

SUMMARY OF THE COMBATING OF DOMESTIC VIOLENCE ACT 4 OF 2003



Legal Assistance Centre
2005

This is a brief summary of the Combating of Domestic Violence Act 2003. It explains this new law in simple language and gives examples to help you understand it. A more detailed guide to this law is also available from the Legal Assistance Centre.

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

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

THE PROBLEM OF DOMESTIC VIOLENCE IN NAMIBIA

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

Domestic violence is sometimes called “battering”. When children are the victims, it is often referred to as “child abuse”.

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

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

Some people believe that a marriage is very private. They think that what happens inside a family is no one else’s business. **This is not true.** What happens inside a marriage can affect the community in many ways. The community has an interest in making sure that all the people in the community are safe.



MYTHS ABOUT DOMESTIC VIOLENCE

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

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

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

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

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

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

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

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

Domestic violence also has costs for society. It results in lost working hours and increased demand for health services. It contributes to overall levels of crime and violence, and so

places extra strain on the police and the courts. It sometimes contributes to increased alcohol and drug abuse. Domestic violence also interferes with overall national development, by preventing the victims, the perpetrators and the community from realising their full potential.

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

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

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

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

- **“VIOLENCE IS NORMAL IN OUR CULTURE”**: Some people think that because domestic violence has always taken

place in their culture it is a tradition that is acceptable to them, and should not be changed.

This is not true. Traditions and practices DO change over time – especially harmful ones. The Namibian Parliament, which is elected by the people, has decided to make domestic violence illegal. This law overrides any customary law or practice.

FACTS ABOUT DOMESTIC VIOLENCE

- **Domestic violence is widespread.** It is estimated that up to one-half of all women worldwide suffer physical abuse at the hands of intimate partners. The proportion is even higher in some countries.
- **Domestic violence is against the law.** Domestic violence is contrary to the Namibian Constitution. It also violates existing criminal laws such as those on assault, indecent assault and child abuse, as well as being covered by the Combating of Domestic Violence Act.
- **Domestic violence is harmful to the victim.** Domestic violence can harm its victims physically, emotionally, financially and socially. The victim may suffer serious injury or even death, as well as a range of psychological problems. The injuries caused by domestic violence are as serious or more serious as those caused from assaults by strangers. Emotional and psychological abuse can be as damaging as physical abuse.
- **Domestic violence is harmful to the children in the family.** Children growing up in a violent family can develop

emotional and behavioural problems, even if they do not experience the violence directly. They also learn that violence is a way of solving problems, which increases the level of violence in society.

- **Domestic violence is harmful to the perpetrator.** The perpetrator may lose the respect of his family and his own self-respect. He may then try to compensate for his feelings of shame and inadequacy with more violence, or with a retreat into alcoholism.
- **Domestic violence is harmful to the family.** Violence within relationships tends to increase over time. It often leads to a complete breakdown of the marriage.
- **Domestic violence is harmful to the community.** It can upset other family members and neighbours. It also sets a bad example for the children in the community. It causes other women in the community to feel intimidated.
- **Domestic violence is harmful to society at large.** It creates an atmosphere of disrespect for women. It teaches children that force is acceptable. Its costs include the costs of state medical care, increased crime and violence, problems such as alcohol and drug abuse and lost productivity. In this way, violence holds back the overall development of the nation.
- **Domestic violence is a gender-based problem.** Although men can be the victims of domestic violence, most violence is perpetrated by men against women. Women are most at risk of violence from men that they know.

DEFINITION OF LEGAL TERMS

COMPLAINANT – the person experiencing the domestic violence

APPLICANT – the person who applies for a protection order
This will usually be the complainant, but it may be someone acting on the complainants behalf, such as a family member, a friend or a social worker.

RESPONDENT – the person against whom the protection order is requested.
This is the person who is believed to have committed the domestic violence.



DEPENDANT – a child or other family member who is unable to support themselves and is being financially supported by the complainant and/or the respondent

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

SUMMONS – an order to appear in court

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

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

In this booklet, we refer to the complainant as “she” and the respondent as “he”.

We know that women can commit violence and that men can be victims, but we are using the language that fits the most common situations.

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

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

CHILD ABUSE

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

WHAT IS DOMESTIC VIOLENCE?

The following things are domestic violence if they take place in a domestic relationship. The definition of a domestic relationship is explained in the next section.

(1) Physical abuse, including

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

(2) Sexual abuse, including

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

daughter by another man to look at a pornographic movie.

(3) Economic abuse, including

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

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

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

- (5) **Harassment.** This is repeatedly following or communicating with the complainant, or a family member or dependant of hers, in an unwelcome way. It includes
- watching the person, or hanging around nearby
 - telephoning the person, including ‘silent phone calls
 - sending letters, email, or other messages or objects.

It is also harassment if the defendant gets someone else to do any of these things.

- (6) **Trespass**, which is
- entering the home or property of the complainant, without her consent, where the complainant and defendant do not share the same home.

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

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

- (8) **Threats** or **attempts** to carry out any of these acts are also domestic violence.

This is an important point. You do not have to wait until you have already been beaten to seek help from the court. A threat of harm is enough.

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

For most kinds of domestic violence, one incident can be enough for the court to grant a protection order. Only harassment and psychological abuse require a pattern of events. Trivial incidents that would not be considered violence on their own might amount to domestic violence if they are part of a pattern of behaviour.

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



EXPOSING CHILDREN TO ABUSE

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

For example, suppose that a child comes to school crying every day because he hears his father beating his mother when he is in his bed at night. His teacher could help him get a protection order to stop the violence.



The mother is a victim of domestic violence in the form of physical abuse, but the child is also a victim of domestic violence because the father is knowingly placing the child in a situation where he can hear what is going on.



WHAT IS A DOMESTIC RELATIONSHIP?

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

(1) marriage

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

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

- current cohabitation
- cohabitation that ended recently.

(3) two people who are parents of a child

- a man and a woman who have a child together, even if they have never been married or lived together
- a man and a woman who are expecting a child together, even if they have never been married or lived together.

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

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

(4) parent and child

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

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

(5) family members with some domestic connection

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

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

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

(6) boyfriend-girlfriend

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

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

It is not necessary for both people to agree about the nature of the relationship. For example, the girl might reasonably think

from the boys behaviour that they had a romantic relationship, even if the boy insists that she was not really his girlfriend.

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



The law does NOT cover same-sex relationships.

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

AN OVERVIEW OF THE LAW

What can you do if you are experiencing domestic violence?

If you have experienced violence or threats of violence in a domestic relationship, you can take the following steps:

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

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

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

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

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



Civil action

Criminal action

OR BOTH

PROTECTION ORDERS

Who can get a protection order?

- Anyone who has been abused or threatened with abuse in a domestic relationship.

Someone under the age of 21 (called “a minor”) may bring an application without the help of an adult in cases where the violence is serious.

- A family member, police officer, social worker, health care provider, teacher, traditional leader, religious leader, employer, counsellor, or any other person who has an interest in the well-being of the person who has suffered the violence.

The person who has actually suffered the violence must give written consent for the application to be made by someone else, unless this person is:

- under the age of 21
- mentally incapacitated
- unconscious
- regularly under the influence of alcohol or drugs, or
- at risk of such serious physical harm that the court may approve an application without that persons consent.

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

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

Against whom may a protection order be made?

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

Where can you make an application for a protection order?

You can choose to make the application at the magistrates court nearest to:

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

Once granted, a protection order is enforceable throughout the country.

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

When can you make an application for a protection order?

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

Who will help you make the application?

The clerk of the court or a prosecutor connected to the court concerned **must** help you prepare the application if you ask.

The law says that this is their duty. Other people can also help you fill in the application forms. You could ask for help from a police officer, a social worker, a relative or anyone you trust.

Who should you give the application to?

You should give the application for the protection order to the clerk of the magistrates court.

What other documents should you include?

You should give the following items to the clerk of the court:

- A completed application form

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

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

- Other documents to support your case, if possible.

For example, you could include supporting affidavits from other people who know about the abuse, such as neighbours or family members who have seen or heard the abuse happening. You could include a copy of a medical report from your doctor, or a photocopy of your hospital card showing the dates when you went to get treatment. You can make the application without

any other documents to support your application form. But the magistrate will be more likely to believe your side of the story if you have extra evidence.

- If you are making an application on behalf of someone else, you should either include a consent form from that person OR fill in the section on the application form which explains why a consent form is not needed.
The situations where consent is not needed were explained above.
- If you are asking for an order to stop the respondent from having contact with someone other than you or a child or some other person who is in your care, you must include written consent from that other person to be included in the no-contact order.

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

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



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

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

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

OR

The magistrate may ask for more information before making a decision. To get this information, the magistrate may ask you or someone else to come to the court to answer some questions. The magistrate may want to hear the respondents side of the story before making even a temporary order.

OR

The magistrate may dismiss the application because it appears to be false, or not serious enough.

Interim protection order

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

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

- how long the domestic violence has been going on
- what kind of domestic violence is taking place (physical, sexual, economic, etc) and how severe it has been
- whether there is any immediate danger to people or property

- your view of how serious the violence has been
- the need to protect your health, safety and well-being
- the need to protect any children or other dependants who may be affected.

An interim protection order has no effect until it is served on (officially given to) the respondent. The court will take care of this. You do not have to deliver the protection order yourself.

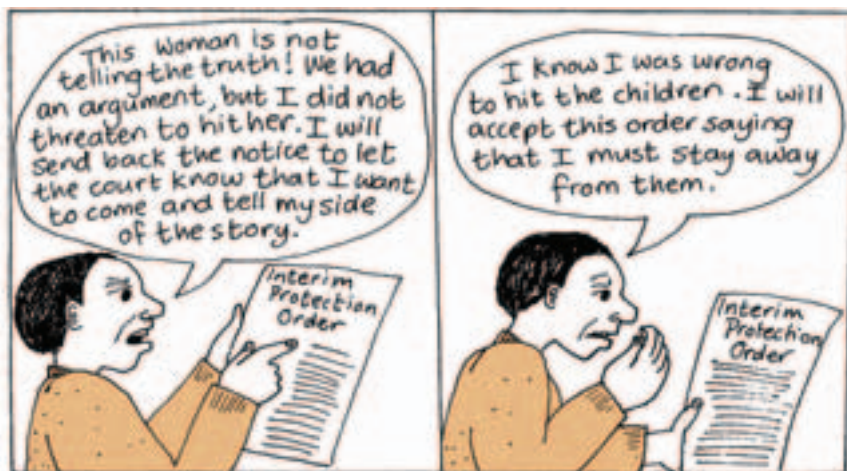


The police have a duty to arrange for temporary police protection for you until the order has been made final and served on the respondent.

What happens after the interim protection order is granted?

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

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



Opposing the order

OR

Accepting the order

The clerk of court will set a date for the enquiry. This date must be within 30 days of the date when the clerk of the court receives the respondents reply. You will be notified of the court date at least 24 hours in advance.

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

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

- (2) **If the respondent does not oppose the order:** If the respondent does NOT give the clerk of the court a notice saying that he opposes the interim protection order, then the order will automatically become final. The magistrate must make sure that the respondent really received notice of the

interim protection order and chose not to oppose it. Once this is proved, the magistrate *must* make the interim protection order into a final protection order.

What if the magistrate does NOT grant an interim order?

If the magistrate is not sure whether an interim protection order is justified, the magistrate will ask the clerk of the court to tell you and the respondent to come to court for an enquiry. The magistrate will then listen to both sides of the story before making any decision.

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

What happens at the enquiry?

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

- the court officials, you, the applicant (if this is someone other than you) and the respondent
- your lawyer and the respondents lawyer (if you have them), and any other people who are going to give information to the court about the case
- up to two people to support you and up to two people to support the respondent (friends, family members, etc)
- any other person authorised by the court.

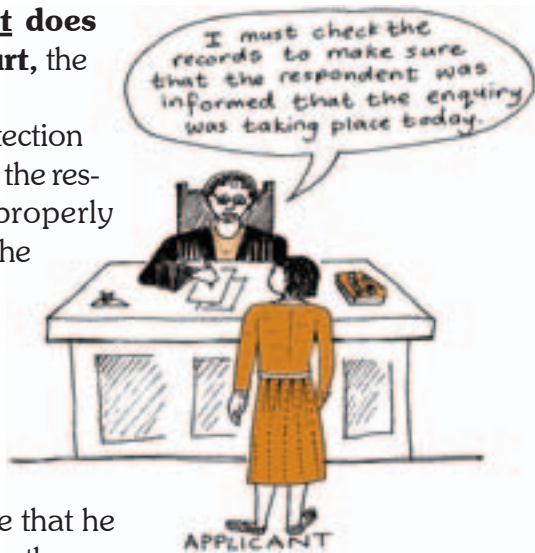
There are four possible ways that the enquiry can go forward, depending on who shows up.

(1) If the **respondent** does **NOT** come to court, the magistrate can

- issue a final protection order, as long as the respondent was properly informed about the enquiry

OR

- postpone the case and issue a summons to the respondent to make sure that he comes to court on the new date. (A summons is a legal document requiring someone to come to court.)



(2) If **you** do **NOT** come to court, the magistrate can

- dismiss the case, if the magistrate believes that you are no longer interested

OR

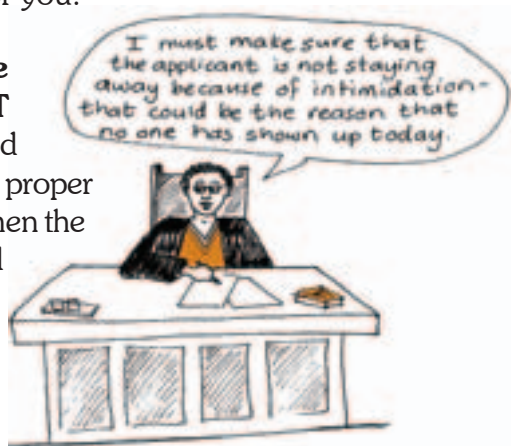
- postpone the case, if there is a good reason why you did not come to court (for example because you were in hospital)
- OR



- go ahead with the enquiry by considering your affidavit evidence, or (if the respondent wishes) order you and any other person who made an affidavit to come to court on another date so that the respondent can challenge their evidence.

The court will also ask the station commander of the relevant police station to find out if you have been threatened or intimidated. If this is the problem, then the police must provide protection for you.

- (3) If **both** you and the **respondent do NOT come to court**, and the respondent had proper notice of the enquiry, then the magistrate can proceed as in (2) above.



- (4) If you and the **respondent are both present**, then the magistrate will consider the matter. The magistrate will listen to what both you and the respondent have to say. The magistrate may also consider other evidence, such as testimony from other witnesses or medical reports. You and the respondent (or your lawyers) can question any of the witnesses.



POSTPONEMENTS

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

Are lawyers allowed at the enquiry?

You and the respondent are both allowed to use lawyers, but the procedure is supposed to be so simple that lawyers will not be necessary.

If one or both of you do not have lawyers, the magistrate must make sure that the proceedings are relaxed and informal so that you will both feel comfortable about telling the court what has happened. The magistrate is supposed to make sure all the relevant information is discussed.



EVIDENCE AT ENQUIRIES

The magistrate will listen to any witnesses who are likely to have useful information. You and the respondent can bring witnesses to court to support your stories. You can also ask

the clerk of court to arrange a summons for an important witness who may not come to court voluntarily (such as a doctor who treated an injury resulting from domestic violence). The magistrate may also summon witnesses to give information about the case. Witnesses who cannot come to court can give written statements instead, if both parties agree to this.

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

The magistrate will also consider any other evidence that might be helpful, such as any information about previous problems of domestic violence involving the same people.

What happens at the end of the enquiry?

The magistrate can make the interim protection order into a final protection order, or cancel it or change it.

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



Final protection order

A **final protection order** will be issued if the magistrate is convinced that domestic violence has taken place. The magistrate will consider the same factors as for an interim protection order.

The final protection order will be served on the respondent. A copy of the order will be sent to the police station where you are most likely to report any problems, so that the police can be ready to help.

Terms of protection orders

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

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

Protection orders may also include the following provisions:

- (1) **weapons**
an order to give a gun or other weapon to the police
- (2) **no-contact provisions**
 - (a) an order not to come near you or your home, workplace, school, etc.
AND/OR
 - (b) an order not to contact you or communicate with you
AND/OR
 - (c) similar orders covering other people who are at risk (such as your children or family members)

All of the people covered by the protection order must be named. If this part of the order applies to a third party

other than your children or dependants, that person must give written consent to be included.

(3) **joint household**

an order to move out of the joint home, regardless of who owns or rents it

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

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

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

(4) **alternative accommodation**

an order to pay rent for alternative accommodation for you, or to arrange for another place for you to stay

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

(5) **possession of property**

an order to give you possession of certain personal property (such as vehicles, agricultural tools, livestock, furniture,

chequebooks, childrens clothing and toys, identification documents, keys, or other necessary personal items)

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

(6) **protection of property**

an order to either you or the respondent not to sell, damage or get rid of property which the other party has an interest in, or can reasonably expect to use.

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



(7) **protection of children**

The protection order can also include protection for children who are affected by the situation by making:

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

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



(8) **other orders**

The magistrate can include any other order which is necessary to protect the safety of you and anyone who is in your care.

(9) **police assistance**

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

- search for and take a gun or other weapon from the respondent
- go with you to help you to collect your personal belongings in safety.

How long does the final protection order remain in force?

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

Orders about the joint home and its contents will usually remain in force for 6 months to one year, depending on the circumstances.

Orders about child custody and access will remain in force until they are changed by another court order.

Temporary maintenance orders can remain in force for a maximum of six months. This gives you enough time to take the case to an ordinary maintenance court.

Other provisions of a protection order can remain in force for a maximum of three years.

CHANGING OR CANCELLING THE ORDER

You or the respondent can apply to the magistrate to change or cancel a protection order at any time.

If you apply to have the protection order cancelled, the magistrate can do this without holding an enquiry. But the magistrate must be sure (a) that the request is made freely, and not as a result of intimidation and (b) that cancelling the order will not endanger you or anyone else.

If you apply for a change in the protection order, the magistrate will proceed in the same way as with the original application.

If the respondent applies for a change or a cancellation, then the magistrate must hold another enquiry and you must be

given 10 days notice. The magistrate must make sure that the change or cancellation will not endanger you or anyone else.

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

You or the respondent or the magistrate can ask for a social worker report on the family circumstances to help guide the magistrates decision.

Appeals

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

Who will deliver the protection order to the respondent?

If the respondent is in court when the order is made, the order can be given to him. Otherwise, a copy of the order will be officially delivered to the respondent by the clerk of the court, the messenger of the court, or the police.

What happens if the respondent violates the protection order?

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

For example, suppose that the protection order says that the respondent must not make contact with you. If he contacts you anyway, you must tell the police. You must make a statement giving details about how the respondent violated the protection order. You can lay a separate criminal charge against the respondent at the same time if his actions amount to another crime, such as trespass or assault.

The police have the power to arrest the respondent **without a warrant** if there are reasonable grounds to suspect that the protection order has been violated.

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

What is the penalty for violating a protection order?

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



Are there safeguards against abuse of protection orders?

Yes. If you consent to a violation of the protection order, then no crime has been committed. For example, suppose that the protection order contains a no-contact provision, but you invite

the respondent into your home. In such a case, the respondent cannot be convicted for violating the order. But it is not legally possible for you to give consent to any form of physical abuse.

If you give false or misleading information to the police about the breach of a protection order, then you have committed a crime. The penalty is a fine of up to N\$4000 or imprisonment for up to one year, or both.



Privacy

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



DOMESTIC VIOLENCE CRIMES

Does the law create any new crimes?

No, but certain crimes which take place in domestic relationships will be referred to as “domestic violence crimes”. These crimes will be dealt with in special ways.

The crimes that qualify for this are crimes of violence (such as murder, rape, indecent assault and assault) and some other crimes (such as kidnapping, robbery, malicious damage to property and criminal insult). Violating a protection order is also a crime.



Who can lay a charge of a domestic violence crime?

You, or any person who has an interest in your well-being – such as a counsellor, health care provider, police officer, social worker, teacher or employer. But only a person covered by a protection order can make a report to the police complaining that the protection order has been violated.

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



What can the police do in cases of domestic violence?

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

- **arrest** the suspected offender **without a warrant**
- issue a **formal written** warning to the suspected offender
- **search for weapons** at the scene of the domestic violence **without a warrant**

But the police officer must take your wishes into account.

FORMAL WARNINGS

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

If a police officer issues a formal warning, the station commander must put a copy of it on file at the police station. If there is a court case later on, previous formal warnings are likely to make things more serious for the abuser. There is no limit on the number of formal warnings which can be issued. The penalty for failing to comply with a formal warning is a fine of up to N\$2000 or imprisonment for a period of up to 6 months.



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

If you lay a criminal charge, will the suspected offender be released on bail?

The question of bail will be treated in the same way as for other crimes, with one important difference. As the complainant, you must be informed about the bail hearing and given a chance to put relevant information before the court. For example, if the person who was arrested has threatened you, this might be a reason to refuse to give bail.

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

The court may order that the accused must continue to financially support you and any dependants whilst out on bail at the same level as before the arrest, to make sure that you are not financially punished for asserting your rights.

The court might add other bail conditions if this is necessary.

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

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

You should report this to the police right away. The police should then contact the prosecutor, who can take steps to have the bail cancelled.

WHAT WILL HAPPEN AT THE CRIMINAL TRIAL?

Closed court:

Trials for domestic violence crimes will be heard privately in closed court. It is a crime to publish details that might reveal your identity.

Speedy trial:

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

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

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

Reducing the trauma of the trial:

The prosecutor should meet with you before the trial to explain exactly what happens in court. The prosecutor might ask a social worker to take you to the courtroom before the trial to show you where you will sit and to give you more information about what will happen on the day of the trial. To remind yourself, you can go through the statement you gave to the police before the trial starts. You must say the same things in court that you said to the police.

What is the penalty for a domestic violence crime?

The punishment will depend on the circumstances of the crime. It might be:

- a fine
- time in jail, or
- a suspended sentence (jail time which is postponed as long as there is no repeat crime)
- weekend imprisonment or community service.

These last two options can be good ones in cases where the crime was not too serious, or where the offender is employed and does not want to lose the job.

As the complainant, you will be given a chance to tell the court what you think would be an appropriate sentence. (If the complainant is deceased, this input will come from the next of kin.)



Conviction of a domestic violence crime involving physical abuse may disqualify a person from having a licence for a gun for at least two years, or possibly longer.

What are the duties of the police?

The police must:

- respond promptly and give appropriate priority to every report of domestic violence, including reports that a protection order has been violated
For example, the police will be expected to respond immediately if someone comes to the charge office to complain about domestic violence or calls in to report a domestic violence crime.
- provide protection to you, your children and other persons in your care
For example, when a protection order is issued, the station commander will inform all police at that station that you are at risk, and make sure that the necessary protection is given to you and any other person protected by the order. The police will also go with you to make sure that you can collect personal belongings from the residence if necessary.
- interview you and any witnesses in a way that allows everyone to speak freely
For example, the police must arrange for the statement to be taken by a person of the same sex as you where possible. The statement must be taken in private, but you may have a friend or support person present if you wish.
- provide information to you, to the abuser and to any family members who are affected about:

- assistance in obtaining medical treatment
- the availability of shelters or other appropriate services
- the availability of transport for treatment or to a shelter
- the rights and remedies available in terms of the law and how they work.

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

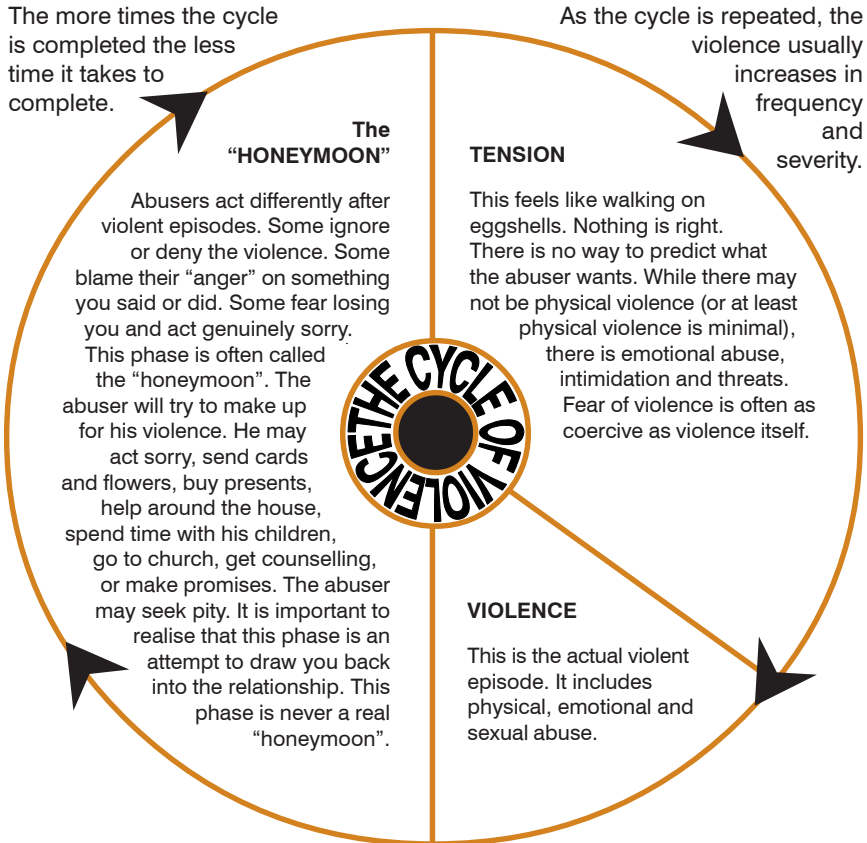
Hon Kawana, Deputy Minister of Justice
Parliamentary debate on Combating of Domestic Violence Act

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

Hon Sioka
Parliamentary debate on Combating of Domestic Violence Act

THE CYCLE OF VIOLENCE

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



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

President Sam Nujoma, 23 September 1993

