

 **martinvermaak**
— *Attorneys* —



**Dedicated, Focused &
Results Orientated**

“I am living in hell from one day to the next. But there is nothing I can do to escape. I don't know where I would go if I did. I feel utterly powerless, and that feeling is my prison. I entered of my own free will, I locked the door, and I threw away the key.”

— Haruki Murakami

Domestic Violence



Domestic Abuse in South Africa

South Africa is facing a growing epidemic of Domestic Violence. Police statistics for 2017 to 2018 reflects over 20 000 murders, 50 000 plus cases of Sexual offences, 40 000 plus reported rapes which suggest massive levels of violence in our homes.

Not comparing very well with other countries regarding Domestic Violence statistics. The epidemic of violence in South Africa is undermining our nation's health and economic and social development. We have one of the highest levels of incidences of Domestic Violence in the world.

Many cases of Domestic Violence go unreported and it is suggested that only a small percentage of Domestic Violence cases are actually reported. It is known that more women and children are subjected to Domestic Violence than men. However, this does not retract from the fact that the abuse suffered by men are real and can and have the same consequences to the abused man as that of the abused women.

“My father was one of those men who sit in a room and you can feel it: the simmer, the sense of some unpredictable force that might, at any moment, break loose, and do something terrible. [Burnside, p. 27]” - John Burnside, A Lie About My Father: A Memoir.



The State's Role

The State has recognised that they must turn the tide on Domestic Violence and the Domestic Violence Act No. 116 of 1998 was enacted to serve this purpose. The preamble of this Act reads as follows:

“RECOGNISING that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society; that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships; and that the remedies currently available to the victims of domestic violence have proved to be ineffective;

AND HAVING REGARD to the Constitution of South Africa, and in particular, the right to equality and to freedom and security of the person; and the international commitments and obligations of the State towards ending violence against women and children, including obligations under the United Nations Conventions on the Elimination of all Forms of Discrimination Against Women and the Rights of the Child;

IT IS THE PURPOSE of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence,”

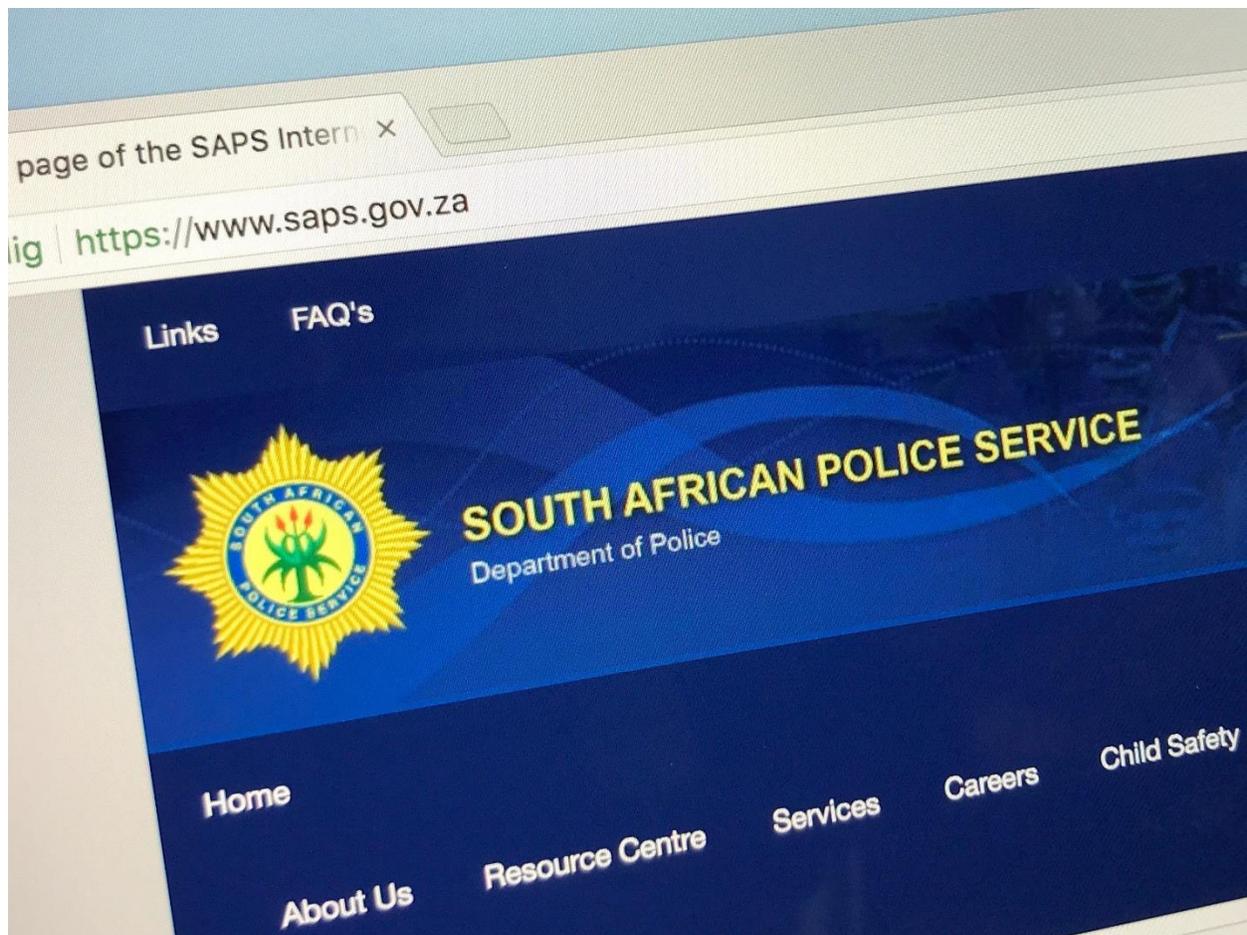
Commitment of SAPS to Victims of Domestic Violence: -

“It is the commitment of the SAPS to treat victims of domestic violence with sensitivity and care.

As police officials.-

- we will treat victims with respect and protect your dignity;*
- listen to what victims have to say;*
- not insult or blame or suggest that it was their own fault that they were abused;*
- assist you with empathy and care;*
- inform victims of their rights and options.*

https://www.saps.gov.za/resource_centre/women_children/domestic_violence.php



Who Has Protection In Terms of the Domestic Violence Act?

Any person who is or who has been in a domestic relationship with a Respondent; and who is or has been subjected or allegedly subjected to an act of domestic violence; including any child in the care of the Complainant.

A Domestic Relationship

Means a relationship between a Complainant and a Respondent in any of the following ways:

- they are or were married to each other, including marriage according to any law, custom or religion;

- they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- they are family members related by consanguinity, affinity or adoption;
- they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
- they share or recently shared the same residence.

Domestic Violence means -

- physical abuse;
- sexual abuse;
- emotional, verbal and psychological abuse;
- economic abuse;
- intimidation;
- harassment;
- stalking;
- damage to property;
- entry into the Complainant's residence without consent, where the parties do not share the same residence; or
- any other controlling or abusive behaviour towards a Complainant,
- where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the Complainant.

The Domestic Violence Act Defines These Types of Abuse as Follows: -

Economic Abuse includes-

- the unreasonable deprivation of economic or financial resources to which a Complainant is entitled under law or which the Complainant requires out of necessity, including household necessities for the Complainant, and mortgage bond repayments or payment of rent in respect of the shared residence; or
- the unreasonable disposal of household effects or other property in which the Complainant has an interest.

Emergency Monetary Relief means compensation for monetary losses suffered by a Complainant at the time of the issue of a Protection Order as a result of the domestic violence, including-

- loss of earnings;
- medical and dental expenses;
- relocation and accommodation expenses; or
- household necessities.

Emotional, Verbal and Psychological Abuse means

- a pattern of degrading or humiliating conduct towards a Complainant, including—
- repeated insults, ridicule or name calling;
- repeated threats to cause emotional pain; or
- the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the Complainant's privacy, liberty, integrity or security.

Harassment means

- engaging in a pattern of conduct that induces the fear of harm to a Complainant including-
- repeatedly watching, or loitering outside of or near the building or place where the Complainant resides, works, carries on business, studies or happens to be;
- repeatedly making telephone calls or inducing another person to make telephone calls to the Complainant, whether or not conversation ensues;
- repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the Complainant.

Signs of an Abusive Relationship

Sophie Saint Thomas states in an article "11 Signs of Emotional Abuse in Relationships That You Should Never Overlook" that the signs of Emotional Abuse include the following:

- They frequently direct angry outbursts at you.
- They criticize the way you look or how you dress.
- Your partner insults and curses at you when they're upset, then begs for your forgiveness later.

- They text and call you constantly to check in.
- They refuse to leave your personal space.
- They try to control the people you spend time with.
- They use gaslighting tactics to manipulate you into doubting your experiences.
- They speak for, or over, you.
- They show physical aggression, whether or not it's directed at you.
- They pressure you into having sex with them.
- They shut down and withhold emotional intimacy.

How to Apply for a Protection Order

A Complainant may apply to Court for a Protection Order and any Party to a Protection Order Application are entitled to make use of the services of an Attorney.

If the Court is satisfied that there is *prima facie* evidence that the Respondent is committing or has committed an act of Domestic Violence; and undue hardship may be suffered by the Complainant as a result of such Domestic Violence if a Protection Order is not issued immediately, the Court must, issue an Interim Protection Order against the Respondent.

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 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.

An Interim Protection Order shall have no force and effect until it has been served on the Respondent.

If the Respondent does not appear on a return date and if the Court is satisfied that-

- proper service has been effected on the Respondent; and
- the application contains *prima facie* evidence that the Respondent has committed or is committing an act of Domestic Violence,

The Court must issue a Protection Order in the prescribed form.

If the Respondent appears on the return date in order to oppose the issuing of a Protection Order, 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 shall form part of the record of the proceedings.

The Court must, after a Hearing, issue a Protection Order if it finds, on a balance of probabilities, that the Respondent has committed or is committing an act of Domestic Violence.

Upon the issuing of a Protection Order, the Clerk of the Court must forthwith in the prescribed manner cause-

- the original of such order to be served on the Respondent; and
- certified copy of such order, and the original warrant of arrest to be served on the Complainant.

The Clerk of the Court must forthwith forward certified copies of any Protection Order and of the warrant of arrest to the Police Station of the Complainant's choice.

A Protection Order issued in terms of this section remains in force until it is set aside, and the execution of such order shall not be automatically suspended upon the noting of an appeal.

Court's Powers in Respect of Protection Order

The Court may, prohibit the Respondent from-

- committing any act of domestic violence;
- enlisting the help of another person to commit any such act;
- entering a residence shared by the Complainant and the Respondent: Provided that the Court may impose this prohibition only if it appears to be in the best interests of the Complainant;
- entering a specified part of such a shared residence;
- entering the Complainant's residence;
- entering the Complainant's place of employment;
- preventing the Complainant who ordinarily lives or lived in a shared residence as from entering or remaining in the shared residence or a specified part of the shared residence; or
- committing any other act as specified in the Protection Order.

The Court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the Complainant.

“There are so many women suffering in silence, and, yes, men, too. There are so many men and women who are humiliated in their own homes, in front of their children. How are they ever supposed to develop an idea of what safety is?”

— Shenita Etwaroo

Protection Order Granted – It Is Now a Powerful Weapon!

A Complainant may hand the Warrant of Arrest together with an Affidavit wherein it is stated that the Respondent has contravened any prohibition, condition, obligation or order contained in the Protection Order, to any member of the South African Police Service.

If it appears to the member concerned that there are reasonable grounds to suspect that the Complainant may suffer imminent harm as a result of the alleged breach of the Protection Order by the Respondent, the member must forthwith arrest the Respondent for allegedly committing the offence.



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