

DOMESTIC VIOLENCE ACT, 2008

No. 10



of 2008

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An Act to provide for the protection of survivors of domestic violence and for matters connected therewith.

Date of Assent: 25th April, 2008

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

Short title and commencement

1. This Act may be cited as the Domestic Violence Act, 2008 and shall come into operation on such date as the Minister may, by order published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“applicant” means any person who alleges to have been subjected to an act of domestic violence;

“child” includes biological, adopted, step or any child in the care or custody of the applicant or respondent;

“court” means a magistrate’s court of any rank, and includes a customary court which has been authorised, by Statutory Instrument, to hear a matter under this Act;

“domestic relationship” means a relationship between an applicant and the respondent in any of the following ways —

- (a) they are or were married to each other;
- (b) they are or were cohabiting;
- (c) they are a child of the applicant or respondent;
- (d) they are family members;
- (e) they would be family members related by affinity if the persons referred to in paragraph (b) were, or could be married to each other;
- (f) they share or shared the same residence; or
- (g) they are or were in an engagement, dating including an actual or perceived romantic, intimate or sexual relationship;

“domestic violence” means any controlling or abusive behavior that harms the health or safety of the applicant and includes —

- (a) physical abuse or threat thereof;
- (b) sexual abuse or threat thereof;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) damage to property;
- (h) where the applicant and the respondent do not stay in the same home, entry into the applicant’s home without his or her consent;
- (i) unlawful detainment; or
- (j) stalking;

“economic abuse” means —

- (a) the deprivation or threat thereof of economic resources to which the applicant is entitled under the law, or which the applicant requires out of necessity, including household necessities for the applicant and any child, and mortgage bond repayments or rental payments of the residence; or
- (b) the disposal, alienation or threat thereof of household effects or other property in which the applicant has an interest;

“emotional, verbal or psychological abuse” means the systematic and deliberate breaking down or destroying of an applicant or child’s mental well-being by using verbal or physical forms of communication such as but not limited to —

- (a) insults, ridicule or name calling;
- (b) threats to cause emotional pain; or
- (c) the exhibition of obsessive possessiveness or jealousy which is such as to constitute a serious invasion of the applicant’s privacy, liberty, integrity or security;

“harassment” means engaging in a pattern of conduct that constitutes fear of harm including —

- (a) loitering outside of or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
- (b) making telephone calls or inducing another person to make telephone calls to the applicant, whether or not a conversation ensues; or
- (c) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the applicant’s home or work;

“intimidation” means uttering, conveying or causing any person to receive a threat, which induces fear;

“Minister” means the Minister on whose portfolio the Act falls under;

“order” means an interim order, restraining order, occupation order or tenancy order;

“residence” means the premises where the applicant and the respondent have been living together in a domestic relationship;

“respondent” means any person who is or has been in a domestic relationship with the applicant and against whom the applicant seeks to obtain or has obtained an order under this Act;

“sexual abuse” means but is not limited to any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the applicant;

“stalking” means conduct which is intended to create apprehension of imminent or future bodily harm or death to the applicant or a member of the family of the applicant, or an intimate partner of the applicant; and

“unlawful detainment” means confining a person without the person’s consent.

Occupation order

10. An occupation order shall grant the applicant or child the exclusive or non exclusive right to live in the residence occupied or belonging to the applicant, the respondent or to the applicant and the respondent, for a specified or indefinite period.

Tenancy order

11. A tenancy order shall grant the applicant or child the exclusive or non exclusive tenancy of the residence occupied by the applicant, the respondent or by both the applicant and the respondent, with such order as to payment of rental or mortgage as shall be just.

Validity of order

12. An order issued under this Act shall remain in force unless it expires or is revoked under section 13.

Variation and revocation of order

13. (1) An applicant or respondent may make an application in such form as may be prescribed, to vary or set aside an order made under this Act.

(2) An application made in accordance with subsection (1) shall be served on the respondent.

(3) The court shall, where it is satisfied by oral evidence that the application —

(a) is made freely and voluntarily; and

(b) in the best interest of the parties and children, vary or revoke an order made under this Act.

PART III – *General*

Third party interest in property subject to order

14. Where a person has an interest in the property which is subject to an order under this Act, the person shall be given notice of the application and shall be entitled to appear and be heard in the matter as if he or she were a party to the application.

Effect of order on interest in property

15. (1) An order made under this Act shall not affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties.

(2) Where a lease agreement to a residence is in the name of the respondent, and the applicant, who is not party to the agreement is granted an occupation or tenancy order, the landlord shall not evict the applicant on the basis that the applicant is not party to such lease agreement.

(3) Unless the court direct otherwise, where an order is granted and before the order was made, the respondent was responsible for the payment of mortgage or the rent, he or she shall continue to be so responsible.

Use of furniture, household effects, etc

16. (1) The court may when granting an order under this Act, grant to the applicant for such period and on such terms and conditions as the court deems fit, the use of any —

(a) furniture, household appliances or household effects;

(b) vehicle;

(c) joint cheque book;

(d) bank cards;

(e) medical insurance cards;

(f) identification documents; or

(g) other personal effects in the residence to which the order relates.

(2) An order under this section may be varied or revoked in accordance with section 13.

17. An order under this Act shall not diminish any other action against the respondent.

Rights not diminished by Act

18. The provision in respect of appeals contained in the High Court Act and the Customary Courts Act shall apply to proceedings in terms of this Act.

Appeals
Cap. 04:02
Cap. 04:05

19. A person who contravenes an order issued under this Act shall be guilty of an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 2 years or to both.

Offence and penalty

20. The registrar of the court shall maintain, in such form as may be prescribed, a register of all applications filed under this Act and all orders made thereunder.

Register of applications, etc.

21. The Minister may make regulations for any matter which is required to be prescribed or for the better carrying out of the provisions of this Act.

Regulations

PASSED by the National Assembly this 8th day of February, 2008.

E.S. MPOFU,
Clerk of the National Assembly.