Namibia

Combating of Domestic Violence Act, 2003

Act 4 of 2003

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Republic of Namibia
Annotated Statutes

Combating of Domestic Violence Act, 2003

Act 4 of 2003

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Commenced on 17 November 2003 by Commencement of the Combating of Domestic Violence Act, 2003

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ACT

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

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

Part 1 – DEFINITIONS

1. General definitions

In this Act, unless the context otherwise indicates -

"**applicant,**" depending on the context, means -

(a) a person contemplated in section 4 who makes an application for a protection order;

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

(c) the complainant if he or she makes the application for a protection order;

"**child**" means a person who is under the age of 18 years;

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

(a) domestic violence as contemplated in this Act is committed, being committed or alleged to have been committed; or

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

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

"**dependant**" means a person who is legally entitled to be maintained by another person;

"**domestic relationship**" has the meaning assigned to it in section 3;

"**domestic violence**" has the meaning assigned to it in section 2;

"**domestic violence offence**" means any of the offences referred to in section 21;

"**enquiry**" means the enquiry held under section 12;

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

"**Inspector-General**" means the Inspector-General of Police appointed in terms of Article 116 of the Namibian Constitution;

"**Minister**" means the Minister responsible for justice;

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

"**prescribe**" means prescribe by regulation made under this Act;

"**protection order**" means an interim or final protection order granted under this Act;

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

"**respondent**" means a person against whom a protection order is sought or has been made;

"**social worker**" means a social worker as defined in the Social and Social Auxiliary Workers' Professions Act, 1993 (Act No. 22 of 1993); and

[The Social and Social Auxiliary Workers' Professions Act 22 of 1993 has been replaced by the Social Work and Psychology Act 6 of 2004.]

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

[There is a superfluous comma before the bracketed text.]

2. Definition of domestic violence

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

(a) physical abuse, which includes -

(i) physical assault or any use of physical force against the complainant;

(ii) forcibly confining or detaining the complainant; or

(iii) physically depriving the complainant of access to food, water, clothing, shelter or rest;

(b) sexual abuse, which includes -

(i) forcing the complainant to engage in any sexual contact;

(ii) engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;

(iii) exposing the complainant to sexual material which humiliates, degrades or violates the complainant's sexual integrity; or

(iv) engaging in such contact or conduct with another person with whom the complainant has emotional ties;

(c) economic abuse, which includes -

(i) the unreasonable deprivation of any economic or financial resources to which the complainant or dependant of the complainant is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities, and mortgage bond repayments or rent payments in respect of a shared household;

(ii) unreasonably disposing of moveable or immovable property in which the complainant or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;

(iii) destroying or damaging, property in which the complainant, or a family member or a dependant of the complainant, has an interest or a reasonable expectation of use; or

(iv) hiding or hindering the use of property in which the complainant, or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;

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

(i) committing physical abuse against a family member or dependant of the complainant;

(ii) threatening to physically abuse the complainant, or a family member or dependant of the complainant;

(iii) exhibiting a weapon; or

(iv) any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour;

(e) harassment, which means repeatedly following, pursuing or accosting the complainant, or a family member or dependant of the complainant, or making persistent unwelcome communications, and includes but is not limited to -

(i) watching, or loitering outside or near the building or place where such person resides, works, carries on business, studies or happens to be;

(ii) repeatedly making telephone calls or inducing a third person to make telephone calls to such person, whether or not conversation ensues; or

(iii) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to such person's residence, school or workplace;

(f) entering the residence or property of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence;

(g) emotional, verbal or psychological abuse, which means a pattern of degrading or humiliating conduct towards a complainant, or a family member or dependant of the complainant, including -

(i) repeated insults, ridicule or name calling;

(ii) causing emotional pain; or

(iii) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's, or the complainant's dependant or family member's privacy, liberty, integrity or security; or

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

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

(a) causes or allows that child to see or hear the physical, sexual, or psychological abuse of a person with whom that child has a domestic relationship; or

(b) puts that child, or allows that child to be put, at risk of seeing or hearing the abuse referred to in paragraph (a);

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

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

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

3. Definition of domestic relationship

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

(a) they are or were married to each other, including a marriage according to any law, custom or religion, or are or were engaged to be so married;

(b) they, being of different sexes, live or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;

(c) they have, have had or are expecting a child together, excluding situations -

(i) where the child is conceived as a result of rape; or

(ii) where the parties contributed gametes for artificial insemination, in vitro fertilisation or similar fertilisation techniques, but have no other relationship;

(d) they are parent and biological or adoptive child;

(e) they -

(i) are or were otherwise family members related by consanguinity, affinity or adoption, or stand in the place of such family members by virtue of foster arrangements; or

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

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

(aa) the sharing of a residence; or

(bb) one of them being financially or otherwise dependant on the other; or

(f) they, being of different sexes, are or were in an actual or a perceived intimate or romantic relationship.

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

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

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

Part II – PROTECTION ORDERS

4. Who may apply for protection order

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

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

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

[There is no full stop at the end of this sentence in the Government Gazette; there are no additional words.]

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

(a) a minor;

(b) mentally incapacitated;

(c) unconscious;

(d) regularly under the influence of alcohol or drugs; or

(e) at risk of serious physical harm,

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

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

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

5. Jurisdiction

(1) A court of a district where the -

(a) complainant permanently or temporarily resides, is employed or carries on business;

(b) respondent resides, is employed or carries on business; or

(c) cause of action arose,

has jurisdiction to grant a protection order under this Act.

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

6. Manner of application for a protection order

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

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

(a) the facts on which the application is based;

(b) the nature of the order applied for; and

(c) the police station where any breach of the protection order is most likely to be reported.

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

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

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

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

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

7. Criteria for granting of and contents of protection order

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

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

(a) solely in respect of behaviour which took place before the commencement of this Act; or

(b) subject to subsection (3), in respect of minor or trivial acts or incidents of domestic violence.

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

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

(a) the history of domestic violence by the respondent towards the complainant;

(b) the nature of the domestic violence;

(c) the existence of immediate danger to persons or property;

(d) the complainant's perception of the seriousness of the respondent's behaviour; and

(e) the need to preserve the health, safety and wellbeing of the complainant, any child or other person who is in the care of the complainant.

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

8. Granting of interim protection orders

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

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

(a) require oral evidence or further evidence of any nature and that evidence forms part of the record of the proceedings; and

(b) for the purposes of paragraph (a), summon any person to appear before the court.

(3) After considering an application as contemplated in subsection (1) the court -

(a) must, if it is satisfied that there is sufficient evidence as contemplated in section 7(1), grant, in the prescribed form and manner, an interim protection order notwithstanding the fact that the respondent has not been given notice of the proceedings and an opportunity to be heard;

(b) may, if the circumstances so require, refer the matter for an enquiry, in which case, the court must give such directives as may be prescribed for the conducting of any subsequent proceedings;

(c) may, grant part of the relief applied for and refer any outstanding issues to an enquiry, in which case, paragraph (b) will apply; or

(d) may, if it considers that the application has no merit, dismiss the application.

(4) An interim protection order must -

(a) call upon the respondent to, on or before the return date, show cause why the interim protection order should not be confirmed; and

(b) contain any other prescribed information.

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

(6) The clerk of the court must send a copy of the interim protection order to the station commander of the police station named in the application and that station commander must cause police protection, to the extent reasonably necessary and possible, to be provided to the complainant or any person in the care of the complainant who is at risk until such time as the interim protection order is made final and served on the respondent or discharged.

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

9. Service of interim protection order

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

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

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

[The cross-reference in subsection (3) is in error. It should refer to section 16.]

10. Confirmation where respondent fails to oppose

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

11. Effect of notice to oppose

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

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

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

12. Procedure for enquiry

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) proceed to hear and determine the matter in the absence of the respondent; or

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

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

(a) if it is satisfied that the applicant or complainant no longer wishes to pursue the matter, dismiss the application; or

(b) after having received a reasonable excuse for such non-appearance, postpone the enquiry on reasonable terms; or

(c) if it is satisfied, having regard to the material before it, that it is appropriate for evidence to be given by affidavit, the court may, on the application of any other party, order the attendance for cross-examination of the person who made such affidavit.

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

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

(a) confirm or discharge the interim order in its entirety;

(b) confirm specified provisions of the interim order;

(c) cancel or vary specified provisions of the interim order;

(d) discharge the interim order and substitute another order for the interim order;

(e) if the respondent is present at the enquiry, at the request of the applicant or at its own initiative, add provisions which were not contained in the interim order.

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

13. Final protection orders

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

(2) Where an interim protection order is confirmed with or without modifications after an enquiry which the respondent fails to attend, the court must extend the interim protection order until such

date as the final protection order is served on the respondent and the interim protection order has full force and effect until this date regardless of whether or not the respondent has been notified of the extension.

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

[The word "commander" is misspelt in its second usage in subsection (3), as reproduced above.]

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

14. Terms of protection order

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

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

(a) a provision directing the respondent to surrender any firearm or other specified weapon in the possession of the respondent, which may also include if appropriate -

(i) a provision suspending any firearm licence in the name of the respondent for the duration of the protection order;

(ii) a provision authorising the police to search for and seize any weapon at any specified place where there is probable cause to believe that the weapon may be located;

(b) "no-contact" provisions which -

(i) forbids the respondent to be, except under conditions specified in the order, at or near specified places frequented by the complainant or by any child or other person in the care of the complainant, including but not limited to -

(aa) the residence, workplace or educational institution of the complainant, or any child or other person in the care of the complainant;

(bb) a shelter or other residence where the complainant is temporarily living; or

(cc) the residences of specified family members;

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

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

[The verb "forbids" at the beginning of subparagraphs (i) and (ii) should be "forbid" to be grammatically correct.]

(c) if an act of physical violence has been committed, a provision granting the complainant and dependants of the complainant exclusive occupation of a joint residence, regardless

of whether the residence is owned or leased jointly by the parties or solely by either one of them, which may also include if appropriate -

(i) a provision directing that the contents of the joint residence (or certain specified contents) remain in the residence for the use of the person given possession;

(ii) a provision directing a police officer to remove the respondent from the residence;

(iii) a provision authorising the respondent to collect personal belongings from the residence under police supervision,

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

(aa) the length of time that the residence has been shared by the complainant and the respondent, but without prejudicing the complainant on the grounds that he or she has at any stage fled the common residence to assure his or her safety or the safety of any child or other person in the care of the complainant;

(bb) the accommodation needs of the complainant and any other occupants of the residence, considered in light of the need to secure the health, safety and wellbeing of the complainant or any child or other person in the care of the complainant; and

(cc) any undue hardship that may be caused to the respondent or to any other person as a result of such order;

(dd) in the case of communal land, the respective customary law or practice which governs the rights of ownership to or occupation of that communal land;

(d) a provision directing the respondent to -

(i) pay rent for the complainant by a specified date of each month in respect of a residence; or

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

(e) a provision directing a police officer to accompany, within a specified time, the complainant or another person designated by the complainant, to the joint residence to supervise the removal of personal belongings of the complainant or any child or other person in the care of the complainant;

(f) a provision granting either party possession of specified personal property, including but not limited to means of transport, agricultural implements, livestock, furniture, chequebooks, credit cards, children's clothing and toys, identification documents, keys, personal documents or other necessary personal effects, but the order must not be made in respect of property which is not owned by either party or which is jointly owned by either party and another person;

(g) a provision restraining the complainant or the respondent or both from taking, converting, damaging or otherwise dealing in property in which the other party may have an interest or a reasonable expectation of use;

(h) a provision temporarily directing the respondent to make periodic payments in respect of the maintenance of the complainant, and of any child of the complainant, if the respondent is legally liable to support the complainant or the child, as an emergency measure where no such maintenance order is already in force;

(i) a provision granting temporary sole custody -

(i) of a child of the complainant to any appropriate custodian other than the respondent; or

(ii) of any child of the complainant or any child in the care of a complainant to the complainant or to another appropriate custodian;

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

(j) a provision temporarily -

(i) forbidding all contact between the respondent and any child of the complainant;

(ii) specifying that contact between the respondent and a child of the complainant, must take place only in the presence and under the supervision of a social worker or a family member designated by the court for this purpose; or

(iii) allowing such contact only under specified conditions designed to ensure the safety of the complainant, any child who may be affected, and any other family members,

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

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

15. Duration of final protection orders

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

(a) a provision granting the complainant exclusive occupation of a residence owned -

(i) by the complainant, remains in force for any period set by the court;

(ii) by the respondent, remains in force for any period set by the court up to a maximum of six months;

(iii) jointly by the complainant and the respondent, remains in force for any period set by the court up to a maximum of one year;

(b) a provision granting the complainant exclusive occupation of a leased residence remains in force for any period set by the court, but must not extend beyond the duration of the current lease period;

(c) a provision directing that the complainant enjoys possession of household effects must, if made in conjunction with an order granting the complainant exclusive occupation of a joint residence, remain in force for the same period as the provision in that order;

(d) a provision concerning temporary custody of a child and access to a child remains in force until it is superseded by another order of a relevant court;

(e) a provision concerning maintenance remains in force for any period set by the court up to a maximum of six months; and

(f) any other provision of a final protection order remains in force for three years.

16. Offences

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

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

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

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

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

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

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

17. Modification or cancellation of protection orders

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

(a) the complainant;

(b) an applicant; or

(c) the respondent.

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

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

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

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

(6) In an application made as contemplated in subsection (5) the court may, whether or not it appears that it is the wish of the complainant to oppose the modification or cancellation, grant the respondent's request only if it is satisfied on the basis of all the information before it, including the

record pertaining to the original protection order, that such modification or cancellation will not endanger the complainant or any child or other person concerned in the matter.

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

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

18. Appeals

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

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

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

19. Pending proceedings

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

20. Costs

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

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

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

Part III – CRIMINAL PROVISIONS

21. Domestic violence offences

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

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

22. Complaints

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

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

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

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

23. Arrest and seizure of weapons

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

(a) arrest the person without a warrant; or

(b) issue a formal warning, copies of which must, in the prescribed form and manner, be filed with the police and the Office of the Prosecutor-General.

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

(a) question any person present at the scene of the offence to determine whether there are weapons at the scene; and

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

24. Rights of complainant where person is charged with domestic violence offence

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

(a) to ensure that all relevant information has been obtained from the complainant which includes all information relevant to the question whether the accused should be released on bail and whether any conditions should be imposed if the accused is released on bail; and

(b) to provide such information to the complainant as will be necessary to lessen the impact of the trial on the complainant.

25. Complainant’s submission in respect of sentence

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

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

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

Part IV – POLICE DUTIES

26. Inspector-General to issue directives

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

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

(a) on police protection to complainants of domestic violence and their children or other persons in their care regardless of the source of the request and including such protection to such persons where an applicant intends to make an application for a protection order until such time as the relevant court is open;

(b) to ensure that the necessary priority and prompt action are given to calls and cases alleging violence in domestic relationships or where a protection order has been or is being breached;

(c) to ensure that complainants of domestic violence and witnesses are interviewed in such a way that they are able to speak freely;

(d) on information to be given by police officers to complainants, alleged perpetrators and family members who are present at the scene of an alleged domestic violence offence with regard to assistance for medical treatment, the availability of shelters or other appropriate services, the availability of transport for such treatment or to such shelters, procedures to obtain protection orders and the contents of such orders, the laying of criminal charges or any other matter relevant to domestic violence, and the way and the form in which such information is to be given.

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

27. Records of domestic violence incidents

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

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

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

28. Annual reports to be tabled in National Assembly

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

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Part V – GENERAL

29. Record of proceedings to be kept

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

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

30. Privacy

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

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

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

31. Evidence of psychological effect of domestic violence

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

(a) that the act which forms the subject matter of a charge of a domestic violence offence or an application for a protection order has been committed;

(b) the extent of the harm suffered by the complainant, to enable the court to impose an appropriate sentence upon conviction of the perpetrator; or

(c) defences or grounds for mitigation of sentence in respect of the commission of a criminal act by a person who has suffered past domestic violence against the perpetrator of that violence.

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

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

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

32. Regulations

(1) The Minister may make any regulations relating to -

(a) any prescribed forms referred to in this Act;

(b) prescribed methods of service referred to in Part II of this Act;

(c) the procedure for enquiries in terms of section 12;

(d) procedures for ensuing the speedy hearing, verdict and sentencing in respect of domestic violence offences;

[The word "ensuring" is misspelt in the Government Gazette, as reproduced above.]

(e) procedures for notification to the complainant of the time and place of sentencing, and for the submission of affidavits, as contemplated in section 25;

(f) any other matter which is permitted or required to be prescribed for under this Act; and

(g) any other matter aimed at furthering the objectives of this Act.

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

33. Amendments and savings

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

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

34. Short title and commencement

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

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

FIRST SCHEDULE

OFFENCES

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

12. Robbery where violence or threats of violence are used against the complainant or in the presence of the complainant.

13. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

SECOND SCHEDULE

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

1. The Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended -

(a) in section 60A by the substitution for the word "rape" of the expression "rape or a domestic violence offence";

(b) in section 62 by the addition of the following subsection:-

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

(a) an order prohibiting any direct or indirect contact with the victim during the pendency of the proceedings;

(b) an order prohibiting the possession of any firearm or other specified weapon; and

(c) where the accused is legally liable to maintain the complainant or any child or other dependant of the complainant, an order requiring that the accused support the complainant and child or other dependant at the same or greater level as prior to the arrest.".

(c) in section 153 by the substitution for subsections (3A) and (3B) of the following subsections:-

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

(a) any sexual or indecent act towards or in connection with any complainant;

(b) any act for the purposes of procuring or furthering the commission of a sexual or indecent act towards or in connection with any complainant; or

(c) any domestic violence offence as defined in the Domestic Violence Act, 2003;

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

(3B) Any person whose presence is not necessary at criminal proceedings referred to in paragraphs (a), (b) and (c) of subsection (3A), shall not be present at such proceedings while the complainant in such proceedings is giving evidence, unless such complainant, or, if he or she is a minor, his or her parent or guardian or a person in loco parentis, otherwise requests.".

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

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

"A domestic violence offence involving physical abuse as defined in the Domestic Violence Act, 2003".