



Domestic Violence.

THE NEW DOMESTIC
VIOLENCE ACT, 14 OF 2021

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INTRODUCTION

IN MEMORY OF TSHEGOFATSO PULE AND ALL
THOSE WHO HAVE SUFFERED FROM GENDER BASED
VIOLENCE AND DOMESTIC ABUSE IN SOUTH AFRICA

Welcome to the second edition of our e-book, a comprehensive guide to understanding and addressing the pervasive issue of domestic violence. Domestic violence also known as Gender Based Violence (GBV) is a global issue that transcends borders, cultures, and socio-economic classes. It is not only a South African problem, but a worldwide crisis that demands our attention.

According to the **World Health Organization**, 1 in 3 women globally, around 736 million, are subjected to physical or sexual violence by an intimate partner or sexual violence from a non- partner in their lifetime. This violence often starts early, with 1 in 4 young women (aged 15-24 years) who have been in a relationship already having experienced violence by an intimate partner by the time they reach their mid-twenties.

Domestic Violence in South Africa.

In South Africa, the situation is particularly dire. The country has been dubbed the "rape capital of the world" by Human Rights Watch, with some of the highest rates of gender-based violence worldwide, including rape, female homicide, and domestic abuse.

The female homicide rate in South Africa is roughly 24.6 per 100,000 population—nearly six times the global average.

Approximately 200,000 South African women per year report some type of violent physical attack against them to the police, and more than 40% of South African men interviewed disclosed being physically violent towards a partner.

This e-book aims to shed light on the issue of domestic violence, providing insights into the legal framework, societal implications, and potential solutions. This e-book serves as an invaluable resource for anyone who has experienced gender-based violence. It provides a comprehensive understanding of the legal landscape, societal implications, and potential remedies related to domestic violence. The information contained within these pages offer victims the knowledge and tools they need to navigate the often complex legal and social systems.

THE NEW DOMESTIC VIOLENCE AMENDMENT ACT, 14 OF 2021

The Constitutional Court of South Africa has underscored the severity and impact of domestic violence, stating:

"Domestic violence, distinct in its hidden, repetitive nature and its profound ripple effects, is a crime that transcends class, race, culture, and geography. Its insidious presence, often concealed and frequently unpunished, makes it all the more damaging".

S v Baloyi 86 2000 (1) BCLR 86 (CC), para 11.

In response to this crisis, the government has initiated steps to enhance the laws governing GBV and the procedures for obtaining protection orders. This included the introduction of the **Domestic Violence Amendment Bill [B20-2020]** ("the Bill"), aimed at amending the **Domestic Violence Act 116 of 1998** ("the Old Act"), and culminated in the enactment of the **Domestic Violence Amendment Act 14 of 2021** ("the New Act") or ("DVA"). Alongside the New Act, the Minister of Justice and Correctional Services also unveiled the **Domestic Violence Regulations, 2022**. Furthermore, **Directives** in line with the New Act were introduced on 14 April 2023. Following the enactment of the new **Domestic Violence Act, 14 of 2021**, the **National Instruction 7/1999 - Domestic Violence** was also put into effect on the 24th April 2023. This instruction offers extensive details on the regulatory structure, definitions, and the duties of police officers in handling cases of domestic violence and provide guidance to members of the South African Police Service (SAPS) on the handling of domestic violence cases.

THE AMENDMENTS AND CHANGES

The New Act introduces significant changes to the Old Act, including new definitions such as coercive and controlling behaviour, and expands the existing definition of Domestic Violence to encompass spiritual abuse, elder abuse, and coercive and controlling behaviour. A notable change is the provision for victims of domestic violence to apply for protection orders electronically, eliminating the need for a court appearance. The New Act allows any complainant to apply to a court for a protection order on an ex parte basis. The application can be lodged with the clerk or submitted electronically to the court with jurisdiction over the matter. This amendment will undoubtedly alleviate the burden on complainants seeking urgent protection.

These amendments, aim to bolster the fight against GBV and provide enhanced support and protection for survivors. The New Act specifically seeks to augment the protections for survivors of domestic violence and address the practical challenges and gaps that have emerged since the Old Act was implemented. The New Act introduces several new definitions for various types of domestic abuse and revises some existing ones.

New additions include definitions for "coercive behaviour", "controlling behaviour", "elder abuse", "expose a child to domestic violence", "sexual harassment", and "spiritual abuse". Revised definitions include changes to "harassment", "physical abuse", "sexual abuse", "emotional, verbal or psychological abuse", and "intimidation".

NOTABLE AMENDMENTS

The amendments to the New Act have introduced several significant changes to technical and procedural aspects.

These include:

Mandatory reporting obligations for adults – Now, any adult who has knowledge, or reasonably believes or suspects that an act of domestic violence has been committed against a child, a disabled person, or an older person is required to report such knowledge, belief or suspicion to a social worker or the South African Police Service (SAPS).

Electronic submissions – The amendments have made it possible for applications for protection orders to be submitted electronically, either via email or through a dedicated online portal.

Obligations for electronic communications service providers – If it is alleged that an electronic communication, such as a social media post, was used to commit an act of domestic violence, the court can direct the service provider to provide certain information to the courts.

NOTABLE AMENDMENTS, continue.

Mandatory reporting obligations for functionaries – Certain professionals, including medical practitioners, health care personnel, social workers, educators, and caregivers, who reasonably believe or suspect that an act of domestic violence has been committed against a child, a disabled person, or an older person, are now required to report such belief or suspicion to a social worker or the SAPS.

Domestic Violence Safety Monitoring Notice ("Notice") – A complainant who shares a residence with a respondent and reasonably suspects that the respondent poses a threat to their personal safety can apply for a Notice, in addition to a protection order. This Notice can direct the SAPS to either contact or visit the complainant at their residence at regular intervals, as determined by the court, to ensure the complainant's continued safety. SAPS to either contact or visit the complainant at their residence at regular intervals, as determined by the court, to ensure the complainant's continued safety.

Mandatory prosecutions – Prosecutors are now prohibited from refusing to prosecute a person who has violated the terms of a protection order.

Integrated Electronic Repository – This is a new online platform designed to facilitate the accessibility of orders by functionaries in the criminal justice system.

WHAT IS DOMESTIC VIOLENCE?



Domestic violence is a pervasive issue that is characterized by a pattern of abusive behavior, which infringes upon an individual's fundamental right to live free from violence. This form of violence typically occurs within the context of an intimate relationship, where one partner seeks to inflict harm on the other in an attempt to gain or maintain power and control. This dynamic can exist regardless of the couple's marital status or whether they live together or apart. Domestic violence can have severe and long-lasting effects on a person, impacting their physical, emotional, and psychological well-being and can lead to a variety of mental health issues. These can include depression, anxiety, post-traumatic stress disorder (PTSD), and suicidal ideation or attempts.

The 'harm' inflicted in instances of domestic violence can take on a variety of forms, each with its own devastating impact. Verbal abuse, for instance, can involve shouting, name-calling, or constant criticism, which can erode the victim's self-esteem and mental well-being over time.

Emotional abuse, on the other hand, can include manipulation, control, and humiliation. This might involve isolating the victim from their friends and family, controlling their activities and movements, or repeatedly belittling and humiliating them to make them feel worthless.

Physical abuse is perhaps the most recognizable form of domestic violence and can involve hitting, punching, slapping, or any other form of physical harm. This type of abuse can lead to serious physical injuries and long-term health problems.

Sexual abuse, another form of domestic violence, can involve rape or inappropriate touching. It can also include forcing the victim into sexual activities they are uncomfortable with or using sex as a means of exerting control.

In some cases, the abuse can also extend to the children, either directly through physical or sexual abuse, or indirectly through exposure to the violence inflicted on their parent. This can have severe psychological impacts on the children, affecting their development and mental health.



It is important to note that domestic violence is not a one-time occurrence but a pattern of behaviour that often escalates over time. The cycle of violence can be difficult to break without intervention, as the abuser often uses fear, guilt, shame, and intimidation to keep the victim under control. Recognizing these patterns is the first step towards seeking help and breaking the cycle of abuse.

Assessing the true extent of domestic violence involving male victims presents a challenge. Some research suggests that women who assault their male partners are less likely to be arrested, even when the male victim reports the incident to the police. Another study found that law enforcement often perceives female perpetrators as victims rather than the actual instigators of violence against men. Further research has indicated a significant level of societal acceptance towards aggression by women against men.



Domestic violence is not exclusive to heterosexual relationships; it also occurs in same-sex relationships. Certain populations have identified gay and lesbian relationships as risk factors for abuse. Historically, domestic violence has been viewed as a family matter, with limited attention given to violence in same-sex relationships.

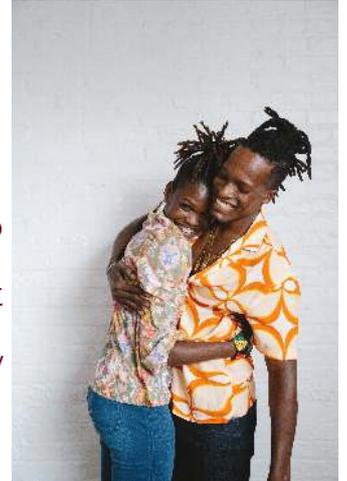
In same-sex relationships, some unique factors can contribute to the dynamics of abuse. These can include: **"Outing" or Threat of Outing:** A perpetrator may threaten to reveal the victim's sexual orientation or gender identity to family, friends, employers, or community members. This can be particularly damaging if the victim is not openly LGBTQ+. **Isolation:** Perpetrators may isolate their victims from the LGBTQ+ community, making it more difficult for them to seek help and support. **Societal Bias and Discrimination:** LGBTQ+ individuals may face additional barriers when seeking help due to societal bias, discrimination, or lack of understanding about same-sex domestic violence. **Limited Resources:** There may be limited resources available specifically for LGBTQ+ victims of domestic violence, such as shelters or counseling services.

UNDERSTANDING THE SCOPE OF A DOMESTIC RELATIONSHIP

Domestic violence can occur in a wide range of domestic relationships, which are defined broadly to include various types of intimate and familial relationships.

Married or Previously Married Partners:

This includes individuals who are or were married to each other under any law, custom, or religion. It doesn't matter whether the marriage is recognised by civil law or is a customary or religious marriage.



Cohabiting Partners:



This refers to individuals who live or lived together in a relationship akin to marriage, regardless of whether they are or were legally married to each other. This includes both opposite-sex and same-sex couples.

Parents of a Child:

This includes individuals who are the parents of a child or who have or had parental responsibility for a child, whether or not they were parents at the same time.

UNDERSTANDING THE SCOPE OF A DOMESTIC RELATIONSHIP

Family Members:

This includes individuals who are related by blood (consanguinity), marriage (affinity), or adoption. This can encompass a wide range of relationships, including siblings, parents and children, and extended family members.

This can encompass a wide range of relationships, including siblings, parents and children, and extended family members.

Engaged, Dating, or Customary Relationships:

This includes individuals who are or were in an engagement, dating, or customary relationship.

This can include any actual or perceived romantic, intimate, or sexual relationship, regardless of its duration.

Individuals Sharing the Same Residence:

This includes individuals in a close relationship who share or shared the same residence. This can include roommates, housemates, or other individuals living in the same household. In essence, a domestic relationship in the context of domestic violence extends beyond traditional marital relationships to encompass a wide range of familial and intimate relationships.

THE DYNAMICS OF ABUSE: UNDERSTANDING THE COMPLEXITIES OF DOMESTIC VIOLENCE

Domestic violence is a pervasive issue that transcends all societal boundaries. It affects individuals from all walks of life, irrespective of age, background, education level, economic status, culture, ethnicity, religion, abilities, or lifestyle.



There is no 'typical victim' of domestic violence, and it is crucial to dispel the misconception that victims somehow invite violence upon themselves or share equal culpability with their abusers. In the context of domestic violence, the abuse arises when one party feels entitled to exert power and control over their partner and chooses to employ abusive tactics to establish and maintain this control.

THE DYNAMICS OF ABUSE: UNDERSTANDING THE COMPLEXITIES OF DOMESTIC VIOLENCE

Even in situations where the victim may retaliate or seemingly instigate violence in an attempt to defuse a volatile situation, the balance of power remains skewed. There is invariably one individual who serves as the primary, consistent source of control, power, and abuse within the relationship.

The dynamics of abusive relationships can vary significantly, but a common thread is the diverse strategies employed by abusers to assert power and control over their victims. Many individuals, both men and women, have endured physical violence, rape, or stalking by an intimate or former partner. These experiences often result in significant impacts, such as fear, safety concerns, post-traumatic stress disorder (PTSD), the need for healthcare, injury, crisis support, housing services, victim advocacy services, legal services, and disruptions to work or school.

Physical and sexual assaults, or threats thereof, are the most overt forms of domestic violence and often serve as the catalyst for external intervention. However, these acts represent only a fraction of the broader spectrum of abuse. Regular use of other abusive behaviours, punctuated by sporadic physical violence, contributes to a climate of fear and enables the abuser to manipulate the victim's life and circumstances. Abusive relationships often exhibit a cyclical pattern of calm periods followed by escalating tension and abuse, culminating in episodes of intense violence. This cycle tends to repeat over time, often with increasing severity. The frequency and duration of these cycles can vary from one relationship to another. Regardless of the specific dynamics, abusers deliberately employ a range of abusive tactics to instill fear and maintain control over their victims.

SIGNS OF AN ABUSIVE RELATIONSHIP

UNDERSTANDING YOUR EMOTIONS AND PERCEPTIONS IN A RELATIONSHIP:

Fear: Do you often find yourself living in fear of your partner or spouse? This fear can manifest in various ways, such as anxiety about their reactions, dread of their mood swings, or terror of potential physical harm.

Walking on Eggshells: Do you habitually avoid certain topics or actions because you're worried they might provoke your partner or spouse's anger? This could be a sign that you're in an environment where open communication is stifled, and you're constantly trying to prevent an outburst or violent reaction.

Self-Doubt: Do you frequently feel that no matter what you do, it's never good enough for your partner or spouse? This could be a sign of emotional abuse, where your self-esteem is systematically undermined to make you feel worthless or incapable.

Self-Blame: Do you find yourself believing that you deserve to be hurt or mistreated? This is a common feeling among victims of abuse, often instilled by the abuser to justify their actions and keep the victim in the cycle of abuse.

Questioning Your Sanity: Do you sometimes wonder if you're the one who's crazy? This could be a sign of 'gaslighting', a manipulative tactic used by abusers to make victims doubt their own perceptions and memory, making them feel confused and disoriented.

Emotional Numbness or Helplessness: Do you often feel emotionally drained, numb, or helpless? These feelings can be a result of ongoing emotional, physical, or sexual abuse, leading to a state of chronic stress or depression.

IDENTIFYING YOUR PARTNER/SPOUSE'S VIOLENT BEHAVIOUR OR THREATS:

Unpredictable Temper: Does your partner or spouse exhibit a volatile and unpredictable temper? This could involve sudden outbursts of anger, intense mood swings, or violent reactions to minor issues, creating an environment of constant fear and uncertainty.

Physical Harm or Threats: Does your partner or spouse physically harm you, or threaten to hurt or kill you? This is a clear sign of physical abuse, where the threat or act of violence is used to control and intimidate you.

Threats Against Children: Does your partner or spouse threaten to take your children away or harm them? This is a form of manipulative behavior, using your love for your children as a tool to control and coerce you.

Suicide Threats: Does your partner or spouse threaten to commit suicide if you leave? This is a form of emotional blackmail, designed to manipulate you by playing on your fears, guilt, and compassion.

Forced Sexual Activities: Does your partner or spouse force you to engage in sexual activities against your will? This is a form of sexual abuse, where consent is disregarded, and sex is used as a tool for power and control.

Destruction of Personal Belongings: Does your partner or spouse destroy your personal belongings? This form of abuse is often used as a means of exerting control and inducing fear. It's a physical act meant to demonstrate what the abuser could potentially do to you.

RECOGNIZING YOUR PARTNER/SPOUSE'S ABUSIVE BEHAVIOUR:

Humiliation and Yelling: Does your partner or spouse frequently resort to humiliation or yelling as a means of communication? This form of verbal abuse can be damaging to your self-esteem and mental health.

Criticism and Belittlement: Does your partner or spouse consistently criticize you or put you down? This could involve belittling your abilities, appearance, or intelligence, often with the intention of making you feel inferior or worthless.

Public Mistreatment: Does your partner or spouse treat you so poorly that you feel embarrassed in front of your friends or family? This could involve public humiliation, aggressive behavior, or blatant disregard for your feelings.

Disregard for Your Opinions or Achievements: Does your partner or spouse ignore or belittle your opinions or accomplishments? This could be a sign of emotional abuse, where your achievements are downplayed, and your opinions are dismissed to undermine your self-worth.

Blame Shifting: Does your partner or spouse blame you for their own abusive behavior? This is a common tactic used by abusers to avoid taking responsibility for their actions, often making the victim feel guilty or at fault.

Objectification: Does your partner or spouse view you as property or a sex object, rather than as a person? This dehumanizing behavior is a form of abuse that reduces your worth to your physical attributes or sexual utility, disregarding your individuality and personal rights.

RECOGNIZING YOUR PARTNER/SPOUSE'S CONTROLLING BEHAVIOUR:

Excessive Jealousy and Possessiveness: Does your partner or spouse display extreme jealousy and possessiveness? This could involve irrational suspicion of your interactions with others, accusations of infidelity, or resentment of your personal relationships and activities.

Control Over Your Movements: Does your partner or spouse control where you go or what you do? This could involve setting strict rules about your outings, insisting on accompanying you everywhere, or punishing you for spending time without them.

Isolation from Friends and Family: Does your partner or spouse prevent you from seeing your friends or family? This is a common tactic used by abusers to isolate their victims, making them more dependent and less likely to seek help.

Financial Control: Does your partner or spouse limit your access to money, the phone, or the vehicle? This form of economic abuse is designed to make you financially dependent on your partner, limiting your ability to support yourself or seek help independently.

Invasive Surveillance: Does your partner or spouse constantly check up on you? This could involve excessive phone calls or texts, tracking your online activity, or even using GPS devices to monitor your location. This behavior is a form of stalking and is about control and intimidation.

THE TYPES OF ABUSE - SECTION 1 - DVA 14 OF 2021

PHYSICAL ABUSE

In the context of the new act introduced, "domestic violence" is defined as conduct enacted by a respondent towards a complainant, which includes:

Physical Abuse: This refers to acts of physical violence or threats of such violence towards a complainant. It also includes actions aimed at depriving the complainant of their liberty or threats to do so. **Administration of Harmful Substances:** This involves administering, attempting to administer, or threatening to administer any drug as defined in **section 1(1) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992)**, or any Scheduled substance as defined in section 1(1) of the **Medicines and Related Substances Act, 1965 (Act No. 101 of 1965)**. These substances could affect the complainant's judgement or decision-making abilities, or be harmful to their health or well-being. It also includes any chemical or other substance that is harmful to the health or well-being of the complainant, administered without the complainant's permission.

Withholding Medication: This involves withholding a complainant's medication or threatening to do so. This act can be particularly harmful as it can directly impact the physical health and well-being of the complainant.

In summary, the New Act defines domestic violence as a range of abusive behaviors, including physical violence, deprivation of liberty, administration of harmful substances, and withholding of medication. Each of these behaviors is intended to control, harm, or instill fear in the complainant.

EMOTIONAL, VERBAL, AND PSYCHOLOGICAL ABUSE

In the context of the new act introduced, "domestic violence" is defined as conduct enacted by a respondent towards a complainant, which includes:



Emotional, verbal, and psychological abuse typically involves a pattern of demeaning or humiliating behavior directed towards the victim. This can include persistent insults, mockery, name-calling, or repeated threats intended to inflict emotional distress. It may also involve obsessive possessiveness or jealousy to such an extent that it significantly infringes on the victim's privacy, freedom, personal integrity, and sense of security. Such abuse can also involve degrading, manipulating, threatening, offensive, intimidating, or humiliating conduct that causes mental or psychological harm to the

This can include:

Insults, Ridicule, or Name Calling: This involves using derogatory language or belittling comments to demean and undermine the victim's self-esteem.

Threats to Cause Emotional Pain: This could involve threats to reveal embarrassing or damaging information, or threats to harm loved ones.

Exhibition of Obsessive Possessiveness or Jealousy: This can involve controlling behaviour and accusations of infidelity that constitute a serious invasion of the victim's privacy, liberty, integrity, or security.

Willful Damaging or Destruction of Property: This involves intentionally damaging property in close vicinity of the victim to intimidate or cause distress. Over time, this isolation can erode the victim's internal strength, leaving them feeling powerless and trapped.

Victims of emotional abuse often suffer from depression, which can increase their risk for suicide, eating disorders, and substance abuse. It's crucial to recognise these signs and understand that help is available for those suffering from such abuse.

ECONOMIC ABUSE

Economic abuse involves the unreasonable deprivation of financial resources that the victim is legally entitled to or requires out of necessity. Economic abuse can take various forms, such as:

Deprivation of Economic or Financial Resources: This involves depriving the victim of economic or financial resources to which they are entitled under law or require out of necessity. This can include education expenses, household necessities, and mortgage bond repayments or rent payments for a shared residence or accommodation.

Disposal of Property: This involves disposing of household effects or other property in which the victim has an interest, without the victim's permission. For instance, the abuser might sell a car that the victim uses for work, without their consent.

Use of Financial Resources: This involves using the victim's financial resources without their permission. For example, the abuser might use the victim's credit card to make large purchases without their knowledge or consent.

Coercion to Relinquish Control: This involves coercing the victim to relinquish control over assets or income, or to sign a legal document that would enable their finances to be managed by another person. For instance, the abuser might pressure the victim into signing over control of their bank accounts.

INTIMIDATION

Intimidation in the context of domestic violence is a form of abuse that involves the use of threats or actions to instill fear and control over a victim. This can take several forms, such as:

Physical Violence or Property Damage: This involves acts of physical violence or damage to property belonging to the victim or any other person. For instance, an abuser might physically harm the victim or destroy their personal belongings to instill fear and assert control.

Threats of Violence or Property Damage: This involves threats of physical violence or damage to property belonging to the victim or any other person. For example, the abuser might threaten to harm the victim or damage their property if they don't comply with the abuser's demands.

Deprivation of Liberty: This involves depriving the victim or any other person of their liberty or threatening to do so. For instance, the abuser might threaten to confine the victim to their home or restrict their movements in some way.



HARASSMENT

Harassment in the context of domestic violence is a form of abuse that involves persistent and unwanted attention that causes fear or distress to the victim. This can take several forms, such as:

Unreasonable Following or Watching: This involves the unreasonable following, watching, pursuing, or accosting of the victim or a related person. It also includes loitering outside of or near the building or place where the victim or a related person resides, works, carries on business, studies, or happens to be. This behavior can lead the victim to believe that they or a related person may be harmed or their property may be damaged.

Repeated Electronic Contact: This involves repeatedly contacting the victim by means of an electronic communications service, regardless of whether a conversation ensues or any information is conveyed to the victim. For example, the abuser might send the victim numerous unwanted text messages or emails.

Sending or Delivering Objects: This involves the repeated sending or delivering of packages, communications, or other objects to the victim, or leaving them where they may be found by, given to, or brought to the attention of, the victim.

Unauthorised Access to Communications: This involves unauthorised access to a victim's communications or electronic communications. For instance, the abuser might hack into the victim's email account to read their emails.

Monitoring or Tracking: This involves the monitoring or tracking of the victim's movements, activities, or interpersonal associations without their consent. This could involve using GPS tracking apps or social media to monitor the victim's whereabouts and activities.

Interference with Property: This involves unreasonable interference with any property that is exclusively used by or in the possession of the victim. For example, the abuser might damage or tamper with the victim's personal belongings.

Abusive or Offensive Electronic Communications: This involves disclosing an electronic communication to the victim, or causing the victim to receive a communication, which is abusive, degrading, offensive, or humiliating, or which violates or offends the sexual integrity or dignity of the victim. It also includes inspiring the belief in the victim that they or a related person may be harmed or their property may be damaged.

Disclosure of Private Information: This involves disclosing an electronic communication, or making a communication available, to another person concerning the victim, which contains information of a private nature, violates or offends the sexual integrity or dignity of the victim, is abusive, degrading, offensive, or humiliating, or inspires the belief in the victim that they or a related person may be harmed or their property may be damaged.

STALKING

While there's no specific legal definition of stalking, nor any dedicated legislation to address this behavior, the term is generally used to describe a form of harassment. It typically refers to a long-term pattern of persistent and repetitive attempts to contact a particular victim, or maintaining contact with them.

Stalking can take many forms. It might involve direct communication, such as repeated phone calls or messages, or physical following, where the stalker repeatedly shows up at the victim's home, workplace, or other places they frequent. Indirect contact can also be a form of stalking, such as contacting the victim through friends, work colleagues, or family, or using technology like email or text messages to maintain unwanted contact.

In today's digital age, stalking can also occur online, on social networks like Facebook, TikTok, Instagram, online forums, Twitter, or via instant messaging apps. The stalker might post offensive material about the victim, create fake profiles to harass them, or even create a dedicated website about the victim.

For example, a stalker might repeatedly send unwanted messages to the victim's social media accounts, post defamatory statements about them online, or use GPS tracking apps to monitor their location.

UNAUTHORISED ENTRY INTO PROPERTY

Unauthorised entry into property involves entering the victim's residence without consent, particularly when the parties do not share the same residence. This could involve breaking into the victim's home while they're away, or entering their home without permission while they're there. For example, an abuser might break into the victim's apartment to leave a threatening note, or they might enter the victim's home uninvited during a social gathering.

OTHER FORMS OF CONTROLLING OR ABUSIVE BEHAVIOUR

This category encompasses any conduct that inflicts harm, or poses an imminent threat to the safety, health, or well-being of the victim. '**Imminent harm**' refers to situations where immediate danger is present. These situations can include:

Firearm Threats: The perpetrator possesses a firearm and has threatened to use it against the victim, their dependents, or other family members. For example, the abuser might brandish a gun during an argument, explicitly threatening to use it. • Previous Use of

Weapons: The perpetrator has used a weapon against the victim in previous instances of domestic violence. This isn't limited to dangerous weapons like firearms or knives; it could also include everyday objects used as weapons.

Critical Injury: The victim was critically injured by the perpetrator on a previous occasion, or during the incident in question. For instance, the victim might have required hospitalization after a violent episode.

Forced Eviction: The victim and their children have been forcibly evicted from the shared residence by the perpetrator or someone affiliated with them. This could involve the abuser changing the locks or physically removing the victim's belongings from the home.

Threat Evidence: The victim has substantial evidence, such as witness statements, that the perpetrator has threatened to harm them. For example, friends or neighbors might have overheard the abuser making threats.

Fear for Children's Safety: The victim fears for the safety of their children. This could be due to direct threats against the children, or because the abuser's violent behavior puts the children at risk.

SEXUAL HARASSMENT

In the context of domestic violence, sexual harassment is defined as any unwelcome sexual attention from a respondent who knows or ought reasonably to know that such attention is unwelcome, or any unwelcome explicit or implicit behaviour, suggestions, gestures, remarks made, communications sent or delivered, or electronic communication that is sexual in nature. This definition defines "domestic violence" to include sexual harassment as one of the forms of conduct that may constitute domestic violence. Sexual harassment may therefore form part of a domestic violence incident.

RELATED PERSON ABUSE

Related person abuse in the context of domestic violence is a form of abuse that involves threats or acts of violence against a person who is closely connected to the victim, such as a family member, friend, or co-worker. This form of abuse is often used as a means to exert control over the victim or to cause them emotional distress. It can take several forms, such as:

Threats of Violence Against a Related Person: This involves threatening the victim with causing physical violence to, or the damage of property of, a related person. For example, the abuser might threaten to harm the victim's sibling or damage their friend's car.

Threats of Violence Made to a Related Person: This involves threatening a related person with physical violence or causing damage to their property. For instance, the abuser might threaten the victim's friend with physical harm or property damage.

Threats to a Related Person Involving the Victim: This involves threatening a related person with causing physical violence to, or the damage of property of, the victim. For example, the abuser might threaten to harm the victim if their friend doesn't comply with the abuser's demands.

Acts of Violence Against a Related Person: This involves committing an act of physical violence against, or causing damage to the property of, a related person, where such actions can in the circumstances be regarded as abuse to cause harm to the victim.

SPIRITUAL ABUSE

Spiritual abuse in the context of domestic violence is a form of abuse that involves the manipulation or violation of the victim's religious or spiritual beliefs. This type of abuse can be particularly damaging as it seeks to undermine the victim's faith or spiritual practices, which are often a source of comfort and strength. It can take several forms, such as:

Advocating Hatred: This involves advocating hatred against the victim because of their religious or spiritual beliefs, in a way that incites harm to the victim. For example, the abuser might spread harmful stereotypes or prejudices about the victim's faith, leading to discrimination or violence against them.

Preventing the Exercise of Religious Freedom: This involves preventing the victim from exercising their constitutional right to freedom of conscience, religion, thought, belief, and opinion. This includes preventing the victim from giving external manifestation to their religious or spiritual convictions and beliefs. For instance, the abuser might forbid the victim from attending religious services or practicing their religious rituals.

Manipulating Religious or Spiritual Convictions: This involves manipulating the victim's religious or spiritual convictions and beliefs to justify or rationalise abusing the victim. For example, the abuser might misuse religious texts or beliefs to justify their abusive behaviour, making the victim feel guilty or sinful for resisting the abuse.

DAMAGE TO PROPERTY

Damage to property in the context of domestic violence involves the wilful damaging or destruction of property, or threats to damage or destroy property, that belongs to the victim, or is in their possession or under their control, or in which the victim has a vested interest. This form of abuse is often used as a means to intimidate and control the victim, causing them to live in a constant state of fear and anxiety.

For example, an abuser might deliberately break the victim's personal belongings, such as their phone or jewelry, as a form of punishment or to exert control. They might also threaten to damage the victim's property, such as their car or house, in order to manipulate them or keep them in the abusive relationship.

ELDER ABUSE

Elder abuse, as contemplated in **section 30(2) of the Older Persons Act, 2006**, refers to the abuse of an older person occurring within a domestic relationship. This can involve physical, emotional, sexual, or financial abuse, as well as neglect.

For instance, an older person might be physically assaulted by a family member, or they might be emotionally abused through constant belittling or isolation. Financial abuse could involve the misuse of the older person's money or assets, while neglect could involve failing to provide the older person with the care and assistance they need.

COERCIVE BEHAVIOUR

Coercive behaviour in the context of domestic violence involves compelling or forcing the victim to abstain from doing anything that they have a lawful right to do, or to do anything that they have a lawful right to abstain from doing. This form of abuse is often subtle and can be difficult to recognise, as it involves manipulation and control rather than physical violence.

For example, an abuser might coerce the victim into cutting off contact with their friends and family, even though the victim has a lawful right to maintain these relationships. The abuser might also force the victim to engage in activities that they don't want to do, such as signing legal documents or participating in certain sexual activities.

For instance, an abuser may manipulate the victim's financial resources, creating a state of economic dependency. This could involve controlling the victim's access to money, preventing them from working, or making all financial decisions without the victim's input. This form of financial control can leave the victim feeling trapped and unable to leave the abusive situation due to a lack of financial independence.

CONTROLLING BEHAVIOUR

Controlling behaviour is a form of domestic violence that is often subtle and insidious, making it difficult for victims to recognise and escape from. It involves behaviour that is aimed at making the victim dependent on, or subservient to, the abuser. This form of abuse can take several forms, including:

Isolating the Victim from Sources of Support: This involves cutting the victim off from their friends, family, and other sources of emotional or practical support. The abuser might discourage or forbid the victim from seeing certain people, or they might create conflicts to drive a wedge between the victim and their support network. For example, an abuser might insist on moving to a new location far away from the victim's family and friends, effectively isolating them.

• **Exploiting the Victim's Resources or Capacities for Personal Gain:** This involves using the victim's resources, such as their money or property, for the abuser's personal benefit. The abuser might also exploit the victim's capacities, such as their skills or labour, without giving anything in return. For instance, an abuser might control all of the victim's earnings, leaving them financially dependent on the abuser.

Depriving the Victim of the Means Needed for Independence, Resistance, or Escape: This involves taking away the resources or opportunities that the victim needs to maintain their independence, resist the abuser's control, or escape from the abusive situation. For example, the abuser might prevent the victim from working or studying, or they might control the victim's access to money, transportation, or communication devices.

EXPOSING A CHILD TO DOMESTIC VIOLENCE

Exposing a child to domestic violence is a form of child abuse that can have profound and long-lasting effects on a child's mental, emotional, and physical well-being. It involves intentionally causing a child to either witness domestic violence or experience its effects. This form of abuse can take several forms, including:

Causing a Child to See or Hear Domestic Violence: This involves situations where a child is made to witness acts of domestic violence. For example, a child might see one parent physically assaulting the other, or they might hear threats, insults, or the sounds of violence from another room. Even if the child is not the direct target of the violence, witnessing such events can be deeply traumatic and can lead to a range of psychological issues, such as anxiety, depression, post-traumatic stress disorder, and behavioural problems.



Causing a Child to Experience the Effects of Domestic Violence: This involves situations where a child experiences the indirect effects of domestic violence. For example, a child might have to deal with the aftermath of a violent incident, such as taking care of an injured parent, cleaning up after a violent episode, or comforting younger siblings. The child might also experience disruptions to their daily life, such as frequent moves, changes in schools, or a lack of necessities due to financial abuse. These experiences can cause stress, insecurity, and difficulties in school and social relationships.

A practical example of exposing a child to domestic violence could be a situation where a child is present in the home during a violent argument between their parents. The child might see their father hitting their mother, or they might hear their mother crying and pleading for help. Even if the child is in another room, they can still hear the sounds of violence and feel the tension and fear in the home. This experience can cause the child to feel scared, confused, and helpless, and it can have a lasting impact on their emotional and psychological well-being.

UNAUTHORISED ENTRY INTO THE VICTIM'S RESIDENCE OR WORKPLACE

This involves the perpetrator entering the victim's residence or workplace without their consent.

This form of abuse can occur whether the victim's residence is permanent or temporary, and regardless of whether the perpetrator and victim share the same residence or workplace.

For example, an abuser might break into the victim's flat while they are out, leaving signs of their presence to instill fear and a sense of violation.

Similarly, an abuser might show up uninvited at the victim's workplace, disrupting their professional environment and creating a sense of insecurity.

INFORMATION REGARDING INTERIM PROTECTION ORDERS.

In South Africa, the station commander at any police station is obliged to provide you with certain resources to assist you in your pursuit of a protection order. Here's what you can expect:

The Act: A copy of the Domestic Violence Act should be readily available for your perusal.

Regulations: The station commander should provide you with a copy of the regulations promulgated under the Act.

National Instruction 7 of 1999: This document, which provides guidelines for police response to domestic violence, should be accessible to you.

Support Services List: The station commander is obliged to maintain a list of local organisations that offer support services to complainants. These services may include trauma counselling, medical services, and suitable shelter.

Form 1 (J571-forms): This form is to be handed to and explained to the complainant by a police official in the case of domestic violence.

Form 6: is the form needed to apply for a protection order. Importantly, the station commander must ensure that copies of these documents are available in every police vehicle at their station that is used to attend to complaints. This ensures that you can access these resources even if you are unable to visit the police station in person.

HOW TO OBTAIN A PROTECTION ORDER

STEP 1 - OBTAIN EVIDENCE

To build a solid case for a protection order, it's crucial to meticulously document all instances of domestic violence against you or your children. Here's a step-by-step guide to help you gather the necessary evidence:

Document Incidents: Maintain a detailed record of every domestic violence incident, specifying dates and times. This will provide a clear timeline of events.

Collect Abuser's Details: Gather all pertinent information about the person you seek protection from. This includes their home and work addresses, phone numbers, and identity number.

Identity Document: Ensure you have your identity document readily available.

While not mandatory, the following items can significantly strengthen your case:

Photographic Evidence: If possible, take photographs of your injuries. These images can vividly illustrate the extent of your suffering to the magistrate.

Abuser's Photo: A photograph of the abuser can be beneficial. It aids the police in identifying the individual when serving the protection order.

Proof of Ownership: If your property was damaged, documents showing who purchased the items can be useful.

Damage Documentation: Photographs of any damaged goods or property can provide concrete evidence of the violence you've endured.

Confirmation Letters: Letters from professionals such as social workers or doctors, confirming the abuse, can lend credibility to your claims.

Witness Statements: Affidavits or statements from individuals who have witnessed the abuse can provide additional support to your case.

Medical Report (J88 form): A J88 form, available at your local police station, is a medical report that documents your injuries.

STEP 2 - COMPLETE THE APPLICATION FOR AN INTERIM PROTECTION ORDER - FORM 6

As previously stated, the necessary forms for a protection order can be acquired from the South African police. *Alternatively*, you can secure copies of the forms needed to file the interim protection order at your local magistrate's court. You can also download the forms from the links provided in this e-book, located in the '**Forms**' section.

When a complainant wants to lay a complaint for domestic violence, the police should render such assistance as may reasonably be required in the circumstances. This includes taking a statement from the complainant, explaining the complainant's rights and the police procedures to be followed, and providing the complainant with information on available support services. The police should also inform the complainant of the right to apply for a protection order and assist the complainant in completing the necessary forms. If the complainant requires medical attention, the police should arrange for the complainant to be taken to a medical facility.

HOW TO OBTAIN A PROTECTION ORDER, continue

STEP 3 - WHERE AND HOW TO OBTAIN AN INTERIM PROTECTION ORDER?

Every **Magistrate's Court** in South Africa is equipped to handle cases of domestic violence. To apply for an interim protection order, you should visit the magistrate's court in the area where you reside, where the respondent lives, or where the incident of abuse occurred. Your application will be made through a written statement or affidavit, contained in **Form 6** detailing:

The circumstances surrounding your application.

The type of order you are seeking.

The name of the police station where you would likely report any violation of the order.

If another person is applying on your behalf, their affidavit should include:

The reasons why they have a significant interest in your welfare.

Their occupation and the capacity in which they are making the application.

Your written consent, except in certain circumstances.

A complainant can apply for a protection order on an **ex parte basis**, meaning **without** the other party present. This application should be made using the prescribed **Form 6** and can be lodged with the **clerk of the court**, typically at the magistrates' court, or submitted **electronically** to the court's designated email address.

In urgent cases, outside of regular court hours or on non-court days, the application can be submitted directly to the court, subject to any specific court directions.

If the complainant does not have legal representation, the court clerk is **obliged** to inform you about the relief options available under the Domestic Violence Act. You should also be informed about your right to lodge a **criminal complaint** against the respondent if a criminal offence has been committed.

The application for a protection order can be made on behalf of the complainant by a person who has a vested interest in his/her well-being. This could be a counsellor, a mental health service provider, police officer, social worker, or teacher. However, the application should be made with the written consent of the complainant, except in cases where the complainant is a minor, mentally incapacitated, unconscious, or otherwise unable to provide consent.

The application can be accompanied by supporting affidavits from individuals who have knowledge of the situation.

WHAT IF THE COMPLAINANT IS A MINOR?

In cases where the complainant is a minor, the court will consider whether the application is in the child's best interests. **Any minor, or person acting on behalf of a minor**, can apply for a protection order without the consent or assistance of a parent or guardian.

If the court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately, the application can be brought outside of ordinary court hours or on non-court days.

ELECTRONIC APPLICATION OF YOUR INTERIM PROTECTION ORDER

The **Domestic Violence Amendment Act of 2021** has made provisions for the electronic submission of applications for protection orders. According to **section 4(1)(b)(i)(bb)** of the principal Act, applications can be submitted electronically to the court with jurisdiction over the case. This means that, depending on the specific policies and procedures of the relevant court, you may be able to submit your application for a protection order online.

STEP 4 - WHEN THE MAGISTRATE APPROVES THE INTERIM PROTECTION ORDER.

WHAT HAPPENS WHEN THE MAGISTRATE APPROVES THE INTERIM PROTECTION ORDER?

If the magistrate approves an interim protection order, the following procedures will take place:

The court clerk will inform you of the **return date**, which is when you are required to **return to court**, and provide you with a case number.

The magistrate will then issue a **notice** for the respondent to appear in court. The respondent will be notified that an application for an interim protection order has been granted and that he/she must appear on the **return date** to present their side of the story.

The court clerk will file the original application and interim protection order forms in your case file and give you three copies. Two of these copies are for the police or the sheriff, depending on who will be delivering the interim protection order to the respondent. The clerk will also provide you with a **return of service** form to take to the police or sheriff.

You must arrange for the police or sheriff to deliver the interim protection order. Please note that there is **no charge** when the police deliver the order, but you will have to pay if the sheriff delivers it.

The police or sheriff will visit the address you provided on your form and deliver a copy of the interim protection order to the respondent. It is vital that the respondent is personally informed of the application and return date.

The police or sheriff will complete the return of service form and return it to the court once the interim protection order has been delivered to the respondent.

It's important to remember that an interim protection order **has no effect** until it is delivered to the respondent. Once the interim protection order is granted and served on the respondent, you can have the respondent arrested if he/she breaches it. Violating any of the conditions set out in the order can result in the respondent being **finned or imprisoned**, or both.

When the court grants an interim protection order, it also issues a warrant of arrest against the respondent. The warrant of arrest is normally suspended as long as the respondent complies with any condition, prohibition, or obligation under the interim protection order. When an interim protection order is granted, the court may issue a warrant of arrest only if the court is satisfied that there are **reasonable grounds** to believe that the respondent will not comply with the protection order.

Therefore, a warrant of arrest may be issued when an interim protection order is granted, but **only in certain circumstances** where the court deems it necessary. It is not an automatic process.

STEP 5 - WHAT HAPPENS AFTER THE MAGISTRATE DECIDES NOT TO ISSUE AN INTERIM PROTECTION ORDER

If the court does **not issue** an interim protection order the court must direct the clerk of the court to cause certified copies of the application concerned and any supporting affidavits to be served on the respondent in the prescribed manner, together with a prescribed notice calling on the respondent to **show cause** on the return date specified in the notice why a protection order should not be issued . This means that even if the court decides not to issue an interim protection order, it can still call the respondent to court on the return date to show cause why a protection order should not be issued.



STEP 6 - WHAT HAPPENS ON THE RETURN DATE AT COURT?

YOU HAVE TO BE AT COURT ON THE RETURN DATE OF THE INTERIM PROTECTION ORDER

If the respondent **fails** to appear in court on the day of the hearing, the protection order will be made **final**. However, if the respondent does show up, the court will hear evidence from you, the respondent, and any other witnesses that may have been called. The court will then consider all the evidence presented to make a decision.

Under the Domestic Violence Act, these proceedings are held **privately**. Only the parties involved, their legal representatives, anyone who has brought an application on your behalf, witnesses, and court officers may be present. You may also bring people to provide you with support. The court has the authority to **exclude anyone** from the proceedings. The Act also **prohibits the publication of any information that may directly or indirectly reveal the identity** of any party to the proceedings.

After hearing all the evidence, the magistrate will decide whether or not to issue the protection order. A hearing to oppose the issuing of a protection order must proceed by way of **oral evidence**, unless the court directs otherwise. Specifically, the court must proceed to hear the matter and **consider any evidence** previously received, and consider such **further affidavits or oral evidence** as it may direct, which must form part of the record of the proceedings. This means that the hearing to oppose the issuing of a protection order must generally be conducted by way of oral evidence, unless the court decides to allow for an application to be made instead.

WHAT HAPPENS IF A PARTY BREACHES THE INTERIM PROTECTION ORDER?

VIOLATING THE INTERIM PROTECTION ORDER HAS SERIOUS CONSEQUENCES

When an individual infringes upon an interim protection order, the victim has the right to seek legal recourse, which may include a request for an **arrest warrant**. The Domestic Violence Act stipulates that any violation of a protection order constitutes a **criminal act**. The offender, upon conviction, could face penalties such as a **fine, imprisonment for up to five years, or a combination of both**.

In the event of a violation of the protection order, as per the Domestic Violence Act, the victim is required to submit a **sworn affidavit** to the South African Police Service (SAPS). The contents of this affidavit must be **truthful**, as it is given under oath. Any deliberate falsehoods or misrepresentations can lead to criminal charges under the Act, potentially resulting in a **two-year prison sentence** upon conviction.

In cases where threats of **harm or death are present**, or if the offender's **mental state is deemed concerning**, the court is obliged to mandate the confiscation of any weapons under the offender's possession or control.

Upon receiving the affidavit, the police will arrest the offender if there are reasonable grounds to believe that the victim is at imminent risk due to the alleged violation. If the police determine there are insufficient grounds for arrest, they will instead charge the offender with violation of the protection order and summon him/her to appear in court at a designated date and time.

Once a charge has been filed, a prosecutor **cannot refuse** to proceed with the case or dismiss it without the approval of the director of public prosecutions. If found guilty of violating the protection order, the offender may face penalties such as a **fine, imprisonment for up to five years, or both**. After the offender's arrest for violating the protection order, the decision to withdraw charges is not in the hands of the victim. This discretion lies solely with the senior public prosecutor.

GIVING FALSE INFORMATION

The **Domestic Violence Act of 2021** also penalises false statements or misrepresentations made during the application for a protection order. Anyone who **knowingly provides false information or misrepresents facts** in a protection order application is committing an offence. Upon conviction, they may face a fine, imprisonment for up to five years, or both. Therefore, any dishonesty in the application for a protection order can lead to criminal charges and penalties under the Act.

FREQUENTLY ASKED OQUESTIONS

May a protection order be varied, withdrawn or set aside?

A complainant or a respondent may apply for the variation or setting aside of a protection order upon written notice to the other party and the court concerned in the prescribed manner. The other party must give written notice to the other party and the court setting out grounds and facts on which the application is opposed, if they oppose the application, within 10 days of the notice being served . Therefore, to apply for the variation or setting aside of a protection order, the complainant or respondent must give written notice to the other party and the court concerned in the prescribed manner, and the other party must have an opportunity to respond within 10 days if they oppose the application. The specific procedures for giving notice and making an application may depend on the rules of the court and the specific circumstances of the case.

Once withdrawn, can one re-apply?

You can re-apply for a protection order as many times as you want, but don't waste the court's time by applying for a protection order when no grounds exist.

For how long is a final protection order valid?

A final protection order issued in terms of the Domestic Violence Act is of force and effect from the time that the existence and content of the order have been served on the respondent, and remains in force until it is set aside. The execution of such order is not automatically suspended upon the noting of an appeal. Therefore, a final protection order is valid until it is set aside by the court, and the respondent must comply with the order until it is no longer in force.

Can the Respondent oppose the granting of a protection order?

If the respondent wishes to oppose the interim protection order, he may do so by giving written notice to the complainant and the court concerned in the prescribed manner. The court must then proceed to hear the matter and consider any evidence previously received, as well as any further affidavits or oral evidence as it may direct. If there is a dispute of fact, the court may adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate in order to afford the party concerned the opportunity to adduce further evidence. On good cause shown the respondent can anticipate the date of the interim protection order to an earlier date.

Is it possible for the court, during the hearing of an interim protection order involving minor children, to initiate further investigations?

In cases of domestic abuse involving minor children, the court has the authority to instigate an investigation. If a family advocate is accessible, the court may, under circumstances outlined in the **Mediation in Certain Divorce Matters Act of 1987**, direct an investigation by a family advocate within the court's jurisdiction. This investigation focuses on the welfare of any minor or dependent child impacted by the proceedings. Alternatively, a designated social worker, as per **section 47 of the Children's Act of 2005**, may conduct the investigation if the court believes the child involved in or affected by the proceedings requires care and protection. In such cases, the provisions of the Children's Act apply.

What transpires if the parties reconcile?

If the respondent is invited back to the property by the complainant, the court will determine that the complainant has relinquished their reliance, and thus the respondent's presence is no longer illegal. If the respondent is barred from contacting the complainant, but the complainant initiates contact, a conviction cannot ensue.

Can a protection order be utilised to forbid contact with children?

The Domestic Violence Act should not be misused to gain a strategic edge in divorce proceedings or custody disputes. The Act's broad definition of domestic violence allows a spiteful complainant to have an innocent respondent arrested. It also enables the Act's misuse by solicitors to gain an unfair advantage in divorce cases. Legal representatives handling Domestic Violence Act applications have a stringent duty of care to prevent the Act's abuse for ulterior motives.

The High Court, as the supreme guardian of all minor children, has the authority to revoke an interim protection order issued by a magistrate's court under the Act if it serves the children's best interests. In one case, the custodial parent used the interim protection order to deny the other parent access to the children, contrary to another court order. The court determined that the Domestic Violence Act was never intended to strip the High Court of its inherent common law powers.

What occurs if the nature of the abuse towards the complainant changes?

Upon receiving a protection order, the respondent may realise they cannot abuse the complainant in the ways outlined in the order, and may resort to other forms of abuse. If this occurs, the complainant must return to the court to modify the protection order.

Can the court award a cost order in domestic violence proceedings?

Section 10(1)(a) of the Domestic Violence Act provides that a court may make an order directing the respondent to pay the complainant's costs of the proceedings, including the costs of obtaining a protection order, if the court is satisfied that the respondent has committed an act of domestic violence. However, the court may not make such an order if it is satisfied that the complainant has sufficient means to pay the costs or that the complainant has acted in bad faith or vexatiously in instituting the proceedings.

Can a respondent seek damages in respect of malicious institution of proceedings against them under the Act?

Section 10(2) of the Domestic Violence Act stipulates that anyone who has suffered loss or damage due to the granting or enforcement of a protection order can initiate civil proceedings for damages against the complainant or any other person causing such loss or damage. This is provided that the complainant or such other person acted maliciously or without reasonable cause. Therefore, a respondent can seek damages in respect of malicious institution of proceedings against them under the Act, but only if they can demonstrate that the complainant acted maliciously or without reasonable cause, and that they have suffered loss or damage as a result of the granting or enforcement of the protection order.

Therefore, the court may award a cost order in domestic violence proceedings, but only if it is satisfied that the respondent has committed an act of domestic violence and that the complainant is not acting in bad faith or vexatiously.

FREQUENTLY ASKED QUESTIONS

What role does medical practitioners play in assisting abused persons?

Medical practitioners are mentioned in section 4(2)(a) of the Domestic Violence Act as persons who may issue a medical certificate to a complainant who has suffered domestic violence. The medical certificate may be used as evidence in court proceedings relating to the domestic violence. Medical practitioners are also mentioned as persons who are required to complete a

Form 2 (Report and risk assessment by functionary) if they obtain information which causes them to believe or suspect on reasonable grounds that a child, person with a disability, or an older person may be a complainant of domestic violence.

Can the police arrest a respondent without a warrant as a result of domestic violence?

Yes, the police can arrest a respondent without a warrant if they reasonably suspect that the respondent committed an offense containing an element of violence against any complainant, including the offense of common assault.

A member **MUST**, without a warrant, arrest any respondent at the scene of an incident of domestic violence if they reasonably suspect that the respondent committed an offense containing an element of violence against any complainant.

Once arrested for assault as a result of domestic violence can the respondent apply for bail?

The **Domestic Violence Amendment Act 14 of 2021** has significantly altered the process of applying for bail in cases related to domestic violence. Previously, an act of domestic violence could be addressed as part of an after-hours bail application. However, the amendments introduced by the new Act have eliminated this possibility.

Now, the accused must be presented in court within 48 hours of their arrest, where they are then eligible to apply for bail. The nature of the application has transitioned from an informal bail application to a formal one, akin to those for serious offences as per **Schedule 5 of the Criminal Procedure Act 51 of 1997**.

However, the presiding officer retains the discretion to revert to an informal application if deemed appropriate. It's clear that the legislature has taken extraordinary measures to enhance the protection of society's vulnerable members. This protection is not exclusive to women and children, as men can also be victims of abuse.

Regrettably, there will always be individuals who exploit the law for personal gain or revenge.

Nonetheless, the changes brought about by the **Domestic Violence Amendment Act 14 of 2021** represent a significant step forward in the fight against domestic violence.

Can the police seize a weapon at an incident of domestic violence?

If a police officer has reason to believe that an individual has threatened or expressed an intention to harm themselves or another person using a firearm or any other weapon; or possesses a firearm and it's not in their best interest or the interest of others due to their physical or mental state, propensity for violence (regardless of whether a weapon was used), or dependency on alcohol or narcotics, the officer may, under Section 110(1) of the Firearms Control Act, enter and search the premises or the person without a warrant, and seize any weapons or ammunition. This is for the purposes outlined in Section 102(1)(a) - (e) of the same Act, which includes the provision that the National Commissioner may declare a person unfit to possess a firearm. If a police officer confiscates a firearm as per the above guidelines, they must verify if the firearm is licensed. If it's not, the officer must record the relevant charge in the case file.

Is there a duty to assist a complainant in finding suitable shelter?

Yes, there is a duty on the police to assist a complainant to find suitable shelter. A member of the police must assist the complainant to find suitable shelter or make arrangements for the complainant to find suitable shelter. This duty is in addition to the duty to render such assistance as may be required by station orders, including assistance to the complainant to lay a criminal charge and to refer the complainant for support services.

FREQUENTLY ASKED QUESTIONS

The police must provide the complainant with the names, contact numbers, and/or addresses of any organization in the area which may be able to provide suitable shelter and relevant support and/or counseling services. If the complainant requests it and it is reasonably possible to do so, the police must contact an organization which may render relevant assistance to the complainant and assist in arranging transport for the complainant to a suitable shelter or an organization that may be able to render relevant support and/or counseling.

Is there a duty to assist the complainant to obtain medical treatment?

Yes, there is a duty on the police to assist the complainant to obtain medical treatment. A member of the police must assist the complainant to obtain medical treatment or make arrangements for the complainant to obtain medical treatment. To comply with this duty, a member must comply with any station orders issued by the station commander in this regard and must at least ask the complainant whether he or she requires medical treatment, and if so, assist or make arrangements for the complainant to receive medical treatment. If a criminal charge has been laid, the member must issue a J88 and SAPS 308 to the complainant for completion by a registered medical practitioner.

A member may, only as a last resort, transport a complainant in a police vehicle to receive medical treatment if such a vehicle is available and there is no other means of transport. In such an event, the complainant must be informed that he or she is being transported at his or her own risk.

What safety measures can be implemented at the scene of domestic violence?

Due to the high risk inherent to and volatility of domestic violence incidents, a member of the police must be extremely careful when responding to a call to a scene of domestic violence and should, whenever reasonably possible, not go alone to the scene. Upon arriving at the scene, the member must attempt to locate the complainant and determine whether the complainant is in any danger. If the complainant is located and he or she is not inside a building or similar structure, the complainant must be interviewed to determine whether he or she is in any immediate danger.

What steps should the police take when the scene of domestic violence has been cleared?

Once the scene of domestic violence has been cleared, the member of the police must render such assistance to the complainant as may reasonably be required in the circumstances and take reasonable steps to secure the scene. The member must also investigate the alleged incident of domestic violence and gather all available evidence in respect of any offence which may have been committed during such incident. If the member has reason to believe that the complainant is in need of medical treatment, the member must assist the complainant to obtain such treatment.

FREQUENTLY ASKED QUESTIONS

The member must also provide the complainant with the names, contact numbers, and/or addresses of any organization in the area which may be able to provide relevant support and/or counseling services. If the complainant requests it and it is reasonably possible to do so, the member must contact an organization which may render relevant assistance to the complainant and assist in arranging transport for the complainant to such organization.

Can the police enter private premises in cases of domestic violence?

Yes, the police may enter private premises in cases of domestic violence if they have reasonable grounds to suspect that domestic violence is occurring or has occurred. A member of the police may enter any premises where domestic violence is suspected to have occurred or is occurring, without a warrant, if the member has reasonable grounds to suspect that domestic violence is occurring or has occurred on such premises. The member may also enter any premises where the member reasonably suspects that a complainant is being held against his or her will or is in imminent danger of suffering bodily harm.

Can I ask the Police to assist me to remove my belongings?

Yes, a complainant may ask the police to assist in collecting personal property. A member of the police may accompany a complainant to collect personal property in accordance with a protection order.

FREQUENTLY ASKED QUESTIONS

If a peace officer accompanies a complainant in accordance with a protection order to collect his or her personal property, the peace officer must ensure the safety of the complainant while he or she removes the property specified in such protection order. If a member is approached by a complainant to accompany him or her and it is not possible to do so immediately, the member must, if no other peace officer is available to accompany the complainant, arrange a reasonable time when it will be suitable to do so.

Can one complain regarding non-compliance by members of the police?

Yes, one can complain regarding non-compliance by members of the police. A failure by a member to comply with an obligation imposed in terms of the Act or the National Instruction constitutes misconduct. Disciplinary proceedings must therefore be instituted in accordance with the

Discipline Regulations against a member who fails to comply with an obligation imposed in terms of the Act or the National Instruction. If a person wishes to lodge a complaint regarding non-compliance by a member of the police, he or she may do so by reporting the matter to the commander of the relevant member on a form SAPS 508(e). The form must be completed within 48 hours of the commander becoming aware of such an allegation and must be forwarded to the relevant offices, including the Provincial Head: Visible Policing, the Provincial Head: Discipline Management, and the relevant district commissioner.

Can I sue the Police for Damages in Domestic Abuse Cases?

There have been instances where victims of domestic abuse have successfully pursued legal action against the Minister of Safety and Security. These cases were based on the police's failure to fulfil their legal obligation to assist victims in protecting themselves under the Act. The Act, along with the National Instructions on Domestic Violence, mandates the police to inform victims of their rights and to aid them in asserting these rights when necessary.

Can I claim monetary relief in an interim protection order?

A complainant may claim emergency monetary relief for monetary losses suffered before or at the time of the issue of a protection order as a result of the domestic violence, including loss of earnings, medical, optical, dental and related expenses, relocation and accommodation expenses, expenses for acquiring household necessities, education expenses, transportation costs, and expenses in respect of psychosocial services and counseling. In addition, the Act provides for the maintenance of any child, person with a disability, or older person in the care of the complainant, to whom the respondent has a duty of care, pending finalization of maintenance proceedings in terms of the Maintenance Act, 1998. Therefore, a complainant may claim emergency monetary relief for monetary losses suffered as a result of domestic violence, as well as maintenance for dependents in their care.

Can the Court issue an order to obtain electronic communication?

The Act defines "**electronic communications service provider**" as an entity or person who is licensed or exempted from being licensed to provide an electronic communications service, and "**electronic communications service**" as any service which consists wholly or mainly of the conveyance by any means of electronic communication over an electronic communication network, but excludes broadcasting services. The Act provides further information on the use of electronic communication in domestic violence proceedings. **Section 7** of the Act allows a court to issue a direction to an electronic communications service provider to provide information or assistance in relation to electronic communications that are relevant to a domestic violence complaint or application. The information or assistance may include identifying the electronic communications service provider whose service is used to host or disclose the electronic communication, or assessing whether the provider is in a position to remove or disable access to the communication or a link to it. The court may also make an order allowing service of the direction to be effected in a specified form and manner if it cannot be served in the prescribed manner. Therefore, the Act recognises the importance of electronic communication in domestic violence cases and provides for the use of electronic communication in obtaining information and assistance relevant to such cases.

What is a domestic violence safety monitoring notice?

A domestic violence safety monitoring notice is a notice issued by a court in terms of section 4A of the **Domestic Violence Act, 1998 (Act No. 116 of 1998)**, which requires a member of the South African Police Service to check on the safety of a complainant regularly by telephone and in person for a specified period. The notice is issued where a protection order has been granted and the complainant and respondent share the same residence, and there are reasonable grounds to suspect that the respondent poses a threat to the complainant's personal safety. Upon receiving the domestic violence safety monitoring notice, the station commander must assign a member of the South African Police Service to serve the notice on the respondent. The assigned member must serve the respondent with a copy of the notice within 24 hours of being assigned, either by hand or electronically.

Can one subpoena witnesses?

Yes, one can subpoena witnesses in terms of section 5A(1) of the Domestic Violence Act, 1998 (Act No. 116 of 1998). A subpoena is a legal document that requires a person to appear in court to give evidence or to provide any book, document or object specified in the subpoena. The subpoena must be issued on a form that corresponds substantially with Form 14 or Form 15 of the Annexure to the Domestic Violence Regulations, 2022, depending on whether it is issued for any person to appear as a witness or to provide any book, document or object.

DOWNLOAD THE FORMS NEEDED

Click on the **Form links** below to download the respective Domestic Violence Forms:

[Form 1](#): Notice to be handed and explained to complainant by police official in case of domestic violence.

[Form 2](#): Report and risk assessment by functionary.

[Form 3](#): Affidavit by adult to report knowledge, belief or suspicion of acts of domestic violence.

[Form 4](#): List of accessible shelters and public health establishments • [Form 5](#): Notice to be handed and explained to complainant by peace officer in case of domestic violence.

[Form 6](#): Application for protection order.

[Form 7](#): Consent for another person to apply for protection order on behalf of victim.

[Form 8](#): Information notice to complainant who is not represented by legal practitioner.

[Form 9](#): Application for domestic violence safety monitoring notice.

[Form 11](#): Report by member of South African Police Service to court.

[Form 18](#): Affidavit by electronic communications service provider furnishing information to court.

[Form 19](#): Application by electronic communications service provider for extension of period within which information must be provided to court or cancellation of direction.

[Form 21](#): Affidavit by electronic communications service provider furnishing additional evidence to court regarding extension of time.

[Form 24](#): Application by electronic communications service provider to set aside or amend court order.

[Form 26](#): Affidavit by electronic communications service provider furnishing additional evidence to court regarding application to set aside or amend court order.

[Form 34](#): Affidavit for purposes of second or further warrant of arrest.

[Form 35](#): Affidavit regarding contravention of protection order.

[Form 38](#): Application for variation or setting aside of protection order.

[Form 41](#): Request for authorisation of alternative manner of service.

FORMS ISSUED BY THE COURT

Form 10: Court order for domestic violence safety monitoring.

Form 12: Interim protection order.

Form 13: Notice to respondent to show cause (submit reasons) why protection order should not be issued.

Form 14: Subpoena for witness.

Form 15: Subpoena for book, document, or objects.

Form 16: Direction issued to electronic communications service provider to furnish information to court.

Form 17: Court order regarding payment of costs of electronic communications service provider.

Form 20: Request for additional evidence by court regarding extension of time period.

Form 22: Information to electronic communications service provider of outcome of application.

Form 23: Court order to electronic communications service provider to remove or disable access to electronic communication.

Form 25: Request for additional evidence from electronic communications service provider regarding application to set aside or amend court order.

Form 27: Court order setting aside or amending court order.

Form 28: Court order for refund of costs paid to electronic communications service provider by State.

Form 29: Final protection order where interim protection order was issued.

Form 30: Final protection order where interim protection order was not issued.

Form 31: Court order for the extension or discharge of interim protection order.

Form 32: Notification of next date of hearing.

Form 33: Warrant of arrest.

Form 36: Notice to appear before Court.

Form 37: Information to station commander and National Commissioner of South African Police Service of final protection order.

Form 39: Notice of variation or setting aside of protection order.

Form 40: Return of service.

Form 42: Court order authorising alternative manner of service.

IMPORTANT CONTACT NUMBERS

South African Police Service

In a case of domestic violence or sexual assault, the South African Police Service will help you find: medical attention; shelter; and victim counselling. **SAPS emergency number: 10111**

People Opposed to Woman Abuse (Powa)

Powa provides counselling, both over the phone and in person, temporary shelter for and legal help to women who have experienced violence. **Website: <http://www.powa.co.za>, Tel: 011 642 4345, E-mail: info@powa.co.za**

Childline South Africa

This non-profit organisation helps abused children and their families with a free counselling service. It deals with issues such as physical and sexual abuse, substance abuse, behavioural problems and trafficking, and gives legal advice.

Website: <https://www.childlinesa.org.za>, Toll-free helpline: 116, E-mail: olcadmin@childlinesa.org.za

Child Welfare South Africa

Child Welfare South Africa focuses on child protection, child care and family development. Neglect and child abuse can also be reported.

Website: <http://childwelfare.co.za>

Tel: 074 080 8315, E-mail: info@childwelfare.co.za

IMPORTANT CONTACT NUMBERS

Families South Africa (Famsa)

Famsa provides counselling and education to help improve marriages and families. It helps in cases of domestic violence and trauma, divorces and mediation. There are 27 offices across the country. **Website:** <http://www.famsa.org.mzansiitsolutions.co.za> **Tel:** 011 975 7106/7.

Tears Foundation

TEARS Foundation provides access to crisis intervention, advocacy, counselling, and prevention education services for those impacted by domestic violence, sexual assault and child sexual abuse. **Website:** <http://www.tears.co.za>, **Free SMS helpline:** *134*7355#, **Tel:** 010 590 5920, **Email:** info@tears.co.za.

The Trauma Centre

The Trauma Centre provides trauma counselling and violence prevention services for people affected by violence.

Website: <http://www.trauma.org.za>

Tel: 021 465 7373, **E-mail:** info@trauma.org.za

Thuthuzela Care Centres

Thuthuzela Care Centres (TCCs) are one-stop facilities that have been introduced as a critical part of South Africa's anti-rape strategy, aiming to reduce secondary victimisation and to build a case ready for successful prosecution.

The website also provides access to information on gender-based violence. **Website:** <http://www.soulcity.org.za>

IMPORTANT CONTACT NUMBERS

Gender-Based Violence Command Centre

0800 428 428

STOP Gender Violence Helpline

0800 150 150/ *120*7867#

Halt Elder Abuse Line (Heal) – Helpline for elderly people

Helpline: 0800 003 081, E-mail: action@actiononelderabusesa.co.za

Human Trafficking Helpline

08000 737 283 (08000 rescue) / 082 455 3664

University Campus Law Clinics

Many universities have law clinics that offer legal assistance.