

SIMPLIFIED DOMESTIC VIOLENCE ACT



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This pamphlet provides a summary of the **Domestic Violence Act [Chapter 5:16]** (the Act) and explanatory notes on its application for the benefit of children, their caregivers and partners in the child rights sector. The Act was enacted on 26 February 2007 and became operational on 25 October 2007.

Brief background

The law came after incessant advocacy efforts by the women's and children's rights movements following an increase in acts of violence against mostly women and children. Some of the acts that resulted in harm to the victims were not adequately covered by the criminal law. Some of such acts include economic abuse and emotional abuse.



The Domestic Violence Act (DVA) and Gender Based Violence (GBV)

GBV can affect anyone; it is not a feminine issue. Whilst acknowledging that it affects girls and women to a larger extent, anyone can be a victim. The DVA covers most issues that cause or result in GBV.

Purpose of the DVA

The Act provides “for the protection and relief of victims of domestic violence...”

Important definitions

Complainant: - a current, former or estranged spouse of the person affected by domestic violence.

- a child of the person affected by domestic violence, whether adopted, born in or out of wedlock or being a step-child.
- anyone staying with the person accused of domestic violence even where the two are not related. This provision covers domestic maids as well.

Respondent: a person who has been accused of causing or threatening DV.

Complainant's representative: this is a person who can make an application for a protection order on behalf of complainant, who could be,

- a. A police officer.
- b. A social welfare officer.
- c. An employer of the complainant.
- d. A member of a church or non-governmental organisation or community based organisation.
- e. A relative, neighbour or colleague of complainant.



NB: A social welfare officer is defined as a registered social worker or social welfare officer employed in the social welfare, health, child care or women's affairs and gender government departments.

Court: The court where one can lodge a complaint of domestic violence is defined as a Magistrates Court, High Court and in cases of emotional, verbal, psychological abuse and economic abuse, a local court.

What is domestic violence?

It means any unlawful action, behaviour or omission which results in the death or injury (physical, sexual or mental) to a complainant by the respondent. It includes;

- a. **Physical abuse-** includes assaults, pushing, kicking and shaking. This is also covered in the Criminal Law (Codifications Reform) Act.
- b. **Sexual abuse-** includes rape, aggravated indecent assault, indecent assault and related offences. The offences are also covered in the Criminal Code.
- c. **Emotional, verbal or psychological abuse-** can include ridicules, insults or name-calling, threats, obsessive possessiveness and any act, omission or behaviour defined as domestic violence that is committed in the presence of minor children of the family and likely to cause them mental injury.
- d. **Economic abuse** – depriving a child or her mother of money for well-being or stopping the mother from gainful employment or economic activity for livelihood. One can also apply for maintenance using the Maintenance Act.



- e. **Intimidation**- resulting in complainant doing or refraining from doing something good for herself out of fear of respondent.
- f. **Harassment**- includes closely watching complainant or loitering at their school or house or sending abusive calls or texts.
- g. **Stalking**- pursuing or accosting complainant.
- h. **Malicious damage to property** belonging to complainant or in which complainant has an interest. This offence is also covered in the Criminal Code under the same name.
- i. **Forcible entry into complainant's house** if they do not share it. Respondent could also be charged under the offence of unlawful entry under the Criminal Code.
- j. **Denial of access to or use house/home** facilities.
- k. **Malicious disposal of property** that complainant has an interest in- such as selling the house where family stays without coming up with alternatives.
- l. **Cultural or customary acts** which are harmful and discriminates against women and girls or degrades them such as forced virginity testing, genital mutilation, pledging of girls, forced marriage, child marriage, forced wife inheritance or sexual intercourse between fathers-in-law and newly married daughters-in-law.
- m. **Abusive acts** caused by discrimination on grounds of age or disability or illness.



NB: When the matter is dealt with under the Criminal Code, the respondent becomes the accused person, whilst the complainant is referred to as such but appears as a state witness. The complainant testifies as a state witness.

NB: If a person commits an act or omission of domestic violence which is regarded as a criminal offence and is found guilty, s/he is liable to a fine and or imprisonment for up to 10 years.

Acts not defined as Criminal Offences

The following acts are not defined as offences; hence they do not attract the above penalty:

- a. Emotional, verbal and psychological abuse.
- b. Economic abuse.

A Complainant can however still apply for a protection order and maintenance order when subjected to this abuse.

Duties of police officers

Every police station deals with domestic violence issues. It is a requirement that at every station there be a police officer who is able to deal with domestic violence reports.

The police officer may advise complainant of the following;

- ◆ Where and how to obtain shelter or medical treatment.
- ◆ That the victim has a right to lodge a criminal complaint even after seeking relief in terms of the Act.
- ◆ That the complainant may choose to have her statement recorded by an officer of the same sex.

NB: *If complainant is not happy with the way she was treated by a police officer, she may lodge a complaint with the officer's superiors.*

Arrest by a police officer without warrant

A police officer can arrest a perpetrator of domestic violence without a warrant if the safety, health or well-being of the complainant is at risk. This should be done where the act of violence constitutes a criminal offence. When arrested, the offender has to appear in court within 48 hours.

Application for a protection order

Application for a protection order may be made to a court where an act of domestic violence has been or is being made or is threatened.



Who may apply for a protection order?

- a. The complainant or anyone acting in his or her best interests with or without the consent of the complainant. A concerned person may use the provision to apply for a protection order against a person who would have committed or who may be about to commit an act of domestic violence against a child or woman who leaves in fear of Respondent.
- b. Any person having care or custody of a minor child if the minor child is a victim of domestic violence.

When can one apply for a protection order?

The application for a protection order can be made any time even outside ordinary court hours or on a day which is not ordinarily a court day. This means that an application can be made after 4pm on a week day or even during weekends or public holidays. One only has to show that the complainant may suffer some harm if the order is not granted immediately.

What does the order contain?

- a. The request or relief sought by the complainant.
- b. Its effect and how it can be enforced.
- c. The right to lodge a criminal complaint.
- d. The right to claim compensation for any loss or injury caused by the domestic violence.



Interim or temporary protection order

- ◆ This order is given against a respondent without giving him or her chance to respond to the application as long as complainant is able to convince the court that an immediate court order against the respondent will protect her/him from harm.
- ◆ This order, once granted, should be served on the respondent.
- ◆ The order will contain a return date, which is a date on which the respondent should go to court to show reasons why the interim protection order should not be confirmed.
- ◆ Failure by the respondent to abide by the order may result in him/her being arrested by the police.

Issue of protection order

- ◆ On the date shown on the interim protection order, the court may go on to issue the protection order if it is satisfied that the complainant needs protection.
- ◆ If the respondent was served with the relevant court papers but fails to appear in court, the court will proceed without hearing his/her evidence or side of the story.
- ◆ Where a respondent is served with the application but fails to appear in court, a warrant of his/her arrest is issued.
- ◆ The warrant of arrest only operates where respondent breaks any of the terms of the order.
- ◆ The order operates for a period of 5 years.

What does the order do?

The order may;

- ◆ Prohibit or stop the Respondent from committing any form of violence against complainant.
- ◆ Direct the respondent to stay away from the complainant.
- ◆ Prohibit the respondent from entering any place where complainant would be.
- ◆ Direct the respondent to pay monetary relief in respect of complainant and any child or dependants of his/hers. This is usually in instances where complainant may need immediate medical attention, maintenance or a place to rent.
- ◆ Award temporary custody of any child or dependant of the respondent to any person or institution and set out access rights to such child. A child may thus be placed in an institution where the child would be exposed to further harm if they are not moved to a place of safety, for instance, in cases where a father would have raped the child in question.
- ◆ Permit the use of respondent's premises/property for the benefit of a child.
- ◆ Set out compensation in respect of injury or pain suffered by complainant.
- ◆ Direct that complainant or respondent undergo counselling with respondent meeting all the costs.



Variation, discharge or extension of an order

- ◆ Any change to the order can only be effected upon application by either complainant or respondent where circumstances have changed.
- ◆ In the case of a minor child, his or her representative should show the court that the application for a change is to the advantage of the child.

Other offences

Making a false statement in an application or affidavit may lead to prosecution.

Special jurisdiction of local courts

Local courts are defined by the Customary Law and Local Courts Act (Chapter 7:05) as either a Primary Court, which is presided over by a Headman or a Community Court, which is presided over by a Chief. In terms of the Domestic Violence Act, the local courts have jurisdiction or powers to deal with the following domestic violence cases and issue protection orders in such cases;

- ◆ Emotional, verbal and psychological abuse.
- ◆ Economic abuse.

Anti- Domestic Violence Council

The Act establishes the Domestic Violence Council.

Responsibilities

- ◆ To keep under constant review the problem of domestic violence in Zimbabwe.
- ◆ To take all the steps to disseminate information and increase the awareness of the public on issues of domestic violence.
- ◆ To promote research into the problem of domestic violence.
- ◆ To promote the provision of services necessary to deal with all aspects of domestic violence and monitor their effectiveness.
- ◆ To monitor the application and enforcement of this Act and any other law relevant to issues of domestic violence.
- ◆ To promote the establishment of safe houses for the purpose of sheltering victims of domestic violence, including their children and dependants, pending the outcome of court proceedings under the Act.
- ◆ To promote the provision of support services to a complainant where the respondent who was the source of support for the complainant and her or his dependants has been imprisoned.
- ◆ To do anything necessary for the effective implementation of the Act.

Where to get help

1. Zimbabwe Republic Police- Victim Friendly Unit: Located within any police station near you.
2. Ministry of Women Affairs, Gender and Community Development: Ward/District Coordinators located within your community.
3. Any women or child focused Non-Governmental or Community Based Organisations.
4. Justice for Children.

Justice for Children assists with provision of legal advice and drafting of court papers, including Protection Orders in all cases involving or affecting children.

Contact them on;



No. 66 Blakeway Drive,
Belvedere, HARARE
Tel: +263- 4 -741510, 778474,
741781, 2927982
Cell: 0772 560 163/4
Whatsapp: 0771 566 761
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JUSTICE FOR CHILDREN

Second floor,
Mership House
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Email: jctbyo@gmail.com

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Tel: +263-20-60359, 60439
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