "some connection of a domestic nature"* since they appeared to have some financial dependency. The High Court noted that the Combating of Domestic Violence Act was intended *"to bring within its reach a very broad spectrum of familial relationships of a domestic nature, with the purpose that protection orders may be sought by aggrieved family members without having to seek recourse to more expensive and less expeditious civil or criminal proceedings to keep the family peace."*
- 3. Poor utilisation of forms:** The High Court held that the *pro forma* nature of the forms provided is presumably to assist the complainant in making application for the protection order and to assist the magistrate in issuing the protection order by setting out the full range of possible provisions. However, as with any form, the danger exists that the person completing it may not take care to do so clearly and carefully, resulting in *"a sloppy administrative process with little attention being given to crucial details"*.
- 4. Irregular amendments:** The original interim order contained some provisions which were confusing and outside the authority of the law. At the time of a postponement of the enquiry, the magistrate extended and amended the interim order, but without following the prescribed procedure for modification of protection orders. The High Court set aside the interim protection order on the grounds that the *impugned order was inept* and the purported 'amendment' of the order was procedurally invalid.

*Katjivikua v Magistrate: Magisterial District of Gobabis and Another*  
(A 208/2011)[2011] NAHC 340 (4 November 2011)

## 6.2 Recommendations

### Amendments to the Act and regulations

Almost all the key informants interviewed felt that Combating of Domestic Violence Act is good, and pointed to problems with the law's implementation rather than with the law itself. However, the current research has identified a few areas where the Act and the regulations need to be fine-tuned.

- **Fine-tune the Act and regulations in light of the research findings, as detailed in sections 6.3.1 and 6.3.2.**

### Revision of the forms

Many key informants found the application forms complex, cumbersome, repetitive and time consuming to complete. The forms used for protection orders are in need of simplification in terms of language, length and organisation to make them more user-friendly.

There are two possible ways to simplify the application form: (a) Incorporate improved check-lists to streamline the process so that applicants can check their responses rather than composing an affidavit in narrative form. (b) Reduce the questions by encouraging complainants to answer guiding questions in narrative form. This could help to avoid confusion in cases where questions with checklists might be misunderstood. It would also avoid some of the repetition which the forms currently exhibit. Magistrates consulted on this question at a 2011 training session were almost evenly divided. We endorse the second approach.

*As with any form, the danger exists that the person completing it may not take care to do so clearly and with full regard to all the sections... The end result is that the *pro forma* form, instead of facilitating clarity in the administration of justice and the order of court, becomes a sloppy administrative process with little attention being given to crucial details.*

*Katjivikua v Magistrate: Magisterial District of Gobabis and Another*  
(A 208/2011) [2011] NAHC 340 (4 November 2011)

- **Simplify the forms with more emphasis on narrative accounts within a context of open-ended guiding questions, to eliminate the need for both an application form and a separate affidavit. Detailed proposals for changes to the forms are contained in section 6.3.3.**

### Training

There is no substitute for thoroughly-trained personnel when it comes to effective implementation. Several key informants interviewed thought that training for magistrates, police and clerks should be “*mandatory*”. We feel that it is not so important whether training results from law or policy, as long as it takes place.

- We suggest that in-service training for key role-players should be undertaken annually on a regular basis, as well as being part of pre-service training programmes where these exist.
- We also suggest the development of more specialised training materials for clerks of court, magistrates and police, such as domestic violence cases with examples of correctly completed forms and model affidavits as the basis for practical exercises. Training of key service providers needs to become more specialised and participatory in order to be more effective.
- It would be useful to create training manuals for police, clerks and magistrates, and to provide a checklist to help ensure that all necessary forms and signatures are in place.

Our research identified the following areas where at least some magistrates lacked clarity or could benefit from additional training and discussion:

- **Civil and criminal options:** Further training is needed on how the protection order procedure fits together with the option of seeking a formal warning from police or laying criminal charges – as alternative remedies *or* as options which can be pursued simultaneously, at the victim's choice.
- **Enquiries:** Because an inconsistency between the Act and its subordinate regulations on who may be present at enquiries has caused confusion, future training should explain that the Act's rules take precedence, meaning that all protection order enquiries are supposed to take place in closed court.
- **Emotional or economic abuse:** Our researchers observed that many magistrates were somewhat reluctant to issue protection orders for emotional or economic abuse which was not accompanied by physical abuse, and so could perhaps benefit from training on the impact of these less obvious forms of domestic violence.
- **Children:** The research revealed that very few cases are being referred to the Ministry of Gender Equality and Child Welfare for social worker monitoring of children affected by domestic violence. The importance of this measure for preventative purposes should be emphasised, along with sensitisation of magistrates on the impact of domestic violence on children in the household.
- **Temporary maintenance:** The research revealed a few cases where the provisions on temporary maintenance seem to have been misapplied by courts. It would be useful to emphasise in future training that this option is available only where the respondent has a pre-existing legal liability to maintain the person in question. Another problem encountered was that some protection orders exceeded the six-month maximum period set by the Act for provisions on maintenance, pointing to a need for further training on how such temporary maintenance orders differ from, and interact with, the procedures in the Maintenance Act.
- **Temporary custody and access:** Protection order provisions on temporary custody and access were not always applied correctly. The intention of these provisions should be a target for training, along with discussion of the different legal procedures which address custody and access, and which are appropriate in which situations.

- Provide ongoing in-service training for magistrates, with more-experienced magistrates participating in training new magistrates. The training should target the areas identified by the research as being problematic at some courts.

The need for training of clerks of court is urgent. Most clerks interviewed felt that they did not adequately understand the law and wanted additional training, citing the fact that the clerks, not the magistrates, are the ones on the front lines helping applicants to fill in the forms and answering questions from both complainants and respondents. Some did not feel that they clearly understood what actions were encompassed by the term “domestic violence”. One clerk of court emphasised the need for training in effective use of the application forms, saying that she does not understand the reasons behind many of the questions on the form, but that if she understood why the questions were important she could help the complainants provide appropriate answers. Another clerk said, *“Interpreting the Combating of Domestic Violence Act is a very subjective process and everyone reads the Act differently. There should be training on the correct interpretations of the Act.”* We encountered two clerks who did not understand what an interim protection order was. One female magistrate emphasised the need for training of clerks in how to treat complainants of both sexes sympathetically and to avoid gender bias.

*The clerks are the ones doing the work, but we have no training, only the prosecutors and magistrates get training.*

clerk of court, Tsumeb

Many clerks requested educational materials which could help them digest the law. The *Guide to the Combating of Domestic Violence Act* produced by the Legal Assistance Centre was cited as an example of useful interpretative material. It would be useful for training sessions to focus on practical exercises which demonstrate how to properly assist complainants and respondents, with examples of correctly completed application forms.



- Provide ongoing in-service training for clerks of court, with practical exercises on how to complete application forms, including information on the purpose of the various questions. Clerks should also be provided with simplified material on the Combating of Domestic Violence Act.

## Unsympathetic police response

Many clerks expressed concerns about the lack of understanding of domestic violence on the part of police. They said that the police often seemed to be at a loss as to what to do with complainants who appeared at their stations complaining of domestic violence.

Police who were interviewed welcomed the idea of additional training. Some emphasised the need for ongoing training, such as police in Oshakati who said, *“When we get new members they also need to be trained. New officers need to be trained as well as the old ones were. There should be a workshop once a year to maintain the level of knowledge.”* If police are going to continue to be involved in assisting complainants with affidavits to support protection order applications, then they need more intensive training on the information which is required to support protection orders.

However, training alone does not seem sufficient. Although the first Woman and Child Protection Unit was established in Namibia in 1993 with a view to providing more gender-sensitive police services, complaints are still received about insensitive police response on domestic violence and other matters at these units – despite the fact that multiple training initiatives have already targeted the relevant personnel.

Some key informants also cited problem with police attitudes; for example, one magistrate complained that “*police are reluctant to do what the Act says and carry out their duties to the letter of the law,*” saying that “*police should understand their powers and implement them*”.

Other key informants alleged that police sometimes fail to act when the respondents are friends or acquaintances, but police who were consulted vehemently denied that this happens.

- **Ongoing pre-service and in-service police training should be combined with closer supervision of service at the Woman and Child Protection Units, with periodic efforts to survey members of the public directly about their experience at the Units and targeted action on the feedback received.**
- **Police should adopt a formal policy on procedure for handling cases involving parties who are known to police involved in the case. Police who were consulted thought that this would be a good idea, as it would give the public an idea of what they should expect as well as giving police a defence against false allegations of favouritism if they have followed the policy.**

## Dedicated and specialised staff

Several key informants thought that the ideal situation would be to have dedicated clerks and magistrate to deal with protection order applications, with such personnel being available 24 hours a day, seven days a week.

One clerk worried that the courts were too inaccessible to those in outlying areas and suggested that there should be more use of mobile courts, with clerks accompanying them, to assist people in remote areas with protection order applications.

One magistrate innovatively suggested that clerks of court should be social workers who would be equipped to solve many relationship problems without involving the magistrate. Another key informant suggested that clerks should at least be trained in counselling skills. A magistrate suggested that more female clerks of court should be employed to deal with domestic violence applications, which are usually brought by women.

Two key informants pointed to the need for counselling for clerks, to help them handle the stress of a job which involves exposure to harrowing tales of domestic violence.

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

– magistrate, Swakopmund

- Resources are always a constraint, but the number of protection order applications nationwide is steadily increasing. Specialised clerks, police officers and magistrates should be assigned to handle protection orders where possible, at least at the busiest courts and police stations. At large courts, there could be clerks and magistrates who specialise in family matters including domestic violence, maintenance and custody and access issues. This might provide greater efficiency in the handling of this group of cases which would ultimately produce some savings in resources.
- As the goal of attaching social workers to every Woman and Child Protection Unit is progressively realised, these social workers should also liaise with clerks of court to provide counselling and follow-up monitoring as appropriate in specific domestic violence cases.

## Links to support services

Several clerks thought that some couples involved in protection order applications would be better served by couples therapy or individual counselling for abusive respondents. For example, many clerks thought that the court should ideally have a therapist on staff, who could handle the cases which would benefit more from this channel than from a court proceeding. Another suggestion was that government should employ more community-based counsellors to speak to couples who have problems with violence.

Some clerks were already sending couples to speak to pastors or counsellors. A clerk of court in Keetmanshoop suggested that complainants should always be referred to a social worker or a psychologist to speak about their abusive situations before the clerks assist them to complete the application for a protection order, which would support the complainants more effectively and free up some of the time that the court clerk spends trying to calm down the complainant to allow for more focus on the application itself. Of course, this approach should be treated with caution, and with careful deference to the victim's fears and wishes.

A related problem is the "revolving door" syndrome. Many clerks and magistrates said that complainants often withdraw their complaints when the abusive partner apologises, only to return the following month with another complaint. They cited this as a drain on court resources and felt that the cycle would just continue until the respondent underwent lasting behavioural changes which protection orders on their own were unlikely to produce. In the absence of some procedure for providing therapy, respondents are being removed from the system with no support and complainants who find that the protection order on its own has not resolved the problem may fail to return to court to seek help.

A magistrate in Lüderitz thought that the protection order process should be coordinated with a separate institution which could provide counselling: *"The court only offers the protection order but there are some things, such as domestic violence, that people believe are culturally acceptable. Counselling would help this. You can teach people that violence is not acceptable."*

Tsumeb was observed to have a successful program involving close cooperation with a social worker who counsels respondents. Clerks are diverting some cases to this programme rather than proceeding with the protection order process, and it is reportedly very successful.

- It is vitally important for Namibia to establish more counselling programmes for abusers to enable meaningful behavioural change. We recommend amending the law to provide for court ordered-referrals to such programmes as part of protection orders. Even without such an amendment, magistrates should be encouraged to make such referrals where services are available under the authority of *“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”* (Section 14(2)(k)) – although we do not believe that it would be appropriate for the court to make such an order *ex parte*, but only after discussing this option with both the complainant and the respondent.

Rural communities should be targeted for particular support, to make it possible for victims of violence in such communities to consider the possibility of applying for protection orders or seeking other forms of help.

Some key informants felt that complainants who have already approached the courts need support for more lasting solutions beyond protection orders, which are only meant to provide temporary, emergency relief. For instance, one clerk suggested that support is needed to help complainants obtain a divorce, or to help them judge whether it will be safe for them to reunite with erstwhile abusers. This clerk also noted that complainants may need assistance with obtaining maintenance orders under the Maintenance Act 9 of 2003 to replace the short-term maintenance which protection orders can provide.

The lack of shelters for victims of domestic violence was cited as a shortcoming by some key informants, although some found creative solutions. For example, one female police officer and her female colleagues selflessly invite women at risk of violence to stay in their homes until a more permanent solution could be found. A social worker in Oshakati said: *“The shelter for the victims is necessary. Sometimes they report the case but the abuser is still in the house, and so these victims need a place to stay.”* The Ministry of Gender Equality and Child Welfare is in the process of establishing more shelters nationwide, but as these are rolled out it will be necessary to ensure that they form part of an integrated service on domestic violence.

- There is an urgent need to provide more services for victims of domestic violence, especially affected children. This should include follow-up monitoring by the social workers who are designated to work with the various Woman and Child Protection Units.
- The government initiative to establish more shelters is welcome, but it will be important to ensure that shelter accommodation is combined with counselling and other support services for victims of domestic violence.
- It is also important to ensure that all role players are aware of local services available, and to implement monitoring by control social workers and senior police officials to ensure that appropriate referrals to support services are taking place.
- In the longer term, we recommend the establishment of volunteer-staffed victim support programmes with components of counselling, information and networking with others in similar positions.
- Rural communities should be particularly targetted for information and support, by facilitating the establishment of community support groups and by regular visits from government personnel who can support and inform such groups.

## Closer cooperation between service providers

One of the keys to making the process work smoothly appears to be cooperation between different service providers. For example, one magistrate spoke of the difference she noticed when a male station commander who was sympathetic to male respondents as a matter of “*male solidarity in a chauvinist society*” was replaced by a new station commander with a very different attitude. This personnel change opened the door to local meetings between court personnel, police and social workers to discuss different strategies to deal with issues of domestic violence in the area.

A clerk of court pointed to the confusion which inconsistent understandings of the law and procedures can create:

*There is no uniform understanding of protection orders by the police, WCPU, magistrate and clerk. This is due to lack of common training. As a result, applicants often get confused (as a result of differing advice given by police, clerk and WCPU) regarding the right procedure to follow when seeking a protection order.*

Another clerk emphasised the need for “*more interaction and communication between the police, magistrates and court clerks responsible for the protection orders*”, while yet another emphasised the positive impact of effective cooperation between the different service providers.

At a 2011 training session attended by 30 magistrates from all over Namibia, a senior control magistrate noted that magistrates have already been directed to hold minuted monthly meetings with other service providers in their areas – such as police and social workers. However, the vast majority of the magistrates in attendance conceded that they do not actually do this.

- We suggest that the existing directive mandating monthly meetings between magistrates, police, social workers and other relevant local service providers should be repeated and strictly enforced, as closer cooperation would be likely to improve service delivery on domestic violence as well as a range of other gender and family law issues.

## Material resources at courts

One clerk reported that administrative obstacles sometimes slow down the protection order process, such as when the photocopier does not work or the office runs out of photocopy paper. Our researchers also observed this problem, and many key informants reported that they had insufficient copies of the necessary forms or lacked capacity to photocopy them. A senior magistrate confirmed this problem, and complained about the general inefficiency of obtaining offices supplies for magistrates’ courts, including storage boxes to facilitate filing as well as forms and photocopy supplies.

This problem may seem small, but it can have large consequences. An endangered victim of domestic violence may not find the courage to return when the necessary forms are in stock. Administrative inefficiencies can also waste the time of court personnel and increase their sense of being overburdened.

- It should be possible to supply magistrates' courts regularly and promptly with the necessary supplies for protection order applications. We suggest that government take advice from successful businesses with branches throughout Namibia on how to improve the efficiency of supply distribution and storage, as well as measures to reduce wastage.

## Application process

Most clerks interviewed gave similar accounts of the process by which a complainant applies for a protection order: If the complainant comes to the court to apply, the clerks send him or her to the police station to make a sworn statement to the police. Then the complainant must return to the clerk, who helps him or her fill in an application for an interim protection order. The sworn affidavit and any other evidence are given to the magistrate, who determines whether or not to grant the interim protection order. The clerk then sends the interim protection order to the station commander of the police, who is responsible for serving it on the respondent.

The procedure is similar if the complainant approaches the police station initially; according to a document from the Ministry of Safety and Security, *"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. The clerk of the court will assist her to complete the application form."*

A few clerks were not (or thought they were not) Commissioners of Oaths and so could not assist with affidavits. Even where this technicality was not the issue, many clerks did not feel authorised or competent to take the statements. But the bigger problem was that clerks were usually too busy to assist with a statement and consequently sent complainants to the police.

One clerk suggested that police should have the capacity to complete the protection order applications at the police station at any time, so that they could then go directly to the magistrate and get the respondent out of the house immediately if there was any danger.

The current system of involving both clerks and police in the completion of applications for protection orders seems inefficient for service providers and difficult for complainants. We would suggest that clerks of court should be trained to fill out a protection order application form *and* take an accompanying sworn statement if necessary. If the application form is simplified, as we propose, then the total time involved should not increase substantially. If police are called upon less frequently to assist with statements for protection order applications, then this might free up more of their time for service of process. Furthermore, since the application form is designed to serve as a *pro forma* affidavit, if it is improved then there may be no need for supplementing affidavits from complainants.

One clerk of court suggested that complainants who come to the court or the police to apply for a protection order *"should be given some privacy instead of having to do everything in public with every passerby listening to them"*. This is a good suggestion, which we endorse.

- Application forms should be simplified and streamlined so as to be less time-consuming to complete.
- The Ministry of Justice should issue a circular to clarify the fact that clerks of court are authorised to act as Commissioners of Oaths for protection order applications. 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.
- The Ministry of Justice should also issue a circular setting forth standard procedural guidelines for dealing with protection order applications to ensure adherence to the law and consistency across courts.
- Clerks should gradually be trained and empowered to complete the application form as well as any supplementary sworn statement which may be required, and police should be freed from this duty insofar as possible to focus more of their attention on service and enforcement of protection orders. However, all police personnel at Woman and Child Protection Units should also be competent to assist complainants with the entire process, particularly after-hours.
- We also suggest that courts and police stations should both, insofar as possible, identify private spaces where complainants can relate their stories without an audience.

## Procedure for after-hours applications

It is clear from the research involved that there is no consistent approach to after-hours applications. Courts and Woman and Child Protection Units (WCPUs) are open only during office hours. Police are supposed to be on call for each WCPU, but are not always

easy to identify or locate. Many magistrates we spoke to expressed willingness to be approached after-hours to consider protection order applications, but this is not sufficient unless there is someone to assist the complainant in completing the forms and preparing a statement.

*The Act itself is okay really. One issue however is what should happen during the weekends and after hours if one needs to make an application... what should members of the public do?*

clerk of court, Okahandja

- The Ministry of Justice together with the Ministry of Safety and Security should establish a clear and uniform after-hours procedure for protection order applications and make this known to the public.
- All charge offices should know the identity and contact details of the WCPU police personnel on call. After-hours contact numbers for WCPUs should be clearly posted at each WCPU and each police station, and dispatchers who answer 10111 should also know this information.
- The WCPU person on call should be equipped to complete both the protection order application form and any supplementary sworn statement, and should know how to contact the duty magistrate for the local court.
- If it is not possible for the application to be dealt with after-hours for some reason, then the WCPU person on call should take appropriate steps to secure the safety of the complainant, including referring him or her to a shelter or place of safety if necessary.

## Investigation

Several key informants cited the need for some form of investigation to guide the decision on the protection order application. One magistrate specifically suggested social worker investigations between the interim and final protection orders. Two clerks suggested that police should conduct some sort of investigation. A magistrate made the same suggestion, but acknowledged that this would probably not be realistic given that the current shortage of police resources.

This magistrate mentioned the idea of having dedicated domestic violence investigators “*who can look into the information, to see if it is true*”. However, this seems unlikely given that no maintenance investigators have yet been appointed in Namibia, even though the Maintenance Act 9 of 2003 makes explicit provision for them.

The problem with a more investigative approach would be that the time required would undermine prompt response in the form of an interim protection order, and a prompt opportunity for the respondent to oppose this order. Most key informants thought that the system of listening to evidence from both parties at the enquiry was sufficient to allow the court to determine the truth of the allegations.

- While limited state resources are unlikely to permit investigations as standard procedure, we suggest that the Act should specifically provide the option of ordering a social worker investigation between the interim and final orders in cases where the court feels that this is necessary.

## Service of interim protection orders

The most commonly-mentioned problem with the current system is service of interim protection orders. Several key informants interviewed thought that there is a need for service providers who work only on domestic violence cases to ensure prompt service in these matters. However, one jurisdiction which tried this did not report much success; the clerk said, “*if the two police officers who are in charge of domestic violence happen to be on leave then nobody takes responsibility for the serving during their absence. The orders just lie around the station.*”

One clerk said, “*The law should tell us whose job it is to serve the protection orders. It should be the police, who are armed, because some of these respondents are armed and dangerous.*” A magistrate similarly stated: “*We force the police to serve. The law needs to state whose duty it is to serve the order.*” This concern is misplaced. The regulations are in fact very clear on the duty to serve the order. Regulation 5 states that the duty to serve documents under the Act falls on the police in the first instance, but passes to the clerk of the court if the documents cannot be served by the police; the clerk has several options for methods of service, including utilisation of the messenger of the court

We heard again and again from clerks that police lack adequate resources to serve-protection orders. Some police stations reportedly lack adequate transportation to serve protection orders on the respondents, resulting in long waits before interim protection orders granted by the court actually come into force. For example, a clerk of court in Okahandja reported

that “*transport for the police to go to court or to serve protection orders is a problem... Sometimes they have to borrow the court vehicle which should not be the case.*” Another clerk said, “*Maybe the police need for cars to be donated to them to enable them do their job of serving protection orders.*”

The shortage of resources is a concern, but not an excuse for failing to exercise a clear legal duty. Because the context is one of violence, we believe that police should continue to be the first choice for service of process under this law. If police do not have transport available for service of process, then the task should be promptly passed, through the clerk of the court, to the messenger of the court. However, station commanders should be charged to ensure that police do not simply pass this duty off to court messengers without good reason. Because different ministries are involved in the two optional approaches, it is important to ensure that operational and not budgetary concerns are the deciding factor.

Some key informants reported instances where complainants were asked to deliver protection orders to the respondents – which is both inappropriate and potentially dangerous. It may be acceptable for a complainant to accompany police to assist in identifying or locating a respondent, but only where the complainant is genuinely willing to do so.

Several magistrates and clerks pointed to the need for a formal return of service. Some thought that there must be a return of service signed by the respondent, while others indicated that this could create problems because respondents might refuse to sign (presumably thinking that they could avoid the protection order that way). In fact, a return of service need not be signed by the respondent, but only completed and signed by the person who served the document on the respondent. The return of service which is used for the Maintenance Act 9 of 2003 could be used as a model.

- **Police, clerks and court messengers need to be alerted to their duties under the Act. The clerk should take responsibility for monitoring the situation to ensure that the order is promptly served by either police or the court messenger.**
- **The regulations should provide a mechanism which determines when the duty of serving a protection order passes from police back to the clerk for service by the court messenger.**
- **Police and court directives should make it clear that a complainant should never be forced to participate in the service of an interim protection order on a respondent.**
- **The regulations should include a specific form to serve as a return of service, similar to that used in respect of the Maintenance Act 9 of 2003.**

## Case withdrawals

The issue of case withdrawals was a concern for many service providers we interviewed. Some felt frustrated by the wasted effort caused for the courts by case withdrawals, while others seemed more sympathetic to the difficulties complainants experience in trying to break away from a long-standing violent relationship, particularly where they are financially dependent on the abuser. For example, one prosecutor noted: “*For most people, their minds are in two. On the one hand they don’t want to do it – they love the person and they want a miracle to rescue the relationship – but they also understand that once they make the application the law must take its course and the man will usually need to move out.*”

- Clerks, magistrates and police should be given training and information which will help them to understand the reasons why case withdrawals are common in the context of domestic violence, and encouraged to keep documents on file in abandoned cases and to support complainants in going forward with their cases instead of criticising them for wishing to withdraw or seeming ambivalent.
- As noted above, we recommend the establishment of volunteer-staffed victim support programmes with components of counselling, information and networking with other persons who have dealt with domestic violence. Such support could be invaluable to complainants who are hesitating about the way forward in addressing domestic violence.
- The Act should be amended to provide clearer procedures for case withdrawals and improved safeguards to protect complainants who may be intimidated or threatened to withdraw a case. Detailed proposals on this issue are discussed in section 6.3.1.
- There is a need for more counselling services for complainants, including assistance with “exit strategies” for leaving a violent relationship – such as referrals to shelters or assistance with locating alternative housing and advice on divorce and maintenance procedures.

## Role of clerks at enquiries

There was a difference of opinion amongst key informants on whether or not clerks of court should attend enquiries to assist complainants, in the same way that maintenance officers do to assist with applications for maintenance. Current practice differs at different courts. Those in favour of attendance by clerks felt that this helped to elicit evidence that would be helpful to the court. Those opposed worried about maintaining the impartiality of the clerk and about workload.

- The Ministry of Justice should decide on a policy on the attendance of clerks of court at protection order enquiries and direct clerks accordingly, to ensure a consistent approach in all courts.

## Protecting children

The law requires that the Ministry of Gender Equality and Child Welfare be put on notice to provide social worker monitoring where a protection order “involves” children – but it seems that this provision is seldom if ever utilised.

One clerk described this worrying case:

*...it was a marriage where the child was molested by the father and the mother had to open a case with the police. Before the husband had been granted bail she came in to apply for a protection order. Bail was granted thereafter and the interim order instructed that the father must keep away from the child. But it did not happen because the mother and the father started to drink together. The child in question was 12 years old... I was at a loss of what to do when this happened.*

This is a case where the protection order should have been sent to the Ministry of Gender Equality and Child Welfare for monitoring of the child involved by a social worker, who could have instituted proceedings to remove the child from the home if necessary.

- Clarify the mechanisms intended to protect children, by using clearer language in the Act for determining that a protection order “involves” children and providing criteria for this test in the regulations.
- Amend the forms to remove the provision on this issue (since the notification is a responsibility of the clerk and not of the respondent) and provide a separate form for notification of the Ministry of Gender Equality and Child Welfare by the clerk of the court.
- Communicate with clerks of court and magistrates about the importance of taking steps to protect children at risk in circulars and training sessions.

## Enforcement

Lack of effective enforcement of protection orders seems to be a serious problem. For example, a clerk in Okahandja reported that “*after the police have been authorised to remove a respondent from a residence, they don’t always act immediately... I feel the police are not serious.*” A magistrate in Walvis Bay reported similar concerns:

*Our clerk personally takes the protection order to the police, but often the police don’t serve it because of transportation problems. For example, I issued a protection order for the police to remove some children from the custody of their father and give them to the mother, but the police just threatened the father and didn’t do it and I had to almost force the police to remove the children. This weakens the Act.*

Several key informants gave accounts of lack of prompt police action in respect of breaches. Other key informants reported that police lack the resources to enforce protection orders, particularly in remote villages far from the nearest police station. According to the clerks, this results in a lack of confidence on the part of the public, who think ‘What’s the point of getting a protection order if it won’t protect me?’. A few clerks told us that some complainants are afraid to apply for a protection order which might anger the abusive partner, since they cannot count on police protection afterwards.

It must be recognised that there are some cases where protection orders will never be adequate to protect the victim. For example, a clerk recounted a case where a woman was granted a protection order against her husband, and was then accompanied by police to the common home to collect her things. Her husband stabbed the police officer and was then shot. The many murder-suicide cases which have taken place in the domestic context in Namibia are a testament to the fact that the threat of legal consequences is sometimes no deterrent to violence.

***By the time the police get there, the man has already committed the crime. Police have no car at the station, so they don’t go to the villages.***

clerk of court, Outapi

However, there are other cases where protection orders are reportedly effective, and their usefulness can only increase if they are consistently and effectively enforced.

- Police should be made aware of the importance of enforcing protection orders as a crime prevention measure which may sometimes save lives.
- Supervisory personnel at the WCPUs should ensure that protection orders are not given low priority.
- The government should ensure that WCPUs have sufficient staffing to carry out their tasks.

## PEACE BONDS

One senior control magistrate suggested that the Combating of Domestic Violence Act should be supplemented with the use of an old but surviving procedure known as “peace bonds” as a way of giving it “more teeth”.

Section 370 of the Criminal Procedure Ordinance 34 of 1963, which is still in force, deals with the binding over of persons to keep the peace. Where it is shown that a person has threatened violence or injury to some other person, that person can be arrested and brought before the court. After enquiring into the matter the court may require the offender to provide surety to the court as a form of pledge not to breach the peace. If there is further misbehaviour, the money is forfeited to the state. The deposit is kept by the state for six months, and essentially serves as a guarantee of good behaviour.

It seems possible that some respondents might find the threat of a financial loss to be a stronger motivation for good behaviour than the more remote threat of criminal sanction, although peace bonds (like bail) would have to be reasonably related to the means of the respondent.

**Magistrates and members of the public should be reminded of this legal alternative to protection orders for use in appropriate cases.**

## Harassment and stalking

Harassment is one form of domestic violence which can serve as a basis for a protection order, but it is not adequately covered by any criminal law. Stalking behaviour, either by strangers or in a domestic context, can be extremely traumatising for the victim and can in some instances lead to more serious crimes such as property damage, assault, rape, or even murder. The Legal Assistance Centre has published a monograph containing a detailed discussion of this issue, including an assessment of the shortcomings of the current law, examples of laws from other countries and a proposed bill.



- Law reform to provide better criminal remedies for stalking should be considered.

## Raising public awareness of the law

Several key informants felt that public awareness of domestic violence is increasing, and that this was partly attributable to the law – such as the clerk in Oshakati who said: *“Before protection orders, people used to be abused too much. Now most of them are aware about domestic violence.”*

Police in Oshakati agreed that *“as time goes on the villagers hear [about the law] from radio talks which are aired”*, but worried that the public has acquired only *“a very shallow knowledge of what is available”* rather than a genuine understanding. A clerk in Usakos was of the opinion that members of the public think that protection orders are available only after physical violence has occurred, and are unaware that they can use protection orders for stalking, harassment or financial abuse.

We heard from a number of clerks and magistrates that the “right” people were not using the system, in the sense that those who need the protection most are afraid to come forward while those who seek to abuse the system can access it all too easily. Some clerks and magistrates interviewed noted that many individuals who most need help are reluctant to speak out because of shame or fear of social stigmatisation.

Others worried that awareness was still insufficiently broad. A magistrate in Rehoboth commented, *“Some people here have been abused for a long time and they do not know that they can go to court and get a protection order.”* A magistrate in Rundu said: *“I think people are not aware that they can go to court to get a protection order. They are ignorant about the Domestic Violence Act’s provisions.”*

One clerk urged the broadcast of more information about domestic violence on radio, which would be the most accessible form of media for those in outlying rural areas. Another suggested public outreach targetting church groups and traditional leaders. A magistrate suggested general community awareness campaigns.

A magistrate in Oshakati cited Legal Assistance Centre materials and radio programmes as effective educational tools in her area. Several key informants suggested that the law and educational materials should be provided in local languages – something which the Legal Assistance Centre has already attempted. Clearly, the reach of such broadcasts and materials needs to be intensified.

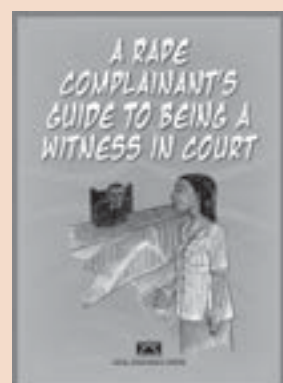
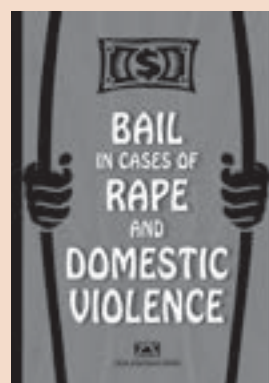
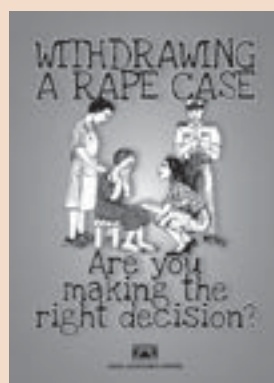
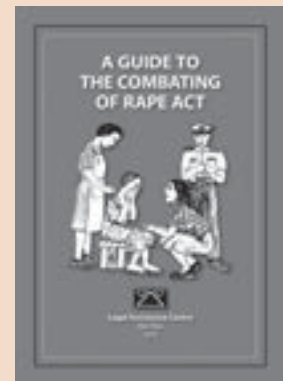
- We suggest continued efforts to raise public awareness of the Combating of Domestic Violence Act through outreach in the form of workshops, television programmes, printed materials and radio broadcasts in local languages.
- Because protection orders are rarely sought by persons who reside in rural areas, the Ministry of Gender Equality and Child Welfare and other role-players should hold information sessions on the law in rural areas in particular, to discuss specific obstacles to utilisation of the law by rural communities.
- Government should involve traditional leaders in popularising the law in rural areas.

## EDUCATIONAL MATERIALS ON DOMESTIC VIOLENCE

These are just some of the publications of the Legal Assistance Centre which are relevant to domestic violence. All have been produced in multiple languages. Please contact the Legal Assistance Centre to check availability.

🏠 4 Marien Ngouabi Street  
(former name Körner Street)  
✉ PO Box 604  
Windhoek  
Namibia  
☎ 264-061-223356  
📄 264-061-234953  
💻 Email – [info@lac.org.na](mailto:info@lac.org.na)  
Website – [www.lac.org.na](http://www.lac.org.na)

Digital versions of these publications are available on the Legal Assistance Centre website.



## Mobile courts

Protection orders are used more by urban residents than by rural residents. There are probably many reasons for this, but one concern is whether magistrates' courts are sufficiently accessible to isolated rural residents.

- We suggest that the operating schedule of mobile courts be examined to see if it would be possible for such courts to handle protection order applications. This would require that the courts return to the site where an interim protection order was issued sufficiently regularly to allow for a return date which is consistent with the Act's requirements.
- Once the operation of community courts in terms of the Community Courts Act 10 of 2003 has properly established and assessed, the Ministry of Justice should consider whether such courts should be given jurisdiction to issue protection orders, or at least interim protection orders.

## Record-keeping

The current research was hampered and in some instances prevented by non-existent or incomplete records. Court files were often missing or incomplete, and it proved impossible to locate information on complaints that protection orders had been breached.

Another problem is that police generally do not keep or compile the records which are mandatory under the Combating of Domestic Violence Act: the incident reports which are supposed to be completed for each domestic violence case brought to the attention of the police, with statistics from these reports to be annually compiled by the Inspector-General and included in an annual report which is tabled in Parliament.

Good record-keeping at courts and police stations is crucial to keep track of the progress of cases, to be prepared for possible reviews or appeals, to facilitate monitoring and supervision and for statistical purposes.

- We suggest that clerks of court need training in record-keeping skills and file management, and that control magistrates should monitor court files to ensure that a high standard of record-keeping is maintained.
- We also suggest the implementation of improved file management systems at all magistrates' courts to safeguard against lost or misplaced files.
- The Inspector-General of the Namibian Police should insist upon systematic adherence to the record-keeping requirements set forth in the Combating of Domestic Violence Act and include relevant statistics in the annual report tabled in Parliament as the law requires.

## 6.3 Proposed amendments to the Combating of Domestic Violence Act

We propose a number of amendments to the legal framework, many of which are technical in nature. The most substantive proposals for amendments to the Combating of Domestic Violence Act are briefly discussed here. The main report includes a more detailed discussion of these proposed amendments, as well as proposals for amendments to the regulations and forms.

### Definition of domestic relationships

Section 3 of the Act defines “*domestic relationship*”. A person can apply for a protection order against another person only if they are in a domestic relationship. Also, a crime becomes a “domestic violence offence” which is subject to certain special procedures under the Act if it is committed within a domestic relationship. We propose the following amendments to the definition of “domestic relationship”:

- The definition of domestic relationship should include children and their primary caretakers, even where they are not immediate family members.
- The Act defines “*child*” as “a person who is under the age of 18 years”. The domestic relationship between parent and “*child*” should exist permanently, even where the child is over 18 years of age, and the parents of a child should automatically remain in a domestic relationship throughout the life of their offspring, even after the “*child*” they have in common becomes an adult.
- A current discrepancy between the description of present and past domestic relationships should be corrected to cover past or present “*actual or perceived intimate or romantic relationships*”, so that it is clear that the court need not enquire into the degree of sexual intimacy between the parties.
- We would strongly urge the removal of the language which now excludes same-sex couples from the Act’s coverage. This restriction is, in our opinion, unconstitutional. The 2001 *Frank* case decided by the Namibian Supreme Court refused to recognise a lesbian relationship for permanent residence purposes and stated that “[e]quality before the law for each person does not mean equality before the law for each person’s sexual relationships”; but it also emphasised that nothing in its judgement “*justifies discrimination against homosexuals as individuals, or deprives them of the protection of other provisions of the Namibian Constitution*”. Furthermore, Namibia is bound by the prohibition against sex discrimination in the International Covenant on Civil and Political Rights, which has been held to encompass discrimination on the basis of sexual orientation. The current exclusion of same-sex relationships constitutes unfair discrimination and should be rectified.
- Consideration should be given to expanding the definition of domestic relationship to include a spouse or intimate partner of a person who is in a domestic relationship with the complainant, and any close family members of that spouse or intimate partner. There are pros and cons to such an expansion of the concept of domestic relationship. The information gathered for this study indicates that spouses and intimate partners of persons who are in a domestic relationship can sometimes be involved in domestic violence. Such spouses or intimate partners are only indirectly connected to the complainant, but they are not in the same position as a friend or a neighbour. For example, some might be a step-parent to a child of the complainant. Such connections would be an argument in favour of expanding the definition to cover such persons. The main counterargument is the special features

of a domestic relationship – some emotional and financial connection—are less likely to be present in respect of such spouses or intimate partners than in other relationships covered by the definition. A second counterargument is that a request for a protection order by an ex-spouse or partner against the person who has ‘taken his or her place’ could be motivated by jealousy or a desire for revenge, thus encouraging abuse of the law. We suggest that this proposal should be tabled for further discussion and debate.

## **Protection orders and criminal charges**

It is not clear that all service providers or members of the public are aware that protection orders and criminal charges can be pursued as separate options, or simultaneously. The Act could be amended to state this explicitly, or this could be clarified by means of a circular to relevant service providers.

## **Withdrawals and safeguards against intimidation of complainant**

The Act has safeguards which are supposed to apply if a complainant does not appear at an enquiry. However, there are several weaknesses with this approach which need to be addressed:

- Unless the court is satisfied that a complainant no longer wishes to pursue the matter, the court must direct the station commander of the police station named in the application to enquire into the reasons for the complainant’s non-appearance, to ensure that there has been no intimidation. The police must provide appropriate police protection if any intimidation is discovered, and find out if the complainant still wishes to proceed with the application. A flaw with this procedure is that it is not clear how the court could satisfy itself of the complainant’s wish to drop the matter in the absence of the complainant or a representative of the complainant. But neither the Act nor the regulations provide a withdrawal form or a procedure for withdrawal. The Act should be amended to provide for a formal withdrawal statement from the applicant or complainant. The regulations would then need to provide a form and a withdrawal procedure which incorporates the existing safeguards against undue pressure.
- A second problem relates to early case withdrawals or abandonments. There are no safeguards which apply if the application is abandoned by the complainant at an earlier stage, before a non-appearance at the enquiry. For example, some complainants abandon their applications before an interim protection order is granted – particularly where a decision on the interim protection order is not made on the same day as the application. The clerk of the court should be tasked by the law with a duty to contact police or a social worker to investigate such situations.
- A third problem relates to implementation of the existing safeguard. Respondents who have been served with an interim protection order may use threats or intimidation to ‘persuade’ complainants to withdraw their cases, or to prevent them from returning to court. This is the situation which the Act’s existing safeguard is intended to address. However, our research uncovered little evidence that courts are in fact sending requests to the relevant station commander to investigate the reasons for the complainant’s non-appearance, and even less evidence that station commanders are conducting investigations and reporting back to the court on their results. The Act should be amended to provide for a reliable follow-up mechanism, perhaps by requiring that the court remand the enquiry to consider the station commander’s report, and summon the station commander if no written report has been received one week prior to the remand date.

## Procedure for opposing interim protection orders

Our research indicates that the current procedure whereby the respondent is expected to file a notice of opposition if he or she wants to oppose an interim protection order is not working well. Respondents do not understand the procedure. Many forms are not returned, and those which are returned are completed in a confusing fashion. Key informants report that respondents often come to court for more information or attend the enquiry even if they are not clearly opposing the order.

We suggest that this aspect of the process should be simplified in the following way: The “notice of intention to oppose” should be eliminated. The respondent should be served with the interim protection order and simply ordered to come to court on the return date. 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 also be directed to come back to court on the return date at the time the application for the interim protection order is considered. Although this could result in a small degree of extra inconvenience for the complainant, it would be a reasonable way to simplify the current procedure and to ensure that all parties are clear on the terms and duration of the protection order.

## Using medical records as evidence

Section 212 of the Criminal Procedure Act 51 of 1977 provides that medical records prepared by a medical practitioner who treated a victim may be used in a criminal case as *prima facie* proof that the victim suffered the injuries recorded in the documents, even if the medical practitioner in question does not testify personally – but such 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. It would be useful to amend the Combating of Domestic Violence Act to make this evidentiary provision applicable to protection order proceedings in the same way as to criminal cases.

## Protections for vulnerable witnesses

In criminal proceedings, there are certain procedural innovations which can be utilised to reduce the trauma of the court appearance for vulnerable witnesses in criminal cases, in terms amendments made by the Criminal Procedure Amendment Act 24 of 2003. A vulnerable witness for this purpose is defined to include a person “*against whom any offence involving violence has been committed by a close family member or a spouse or a partner in any permanent relationship*”. This would cover most, but not all, domestic relationships; for example, it would exclude ex-spouses and ex-intimate partners – who are considered to be in a domestic relationship for at least one year after they part. We propose that the existing vulnerable witness provisions be applied (where relevant) to all proceedings relating to protection orders (application, substitution, modification or breach) and to all domestic violence offences.

## Investigations

Where the court feels that it has insufficient information to make a final decision on a protection order at an enquiry after hearing both sides of the story, the court should have the authority to remand the enquiry and request a social worker (or another appropriate professional) to investigate and report back to the court. An interim protection order which has been issued should remain in force during this period. A short time period should be set for such an investigation, to avoid unfairly disadvantaging the respondent.

## Procedure for making interim protection orders final

The study has shown that different courts seem to have different understandings of the appropriate procedure for making interim protection orders final, and that many complainants abandon their cases because of real or perceived reconciliation with the abuser. In light of this, we recommend a simplified procedure which is altered and clarified by amendments to the Act. This proposal follows on our proposal above that the notice of intent to oppose be eliminated in favour of a notice which simply requires the respondent to come to court on the return date if he or she does not want the order to be made final.

- Where both parties are present on the return date, the court should make a final decision on the protection order application.
- Where the respondent is absent but the complainant is present, the protection order can be made final if the court is satisfied that it was properly served on the respondent, since the respondent did not oppose it.
- Where the complainant is absent and has not submitted a formal withdrawal statement, the court should remand the case and direct the station commander of the relevant police station to cause an investigation to be made into the reasons for the complainant's absence (by police or a social worker). This procedure would ensure that the complainant has not been prevented from attending court by abuse or intimidation. The results of this investigation must be reported to the court on the remand date.

## Format of protection orders

The Act states that both an interim and a final protection order “*must be in the prescribed form*”. However, some magistrates seem to prefer drafting the order themselves instead of trying to fit the order into the pre-printed format. The pre-printed format was designed to save time, and to ensure that magistrates were aware of all the possible provisions which can be included in protection orders. However, if the forms are not proving useful in this regard, magistrates should not be obliged to utilise them. We suggest that the Act and regulations should be adjusted to make the option of departing from the pre-printed forms clearly acceptable. Some consideration should be given to eliminating the pre-printed forms for protection orders, in light of indications that they tend to be utilised carelessly.

## “Physical violence” as a criteria for an order for exclusive occupation of a joint residence

The 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*”. The Act does not indicate whether “*physical*

*violence*” is limited to “*physical abuse*” as defined in the Act, or if it has a broader meaning. To avoid confusion, the term “*physical violence*” should be defined as including physical abuse, sexual abuse and physical acts of intimidation or harassment.

## **Provisions in protection orders pertaining to property**

The Act makes certain property provisions ancillary to orders for exclusive occupation of a joint residence. However, in practice, the “ancillary” provisions in question were often applied for, and granted, independently of an order for exclusive occupation of a joint residence. The linkage in the Act appears to underestimate the fluidity of living arrangements and property-sharing. Therefore we suggest that this provision of the Act be re-conceptualised to de-link from exclusive occupation the provisions on contents of a past or current joint residence, police protection to remove a respondent from a joint residence or police protection to accompany the respondent to collect personal belongings from a joint residence. This would give courts greater flexibility to tailor protection orders to fit the situation at hand, while also preventing challenges to such orders on appeal.

## **Provisions in protection orders pertaining to firearm licences**

The possibility of suspending a firearm licence is seldom invoked – probably because if the firearm has been removed, suspending the firearm licence for that specific weapon is of little use. It would make more sense to amend the Act (and the Arms and Ammunition Act if necessary), so that a magistrate could in appropriate cases 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.

## **Provisions in protection orders pertaining to custody and access**

These provisions appear to be causing particular problems in practice and would benefit from substantial re-working.

- We would suggest that the provisions on custody and access should be applicable only to children of the complainant and the respondent, as otherwise the court’s decisions could have ramifications for persons who will not have notice and an opportunity to be heard. Other provisions in the protection order (such as third party no-contact provisions) could be applied to protect other children.
- The Act should define what is meant by custody and access, which we understand to mean the custody and access rights which are incidents of parental rights and responsibilities. If this is the case, then the Act (or regulations) should include clear directions on how the temporary custody and access provisions fit in with other proceedings which can address custody and access – such as applications under the Children’s Status Act or divorce proceedings in the High Court – and clerks and magistrates should be trained on the intersection and overlap between these various procedures, and encouraged to insist that the parties use the legal procedure that is most appropriate to their circumstances.
- Legal practitioners 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 violence. To prevent such misuse, the Child Care and Protection Bill expected to come before Parliament in 2012 proposes an amendment to the Combating of Domestic Violence

Act, which would limit orders for temporary custody under the Act to situations where “*there is serious and imminent danger to the child in question*”. The amendment would also require a court which makes an interim protection order including a temporary provision on custody to refer the matter to a social worker for investigation and report before the order is made final. This amendment would prevent parties from abusing the protection order proceedings to try and circumvent the normal safeguards, without compromising the court’s ability to respond quickly in cases of danger. If this amendment is for some reason not made by the Child Care and Protection Act, then it should be made alongside the others suggested here.

- A number of complainants requested that an order for temporary custody of their own children be included in a protection order against a respondent who did not have any parental rights over the children. This suggests that there is a need for an additional option in protection orders: directing respondents “not to interfere with” the complainant’s exercise of legal custody over specified children, or with the complainant’s exercise of a role of primary caretaker over specified children.
- Magistrates should be trained that any order pertaining to child custody should be preceded by a finding as to who actually has custody of the child at the time of the application for the protection order.

## **Court-ordered counselling**

An early draft of the Combating of Domestic Violence Bill proposed that a protection order should be able to include a provision directing the respondent to take part in a counselling or treatment programme approved by an appropriate government ministry for this purpose, with three conditions: (1) an appropriate programme must be available in reasonable proximity to the respondent’s residence; (2) the complainant must have no reasonable objections to such an order; and (3) the court cannot order a complainant to participate (although this does not preclude the complainant from voluntarily choosing to participate in counselling sessions). However, this possibility was not retained in the final bill because of government’s concern that there were insufficient programmes available. We recommend that this option should be added to the Act, as a way to strengthen preventative measures – particularly in light of the research finding that so many complainants attempt reconciliation with the abusive respondents. However, it should not be available *ex parte*, but only in final protection orders, after both the complainant and the respondent have had an opportunity to give input on the potential referral.

## **Duration of provisions pertaining to communal land**

The Act sets out the maximum time periods for orders for exclusive occupation of a joint residence, in respect of residences owned or leased by the complainant or the respondent, or jointly – but neglects to set a maximum time period for an order for exclusive occupation of a joint residence which is on communal land allocated to the respondent or the complainant. This omission could be corrected by setting time periods which correspond to those for land ownership: six months where the land is allocated to the respondent, and one year where the land is allocated jointly to the complainant and the respondent. If the land has been allocated to the complainant alone, then there should be no prescribed maximum time period – the length of the order can be left to the discretion of the court. This would make it clear that in the case of communal land, as in the case of land which is owned by the parties, no permanent right is being affected.

## Safeguards for children

Where an interim or final protection order “involves” children, the clerk of the court is supposed to give notice of the 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 could include, for example, social worker investigation and monitoring, or prevention or early intervention services which could assist the family. There are several problems which hamper the application of this provision.

- The reference to a protection order which “involves” children seems to be narrowly interpreted by most courts to refer to a protection order where a child is the complainant. The intention of the law was broader, to provide extra protection for any child who might be at risk from the domestic violence – which could include children who witness violence or grow up in a violent environment, as well as children who are the direct targets of violence. Furthermore, who decides if the interim protection order “involves” children? This is another argument for clarifying the statutory condition attached to the duty to communicate with the Ministry about children at risk so that no judgement call is required to see if it is invoked or not, or alternatively amending the Act to clearly require that courts issuing interim protection orders take responsibility for indicating whether the Ministry should be notified of potential risk to specific children. We suggest that the wording of the relevant sections be made clearer, by referring to any protection order involving violence “*which may in the court’s view put children at risk of physical or emotional harm*”. (The ideal would be a broader standard for invoking social worker monitoring, but this is probably not feasible given the burden of work on Namibia’s social workers.) The regulations could set forth factors to consider in applying this standard.
- The Act provides for communication with the ministry responsible for child welfare in respect of all children involved in *interim* protection orders. However, there is no reference to *final* protection orders – which can be issued in cases where they were not preceded by an interim order. This omission should be rectified.
- The regulations need to provide for a form and a procedure for giving the requisite notice to the Permanent Secretary. The duty is now incorporated into the protection order, which does not really make sense since the duty falls on the clerk of the court and not on the respondent who is bound by the protection order. In fact, this duty is not dependent on the court order, but arises from the statute itself and is conditional only on the fact that the protection order “*involves children*”.

## Enforcement of temporary maintenance orders

The Act should be amended to provide that temporary maintenance orders may be enforced, amended or substituted in the same way as maintenance orders under the Maintenance Act. Otherwise, there is no effective method of enforcement, as an arrest for breach could mean a loss of income that would be detrimental to the issue of maintenance.

## Breaches of protection orders

The courts which issue protection orders need to be notified of breaches of such orders, as this could be relevant to a request for amendment or withdrawal of such an order. Thus, there appears to be a need for some regulatory guidance on how the court which issued the protection order should be notified of charges laid with police for breach of the order, and how

this information should be recorded in the file. We suggest a specific form for this purpose, to be completed by police and transmitted to the clerk of the court to be added to the relevant file.

## Domestic violence offences

The crimes which qualify for special treatment as “*domestic violence offences*” if they take place in domestic relationships are murder, rape, indecent assault, consensual sexual acts with persons under age 16 by someone more than three years older, common assault, assault with intent to do grievous bodily harm, kidnapping, trespass, pointing a firearm, malicious damage to property and *crimen injuria* (criminal insult). The offence of culpable homicide should be added to the list, in light of the fact that several persons in Namibia have been convicted of this offence in domestic violence contexts (often as a competent alternative to a charge of murder). Furthermore, the Act’s requirement that complainants or their next of kin be afforded an opportunity for input on the appropriate sentence for domestic violence offences should be highlighted to presiding officers, to ensure that it is applied in practice.

## 6.4 Conclusion

Knowledge can indeed be power. We hope that this report will serve as a useful reference document which advances understanding of the problem of domestic violence in Namibia and what we can all do about it. Our overarching aim is to contribute to a violence-free Namibia.

### SOME OF THE KEY FINDINGS OF THIS STUDY

- More people in Namibia apply for a protection order each year than die in road accidents.
- Nine out of ten victims of domestic violence who bring protection order applications are women.
- Four out of five applications for a protection order are based on physical abuse, often combined with other forms of domestic violence.
- About 1 in 4 applicants for a protection order reported that the abuser used a weapon or threatened to use a weapon.
- One in two victims of domestic violence receives a death threat from the abuser.
- More than one out of five victims of domestic violence said that their children had been harmed or threatened by the abuser.
- For every victim of domestic violence, six other people are affected. Four are children.
- One out of four abusers named in protection order applications have already been convicted of a crime.
- You could travel from Windhoek to Katima Mullilo and back at least 13 times in the average time it takes to serve an interim protection order on the abuser.
- One out of every five persons who apply for protection orders withdraws the application before receiving a final protection order. Some reconcile with their abusers, and some are afraid.



**STOP**

**DOMESTIC  
VIOLENCE!**



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