

# Immigration and Refugee Board of Canada

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## Responses to Information Requests

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Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

17 August 2012

**NAM104144.E**

Namibia: Protection orders and other legal protection mechanisms in cases of violence, harrassment and threats of violence, including domestic violence

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

**1. Protection Orders****1.1 Overview**

The issuance of protection orders in Namibia is governed by the *Combating of Domestic Violence Act, 2003* (Namibia 2003, Part II). The Act states that "[a]ny person who is in a domestic relationship [...] may apply for a protection order against another person in that domestic relationship" (Namibia 2003, Art. 4.1). Sources explain that a protection order may be obtained if a person in such a domestic relationship has been abused or threatened with abuse (NPA et al. 2012, 58; LAC 2007, 17). According to the Namibian Legal Assistance Centre (LAC), who helped to draft the Act, protection orders can serve as an alternative to criminal charges in cases of domestic violence, although protection orders may be sought at the same time as criminal charges are laid (LAC 2010).

**1.2 Measures Included in Protection Orders**

Sources state that all protection orders include a measure ordering that the violence must stop (NPA et al. 2012, 56; LAC 2007, 27). In addition, a manual produced by the Namibia Paralegal Association (NPA) and other organizations for NPA members explains that every protection order may be tailored to the situation in question (NPA et al. 2012, 56, 59). However, the LAC states that "the terms of the protection orders do not always fit the situation and protection is thus not afforded to those most in need" (LAC 2010).

Other terms which may be incorporated in protection orders include:

- measures banning possession of weapons;
- prohibitions regarding contact between the abuser and the victim;
- the abuser being banned from returning to a shared home;
- the providing of alternative accommodations, including paying the rent for alternative accommodations;
- measures regarding the division and protection of property;
- temporary maintenance orders;
- measures regarding child custody and access to any involved children (NPA et al. 2012, 59-60).

In its guide to the *Combating of Domestic Violence Act*, the LAC explains that protection orders are enforceable throughout the country (LAC 2007, 18).

### 1.3 Who Can Seek Protection Orders

The definition of a domestic relationship for the purpose of the Act is described in section 3 of the Act (Namibia 2003). A legal monograph published by the LAC examining existing legislation that can be used to protect victims of stalking in Namibia explains that relationships defined under the law as domestic relationships include those between spouses, parents and children, as well as between romantic partners of the opposite sex (LAC 2008, 12). The monograph adds that domestic relationships as defined by the law also include past spouses and partners "for at least one year after the break-up of the relationship if they have no children together, and for longer if they do have children" (ibid.). The *Combating Domestic Violence Act, 2003* states that the domestic relationship continues for the life of the child or two years after his or her death (Namibia 2003, Art. 3 (2)).

Sources also indicate that extended family members may be subject to protection orders (NPA et al. 2012, 58; LAC 2008, 12). According to the LAC, these family members must have "some domestic connection" (ibid.). The NPA manual notes that this domestic connection may include such extended family members as "aunts and uncles, who live in an extension of the household" (NPA et al. 2012, 58).

Third parties may apply for a protection order on someone else's behalf, but the third party must have the written consent of the person in need of protection, unless the person is a minor or unable to make decisions on his or her own (NPA et al. 2012, 58; LAC 2007, 17). A third party may also be someone "who has an interest in the well-being" of the victim of domestic violence, such as family members, teachers, police officers, social workers, healthcare providers, traditional leaders and employers (ibid.; NPA et al. 2012, 58). Minors may apply for a protection order on their own if they can satisfy the court of the seriousness of the allegation and demonstrate that they understand what they are doing (ibid.; Namibia 2003, Art. 4 (5)).

According to a LAC representative interviewed by the Namibian daily newspaper *New Era*, the provisions of the law exist to offer protection to both men and women (6 July 2012). A LAC study on the implementation of the *Combating of Domestic Violence Act, 2003*, found that 12 percent of individuals who applied for protection orders were men (LAC 2012, 263).

According to the LAC study, about ten percent of individuals who applied for protection orders were over the age of fifty (LAC 2012, 266). The study also found that there are more cases of violence by children or grandchildren directed towards parents and grandparents than of violence by parents or grandparents towards children (LAC 2012, 274).

### 1.4 Applications for, and Issuance of, Protection Orders

Protection orders are issued by magistrates (Namibia 28 June 2010, 4; LAC 2010). Sources indicate that applications are presented to clerks at magistrates' courts (NPA et al. 2012, 58; LAC 2007, 18). The application must include a sworn affidavit and may include evidence such as witness testimony and medical reports (NPA et al. 2012, 58; LAC 2007, 17-19). A copy of the 22-page form used to apply for protection orders taken from the Namibia Paralegal Association's manual is attached to this Response (Namibia n.d.).

The magistrate will examine the application and evidence to decide whether the issuance of a protection order is warranted (NPA et al. 2012, 56). An interim protection order will be issued until a hearing is held (ibid., 59; LAC 2007, 20). A final protection order may be issued after the hearing (NPA et al. 2012, 59; LAC 2007, 26). According to the NPA manual, a copy of the protection order is sent to the relevant police station by the clerk of the court, so that police protection can be provided if necessary (NPA et al. 2012, 59). A copy will also be sent to the ministry responsible for child welfare if children are involved (ibid.).

Sources note that it is not necessary to have a lawyer to apply for a protection order (NPA et al. 2012, 56; LAC 2007, 25). Sources also indicate that there are no fees involved in obtaining a protection order (NPA et al. 2012, 56; LAC 2010). In an article presenting an overview of the new legislation in Namibia, including the *Combating of Domestic Violence Act, 2003*, the Chief of Law Reform to the Law Reform and Development Commission of Namibia states that the introduction of protection orders has made it inexpensive for individuals to receive protection, compared to the option of going through civil proceedings to obtain a "restraining order" against an offending party which would be more costly (Namiseb 1 Jan. 2009, 107). Further information on what is meant by a restraining order was not found among the sources consulted by the Research Directorate.

According to the LAC guide, it is the legal duty of the clerk of the court or any prosecutor attached to the court to help prepare the application, if asked (LAC 2007, 18). Some sources report that applications may be made at any time and decisions can be made after ordinary court hours and on weekends (NPA et al. 2012, 56; LAC 2007, 18). The LAC guide adds that applications for protection orders are supposed to be treated as "urgent" (ibid.). However, in a report prepared for Namibia's Universal Periodic Review by the United Nations Human Rights Council, the Ombudsman of Namibia states that no procedures have been put in place to allow the receiving of applications outside normal office hours (Namibia 28 June 2010, 4). Likewise, the LAC report

on the implementation of the *Combating of Domestic Violence Act, 2003*, states that, according to informants interviewed during the study, "there is no uniform system for dealing with after-hours applications" (LAC 2012, 261). The report explains that the level of assistance given outside regular office hours varies among different magistrates' courts, with some completely unavailable or who redirect complainants to police stations (ibid.).

### 1.5 Number of Applications Made and Protection Orders Received

According to the study done by the LAC on the implementation of the *Combating of Domestic Violence Act, 2003*, from the first full year of implementation of the law in 2004 to the end of 2008, more than 3,500 applications for protection orders were made (LAC 2012, 251). In addition, the study found that 92 percent of applications for protection orders came from individuals living in urban areas (ibid., 269). The LAC obtained those numbers by collecting information from every magistrate court in Namibia (ibid., 242-243).

The LAC study specifically examined a sampling of 1,122 applications for protection orders out of a total of 1,500 total protection orders made throughout Namibia from 2004 to 2006 (ibid., 255). The LAC was given permission to access court files by the Chief Magistrate (ibid., 242). Because some of the applications made by complainants concerned more than one respondent, 1,131 respondents were implicated in the 1,122 applications filed (ibid., 283). According to the LAC report on the study, 77 percent of applications for protection orders in this sampling resulted in interim protection orders (ibid., 388). The report adds that this figure could be higher in reality, as it was unclear from records whether an interim order was issued in approximately 12 percent of cases (ibid.). However, records indicated that interim protection orders were not issued in 11 percent of cases (ibid.). Interim protection orders are temporary protection delivered by magistrates before hearings are held when "there is sufficient evidence that domestic violence has been committed by the respondent" (ibid., 386). In addition, the report states that 272 out of 1,122 application orders against 1,131 persons, or 24 percent, resulted in final protection orders (ibid., 493). However, the report adds that the number of final protection orders could be higher as it was unclear from records what the outcome of applications was for 38 percent of cases (ibid.).

### 1.6 Penalties for Violating a Protection Order

Sources indicate that it is a crime to violate a protection order and that the police may arrest an individual who violates a protection order (NPA et al. 2012, 56; LAC 2007, 31). According to the LAC guide, police are empowered to arrest someone who has violated a protection order without a warrant if there are "reasonable grounds to suspect that the protection order has been violated" (2007, 31).

A person who violates a protection order can receive a fine of up to 8,000 Namibian dollars [C\$970 (XE 1 Aug. 2012a)], be sentenced to prison for up to two years, or both (Namibia 2003, Art. 16 (1); NPA et al. 2012, 56; LAC 2012, 511). The NPA manual indicates a violation of the protection order will also be considered to have happened if another person acts on the behalf of the accused person, (NPA et al. 2012, 62).

### 1.7 Effectiveness

In a telephone interview with the Research Directorate, the Director of Women's Solidarity Namibia (WSN), a women's rights NGO, stated that protection orders were "not effective" due to administrative obstacles and inconsistencies when attempting to obtain them (WSN 4 July 2012). The director added that a large part of WSN's work is to accompany women applying for such orders (ibid.).

A representative of the Namibian Branch of the World Young Women's Christian Association (YWCA), that advocates for human rights and seeks to empower women (YWCA n.d.), stated in a telephone interview with the Research Directorate that protection orders are "not enforced" by police (10 July 2012). Similarly, the director of WSN stated that police are slow to respond, in case of violations, adding that there are no procedures for what to do if an order is breached (WSN 4 July 2012). The LAC report on the implementation of the *Combating of Domestic Violence Act, 2003*, found little statistical information available regarding violations of protection orders (LAC 2012, 511). However, the LAC found that police reportedly fail to take action in cases of breaches of protection orders (ibid., 511-512). The Director stated that there is no protection against men who violate the orders; for example, men returning to their home after being barred from doing so (ibid.).

The Director was not aware of any case in which men subject to protection orders were summoned by the court because they had violated a protection order (ibid.). Similarly, the YWCA representative explained that protection orders may make a situation worse, as men may end up killing women after being barred from returning to their home, but did not provide examples of such cases (10 July 2012). Corroboration of this statement was not found among the sources consulted by the Research Directorate.

The Ombudsman states that "not all women and children have equal access" to the protection and mechanisms provided by domestic violence legislation (Namibia 28 June 2010, 4). In particular, the

Ombudsman notes that some towns in Namibia do not have resident magistrates and that, in some cases, it is necessary to travel over 100 kilometres to reach a magistrate, sometimes without access to public transport (ibid.).

In an article discussing an international campaign to render firearms inaccessible to anyone with a history of domestic abuse, the Co-Founder of Breaking the Wall of Silence, a Namibian NGO that works to reduce gun violence (Breaking the Wall of Silence n.d.), stated that there is a "bureaucratic system that requires women to shuttle between police stations, the Woman and Child Protection Unit and the courts to obtain a protection order against a man who is abusing her" (*The Namibian* 19 June 2009). The WSN Director similarly stated that sometimes individuals are sent back and forth between the police and Magistrates' Courts when attempting to obtain protection orders (WSN 4 July 2012).

The LAC states that applicants for protection orders have reportedly been turned away in some cases (LAC 2010). According to the LAC, "in many cases," applicants have not received assistance in filling out application forms, "which can lead to incomplete information and a refusal by the magistrate to grant a protection order" (ibid.). The LAC report on the implementation of the *Combating of Domestic Violence Act, 2003* also found that some clerks of magistrates' courts were not aware that they were designated as Commissioner of Oath and as such could take sworn statements, necessary to apply for protection orders (ibid. 2012, 258). The LAC report adds that even among those clerks who were aware that they served as Commissioner of Oaths, it appeared to be "standard practice" to send complainant to the police for them to provide a sworn statement before completing the application process" (ibid., 258-259).

Sources indicate that there may be lengthy waits to obtain a protection order (WSN 4 July 2012; LAC 2010; *The Namibian* 19 June 2009). According to the LAC, there have been instances of "long delays" in receiving protection orders "in urgent cases" (LAC 2010). The Director of Breaking the Wall of Silence reportedly stated that "it can take months" to receive a protection order and that it may not be granted at all despite the lengthy wait (*The Namibian* 19 June 2009). The WSN Director specified that it can take between 3 to 4 months to obtain such an order (4 July 2012). However, the LAC report on the implementation of the *Combating of Domestic Violence Law, 2003*, found that for 688 cases within their sample, 60 percent of interim protection orders were granted within 48 hours and almost 69 percent within 3 days (LAC 2012, 392). Nonetheless, the LAC report expresses concerns about the fact that it may take over two days for decisions to be rendered in approximately 40 percent of cases, "given the potential danger to the complainant in domestic violence situations" (ibid.). In addition, the report found that in 7.6 percent of cases, it took more than 30 days for decisions to be rendered (ibid.). The LAC report also found that 63 percent of final protection orders were granted within 45 days of interim protection orders being issued (LAC 2012, 490). However, according to the report, 15 percent of protection orders were granted more than three months after the date on which the interim protection order was granted, and in one case it took over two years after the granting of a interim protection order for a final protection order to be issued (ibid.).

The LAC report also notes that a protection order only becomes effective when it has been served to the respondent rather than when the decision has been rendered (ibid., 393).

## 2. Other Legal Protection Mechanisms

According to sources, there are legal measures in place to protect the privacy of those in need of protection (LAC 2010; NPA et al. 2012, 62). The NPA manual specifies that matters involving domestic violence or rape are closed to the public (NPA et al. 2012, 62). Media are also banned from divulging the names of the victims (ibid.; LAC 2007, 32). An individual who discloses the identity of a victim could receive a fine of up to N\$10,000 [C\$1,212 (XE 1 Aug. 2012b)] and up to a year in prison (NPA et al. 2012, 62; LAC 2007, 32).

### 2.1 Interdicts

The LAC states that, in addition to existing criminal laws governing assault and trespassing, it is possible for an individual to benefit from protective measures through civil law procedures (LAC 2008, 16-18). The LAC explains that it is possible for an individual to obtain an interdict, a court order directing a perpetrator to stop a particular behaviour (ibid., 17). However, the LAC adds that obtaining such an interdict can be "expensive" as a lawyer would normally be required (ibid.). The LAC also states that obtaining an interdict may not be suitable in an emergency, although the process can reportedly be sped up in urgent circumstances (ibid.). Further information on interdicts was not found among the sources consulted by the Research Directorate.

### 2.2 Peace Orders

According to the legal monograph produced by the LAC, the *Criminal Procedure Act, 2004* provides for the issuance of peace orders in cases of violent behaviour or threats towards individuals or property, (LAC

2008, 18). The provisions include a pledge of N\$5,000 [C\$606 (XE 1 Aug. 2012c)] which is forfeited if the target of order fails to refrain from "doing or threatening injury to the complainant's person or property" (Namibia 2004, Art. 369; LAC 2008, 18). The LAC monograph notes that these provisions were previously available for cases of domestic violence before the *Combating of Domestic Violence Act, 2003*, but were "seldom" used (LAC 2008, 18). Further information about peace orders could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Young Women's Christian Association (YWCA) - Namibia. 10 July 2012. Telephone interview with a representative.

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## Additional Sources Consulted

**Oral sources:** A representative of NamRights and a professor of law at the University of Stellenbosch in South Africa did not provide information within the time constraints of this Response. Attempts to contact a professor of law at the University of Namibia, the Director of the Human Rights and Documentation Centre at the University of Namibia and representative of the Legal Research and Development Trust of Namibia, and the Director of the Namibia Institute for Democracy were unsuccessful.

**Internet sites, including:** Amnesty International; European Country of Origin Information Network; Factiva; Government of Namibia; Human Rights and Documentation Centre; Human Rights Watch; Institute for Public Policy Research; Konrad Adenauer Foundation; Namibia Superior Courts; NamRights; Office of the Ombudsman of Namibia; United Kingdom Home Office; United Nations – Integrated Regional Information Networks, Office of the High Commissioner for Human Rights, Refworld.

## Attachment

Namibia. N.d. "Form 1 - (Regulation 2) Application for Protection Order Section 6(1) of the Combating of Domestic Violence Act, 2003". In *Access to Justice - Paralegal Manual*, pp. 188-209. Namibia Paralegal Association (NPA), New Perimeter, DLA Piper, and University of Maryland School of Law. 2012. <[http://www.namibiaparalegals.org/assets/03527\\_New%20Perimeter\\_NPA\\_Legal\\_Manual\\_v13.pdf](http://www.namibiaparalegals.org/assets/03527_New%20Perimeter_NPA_Legal_Manual_v13.pdf)> [Accessed 11 July 2012]

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