

# A Guide To The Domestic Violence Act



## THE DOMESTIC VIOLENCE ACT

### What is the purpose of act?

- ➔ To protect victims of domestic violence and provide for long term measures of prevention of domestic violence.
- ➔ To prevent domestic violence from occurring.

### Who will benefit from the act?

All persons who are in a relationship:

- A current, former wife or husband.
- All children, whether born in or out of wedlock, adopted or step children
- People living with the perpetrator of the violence, for example relatives or domestic workers
- A girlfriend or boyfriend whether current or former.

### What is domestic violence?

The act describes domestic violence as any of the following:

- ➔ Physical abuse which includes hitting, kicking, punching and other manner of physical abuse or assault or threat of such physical assault.
- ➔ Sexual abuse and this includes, any conduct that humiliates, degrades or otherwise violates the sexual integrity of the complainant.
- ➔ Emotional, verbal and psychological abuse and this includes repeated insults, ridicule, name-calling or repeated threats to cause emotional pain, obsessive jealousy and any behaviour likely to cause mental injury.
- ➔ Economic abuse and this includes deprivation of economic resources for family use, such as household necessities, medical expenses or school fees.

- ➔ It also includes denying one the right to engage in an income generating activity or seek employment.
- ➔ Intimidation, which includes uttering or conveying of a threat or causing a complainant to receive a threat which induces fear of imminent harm in the complainant.
- ➔ Harassment which is watching or loitering around a person's home or workplace, telephoning a person's home or work place or sending messages through the post, or electronically for instance emails that are offensive.
- ➔ Stalking which is following, pursuing or accosting a person.
- ➔ Malicious damage to property.
- ➔ Forcible entry into the residence of another person without consent where the parties are no longer living together.
- ➔ Depriving a person reasonable use of the facilities in the home.
- ➔ Unreasonable disposal of household goods or other property in which the complainant has an interest.

Abuse caused by some cultural or customary practices that discriminate or degrade women;

- Forced virginity testing
- Female genital mutilation
- Pledging of women and girls for purpose of appeasement of spirits
- Child marriage
- Forced marriage
- Forced wife inheritance
- Sexual intercourse between father-in-law and newly married daughters-in-law

- ➔ Abuse of a person because of their age, physical or mental incapacity
- ➔ Abuse due to complainant's physical, mental or sensory disability including blindness, deafness or dumbness
- ➔ Abuse due to complainant mental illness, incomplete development of the mind or a psychotic disorder.

Domestic violence done on a person who applies for a protection order on behalf of a complainant

### How does the act protect victims of domestic violence?

By placing special duties on the police to assist the victim and providing for special domestic violence sections at the police stations

- The police officers should, where possible have been trained to handle domestic violence cases.

They should advise the person experiencing violence of her/his rights to obtain shelter and medical treatment where necessary. They should also advise complainant of ;

- The right to apply for relief provided under the act
- The right to lodge a criminal complaint and take the necessary steps to process the criminal act against the perpetrator.
- The police may also arrest the perpetrator without a warrant if there is reasonable suspicion that an act of domestic violence has been committed.
- The police are expected to serve protection orders on behalf of a victim who is unable to pay for a messenger of court fees.

A complainant may choose to be assisted by an officer of the same sex as the complainant.

A police officer shall take steps to bring a person suspected of being a perpetrator of domestic violence before a magistrate within 48 hours

### What is a Protection Order?

- ➔ This is an order given by a magistrate court or high court or a chief's or headman's court (for cases of psychological, emotional, verbal or economic abuse only) against a person causing domestic violence in any of its forms, which is meant to ensure that such person does not continue to commit the violence. This may also order the person committing the violence to pay maintenance where there is economic abuse.
- ➔ This order is to be issued with a warrant of arrest that the police will use to arrest the perpetrator anytime that an act of

domestic violence is committed.

- ➔ An interim (temporary protection order) can also be obtained

### Who can apply for a Protection Order?

- The victim of domestic violence.
- Any person allowed by a victim to apply for them.
- Any person looking after a victim who is below the age of 18 years.
- Any person acting to represent the victim, without the permission of the victim but with the court's permission
- The following are the recognised persons who can act as complainant's representatives; a police officer, a social welfare officer, an employer of complainant, a person acting on behalf of a church or religious institution or private voluntary organisation, a relative, neighbour or fellow employee of the complainant, a counsellor.

### In which cases will the court give permission to someone else without victim's consent?

- ➔ When satisfied about why the victim has given permission, and
- ➔ When it is in the victim's best interest

### How does one get a Protection Order?

- ➔ One has to make an application to the court and file it with the clerk or registrar of court
- ➔ The clerk of court has a duty to advise the victim (in cases where the victim does not have a lawyer) of :
  - Relief available in terms of the act
  - The effect of any order given and how it will be enforced
  - The right to report to the police and make a criminal complaint if a criminal offense has been committed
  - The right to claim compensation for loss suffered or injury as a result of an act of

domestic violence.

### What evidence will the court consider?

- ➔ \*Written evidence which may include medical evidence based on a police report
- ➔ Oral evidence by the victim, the perpetrator and any witness
- ➔ Evidence by way of an affidavit

### What protection is available before the Protection Order is given by the court?

- ➔ The court has the power to give an interim Protection Order that protects the victim before the court date where it is satisfied that the perpetrator is committing an act of domestic violence or is likely to commit such an act
- ➔ The Interim Protection Order shall be issued with a notice to the respondent to come to court on a date specified and show reasons why a protection order should be made.
- ➔ The clerk of court should assist the victim to serve the Interim Protection Order on the perpetrator through the police.

### When is a Protection Order given?

- ➔ After both the victim and perpetrator have to come to court.
- ➔ And the court is satisfied, that the perpetrator committed an act of domestic violence, and that protection is necessary.
- ➔ A warrant of arrest is attached to the Protection Order and will be used if the perpetrator does not obey order.

### What if the perpetrator does not come to court on the court date?

- ➔ A Protection Order may be given in the absence of that person if the court is satisfied that the person received notice of the date of the hearing.
- ➔ The Protection Order will be served upon the perpetrator as soon as possible and not later than 48 hours by the police or messenger of court if the victim wishes to pay.

### What happens if the perpetrator breaks the Protection Order terms?

- ➔ He / She commits an offence and is liable to a fine or an imprisonment or both fine and imprisonment.
- ➔ Repeated breach of a protection order results in an offence and liability to imprisonment for up to 5 years

### What can be provided in the Protection Order?

- ➔ That the victim or perpetrator or other affected family member undergo counselling.
- ➔ The perpetrator should stop committing an act of violence personally or through others.
- ➔ That the perpetrator should stay away from a specified place, which may be where the victim lives.
- ➔ That the perpetrator should not enter or approach the victim's place of work.
- ➔ That the perpetrator should pay emergency maintenance for the victim's needs and those of child / dependant.
- ➔ Temporary custody of any child or dependant of the perpetrator can be awarded any person or institution with regulated access for the perpetrator.
- ➔ That the perpetrator gives access to a place of residence to the victim and any child / dependant.
- ➔ Direct the perpetrator to pay adequate compensation for any personal injury or loss suffered by the victim resulting from an act of domestic violence.
- ➔ Make any other necessary directions.

### For how long is a Protection Order valid?

- ➔ It may remain in force for at least 5 years but may be cancelled or changed by a court where there are changed circumstances, after hearing the matter.

### Can one apply for more copies of Orders and warrants to arrests?

- ➔ Yes, if the original protection order has been lost.

- ➔ Yes, if the original warrant of arrest has been used for the arrest of the perpetrator.

#### **How does one get the perpetrator arrested?**

- ➔ Where one breaks a term of the Protection Order, the victim or a representative of the victim may request any police officer to arrest the perpetrator.
- ➔ The request for arrest is put in the form of an affidavit.
- ➔ The police officer should arrest the person committing an act of violence if he /she is satisfied that the terms of the order are known to the perpetrator yet he is committing or threatening to commit an act of violence and it is necessary to protect the victim.

#### **What will be the sentence where an offence is committed?**

- ➔ in cases where an offence is also an offence under the criminal law, the sentences under the Domestic Violence Act will be stiffer.
- ➔ Emotional, psychological, verbal and economic abuse do not constitute a criminal offence

#### **What if someone lies in an affidavit for a Protection Order?**

- ➔ This is an offence and can lead to imprisonment of up to 2 years.

#### **What is in the act to provide for the prevention of violence?**

- ➔ The Act provides for an anti-domestic violence Council made

up of government representatives, Non-governmental organisations specialising in women's and children's issues, churches, traditional leaders whose role will be to;

- To keep under review the problem of domestic violence.
- Information dissemination and awareness rising on domestic violence.
- To promote research
- To promote service provision and monitoring.
- To monitor the implementation of the Act.
- To promote establishment of safe houses.

The act provides for anti-domestic violence counsellors who shall come from the welfare department, private voluntary organisations that work on domestic violence and chiefs or headmen.

They shall;

- Advise, counsel and mediate on the causes of domestic violence
- Carry out investigations on the financial status of the parties.
- Carry out investigations and accommodation arrangements.
- Make arrangements for the medical examination of the children's victims



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