Fighting Domestic Violence - South Africa

7. Endnotes

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

[1]    Section 12(1) of the Constitution, 1996.

[2]    The Firearms Control Act seeks to restrict those individuals with a history of domestic violence from owning firearms, given their role in domestic violence and femicide.

[3]    Section 1 of the DVA.

[4]    Section 10 of the Constitution.

[5]    Section 11 of the Constitution.

[6]    Section 12(1) of the Constitution.

[7]    A list of countries that have signed the Maputo Protocol can be accessed [here](https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf?_sm_au_=iVVktTrjStPMWM5jKkM6NKsW8f6TG).

[8]    A list of countries that have signed the Maputo Protocol can be accessed [here](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-8&amp;chapter=4&amp;lang=en).

[9]    Sections 9 and 12 of the Constitution.

[10] *Tshabalala v S and a related matter* (Commission for Equality and another as amici curiae) 2020 (3) BCLR 307 (CC) at para 98 and 99.

[11]    Section 56 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act.

[12]    Section 1 of the DVA.

[13]    Section 1 of the DVA.

[14]    Section 1 of the DVA.

[15]    Throughout this memorandum the terms "victim" and "complainant" will be used interchangeably, as necessitated by context.

[16]    Throughout this memorandum the terms "abuser" and "respondent" will be used interchangeably, as necessitated by context.

[17]    Section 1 of the DVA.

[18]    Refer to <https://www.saps.gov.za/services/protection_order.php>.

[19]    Blue Chip 2 (Pty) Limited trading as Blue Chip 49 v Ryneveldt and others (National Credit Regulator as amicus curiae) [2016] JOL 36049 (SCA).

[20]    See the Prevention of Family Violence Act, 1993 under which the martial rape exemption was abolished.

[21]    Section 1 of the DVA.

[22]    Section 1 of the DVA.

[23]    Section 1 of the DVA.

[24]    Section 1 of the DVA.

[25]    Section 1 of the DVA.

[26]    Section 1 of the DVA.

[27]    Section 1 of the DVA.

[28]    Section 1 of the DVA.

[29]    Section 1 of the DVA.

[30]    Section 4(1) of the DVA.

[31]    Under the terms of Section 1 of the DVA, a domestic relationship means "a relationship between a complainant and a respondent in any of the following ways: (a) they are or were married to each other, including marriage according to any law, custom or religion; (b) 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; (c) 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); (d) they are family members related by consanguinity, affinity or adoption; (e) 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 (f) they share or recently shared the same residence."

[32]    Section 1 of the DVA.

[33]    Section 4(4) of the DVA.

[34]    Section 4(3) of the DVA.

[35]    Section 7(6) of the DVA.

[36]    Section 7(3) and 7(4) of the DVA.

[37]    Section 7(7)(b) of the DVA.

[38]    Section 7(7)(a) of the DVA.

[39]    Section 7(1) of the DVA.

[40]    Section 7(1) of the DVA.

[41]    Section 7(1) of the DVA.

[42]    Section 5(2) of the DVA; Section 3(2) of the PFH Act.

[43]    Section 4(5) of the DVA; Section 2(5) of the PFH Act.

[44]    Section 4(3) of the DVA.

[45]    Section 4(3) of the DVA

[46]    Section 4(4) of the DVA.

[47]    Section 5(6) of the DVA.

[48]    Section 6(7) of the DVA.

[49]    Section 5 of the DVA.

[50]    Section 6(7) of the DVA.

[51]    Section 1 of the DVA.

[52]    Section 9(8) of the PFH Act.

[53]    Section 5(2) of the DVA.

[54]    Section 5(3) of the DVA.

[55]    Section 6(2) of the DVA.

[56]    Section 6(1) of the DVA.

[57]    Section 10 of the DVA.

[58]    Section 9(8) of the PFH Act.

[59]    Refer to: Domestic Violence. Justice College, [www.justice.gov.za/juscol/docs/article-02.html](http://www.justice.gov.za/juscol/docs/article-02.html).

[60]    Form 2 in terms of Section 4(1) of the DVA.

[61]    All forms are available at: <https://www.justice.gov.za/forms/form_dva.htm>; or see application Form 2 PDF at <https://www.justice.gov.za/forms/dva/dva_form%2002.pdf>.

[62]    Form 2 under Section 4(1) of the DVA.

[63]    If an applicant does not have this information, she will need to give some indication as to where the respondent can be found.

[64]    Section 5(1) of the DVA; see also: Justice Department FAQs on Domestic Violence at <https://www.justice.gov.za/vg/dv-faq.html>.

[65]    Section 11(1) of the DVA.

[66]    Section 11(1) of the DVA.

[67]    Section 11(1)(b) of the DVA.

[68]    Section IV.C.(a)(i) of CEDAW Recommendation 35.

[69]    Section 7 of the DVA.

[70]    Section 5(5) of the DVA.

[71]    Section 5(2) of the DVA

[72]    Section 4(5) of the DVA.

[73]    Under the CPA a peace officer includes "any magistrate, justice, police official, member of the prisons service as defined in Section 1 of the Prisons Act 1959 (Act 8 of 1959) and in relation to any area, offence, class of offence or power referred to in a notice issued under Section 334(1), any person who is a peace officer under that section."

[74]    Section 3 of the DVA.

[75]    Section 5(1) of the DVA.

[76]    In terms of Section 1 of the DVA, an act of "Domestic violence" includes: "physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into the complaint's residence without consent, where the parties do not share the same residence; or any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant."

[77]    Section 5(2) of the DVA.

[78]    The "Return Date" being not less than 10 days after notice of the proceedings against the abuser has been served on the abuser (Section 5(5) of the DVA).

[79]    Section 6(1) of the DVA.

[80]    Section 6(2) and (4) of the DVA.

[81]    Section 7 of the DVA.

[82]    Section 7(1) of the DVA.

[83]    Section 7(3) of the DVA.

[84]    See commentary from: Lillian Artz "Tough Choices: Difficulties facing magistrates in applying Protection Orders" (2004) SA Crime Quarterly No 8.

[85]    Section 7(2) of the DVA.

[86]    Under the CPA, a peace officer includes "any magistrate, justice, police official, member of the prisons service as defined in Section 1 of the Prisons Act 1959 (Act 8 of 1959) and in relation to any area, offence, class of offence or power referred to in a notice issued under Section 334(1), any person who is a peace officer under that section."

[87]    Section 7(2) of the DVA.

[88] *KS v AM* (A3032/2016) [2017] ZAGPJHC 297; 2018 (1) SACR 240 (GJ) (24 October 2017) at para 21.

[89]    Section 7(6) of the DVA.

[90]    Section 7(4) of the DVA.

[91]    Section 4(1) of the DVA.

[92]    Under Section 1 of the DVA, a domestic relationship means "a relationship between a complainant and a respondent in any of the following ways: (a) they are or were married to each other, including marriage according to any law, custom or religion; (b) 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; (c) 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); (d) they are family members related by consanguinity, affinity or adoption; (e) 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 (f) they share or recently shared the same residence."

[93]    Section 1 of the DVA.

[94]    Section 4(4) of the DVA.

[95]    Section 7(4) of the DVA.

[96]    Section 1 of the DVA.

[97]    See for example *Mutale v Goldner* (A129/14) [2014] ZAGPPHC 637 (25 August 2014).

[98]    Section 7(7) of the DVA.

[99]    Section 15 of the DVA.

[100]    Section 1 of the DVA.

[101]    Section 2 of the DVA.

[102] Section 51 of the CPA, a peace officer includes "any magistrate, justice, police official, member of the prisons service as defined in Section 1 of the Prisons Act 1959 (Act 8 of 1959) and in relation to any area, offence, class of offence or power referred to in a notice issued under Section 334(1), any person who is a peace officer under that section."

[103]    Section 3 of the DVA.

[104]    Section 73 of the CPA.

[105]    Section 5 and 6 of the DVA.

[106]    National Directives and Instructions on conducting a Forensic Examination on survivors of Sexual Offence cases.

[107]    Section 5(2) of the DVA.

[108]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 102.

[109]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 114.

[110]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 122.

[111]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 127.

[112]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 127.

[113]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 128.

[114]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 139.

[115]    LAWSA, Criminal Law (Volume 11 - Third Edition) at page 84.

[116]    LAWSA, Criminal Law (Volume 11 - Third Edition) at page 84.

[117]    "Intention" is one of the requirements for the various crimes set out in the Criminal Law (Sexual Offences and Related Matters) Amendment Act.

[118]    Section 164 (2) of the CPA.

[119] *K* 1958 3 SA 420 (A) 421, 425; *Z* 1960 1 SA 739 (A); *D* 1963 3 SA 263 (E) 267.

[120]    Sikunyana1961 3 SA 549 (E) 551; *D* 1998 1 SACR 33 (T).

[121]    On necessity, see *supra* IV C and on presumed consent *infra* IV E.

[122]    Strauss 1964 SALJ179 183, 187.

[123]    Criminal Law (Sexual Offences and Related Matters) Amendment Act.

[124]    Matsemela1988 2 SA 254 (T); D1998 1 SACR 33 (T) 39*d–e*.

[125]    "What is consent?" Buyi Nkoyane, <https://www.up.ac.za/speakoutup/article/2383078/what-is-consent>

[126]    CR Snyman, Criminal Law (South Africa: LexisNexis, 2014), page 103-111.

[127]    Sections 77 to Sections 79 of the CPA.

[128]    Section 162 of the CPA.

[129]    Section 164 of the CPA.

[130]    Section 163 of the CPA.

[131]    (656/12) [2013] ZASCA 124; 2014 (1) SACR 29 (SCA); [2014] 2 All SA 141 (SCA) (23 September 2013).

[132]    Section 203 of the CPA

[133]    Section 195 of the CPA

[134]    Section 201 of the CPA

[135]    Section 203, 195 and 201 of the CPA.

[136]    Section 192 of the CPA.

[137]*Matshiva v S* 2014 (1) SACR 29 (SCA).

[138]    Section 305(3) of the Children's Act.

[139]    Section 305(6) of the Children's Act.

[140]    Section 305(7) of the Children's Act.

[141]    Section 110 of the Children's Act.

[142]    Section 283 of the CPA.

[143]    196 (2)SA 537(A) at 540 G.

[144]    Section 51 of the Criminal Law Amendment Act.

[145]    Section 51 of the Criminal Law Amendment Act.

[146]*Omar v Government of the Republic of South Africa and Others* (2005) ZACC 17; 2006 (2) SA 289 (CC).

[147]    Section 17 of the DVA.

[148]    Section 17 of the CPA.

[149]    Section 7 of the DVA.

[150]    Section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendments Act.

[151]    Section 276 of the CPA.

[152]    Section 296 of the CPA.

[153]    Section 276 of the CPA.

[154]    (GA/RES/40/34)

[155]    [The Service Charter for Victims in South Africa](https://www.npa.gov.za/sites/default/files/resources/public_awareness/victims_charter.pdf).

[156]*S v Ferreira and Others* [2004] 4 All SA 373 (SCA) (1 April 2004).

[157]*S v Ferreira and Others*.

[158]    (245/03) [2004] ZASCA 29; [2004] 4 All SA 373 (SCA) (1 April 2004).

[159]*S v Ferreira and Others*.

[160]*S v Ferreira and Others*.

[161]    Definition of "complainant" in terms of the DVA, 116 of 1998.

[162]    Definition of "domestic violence" under the DVA, 116 of 1998.

[163]    To access the Code of Good Practice: Handling of Sexual Harassment Cases in Workplaces, please click [here](https://www.gov.za/documents/employment-equity-act-code-good-practice-handling-sexual-harassment-cases-workplaces).

[164]    Definition of "complainant" under the PFH Act.

[165]    Section 10(1) of the PFH Act.

[166]    Section 10(2) of the PFH Act.

[167]    Section 10(3) of the PFH Act.

[168]    Section 2(2) of Schedule 8: Code of Good Practice: Dismissal of the Labour Relations Act, 66 of 1995.

[169]    Section 2(4) of Schedule 8: Code of Good Practice: Dismissal of the Labour Relations Act, 66 of 1995.

[170]    Section 7(a) of Schedule 8: Code of Good Practice: Dismissal of the Labour Relations Act, 66 of 1995.

[171]    Section 7(b) of Schedule 8: Code of Good Practice: Dismissal of the Labour Relations Act, 66 of 1995.

[172]    Section 20 of the Basic Conditions of Employment Act 75 of 1997.

[173]    Section 27 of the Basic Conditions of Employment Act 75 of 1997.

[174]    Article 10(f) of the International Labour Organization's Convention on Violence and Harassment.

[175]    130 of 1998.

[176]    Section 4 of the Refugees Act 130 of 1998.

[177]    Criminal Law Amendment Act.

[178]    Refugee Act 130 of 1998.

[179]    Military Discipline Bill.

[180]    National Prosecuting Authority Act 32 of 1998.

[181]    Section 1(2) of the Children's Act, 2005.

[182]    Section 1(3) of the English Children Act, 1989 and Sections 60CC(2) and (3) of the Australian Family Law Act, 1975.

[183]    Section 9 of the Children's Act.

[184]    Section 7(1)(l) of the Children's Act.

[185]*P v P 2*007 (5) SA 94 (SCA) at paragraph 14.

[186]    Section 7 of the Children's Act.

[187]    Section 7(1)(g) of the DVA.

[188]    Section 7(1)(l) of the Children's Act, 2005.

[189]    Section 7(6) of the DVA, 1998.

[190]    Article 9 of the Convention on the Rights of the Child.

[191]    Article 19 of the Convention on the Rights of the Child.

[192]    Section 10 of the Children's Act.

[193]    Section 7(l) of the Children's Act, 2005.

[194]    Section 26(1) of the Constitution.

[195]    Section 26(3) of the Constitution.

[196]    19 of 1998.

[197]    Section 4 of the PIE Act.

[198]    Section 4(7) of the PIE Act.

[199]    Section 4 of the PIE Act.

[200]    Section 4 of the PIE Act.

[201]    Article 4 of the Maputo Protocol.

[202]    Section 14(2)(b) of the Consumer Protection Act.

[203]    Section 3 of the Consumer Protection Act.

[204]    Article 4 of the Maputo Protocol.

[205]    Section 7 of the DVA.

[206]    Section 7(c) of the DVA.

[207]    Section 7(2) of the DVA

[208]    <https://www.sahrc.org.za/home/21/files/SAHRC%20GBV%20Research%20Brief%20Publication.pdf>

[209]    Refer to: <https://za.boell.org/sites/default/files/uploads/2013/10/criminaljusticeresponses-assessingimplimentationofdvaingauteng.pdf>

[210]    Article 4(b) to the Maputo Protocol.

[211]    See for example Articles 55 and 56 of the African (Banjul) Charter on Human and Peoples' Rights.

[212]           See for example Article 56 of the African (Banjul) Charter on Human and Peoples' Rights.

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