



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 17 November 2003

No.3094

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## Government Notices

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### MINISTRY OF JUSTICE

No. 234 2003

#### COMMENCEMENT OF THE COMBATING OF DOMESTIC VIOLENCE ACT, 2003 (ACT NO. 4 OF 2003)

In terms of section 34 of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003), I hereby determine that the said Act will come into operation on the 17th November 2003.

**A. KAWANA**  
**MINISTER OF JUSTICE**

Windhoek, 7 November 2003

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### MINISTRY OF JUSTICE

No. 235 2003

#### COMBATING OF DOMESTIC VIOLENCE ACT, 2003: REGULATIONS RELATING TO THE COMBATING OF DOMESTIC VIOLENCE

The Minister has, in terms of section 32 of the Combating of Domestic Violence Act, 2003 made the regulations set out in the Schedule.

## SCHEDULE

### Definitions

1. In these regulations a word or expression to which a meaning has been given in the Act bears that meaning and, unless the context indicates otherwise -

“the Act” means the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003); and

“signature” includes writing a person’s name on a document or placing a person’s mark or thumb print on a document.

### Manner of application for a protection order

2. (1) A person who makes an application for a protection order as contemplated in section 6(1) of the Act must make the application on a form corresponding substantially to Form I of the Annexure.

(2) Where an application is brought on behalf of a complainant by another person as contemplated in section 4 of the Act, the application must set out or contain -

- (a) the basis for the applicant’s interest in the well being of the complainant; and
- (b) the written consent of the complainant, or the grounds for dispensing with such consent as contemplated in section 4(4) of the Act.

(3) The written consent to be given by the complainant as contemplated in section 4 of the Act must be in the form substantially corresponding to Form 2.

(4) Where an applicant for a protection order requests a no-contact provision in respect of a person other than the complainant, a child or other person in the care of the complainant as provided as contemplated in section 14(2)(b) of the Act, consent of that person, or where that person is a child, the consent of a parent or person in whose care that child is to the proposed no-contact provision must be attached to the application in the form substantially corresponding to Form 3.

(5) An application for a protection order must be dealt with as a matter of urgency and the court may sit after ordinary court hours and on days which are normally not considered as court days to hear such applications if the need arises.

### Notice to attend enquiry

3. The notice to attend an enquiry as contemplated in section 11(1) must be in a form substantially corresponding to Form 4.

### Procedure for enquiry

4. (1) Where it considers it appropriate in the interests of the moral welfare or safety of the applicant, the court may order that the public or press be excluded from a domestic violence enquiry.

(2) A court holding an enquiry must administer an oath to, or accept an affirmation from any witness appearing before it and record the evidence of that witness.

(3) The enquiry referred to in subregulation (1) must be held in the presence of the respondent or in his or her absence, on production of proof that the respondent was served with the notice referred to in regulation 3.

(4) Unless otherwise provided for in the Act or in these regulations, proceedings at an enquiry must be conducted in accordance with practice and procedure followed in civil proceedings in the magistrates courts in Namibia.

(5) The court may, when conducting an enquiry, depart from any strict rule of practice or procedure as contemplated in subregulation (4), if the court considers that departure from that practice or procedure would ensure that substantial justice is achieved between the parties to the enquiry.

(6) The court must, where both or one of the parties are not represented, assist such parties in the quest to ensure that substantial justice is achieved and may use its discretion to ensure that the inquiry is held in a relaxed atmosphere where the parties can express themselves freely.

(7) The court holding an inquiry must play an active role in the proceedings and may at any time during the inquiry cause any person to be summoned as a witness or examine any person who is present at the inquiry, although that person was not summoned as a witness, and may recall and re-examine any person already examined, in an objective attempt to determine the facts in a manner that is aimed at ensuring that substantial justice is achieved between the parties.

(8) The court holding an inquiry must keep record of the proceedings or cause the proceedings to be recorded in full be it in shorthand or by mechanical means by a person directed by the presiding officer to do so.

(9) Notwithstanding anything contained in any other law, the following evidence is admissible at an enquiry -

- (a) previous convictions as far as it pertains to acts of violence be it domestic or otherwise;
- (b) records of previous protection orders refused or granted against any of the parties;
- (c) reports of acts of domestic violence reported to the police;
- (d) formal warnings issued by the police; or
- (e) variations or cancellation of protection orders.

(10) At the inquiry, a statement in writing by any person, other than one of the parties, is admissible as evidence to the same extent as oral evidence to the same effect by the person concerned, but, a copy of the statement must, at least 14 days before the date on which the statement is to be submitted as evidence, be served on the other party and he or she may at least seven days before the commencement of the inquiry, object to the statement.

(11) Where a party wishes to arrange to summon witnesses through the court, the clerk of the court must assist such person to identify and summon such witnesses where the court considers it necessary, it may however limit the number of persons to be called as witnesses.

(12) If a person -

- (a) objects to the production of a statement as contemplated in subregulation (10), the court must inquire into the reasons for such objection and after doing so give a ruling as to whether such statement is admissible as evidence or not; or
- (b) does not object, the statement contemplated in subregulation (10) may on its production at the inquiry be admitted as evidence in the inquiry.

### Service of documents

5. (1) Service of any documents which are required to be served under the Act or these regulations must, subject to subregulation (2), be served by a member of the Namibian Police as part of that member's duties under section 26 of the Act.

(2) Subject to any guidelines made under section 26(1), the Station Commander of the relevant police station must ensure that reasonable efforts are made by a member of the police to serve the documents as provided in subregulation (1) within 5 days of receiving them from the clerk of the court.

(3) Where documents cannot be served by the police as contemplated in subregulation (1), service must be effected without delay by the clerk of the court by -

- (a) handing or presenting a certified copy of the document to the person on whom the document is to be served;
- (b) sending a certified copy of the document to that person by registered mail and endorsing the original document to this effect; or
- (c) directing the messenger of the court to forthwith serve the document on the person to be served by delivering a certified copy of the document in any one of the following manners -
  - (i) handing or presenting it to that person personally;
  - (ii) handing or presenting it at that person's residence or place of business to a person apparently not less than 16 years of age residing or employed there; or
  - (iii) handing or presenting it at that person's place of employment to a person apparently not less than 16 years of age and apparently in authority over that person or in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at that person's place of employment.

(3) Where the person on whom a document is to be served keeps his or her residence, place of business or place of employment closed and thereby prevents the messenger of the court from serving the document in the manner described in subregulation (2), the messenger of court must effect service of the document by affixing it to the outer or principal door or security gate of such residence, place of business or place of employment.

(4) Subject to section 20 of the Act, any costs which are incurred when service of documents is effected by the messenger of court must be borne by the State.

(5) Any matter relating to the service of documents not provided for in the Act or in these regulations must be carried out in the same manner in which service of court process is carried out in the magistrates court.

(6) For the purposes of this regulation "residence" means, where the building is occupied by more than one person or family, that portion of the building occupied by the person on whom service is to be effected.

### Interim protection order

6. An interim protection order made in terms of section 8 of the Act must be in a form substantially corresponding to Form 5.

**Notice to oppose**

7. A notice of an intention to oppose on the part of the respondent as contemplated in section 11 of the Act must be in a form substantially corresponding to Form 6.

**Postponement of enquiry**

8. If an enquiry held in terms of section 12 of the Act is postponed in the absence of one of the parties, notice of the new court date must be prepared in a form substantially corresponding to Form 7 and served on the absent party in the manner prescribed in Regulation 5.

**Notice upon non-attendance by complainant at enquiry**

9. (1) If an applicant fails to appear at an enquiry under the circumstances set out in section 12(15) of the Act, notice to the station commander of the police station named in the application to enquire into the reasons for such non-appearance must be made in a form substantially corresponding to Form 8A.

(2) The report of the station commander to the notice referred to in subregulation (1) must be in a form substantially corresponding to Form 8B and that notice forms part of the official record of the proceedings.

(3) If the court, on consideration of the response of the station commander, is satisfied that the non-appearance of the applicant was due to intimidation of the applicant or to a fear of harm on the part of the applicant, the court must set a new date for the enquiry and make an order for such police protection as will be sufficient to enable the safe attendance of the complainant on court date.

**Final protection order**

10. A final protection order contemplated in section 13(1) of the Act, whether or not it is preceded by an interim protection order, or an order for the modification or cancellation of a protection order as contemplated in section 17 of the Act, must be in a form substantially corresponding to Form 9A, accompanied by Form 9B where appropriate.

**Application for modification or cancellation of protection orders**

11. (1) An application for the modification or cancellation of a protection order in terms of section 17 of the Act must be in a form substantially corresponding to Form 10A.

(2) Where the court has granted the application contemplated in subregulation (1) notice must be given to the other party and that notice must be in a form substantially corresponding to form 10B of the annexure.

**Formal warning**

12. (1) A formal warning as contemplated in section 23(1)(b) of the Act must be in a form substantially corresponding to Form 11.

(2) Whenever a formal warning is issued in terms of section 23(1)(b) of the Act, the station commander of the police station in question must place a copy of the warning on file at that police station and must forthwith transmit a copy of the formal warning to the Office of the Prosecutor-General either by hand or by post.

(3) The Prosecutor-General must cause all formal warnings received in terms of these Regulations to be filed in a register kept for such purposes.

(4) Any person who fails to comply with a warning issued in accordance with subregulation (1) commits an offence and is liable on conviction to a fine not exceeding N\$ 2000 or to imprisonment for a period not exceeding six months.

#### **Notice of court proceedings on bail or sentencing**

**13.** (1) Notice to the complainant of proceedings for sentencing as contemplated in section 25(1) of the Act, or for bail as contemplated in section 60A of the Criminal Procedure Act, 1977(Act No. 51 of 1977) must be in a form substantially corresponding to Form 12.

(2) If the bail proceedings contemplated in subregulation (1) are postponed in the absence of the complainant, the complainant must be notified of the new date in a form substantially corresponding to Form 12.

(3) If bail is granted to the accused in the absence of the complainant, the complainant must be notified of the fact that bail was granted, and of any bail conditions, in a form substantially corresponding to Form 13.

(4) All notices in terms of this regulation must be served on the complainant in the manner prescribed in Regulation 5.

#### **Record of domestic violence incidents**

**14.** Records of domestic violence incidents as contemplated in section 27 of the Act must be kept in a form substantially corresponding to Form 14.

#### **Fees**

**15.** Fees in terms of section 29(1) of the Act must be the same as those prescribed in Rule 34 of the Magistrates Court Rules of Court promulgated by Government Notice No. R1108 of 21 June 1968.

#### **Procedure for speedy hearing of domestic violence offences**

**16.** (1) In pursuance of the speedy hearing, verdict and sentencing of domestic violence offences as contemplated in section 32(1)(d), the prosecutor must, as a matter of priority, place a criminal case involving any domestic violence offence on the court roll as soon as it is received.

(2) Where a postponement in a criminal case concerning a domestic violence offence is granted at the request of the accused, the court may remand the defendant in custody until the new court date regardless of whether or not the accused was previously in custody or out on bail as long as -

- (a) there is a *prima facie* evidence that a domestic violence offence has been committed; and
- (b) the court is satisfied that the victim of the alleged offence may be at risk if defendant is not confined until the conclusion of the case.

(3) If a postponement is granted for any reason in a case involving a domestic violence offence, the prosecutor must re-schedule the case on the court roll in order to ensure that the case is heard as a matter of priority.

#### **Short title**

- 17.** These regulations shall be called the Domestic Violence Regulations.

**FORM 1 –  
(Regulation 2)  
APPLICATION FOR PROTECTION ORDER  
Section 6(1) of the Combating of Domestic Violence Act, 2003**

<b>DEFINITIONS</b>
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**COMPLAINANT** = the victim of the domestic violence (even if someone else applies for the protection order)

**RESPONDENT** = the person who committed the domestic violence

If the directions say to mark a question with a **TICK**, you can use a mark that looks like § or X.

**DOMESTIC VIOLENCE**

*Domestic violence includes the following acts. It can also include acts which are not listed.*

**PHYSICAL ABUSE**

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

**SEXUAL ABUSE**

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

**ECONOMIC ABUSE**

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

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

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

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

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

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

EMOTIONAL, VERBAL OR PSYCHOLOGICAL ABUSE, which means a pattern of degrading or humiliating conduct towards a complainant (or a family member or dependant of the complainant) including-

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

THREATS or ATTEMPTS to do any of these acts.

PSYCHOLOGICAL ABUSE OF A CHILD includes a situation where someone other than a victim of domestic violence -

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

In some cases, a SINGLE ACT can amount to domestic violence. A number of acts that form part of a PATTERN of behaviour may amount to domestic violence even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

### **DOMESTIC RELATIONSHIPS**

*Domestic relationships include only the following relationships.*

MARRIAGE: a male and female who are or were married to each other in a marriage according to any law, custom or religion, or who are or were engaged to be so married.

LIVING TOGETHER AS HUSBAND AND WIFE: a male and female who are living or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other.

HAVING A CHILD TOGETHER: a male and female who have, have had or are expecting a child together - excluding situations where the child is conceived as a result of rape or where the parties contributed ova or sperm for an assisted reproductions technique but have no other relationship.

PARENT AND CHILD, whether biological or adoptive.

### **FAMILY MEMBERS**

- people related by blood, marriage or adoption;
- people who are standing in the place of family members because of foster arrangements;
- people who would be family members related by marriage if a man and a woman who are living together as husband and wife had been formally married .

BUT ONLY IF THEY HAVE SOME CONNECTION OF A DOMESTIC NATURE, such as the sharing of a residence or one of them being financially or otherwise dependant on the other.

BOYFRIEND/GIRLFRIEND: a male and female who are or were in an actual or a perceived intimate or romantic relationship.

A “domestic relationship” based on a past relationship (such as marriage or a romantic relationship which is now over) is considered to continue for at least one year after the relationship has come to an end. Where a child is born to any couple, their “domestic relationship” continues throughout the lifetime of that child and for one year after the death of the child. The court can extend these time periods if there are good reasons to do so.